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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–419–AD; Amendment 39–13761; AD 2004–16–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, that requires a one-time inspection to determine whether the outer cylinder of the wing landing gear has certain part numbers, and replacement of the outer cylinder of the wing landing gear with a new, improved, or reworked part if necessary. This amendment also requires removal of the load evening system, if such a system is installed. This action is necessary to prevent fracture of the outer cylinder of the wing landing gear, which could result in collapse of the wing landing gear. This action is intended to address the identified unsafe condition.

DATES: Effective September 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes was published in the **Federal Register** on April 29, 2003 (68 FR 22641). That action proposed to require a one-time inspection to determine whether the outer cylinder of the wing landing gear has certain part numbers, and replacement of the outer cylinder of the wing landing gear with a new, improved, or reworked part if necessary. That action also proposed to require removal of the load evening system, if such a system is installed.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA has duly considered the comments received.

Support for the Proposed AD

One commenter supports the proposed AD.

Request To Allow Records Review In Lieu of Inspection

Several commenters request that we revise paragraph (a) of the proposed AD to allow operators to perform a records review to determine whether a subject part is installed on the airplane. One commenter, the manufacturer, notes that this alternative should be available to operators because the subject part numbers have not been delivered on a new airplane for more than 20 years. Another commenter states that a review of its tracking system shows that the subject part numbers are not in its stock or were deleted when certain airplanes in its fleet were retired from service.

We concur with the commenters' request. If an operator has a tracking system that records the detailed part number for the outer cylinder of the wing landing gear (*i.e.*, not just a higher-level assembly) for the Model 747 airplanes in its fleet, a records review is an acceptable method of complying with paragraph (a) of this AD. We have revised paragraph (a) of this AD accordingly.

Request To Revise Description of Part Marking

One commenter requests that we revise paragraphs (b) and (d) of the proposed AD to acknowledge that Boeing Service Bulletin 747–32–2472, dated November 30, 2000, does not specify changing the part number of the outer cylinder of the wing landing gear. (Paragraph (b) of the proposed AD states that the rework procedures described in the referenced service bulletin include, among other things, changing the part number of the outer cylinder. Paragraph (d) of the proposed AD prohibits installation of the subject part numbers after the effective date of the AD.) The commenter suggests changing the wording of paragraph (b) of the proposed AD to specify marking the outer cylinder to indicate that the referenced service bulletin has been accomplished. The commenter suggests changing the wording of paragraph (d) of the proposed AD to prohibit installation of a part that has not been (inspected, reworked, and) marked to indicate that the referenced service bulletin has been accomplished.

We concur with the commenter's request and have revised paragraphs (b) and (d) of this AD accordingly.

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system.

The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Explanation of Change to Cost Impact Estimate

Since the issuance of the proposed AD, we have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 1,106 airplanes of the affected design in the worldwide fleet. We estimate that 256 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the inspection to determine whether subject part numbers are installed, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $16,640, or $65 per airplane.

We estimate that 225 airplanes in the worldwide fleet, and 66 airplanes of U.S. registry, are equipped with the subject outer cylinders that will require further action. It will take approximately 12 work hours per airplane to accomplish the chrome removal and inspections for cracking or heat damage, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these actions on U.S. operators is estimated to be $51,480, or $780 per airplane.

For airplanes subject to removal of the load evening system, it will take approximately 240 work hours per airplane, at an average labor rate of $65 per work hour. Based on the best data available, we estimate that necessary parts will cost $2,392. Based on these figures, the cost impact of the removal of the load evening system is estimated to be $17,992 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–16–05 Boeing: Amendment 39–13761. Docket 2000–NM–419–AD.

Applicability: All Model 747 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the outer cylinder of the wing landing gear, which could result in collapse of the wing landing gear, accomplish the following:

Inspection To Determine Part Number

(a) Within 36 months after the effective date of this AD, perform a one-time inspection to determine the part number (P/N) of the outer cylinder of the wing landing gear on both sides of the airplane, per the Accomplishment Instructions of Boeing Service Bulletin 747–32–2472, dated November 30, 2000. Instead of inspecting the outer cylinder of the wing landing gear, a review of airplane maintenance records is acceptable if the detailed P/N of the outer cylinder of the wing landing gear (not just a higher-level assembly) can be positively determined from that review.

(1) If no outer cylinder having P/N 65B01212–( ) (where ''( )'' is any dash number of that part number), 65B01430–3, or 65B01430–4 is found: No further action is required by this paragraph.

(2) If any outer cylinder having P/N 65B01212–( ) (where ''( )'' is any dash number of that part number), 65B01430–3, or 65B01430–4 is found: Accomplish paragraph (b) of this AD.

Replacement of Outer Cylinder

(b) For any outer cylinder identified in paragraph (a)(2) of this AD: Within 36 months after the effective date of this AD, replace the outer cylinder on the wing landing gear with a new, improved part or a part that has been inspected and reworked per the Accomplishment Instructions of Boeing Service Bulletin 747–32–2472, dated November 30, 2000. The rework procedures described in the service bulletin, if accomplished, include performing a one-time nital etch inspection of the upper inner surface of the outer cylinder for chrome plating; removing any chrome plating that is present; performing a one-time magnetic particle inspection for cracking of the outer cylinder; performing a nital etch inspection for heat damage of the outer cylinder; reworking the outer cylinder, as applicable; and marking the outer cylinder to indicate that the service bulletin has been accomplished.

Removal of the Load Evening System

(c) For airplanes listed in Boeing Service Bulletin 747–32–2131, Revision 2, dated March 15, 1974: Before performing the requirements of paragraph (b) of this AD,

remove the load evening system installed on the wing landing gear, per the Accomplishment Instructions of the service bulletin.

Parts Installation

(d) As of the effective date of this AD, no person may install, on any airplane, an outer cylinder of the wing landing gear if the outer cylinder has P/N 65B01212–( ) (where ''( )'' is any dash number of that part number), 65B01430–3, or 65B01430–4, unless the outer cylinder has been inspected, reworked, and marked to indicate that Boeing Service Bulletin 747–32–2472 has been accomplished.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–32–2472, dated November 30, 2000; and Boeing Service Bulletin 747–32–2131, Revision 2, dated March 15, 1974; as applicable. Boeing Service Bulletin 747–32–2131, Revision 2, contains the following effective pages:

Page number	Revision level shown on page	Date shown on page
1, 3–6, 18, 26, 35	2	March 15, 1974.
21, 22, 25, 27–29, 33, 34, 44, 49, 51, 53–55, 65–67, 77, 79.	1	November 30, 1972.
2, 7–17, 19, 20, 23, 24, 30–32, 36–43, 45–48, 50, 52, 56–64, 68–76, 78, 80, 81.	Original	July 28, 1972.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, 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 National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register&/code_of_federal_regulations/&ibr_locations.html.*

Effective Date

(h) This amendment becomes effective on September 14, 2004.

Issued in Renton, Washington, on July 27, 2004.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17760 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–SW–10–AD; Amendment 39–13764; AD 2004–16–08]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters Inc. Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for MD Helicopters, Inc. Model MD900 helicopters. This action requires installing a fan input force limiting control rod assembly fail-safe device (fail-safe device). This AD also requires, after installing a fail-safe device, before the first flight of each day, checking the fail-safe device for bent clips, taut lanyards, and piston rod movement. If any of these conditions are found, this AD requires replacing the control rod assembly with an airworthy control rod assembly before further flight. This amendment is prompted by an accident report of fatigue failure of the piston rod in the spring capsule on a control rod assembly. The actions specified in this AD are intended to provide a temporary backup support system in the event of a piston rod failure and to prevent subsequent loss of control of the helicopter.

DATES: Effective August 25, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 25, 2004.

Comments for inclusion in the Rules Docket must be received on or before October 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2004–SW–10–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the Web at *http://www.mdhelicopters.com.* This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Roger T. Durbin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5233, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for MD Helicopters, Inc. Model MD900 helicopters. This action requires installing a fail-safe device; and, thereafter, before the first flight of each day, checking for bent clips, taut lanyards, or piston rod movement. If any of these conditions are found, this AD requires replacing the control rod assembly with airworthy parts before further flight. This amendment is prompted by an accident report of

fatigue failure of the piston rod in the spring capsule of the control rod assembly. This condition, if not corrected, could result in failure of the piston rod and subsequent loss of control of the helicopter.

The FAA has reviewed MD Helicopters, Inc. Service Bulletin SB900–094, dated March 17, 2004 (SB), which describes procedures for installing a fail-safe device to prevent separation of the piston rod from the spring capsule if a fracture occurs. The SB also describes a daily pilot check of the piston rod and fail-safe device after installing it.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to prevent fatigue failure of the piston rod and subsequent loss of control of the helicopter. This AD requires:

- Installing a fail-safe device on or before September 17, 2004, or based on specified hours time-in-service (TIS) of the control rod assembly, whichever occurs first.
- Before the first flight of each day, after installing a fail-safe device, unzipping the ceiling panel in the baggage compartment and checking for bent clips on the outer bell-crank assembly, taut lanyards connected to clips, and movement of the piston rod. An owner/operator (pilot), holding at least a private pilot certificate, may perform these checks. Pilots may perform these checks because they require no tools and can be done equally well by a pilot or a mechanic. However, the pilot must enter compliance with these requirements into the helicopter maintenance records by following 14 CFR 43.11 and 91.417(a)(2)(v).
- If the bellcrank assembly has taut lanyards, bent clips, or the piston rod moves in any direction, replacing the control rod assembly with an airworthy control rod assembly before further flight.

Mechanics perform the actions following the SB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, installing a fail-safe device is required before further flight for those helicopters that have a control rod assembly with 790 or more hours TIS, and this AD must be issued immediately.

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.

The FAA estimates that this AD will affect 29 helicopters and take about 0.5 work hour to install a fail-safe device at an average labor rate of $65 per work hour. The daily check requires only a minimal amount of time and, therefore, the costs are negligible. Required parts will cost about $322 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $10,280.50.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available 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 mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2004–SW–10–AD.'' The postcard will be date stamped and returned to the commenter.

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 a new airworthiness directive to read as follows:

2004–16–08 MD Helicopters, Inc.: Amendment 39–13764. Docket No. 2004–SW–10–AD.

Applicability: Model MD900 helicopters, with Fan Input Force Limiting Control Rod Assembly (control rod assembly), part number (P/N) 900C6010239–105 or 900C2010239–107, installed, certificated in any category.

Compliance: Required as indicated.

To provide a temporary back-up support system in the event of piston rod failure and to prevent subsequent loss of control of the helicopter, accomplish the following:

(a) Unless accomplished previously, install a control rod assembly fail-safe device (fail-safe device) by following the Accomplishment Instructions, paragraph A., of MD Helicopters, Inc. Service Bulletin SB900–094, dated March 17, 2004 (SB). Install the fail-safe device on or before September 17, 2004, or as indicated in the following table based on the hours time-in-service (TIS) of the control rod assembly, whichever occurs first.

Install a fail-safe device	If the control rod assembly has
(1) Before reaching 200 hours TIS.	Less than 200 hours TIS.
(2) Within 10 hours TIS.	200 or more but less than 790 hours TIS.
(3) Before further flight.	790 or more hours TIS.

(b) Before the first flight of each day after installing a fail-safe device required by paragraph (a) of this AD, check the control rod assembly as follows:

(1) Unzip the ceiling panel of the baggage compartment;

(2) Examine the outer bell-crank assembly for any bent clip and any lanyard connected to a clip that is taut; and

(3) Check the piston rod for any movement.

(4) An owner/operator, holding at least a private pilot certificate, may perform these visual checks and must enter compliance into the helicopter maintenance records in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v)).

(c) Before further flight, replace the control rod assembly with an airworthy control rod assembly if a bent clip, a taut lanyard, or any movement of the piston rod is found.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Los Angeles Aircraft Certification Office (LAACO), FAA, for information about previously approved alternative methods of compliance.

(e) Install the fail-safe device following MD Helicopter, Inc. Service Bulletin SB900–094, dated March 17, 2004. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at *www.mdhelicopters.com.* Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(f) This amendment becomes effective on August 25, 2004.

Issued in Fort Worth, Texas, on July 28, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–17793 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–178–AD; Amendment 39–13760; AD 2004–16–04]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3 series airplanes. This AD requires testing for stiffness of the aft pintle pin bushing of the main landing gear (MLG), and inspecting and measuring the aft pintle pin bushings of the MLG for damage, and for out-of-limit dimensions of the bushing bore. This AD also requires corrective action if necessary. This action is necessary to detect and correct corrosion and deterioration of the aft pintle pin bushings of the MLG. Corrosion and deterioration of the bushings, if not detected and corrected, could result in the MLG not extending fully during landing, with consequent damage to the airplane structure. This action is intended to address the identified unsafe condition.

DATES: Effective September 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3 series airplanes was published in the **Federal Register** on June 14, 2004 (69 FR 32922). That action proposed to require testing for stiffness of the aft pintle pin bushing of the main landing gear (MLG), and inspecting and measuring the aft pintle pin bushings of the MLG for damage, and for out-of-limit dimensions of the bushing bore. That action also proposed to require corrective action if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we may consider further rulemaking then.

Cost Impact

The FAA estimates that 108 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $210,600, or $1,950 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–16–04 Short Brothers PLC: Amendment 39–13760. Docket 2003–NM–178–AD.

Applicability: All Model SD3 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and deterioration of the aft pintle pin bushings of the main landing gear (MLG), which could result in the MLG not extending fully during landing, with consequent damage to the airplane structure, accomplish the following:

Service Bulletin Reference

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model SD3–30 series airplanes: Short Brothers Service Bulletin SD330–32–122, dated April 30, 2003.

(2) For Model SD3 SHERPA series airplanes: Short Brothers Service Bulletin SD3 SHERPA–32–3, dated April 30, 2003.

(3) For Model SD3–60 SHERPA series airplanes: Short Brothers Service Bulletin SD360 SHERPA–32–2, dated April 30, 2003.

(4) For Model SD3–60 series airplanes: Short Brothers Service Bulletin SD360–32–36, Revision 1, dated May 26, 2003.

Note 1: Short Brothers Service Bulletin SD360–32–36 references Short Brothers Service Bulletin SD360–32–03, dated November 1983, as an additional source of service information for replacement of certain bushings, if necessary.

Tests, Inspection, Measurements, and Corrective Action

(b) Within 24 months after the effective date of this AD: Do a friction test for stiffness of the aft pintle pin bushings of the MLG, and a detailed inspection for any defect of the bushings of the aft pintle pin of the MLG; and measure the bore diameter of the bushings (if a defect is found, this paragraph requires that the bushing be replaced; therefore, it is not necessary to do the bore diameter measurement on that bushing). Do all applicable corrective actions and other specified actions prior to further flight. Do all actions per the applicable service bulletin.

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

No Reporting Requirement

(c) Although the service bulletins specify to send certain items to Short Brothers for evaluation (*i.e.,* results of the friction tests, unserviceable bushings, and photographs of serviceable bushings), this AD does not require that action.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) The actions shall be done in accordance with the Short Brothers service bulletins listed in Table 1 of this AD, as applicable.

TABLE 1.—APPLICABLE SERVICE BULLETINS

Short Brothers service bulletin	Revision level	Date
SD330–32–122	Original	April 30, 2003.
SD360–32–36	Revision 1	May 26, 2003.
SD3 SHERPA–32–3	Original	April 30, 2003.
SD360 SHERPA–32–2	Original	April 30, 2003.

Short Brothers Service Bulletin SD360–32–36, Revision 1, dated May 26, 2003, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 6	1	May 26, 2003.
2–5, 7–13	Original	April 30, 2003.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 3: The subject of this AD is addressed in British airworthiness directives 001–04–2003 (for Model SD3–30 series airplanes), 002–04–2003 (for Model SD3–60 series airplanes), 004–04–2003 (for Model SD3 SHERPA series airplanes), and 003–04–2003 (for Model SD3–60 SHERPA series airplanes).

Effective Date

(f) This amendment becomes effective on September 14, 2004.

Issued in Renton, Washington, on July 27, 2004.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17759 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–325–AD; Amendment 39–13759; AD 2004–16–03]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 airplanes, that requires a one-time detailed inspection of the wing flap actuators for proper bonding of the flap actuator fairings to the lower skin of the wings, and related corrective or preventative actions. These actions are necessary to prevent possible separation of the flap actuator fairings from the lower skin of the wings from causing possible damage to adjacent structural elements (such as the horizontal stabilizer), which could result in reduced controllability of the airplane. These actions are intended to address the identified unsafe condition.

DATES: Effective September 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 airplanes was published in the **Federal Register** on April 29, 2004 (69 FR 23458). That action proposed to require a one-time detailed inspection of the wing flap actuators for proper bonding of the flap actuator fairings to the lower skin of the wings, and related corrective or preventative actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Clarification of Service Bulletin Issue Date

Although Gulfstream Aerospace LP Alert Service Bulletin 200–57A–161, Revision 1, dated November 7, 2002, shows November 5, 2002, as the date of the original issue of the service bulletin, the actual date of the original issue of the service bulletin is November 6, 2002. There are no other revisions of this service bulletin. We have revised Paragraph (d) of this AD to specify the original issue date of the service bulletin as November 6, 2002.

Conclusion

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

Cost Impact

The FAA estimates that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will be supplied free of charge by the manufacturer. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $50,700, or $845 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–16–03 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39–13759. Docket 2002–NM–325–AD.

Applicability: Model Galaxy and Model Gulfstream 200 airplanes, serial numbers 004 through 074 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible separation of the flap actuator fairings from the lower skin of the wings from causing possible damage to adjacent structural elements (such as the horizontal stabilizer), which could result in reduced controllability of the airplane, accomplish the following:

Inspection

(a) Within 30 flight hours or 5 flight cycles after the effective date of this AD, whichever occurs earlier, perform a one-time detailed inspection of the wing flap actuators for proper bonding of the flap actuator fairings to the lower skin of the wings; in accordance with Part A of the Accomplishment Instructions of Gulfstream Aerospace LP Alert Service Bulletin 200–57A–161, Revision 1, dated November 7, 2002.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Reinforcement of Actuator Fairing Adhesive

(b) If the inspection required by paragraph (a) of this AD reveals either no separation or separation of the flap actuator fairings from the lower skin of the wings that is within the limits specified in Gulfstream Aerospace LP Alert Service Bulletin 200–57A–161, Revision 1, dated November 7, 2002, do paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to further flight, apply sealant around the edges of the fairings, in accordance with Part A of the Accomplishment Instructions of the service bulletin.

(2) Within 300 flight hours after performing paragraph (b)(1) of this AD, remove and reattach the flap actuator fairings in accordance with Part B of the Accomplishment Instructions of the service bulletin.

Removal and Reattachment of Actuator Fairings

(c) If the inspection required by paragraph (a) of this AD reveals separation of the flap actuator fairings from the lower skin of the wings that is outside the limits specified in Gulfstream Aerospace LP Alert Service Bulletin 200–57A161, Revision 1, dated November 7, 2002: Prior to further flight, remove and reattach the flap actuator fairings in accordance with Part B of the Accomplishment Instructions of the service bulletin.

Actions Accomplished Per Previous Issue of Service Bulletin

(d) Actions accomplished before the effective date of this AD per Gulfstream Aerospace LP Alert Service Bulletin 200–57A–161, dated November 6, 2002, are considered acceptable for compliance with corresponding actions specified in this AD.

Reporting Requirements

(e) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(g) Unless otherwise specified by this AD, the actions shall be done in accordance with Gulfstream Aerospace LP Alert Service Bulletin 200–57A–161, Revision 1, dated November 7, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402. Copies may be inspected at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in Israeli airworthiness directive AD 57–02–10–15, dated October 31, 2002.

Effective Date

(h) This amendment becomes effective on September 14, 2004.

Issued in Renton, Washington, on July 27, 2004.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17758 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–209–AD; Amendment 39–13758; AD 2004–16–02]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3 series airplanes, that requires installing a new warning annunciator light on the central warning panel and revising the Normal Procedures Section of the Aircraft Flight Manual to provide the flightcrew with procedures related to the new light. This action is necessary to prevent an engine shut-down in icing conditions, which could result in loss of control of the airplane and consequent injury to flightcrew and passengers. This action is intended to address the identified unsafe condition.

DATES: Effective September 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, PO Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to all Short Brothers Model SD3 series airplanes was published in the **Federal Register** on June 2, 2004 (69 FR 31049). That action proposed to require installing a new warning annunciator light on the central warning panel and revising the Normal Procedures Section of the Aircraft Flight Manual to provide the flightcrew with procedures related to the new light.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 125 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $4,800 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $843,750, or $6,750 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–16–02 Short Brothers PLC: Amendment 39–13758. Docket 2002–NM–209–AD.

Applicability: All Model SD3 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an engine shut down in icing conditions, which could result in loss of control of the airplane and consequent injury to flight crew and passengers, accomplish the following:

Installation and Aircraft Flight Manual (AFM) Revision

(a) Within five months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Install a new warning annunciator light on the central warning panel in accordance with the Accomplishment Instructions of the applicable Shorts service bulletins listed in Table 1 of this AD; and

(2) Revise the Normal Procedures Section of the AFM by inserting a copy of the applicable pages of the Shorts AFM document listed in Table 1 of this AD, per the Accomplishment Instructions of the applicable Shorts service bulletin listed in Table 1 of this AD.

TABLE 1.—SHORTS SERVICE BULLETINS AND AFMS

For model	Shorts service bulletin	Shorts AFM document number
SD3–SHERPA series airplanes	SD3 Sherpa-31–2, Revision 1, dated October 29, 2002.	Doc.No.SB.5.2, P/5.
SD3–60 SHERPA series airplanes	SD360 Sherpa-31–1, Revision 1, dated October 29, 2002.	Doc.No.SB.6.2, P/3.
SD3–30 series airplanes	SD330–31–15, Revision 1, dated October 29, 2002.	Doc.No.SBH.3.3, P/20 or Doc.No.SBH.3.6, P/18, as applicable.
SD3–60 series airplanes	SD360–31–06, Revision 1, dated October 29, 2002.	Doc.No.SB.4.8, P/19 or Doc.No.SB.4.6, P/20, as applicable.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with the Shorts service bulletin listed in Table 2 of this AD, as applicable.

TABLE 2.—SHORTS SERVICE BULLETINS INCORPORATED BY REFERENCE

Service bulletin	Revision	Date
SD3 Sherpa-31–2	1	October 29, 2002.

TABLE 2.—SHORTS SERVICE BULLETINS INCORPORATED BY REFERENCE—Continued

Service bulletin	Revision	Date
SD360 Sherpa-31–1	1	October 29, 2002.
SD330–31–15	1	October 29, 2002.
SD360–31–06	1	October 29, 2002.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, PO Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in British airworthiness directives 002–06–2002, 003–06–2002, 004–06–2002, and 005–06–2002.

Effective Date

(d) This amendment becomes effective on September 14, 2004.

Issued in Renton, Washington, on July 27, 2004.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17757 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–92–AD; Amendment 39–13762; AD 2004–16–06]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited Model Avro 146–RJ series airplanes, that requires replacing the existing digital flight guidance computer(s) (DFGC) with a new or modified DFGC(s). This action is necessary to prevent a premature flare from occurring on approach due to erroneous data being provided to the DFGC(s); and also to prevent uncertainty about autopilot engagement status, which could cause the pilot to apply unneeded force to the control column and possibly result in a runaway condition of the autotrim. Either condition could lead to reduced controllability of the airplane. This action is intended to address the identified unsafe conditions.

DATES: Effective September 14, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of September 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model Avro 146–RJ series airplanes was published in the **Federal Register** on March 24, 2004 (69 FR 13760). That action proposed to require replacing the existing digital flight guidance computer(s) (DFGC) with a new flight computer(s).

Comments

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

Request To Revise the Explanation of Unsafe Conditions and Results

Two commenters state that the unsafe condition and results specified in the AD are derived from an incorrect combination of two completely unrelated conditions. Both commenters state that the premature flare condition is due to erroneous radio altimeter data provided to the DFGCs being undetected. One of the commenters, the airplane manufacturer, states that inappropriate force that the pilot applied to the control stick resulted from the flightcrew's uncertainty as to whether the autopilot was engaged or not. The commenter requests that the Summary and Discussion sections of the proposed AD be rewritten to reflect that the two unsafe conditions are unrelated. The other commenter, the DFGC manufacturer, requests that the body of the proposed AD be rewritten to reflect that the two unsafe conditions are unrelated.

The FAA agrees that the premature flare condition and application of inappropriate force to the control stick are unrelated. Therefore, we have rewritten the statement of unsafe conditions in the Summary and body of the AD to reflect the commenters' statements. However, the Discussion section of the AD is not repeated in the final rule, so no change to the final rule is necessary in that regard.

Request To Revise Wording Describing the Action to Replace

One commenter, the DFGC manufacturer, requests that the wording of paragraph (a) of the proposed AD describing the replacement of the ''existing * * * DFGC'' with a ''new DFGC(s) * * *'' be revised to read ''a modified DFGC.'' The commenter states that the unsafe conditions result from erroneous data from external sources being supplied to DFGCs that are in perfect working order. The commenter indicates that specifying replacement of an existing DFGC with a new DFGC implies that the DFGC was seriously flawed and required a major redesign. The commenter states that only minor software adjustments were necessary to enhance DFGC monitoring capabilities and no redesign was needed to address the unsafe conditions. Following the

same reasoning, the commenter requests that the heading of paragraph (a) be changed from ''Replacement'' to ''Modification.''

We understand the commenter's position and agree that clarification is necessary. DFGCs returned to the manufacturer for upgrade, then returned to service certainly have been modified. However, we do not agree that the word ''new'' carries such negative impact, since any new DFGC produced by the manufacturer will also contain the upgrade. Therefore, the wording of the summary of the section and paragraph (a) of this AD has been changed to read ''with a new or modified DFGC(s).''

We do not agree that the heading of paragraph (a) should be changed from ''Replacement'' to ''Modification.'' Though the DFGC is being switched for an upgraded DFGC, and will itself be upgraded by the manufacturer for return to service, the DFGC is still being replaced with another DFGC, not modified by the operator. No change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $4,250 per DFGC (some airplanes may have 2 DGFCs). Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $4,315 and $8,565 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–16–06 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13762. Docket 2003–NM–92–AD.

Applicability: All Model Avro 146–RJ series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a premature flare from occurring on approach due to erroneous data being provided to the DFGC(s); and also prevent uncertainty about autopilot engagement status, which could cause the pilot to apply unneeded force to the control column and possibly result in a runaway condition of the autotrim; either of which conditions could lead to reduced controllability of the airplane; accomplish the following:

Replacement

(a) Within 29 months after the effective date of this AD, replace the existing DFGC(s) with a new or modified DFGC(s), in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.22–068–70628B, dated November 4, 2002.

Reporting Requirements

(b) Although the service bulletin referenced in paragraph (a) of this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The actions shall be done in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.22–068–70628B, dated November 4, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in British airworthiness directive 001–11–2002.

Effective Date

(e) This amendment becomes effective on September 14, 2004.

Issued in Renton, Washington, on July 27, 2004.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17756 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 249

[Release Nos. 33–8400A; 34–49424A; File No. S7–22–02]

RIN 3235–AI47

Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: We are making technical corrections to rules adopted in Release No. 33–8400 (March 16, 2004), which were published in the **Federal Register** on March 25, 2004 (69 FR 15593). The rules adopt amendments that increase the number of events requiring disclosure on Form 8–K and accelerate the filing deadline for that form. This document corrects certain errors in the regulatory text of the adopting release.

DATES: Effective August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Discussion

On November 24, 2003 in Release No. 33–8340,[1] we added paragraph (b) to Item 5 of Form 10–Q[2] and Item 5 of Form 10–QSB,[3] which requires companies to disclose information regarding changes to the procedures by which security holders may recommend nominees to the company's board of directors. In Release 33–8400 (the ''Adopting Release''),[4] we adopted amendments to these items that inadvertently deleted paragraph (b). These amendments clarify that paragraph (b) is not deleted from Item 5 of Forms 10–Q and 10–QSB.

Also, the regulatory text in the Adopting Release states that, with regard to disclosures under Item 2.01 of Form 8–K, *Completion of Acquisition or Disposition of Assets,* disclosure of the identity of the source of funding need only be made when a material relationship exists between the company and the person from whom the assets were acquired. However, the release discussion is inconsistent with the regulatory text inasmuch as the release discussion indicates that disclosure of the source of funding must be made if a material relationship exists between the company and the source of funding. We are revising the regulatory text to be consistent with the release discussion, which was our original intent and consistent with commenters' remarks.

In addition, in the Adopting Release, we adopted amendments to add three checkboxes to the cover of Form 8–K to allow companies to satisfy specified overlapping Form 8–K and Regulation M–A disclosure obligations in a single filing on Form 8–K. These amendments add a fourth checkbox to allow a company to satisfy the disclosure requirements of Rule 13e–4(c),[5] the Regulation M–A provision for issuer tender offers, by including that disclosure in a Form 8–K. Also, to clarify that a Form 8–K report that satisfies the filing requirements of Rule 14a–12(b)[6] must contain all of the information required by Rule 14a–12, we are revising the reference in the newly adopted second checkbox to remove the paragraph (b) designation.

These amendments also redesignate paragraphs (a)(5)(1) and (2) of Item 5.01 of Form 8–K, *Changes in Control of Registrant,* as paragraphs (a)(5)(i) and (ii). A further correction pertains to Item 5.05(c) (formerly Item 10) of Form 8–K, *Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics,* which provides that a company need not file a Form 8–K report regarding a waiver from, or amendment to, its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions if it posts the required disclosure on its Web site.[7] We are correcting this item to state that a company disclosing an amendment to, or waiver from, such code of ethics on its Web site must do so within four business days after the date on which the code is amended or the waiver is granted in order to comply with paragraph (c) of the item, rather than within five business days of such date.[8] We intended the deadline to parallel the general Form 8–K four business day filing deadline.

In Item 1.03 of Form 8–K, *Bankruptcy or Receivership,* we are revising the reference to the Bankruptcy Act to refer instead to the U.S. Bankruptcy Code[9] to acknowledge the revisions made by the Bankruptcy Reform Act of 1978. Also, in the instructions to Forms S–2 and S–3, we are changing incorrect references to Section 12[10] of the Exchange Act to refer to Section 13[11] instead.

Finally, we are correcting revisions to Item 5(a) of Form 10–K which erroneously included previously deleted regulatory text permitting the exclusion of sales made under Regulation S.[12]

II. Certain Findings

Under the Administrative Procedure Act (''APA''), notice of proposed rulemaking is not required when an agency, for good cause, finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[13] The correcting amendments to Form 8–K are technical changes that correct cross-references, correct paragraph numbering, conform the text to the stated intent of the Commission, replace text accidentally removed, and delete text previously removed. For these reasons, the Commission finds that there is no need to publish notice of these amendments.[14] The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.[15] For the same reasons described with respect to opportunity for notice and comment, the Commission finds there is good cause for the amendments to take effect on August 23, 2004.

III. Need for Correction

As published, the final regulations contain errors which are in need of clarification.

IV. Correction of Publication

Accordingly, the publication on March 25, 2004 of the final rules

[1] Release No. 33–8340 (Nov. 24, 2003) [68 FR 66992].

[2] 17 CFR 249.308a.

[3] 17 CFR 249.308b.

[4] 69 FR 15593.

[5] 17 CFR 240.13e–4(c).

[6] 17 CFR 240.14a–12(b).

[7] A company may do so if it has indicated in its most recent annual report that it intends to make such disclosures in this manner.

[8] See General Instruction B.1 to Form 8–K.

[9] 11 U.S.C.

[10] 15 U.S.C. 78*l*.

[11] 15 U.S.C. 77m.

[12] *See* Release No. 33–7505 (Feb. 17, 1998) [63FR 9632].

[13] 5 U.S.C. 553(b)(3)(B).

[14] For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major status under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking); 5 U.S.C. 804(3)(C) (for purposes of congressional review of agency rulemaking, the term ''rule'' does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

[15] *See* 5 U.S.C. 553(d)(3).

(Release No. 33–8400) relating to the addition of new Form 8–K disclosure requirements and acceleration of the filing date for that form, which was the subject of FR Doc. 04–6332, is corrected as follows.

Note: These corrections to Form S–2 (17 CFR 239.12), Form S–3 (17 CFR 239.13), Form 8–K (17 CFR 249.308), Form 10–Q (17 CFR 249.308a), Form 10–QSB (17 CFR 249.308b) and Form 10–K (17 CFR 249.310) do not appear in the Code of Federal Regulations.

1. On page 15618, first column, eleventh line, revise the reference ''Section 12'' to read ''Section 13''.

2. On page 15618, second column, fifth line of paragraph I.A.3.(a) under *General Instructions*, revise the reference ''Section 12'' to read ''Section 13''.

3. On page 15619, first column, second line of the second checkbox, revise the reference to ''14a–12(b)'' to read ''14a–12''.

4. On page 15619, first column, third line of the second checkbox, revise the reference to ''(17 CFR 240.14a–12(b))'' to read ''(17 CFR 240.14a–12)''.

5. On page 15619, first column, add the following checkbox above the *General Instructions*.

''[] Pre-commencement communications pursuant to Rule 13e–4(c) under the Exchange Act (17 CFR 240.13e–4(c))''

6. On page 15620, second column, fourth line of paragraph (a) under Item 1.03 Bankruptcy or Receivership, revise the reference ''Bankruptcy Act'' to read ''U.S. Bankruptcy Code''.

7. On page 15620, third column, revise paragraph (e) under Item 2.01Completion of Acquisition or Disposition of Assets to read as follows:

''(e) if the transaction being reported is an acquisition and if a material relationship exists between the registrant or any of its affiliates and the source(s) of the funds used in the acquisition, the identity of the source(s) of the funds unless all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, in which case the identity of such bank may be omitted provided the registrant:''

8. On page 15625, third column, redesignate paragraphs (a)(5)(1) and (a)(5)(2) of Item 5.01 as paragraphs (a)(5)(i) and (a)(5)(ii).

9. On page 15627, first column, fifth line of paragraph (c) of Item 5.05, revise the word ''five'' to read ''four''.

10. On page 15628, first column, revise amendatory instruction 20.f. to read:

''f. Revising Item 5(a);''.

11. On page 15628, first column, first line under ''Item 5. Other Information,'' designate the paragraph as paragraph (a).

12. On page 15628, in the second column, revise amendatory instruction 21.f. to read:

''f. Revising Item 5(a);''.

13. On page 15628, second column, first line under ''Item 5. Other Information,'' designate the paragraph as paragraph (a).

14. On page 15628, third column, eighth through eleventh lines in paragraph (a) under ''*Item 5. Market for Registrant's Common Equity and Related Stockholder Matters*,'' remove the phrase ''other than unregistered sales made in reliance on Regulation S (17 CFR 230.901 through 230.905)''.

By the Commission.

Dated: August 4, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–18118 Filed 8–9–04; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 358

[Docket Number RM01–10–002; Order No. 2004–B]

Standards of Conduct for Transmission Providers

Issued August 2, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule; Order on Rehearing of Order No. 2004–A.

SUMMARY: The Federal Energy Regulatory Commission (Commission) generally reaffirms its determinations in Order Nos. 2004 and 2004–A and grants rehearing and clarifies certain provisions. Order No. 2004 requires all natural gas and public utility Transmission Providers to comply with Standards of Conduct that govern the relationship between the natural gas and public utility Transmission Providers and all of their Energy Affiliates.

In this order, the Commission addresses the requests for rehearing and/or clarification of Order No. 2004–A. The Commission grants rehearing, in part, denies rehearing, in part, and provides clarification of Order No. 2004–A.

EFFECTIVE DATE: Revisions in this order on rehearing will be effective September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Demetra Anas, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8178.

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I. Applicability of the Standards of Conduct to Newly Formed Transmission Providers
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V. Effective Date

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. On November 25, 2003, the Federal Energy Regulatory Commission issued a Final Rule adopting Standards of Conduct for Transmission Providers (Order No. 2004 or Final Rule) [1] which added Part 358 and revised Parts 37 and 161 of the Commission's regulations. The Commission adopted Standards of Conduct that apply uniformly to interstate natural gas pipelines and public utilities (jointly referred to as Transmission Providers) that were

[1] Standards of Conduct for Transmission Providers, 68 FR 69134 (Dec. 11, 2003), III FERC Stats. & Regs. ¶ 31,155 (Nov. 25, 2003).

subject to the former gas Standards of Conduct in Part 161 of the Commission's regulations or the former electric Standards of Conduct in Part 37 of the Commission's regulations.[2] Under Order No. 2004, the Standards of Conduct govern the relationships between Transmission Providers and all of their Marketing and Energy Affiliates. On April 16, 2004, the Commission affirmed the legal and policy conclusions on which Order No. 2004 was based, granted and denied rehearing and offered clarification in Order No. 2004–A.[3]

2. In this order, the Commission addresses the requests for rehearing and/or clarification of Order No. 2004–A. As discussed below, the Commission grants rehearing, in part, denies rehearing, in part, and provides clarification of Order No. 2004 and 2004–A.

3. Chief among the clarifications are that (1) Local distribution companies (LDCs) may release or acquire capacity in the capacity release market without becoming Energy Affiliates; (2) the Energy Affiliate exemption for LDCs extends to LDCs serving state-regulated load at cost-based rates that acquire interstate transmission capacity to purchase and resell gas only for on-system sales; (3) an LDC division of an electric public utility Transmission Provider will not be treated as an Energy Affiliate if it qualifies for the LDC exemption under § 358.3(d)(6)(v); (4) LDCs that otherwise qualify for the LDC exemption under § 358.3(d)(6)(v) do not change their status by responding to emergencies; however, each emergency activity shall be posted; (5) natural gas processors do not become Energy Affiliates by virtue of purchasing and transporting gas on affiliated Transmission Providers for plant thermal reduction purposes; (6) processors, gatherers, intrastate pipelines and Hinshaw pipelines may purchase gas for operational purposes and make de minimus sales as required to remain in balance without becoming Energy Affiliates; (7) service companies that do not engage in any activities described in §§ 358.3(d)(1), (2), (3) or (4) on their own behalf and whose employees assigned, dedicated or working on behalf of a particular entity are subject to the Standards of Conduct as if they were directly employed by that entity are not Energy Affiliates; (8) an affiliate that purchases natural gas solely for its own consumption is not an Energy Affiliate by virtue of those purchases; (9) § 358.4(a)(5) does not prohibit senior officers who are Transmission Function Employees from receiving transmission-related information; (10) Transmission Providers need not post the identity of shared physical field infrastructure, such as substations, that do not house any employees; (11) posted logs of discretionary waivers need not disclose customer names; (12) all officers of the Transmission Provider as well its employees with access to transmission information or information concerning gas or electric purchases, sales or marketing must be trained concerning the requirements of the Standards of Conduct; (13) Transmission Providers need not post notice of or transcribe scoping meetings for purposes of the Standards of Conduct; and (14) a Transmission Provider that has a division that operates as a functional unit is not required to maintain separate books and records for that unit.

I. Background

4. The Commission provided a detailed background of this proceeding in Order Nos. 2004 and 2004–A, which it will not repeat here.

5. Thirty-five petitioners requested rehearing and/or clarification of Order No. 2004–A.[4]

6. On May 10, 2004, in Houston, Texas, the Commission hosted a Technical Conference to provide additional informal guidance on implementing the Standards of Conduct. Approximately 230 individuals participated in the conference, which was also audiocast. As a result of the conference, industry groups have been working to bring together Chief Compliance Officers in a collaborative fashion.

II. Need for the Rule

Order Nos. 2004 and 2004–A

7. The Final Rule and the Order on Rehearing identified a number of changes in the energy, natural gas, power and transmission markets that supported the need for enhancing the Standards of Conduct, including, but not limited to, open-access transmission, unbundling, changing commodity markets, increased mergers, convergence of gas and electric industries, asset management, electronic commodity trading and an increase in the number of power marketers or entities with market-based rate authority.

Requests for Rehearing and/or Clarification and Commission Conclusions

8. El Paso and INGAA request rehearing and repeat the arguments they previously made that the Standards of Conduct requirements in Order No. 2004 (and 2004–A) are overbroad and unsupported by substantial evidence. NGSA and Sempra filed comments stating that they support most aspects of the Standards of Conduct.

9. For the reasons discussed in Order Nos. 2004 and 2004–A, the Commission denies the requests for rehearing. As the Commission previously stated, the Final Rule is needed to address the Commission's statutory mandate to prevent unduly discriminatory transmission service under sections 4 and 5 of the Natural Gas Act (NGA) and sections 205 and 206 of the Federal Power Act (FPA). Order Nos. 2004 and 2004–A are needed to guide the behavior of Transmission Providers towards all of their affiliates who compete with non-affiliates for access to transmission capacity and compete in the wholesale commodity markets.

10. Entergy, Kinder Morgan, Southern and Xcel have requested that the Commission postpone the date for Transmission Providers to comply with the requirements Order No. 2004. The Commission is deferring the implementation date by three weeks and Transmission Providers are required to comply with the Standards of Conduct by September 22, 2004.

III. Analysis of Requests for Rehearing and/or Clarification

A. Definition of a Transmission Provider

Order Nos. 2004 and 2004–A

11. Section 358.3(a) defines a Transmission Provider as: ''(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or (2) Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.''

Requests for Rehearing and/or Clarification and Commission Conclusions

12. NASUCA repeats its previous request for rehearing arguing that the Commission should classify Hinshaw[5]

[2] The gas standards of conduct were codified at part 161 of the Commission's regualtions, 18 CFR part 161 (2003), and the electric standards of conduct were codified at 18 CFR 37.4 (2003).

[3] 69 FR 23562 (Apr. 29, 2004), III FERC Stats. & Regs. ¶ 31,161 (Apr. 16, 2004).

[4] A list of petitioners that requested rehearing and/or clarification is included in Appendix A.

[5] Hinshaw pipelines are exempt from Commission regulation under the NGA, but they may have limited jurisdiction certificates to provide interstate transportation services like an intrastate pipeline under the Natural Gas Policy Act of 1978. *See* Order No. 63, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,118 (1980).

or intrastate pipelines as Transmission Providers under the Standards of Conduct. NASUCA argues that section 311 of the Natural Gas Policy Act of 1978 (NGPA)[6] authorizes the Commission to condition the certificates that authorize Hinshaw and intrastate pipelines to engage in transmission transactions. NASUCA claims that intrastate pipelines have the same incentives to transfer market power to their Energy Affiliates as do other Transmission Providers. NASUCA argues that requiring the independent functioning of employees would limit the opportunities for intrastate pipelines to give preferential treatment to marketing affiliates that compete with non-affiliated shippers on intrastate pipelines. NASUCA claims that discriminatory intrastate transactions have the potential to distort wholesale markets and may fall between the cracks of federal and state regulation.

13. For the reasons discussed in Order No. 2004–A (at P 36), the Commission denies NASUCA's request for rehearing and will not classify intrastate and Hinshaw pipelines as Transmission Providers under the Standards of Conduct. The Commission encourages shippers who are treated in a discriminatory fashion by an intrastate or Hinshaw pipeline that is providing service under section 311 of the NGPA to contact the Enforcement Hotline or file a complaint with the Commission.

14. AGA, National Fuel—Distribution and Questar-Gas argue that LDCs should not be considered Transmission Providers as a result of transporting interstate natural gas under Order No. 63 Certificates. The Commission agrees and stated as much in Order No. 2004–A.[7] To the extent an LDC is also a Hinshaw pipeline with Order No. 63 certificate authorization, it is not an Energy Affiliate unless it engages in Energy Affiliate activities beyond those allowed pursuant to § 358.3(d)(6)(v).

B. Definition of an Energy Affiliate

Order Nos. 2004 and 2004–A

15. The Final Rule defined Energy Affiliate in § 358.3(d) as an affiliate that:

(1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or

(2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or

(3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or

(4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

(5) An LDC division of an electric public utility Transmission Provider shall be considered the functional equivalent of an Energy Affiliate.

(6) An Energy Affiliate does not include:

(i) A foreign affiliate that does not participate in U.S. energy markets;

(ii) An affiliated Transmission Provider or an interconnected foreign affiliated natural gas pipeline that is engaged in natural gas transmission activities which are regulated by the state, provincial or national regulatory boards of the foreign country in which such facilities are located;

(iii) A holding, parent or service company that does not engage in energy or natural gas commodity markets or is not involved in transmission transactions in U.S. energy markets; or

(iv) An affiliate that purchases natural gas or energy solely for its own consumption and does not use an affiliated Transmission Provider for transmission of natural gas or energy; or

(v) A state-regulated local distribution company that acquires interstate transmission capacity to purchase and resell gas only for on-system customers, and otherwise does not engage in the activities described in §§ 358.3(d)(1), (2), (3) or

(4), except to the limited extent necessary to support on-system customer sales and to engage in *de minimus* sales necessary to remain in balance under applicable pipeline tariff requirements.

i. Scope of the LDC Exemption

Requests for Rehearing and Clarification and Commission Conclusions

16. Several petitioners repeat previous requests for an outright exemption for LDCs and all their activities. For the reasons discussed in Order No. 2004–A, the Commission denies this request.

17. AGA, Cinergy, Duke, Questar-Gas, Gulf South and National Fuel—Distribution seek rehearing and reconsideration of the Commission's decision to exempt from Energy Affiliate status only those LDCs that do not participate in wholesale market functions such as hedging. Some petitioners argue that the Commission should allow LDCs to participate in financial markets and to hedge to support on-system sales. Petitioners argue that hedging and capacity release are essential functions that allow LDCs to control costs and ensure reliability. Petitioners argue that capacity release, like *de minimus* sales, allows LDCs to balance their upstream transmission capacity commitments throughout the year and minimize costs to retail ratepayers. In addition, some petitioners argue that the *de minimus* exception for balancing sales is too vague.

18. The Commission is retaining the current version of the rule with some clarification. Specifically, an LDC would not be able to engage in financial or futures transactions or hedging without becoming an Energy Affiliate. As stated in Order Nos. 2004 and 2004–A, the Commission is concerned that transmission information could be valuable in the financial and futures markets and could be unduly preferential to an Energy Affiliate. Although several petitioners urge the Commission to narrow the definition of Energy Affiliate to permit LDCs to participate in futures markets or hedging to the extent necessary to support on-system sales, it is virtually impossible to distinguish between financial or futures transactions in a speculative market versus those needed to support on-system sales.

19. With respect to LDCs' participation in the capacity release market, the Commission did not intend to restrict the capacity release market and clarifies that LDCs may release or acquire capacity in the capacity release market without becoming Energy Affiliates. KM Pipelines requested rehearing of the Commission's statement in Order No. 2004–A, that its affiliated LDC makes off-system sales and therefore falls squarely within the definition of Energy Affiliate. (Order No. 2004–A at P 105.) KM Pipelines argue that its affiliated LDC, KMI, only makes purchases or sales of gas that are ''necessary to support on-system customer sales'' and does not make ''off-system sales.''

20. KM Pipeline's request for rehearing on this issue has identified to the Commission an error in the regulatory text of § 358.3(d)(6)(v) of the Commission's regulations, which references both ''on-system customers'' and ''on-system customer sales.'' The Commission will revise the regulatory text at § 358.3(d)(6)(v) so that the term ''on-system sales'' is consistently used. We intend this correction to limit the LDC exemption to LDCs serving state-regulated load at cost-based rates, and not LDCs competing in competitive retail markets.

[6] 15 U.S.C. 3371 (2000).

[7] Order No. 2004–A at P 72 (special purpose exchange authorizations and section 7(f) service area determinations do not make an LDC a Transmission Provider or an Energy Affiliate) and Order No. 2004–A at P 93 (an LDC's status as a Hinshaw pipeline does not invalidate an otherwise appropriate exemption from the term Energy Affiliate).

21. With respect to KM Pipelines's specific request, although the Commission erroneously labeled KMI's activities as ''off-system,'' the Commission finds that KMI nonetheless may not qualify for the LDC exemption. The Commission is concerned that an LDC which also acts as a competitive retail service provider in a state-approved retail access program could use preferential access to interstate transmission system to frustrate other competitive merchants seeking to serve the same customers. Affiliated retail merchant functions will compete against other non-affiliated retail merchants for upstream pipeline capacity, storage services, and the best gas purchase alternatives available in the wholesale energy market. Also, a competitive retail merchant has a strong profit motive in this line of its business.[8] While the Commission supports retail competition under state approved programs, the Commission must also ensure fair and non-discriminatory access to interstate transmission and storage services to all who participate in competitive retail markets.

ii. Treatment of LDC Divisions

Order on Rehearing

22. In Order No. 2004–A, the Commission stated that an LDC division of an electric Transmission Provider would be treated as an Energy Affiliate.[9]

Requests for Rehearing and Clarification and Commission Conclusions

23. AEP and EEI request rehearing arguing that the Commission has shown no potential for affiliate abuse relating to the sharing of employees, facilities, or information between an LDC division and its affiliated electric Transmission Provider. Because an LDC division that makes only on-system sales and does not participate in other Energy Affiliate activities is not defined as an Energy Affiliate, this question only pertains to LDC divisions that are making off-system sales or participating in Energy Affiliate activities. The Commission will revise the regulatory text to reflect the Commission's intent that an LDC division would not be treated as an Energy Affiliate to the extent that it qualifies for the LDC exemption at § 358.3(d)(6)(v).

24. With respect to LDCs that are Energy Affiliates, the Commission denies rehearing. If an LDC division provides natural gas to an electric generator in exchange for power and then sells the power, the LDC division would unduly benefit from preferential access to electric transmission information and competitors would be unduly disadvantaged. Application of the Standards of Conduct ensures that the affiliated LDC has no more information than unaffiliated competitors.

25. Entergy, Cinergy and National Grid request the Commission to clarify that both gas and electric LDCs qualify for an exemption from the definition of Energy Affiliate in § 385.3(d)(6)(v). They note that the Commission's revision to § 358.3(d)(6)(v) focuses on LDCs that are natural gas distributors and does not reference electric LDCs. They argue, however, that elsewhere in Order No. 2004–A, the Commission implied that LDC includes both natural gas and electric retail operations. They argue that provided a Transmission Provider's marketing and sales unit is treated as an Energy Affiliate, the Transmission Provider's bundled electric retail distribution function should not be treated as an Energy Affiliate. Therefore, they request the Commission to revise § 358.3(d)(6)(v) to reflect that a state-regulated LDC that acquires interstate transmission capacity to purchase and resell gas or electricity only for on-system customers is not an Energy Affiliate.

26. The Commission denies these requests for rehearing. This is one instance where the Commission's Standards of Conduct Rules were modified to reflect differences in the gas and electric industries. Gas LDCs make *de minimus* sales and purchases of gas to maintain line pack and keep their systems in balance. Electric LDCs do not make sales to stay in balance but instead they purchase ancillary services from the Transmission Provider or adjust generation. Electric utilities, therefore, do not need a *de minimus* exception for balancing.

iii. Emergency LDC Activities

Requests for Rehearing and Clarification and Commission Conclusions

27. AGA asks the Commission to exempt LDCs' responses to emergency situations. AGA argues that LDCs should not become Energy Affiliates in the event they make off-system sales, or take other actions in the wholesale market place in response to emergencies. The Commission clarifies that LDCs do not change their status under the LDC exemption by responding to emergencies. The LDC should inform its affiliated Transmission Provider of the emergency and the Transmission Provider is directed to comply with the requirements of § 358.4(a)(2) and post on the OASIS or Internet Web site, as applicable, each emergency activity of the LDC, within 24 hours of such emergency.

iv. Gatherers and Processors

Order Nos. 2004 and 2004–A

28. In Order No. 2004–A at P 97, the Commission clarified that gatherers and processors affiliated with interstate pipelines are not Energy Affiliates in certain circumstances. Further, the Commission ruled that if a gatherer or processor merely provides a gathering or processing service and only purchases natural gas to supply operational needs (such as compression fuel), and does not engage in other transmission-related activities, then it is not an Energy Affiliate. The Commission explained that when gatherers and processors engage only in gathering and processing, they provide services to wholesale market participants but do not compete with them. Order No. 2004–A further held that an affiliate may use an affiliated Transmission Provider to transport power or gas for its own consumption without becoming and Energy Affiliate as defined in the rule. *See* Order No. 2004–A at P 118.

Requests for Rehearing and/or Clarification and Commission Conclusions

29. El Paso requests that the Commission confirm that to the extent a processor purchases gas for plant thermal reduction (PTR) purposes, it is doing so to supply its operational needs and is not an Energy Affiliate. El Paso further requests that the Commission clarify that the transportation of gas for PTR purposes is not an activity that would make a processor an Energy Affiliate. The Commission grants this requested clarification.

30. CenterPoint, Duke Energy, El Paso and INGAA argue that it is arbitrary and capricious for the Commission to recognize that gatherers and processors affiliated with interstate transmission providers may purchase gas for operational purposes, but not to acknowledge that such entities also may engage in sales of gas for similar reasons. The Commission will grant clarification that processors and gatherers may purchase gas for

[8] Unlike a traditional LDC serving bundled franchised public utility load in a state prescribed service territory at state-approved rates, a retail service provider selling in a competitive retail market is authorized by the state to compete at prices established by the market not by regulators. Any reductions in costs will typically accrue as profits to the retail merchant, while increases in costs may result in losses.

[9] *See* Order No. 2004–A at P 68; see also 18 CFR 358.3(d)(5).

operational purposes and make *de minimus* sales as required from time to time to remain in balance without becoming Energy Affiliates. The regulatory text will be modified to reflect this (*see* discussion of § 358.3(d)(6)(vi) *infra*).

31. CenterPoint also argues that gatherers and processors should be exempt from the definition of Energy Affiliate if they buy and sell gas from their own facilities and act as nominating/scheduling agents. CenterPoint argues that the ability to buy gas at the wellhead and resell it is a critical aspect of the gathering business model because the gatherer knows that a specific volume of gas will be gathered at a particular point and is better able to ensure maximum utilization of its investment in pipeline gathering facilities. CenterPoint claims that such certainty improves the affiliated gatherer's ability to plan and implement expansion of its gathering system.

32. The Commission denied rehearing on this point in Order No. 2004–A, and CenterPoint offers no basis for the Commission to reconsider its determination there.[10] To the extent a gatherer aggregates supply produced by others and resells that gas to the wholesale market, the gatherer is clearly acting as a marketer, and the Transmission Provider must treat it as such. To the extent CenterPoint wishes to continue to pursue its business model as a field aggregator it is not prohibited from doing so, but it must comply with the separation required of Transmission Providers and their Energy Affiliates.

v. Producers

Order Nos. 2004 and 2004–A

33. In the Final Rule and the Order on Rehearing, the Commission concluded that producers that perform Energy Affiliate activities as described in § 358.3(d) are not exempt from the definition of Energy Affiliate.

Requests for Rehearing and/or Clarification and Commission Conclusions

34. Shell Offshore and Shell Gas disagree with the Commission's decision not to include a producer exemption in the new Part 358 Standards of Conduct. For the reasons stated in Order No. 2004–A, rehearing is denied.[11]

35. Shell Offshore argues that because two Commissioners voted to grant rehearing of Order No. 2004 and include a producer exemption there was no majority for the Energy Affiliate definition in § 358.3(d). Shell Offshore argues that defining a producer that performs Energy Affiliate functions as an Energy Affiliate under the rule contravenes the requirement in the Department of Energy Authorization Act that Commission actions must be approved by a majority vote of the Commission. Shell Offshore requests a stay of Order No. 2004 until a valid rehearing order is issued.

36. The Commission denies Shell Offshore's request for stay. Shell Offshore states that two Commissioners voted to include a producer exemption. This is incorrect. Commissioner Brownell, in her dissent in part, stated that she would have retained the existing exemption under Order No. 497 for affiliated producers. Commissioner Kelliher, in his dissent in part, would have, among other things, expanded the scope of the LDC exemption and granted an exemption for Part 157 pipelines. He did not, however, state that he would have granted an exemption for affiliated producers. Nonetheless, the decision to define producers (as well as gatherers, processors, intrastate pipelines and Hinshaw pipelines) that perform Energy Affiliate functions as Energy Affiliates was originally made in Order No. 2004 with a 2–1 majority vote of the Commission. As there was no majority to exempt producers from the definition of Energy Affiliate on rehearing in Order No. 2004–A, producers have no blanket exemption from the definition of Energy Affiliates.

37. Shell Offshore and Shell Gas disagree with the Commission's decision not to include a producer exemption in the new Part 358 Standards of Conduct. Shell Offshore argues that there is no evidence to support the Commission's decision to expand the Standards of Conduct to cover ''traditionally exempt entities such as producers shipping solely their own production.'' Shell Offshore argues that the two *Gas Daily* articles cited in Order No. 2004–A were published after the issuance of Order No. 2004, were not in the record of this proceeding, were not available for public comment, are not relevant to the elimination of the producer exemption, and have been misinterpreted by the Commission in reaching its conclusions. Shell Offshore argues that, at best, the articles stand for the proposition that producers hold pipeline capacity only to fill the void left from the collapse of the marketers.

38. The Commission denies rehearing of a blanket exemption for producers shipping solely their own production. We do not accept Shell Offshore's argument that the Commission should categorically exempt a producer when it is shipping solely its own production over the affiliated pipeline. Such a scenario does not eliminate the possibility of the producer being in a position to take undue advantage of preferential access to transmission system information.[12]

As the Commission stated in Order No. 2004:

Producers that are selling energy are competing with other non-affiliated shippers for access to the pipelines' transmission systems. Whether a producer is selling gas from its own production or from the production of another, it is competing with non-affiliates for access to the pipeline's transportation system.[13]

Producers, as first sellers of natural gas, are always in a position to potentially benefit from preferential access to transmission system information.[14] While producers can and sometimes do conduct business in ways that minimize that potential, such as when a producer sells all of its gas under firm fixed-price, long-term contracts at the wellhead, such strategic decisions are choices that producers may change at will.

39. The Commission's use of the *Gas Daily* articles in Order No. 2004–A was neither inappropriate nor misplaced. The articles merely illustrate the point that producers have a significant presence in the wholesale commodity marketplace.[15] Producers sell significant quantities of natural gas at points downstream of the producing fields, and preferential access to transmission system information would unduly

[10] Order No. 2004–A, PP 77–83.

[11] Order No. 2004–A at PP 84–87.

[12] For example, if the producer received information about a curtailment of capacity on the affiliated pipeline before non-affiliated shippers, it would be in a position to make mid-day nominations on the affiliated pipeline to remedy the situation before other non-affiliated shippers became aware of the situation. Such an event, if it resulted in the allocation of the remaining capacity at the only alternative delivery point on the system to the affiliated producer, would leave no capacity available to other shippers. This would allow the affiliated producer to continue to deliver its gas while non-affiliated producers would be shut in. The fact that the affiliated producer flows only its own production over the affiliated pipeline does not alleviate the Commission's concern about such an undue preference taking place.

[13] Order No. 2004 at P 71.

[14] For example, knowledge of damage to a neighboring pipeline might allow a producer to demand a higher price for its uncommitted gas.

[15] *See also* ''Top N. American Marketers, Gas Daily's Quarterly Look at Marketer rankings,'' *Gas Daily,* September 5, 2002 (BP, Conoco, Chevron Texaco and Exxon Mobil among the top 15 marketers in 2002 and 2001); ''Top Players Shift in Latest Marketer Rankings,'' *Gas Daily,* August 17, 2001 (BP number two for second quarter 2001 with 12.3 Bcf/d in trading); ''Top 30 Gas Marketers,'' *Inside FERC's Gas Market Report,* June 25, 1999 (Coral, Conoco, BP/Amoco, and Texaco among top 19 marketers in 1998).

prefer their wholesale merchant function activities whether they are first sales or sales for resale.

40. While the Commission will deny rehearing, there may be circumstances where an individual interstate natural gas pipeline with an affiliated producer can demonstrate that the Commission's general concerns do not apply in a particular case. The Commission will consider requests for exemptions or waiver of the Standards of Conduct on a case-by-case basis.

vi. Intrastate and Hinshaw Pipelines

Order Nos. 2004 and 2004–A

41. In the Order on Rehearing, the Commission clarified that intrastate and Hinshaw pipelines affiliated with interstate pipelines are not Energy Affiliates in certain circumstances. The Commission stated that to the extent Hinshaw pipelines are state-regulated LDCs, make no off-system sales and do not engage in any of the activities described in § 358.3(d), they are not Energy Affiliates. However, the Commission also stated that if a Hinshaw pipeline makes off-system sales or participates in Energy Affiliate activities, it is an Energy Affiliate. *See* Order No. 2004–A at P 93. If an intrastate pipeline makes sales of natural gas, holds transmission capacity or engages in Energy Affiliate activities, it is an Energy Affiliate. *See* Order No. 2004–A at P 94.

Requests for Rehearing and/or Clarification and Commission Conclusions

42. Duke Energy, El Paso and INGAA request rehearing and urge the Commission to permit intrastate and non-LDC Hinshaw pipelines to make purchases and sales for operational reasons without triggering Energy Affiliate status. INGAA and El Paso argue that forcing only affiliates to rely exclusively on cash-out mechanisms to balance places them at a distinct disadvantage compared to any other company that must balance.

43. The Commission grants rehearing on this point. We agree with INGAA and El Paso that intrastate and Hinshaw pipelines should be permitted to make *de minimus* sales and purchases of natural gas to keep their systems in balance without becoming Energy Affiliates on account of that balancing. The Commission will codify in a new section (§ 358.3(d)(6)(vi)) as follows: A producer, gatherer, Hinshaw pipeline or an intrastate pipeline that makes incidental purchases or sales of *de minimus* volumes of natural gas to remain in balance under applicable pipeline tariff requirements and otherwise does not engage in the activities described in §§ 358.3(d)(1), (2), (3) or (4).

44. Duke Energy adds that intrastate and non-LDC Hinshaws should also be permitted to hedge financial risk without triggering Energy Affiliate status. The Commission denies rehearing. Duke Energy's request that intrastate and Hinshaw pipelines be permitted to hedge financial risk is denied because hedging financial risk is a commodity function. There is no reason that entities performing that commodity function should have preferential access to transmission information.

vii. Service Companies

Order Nos. 2004 and 2004–A

45. In Order Nos. 2004 and 2004–A, the Commission stated that service companies that do not engage in energy or natural gas commodity markets and are not involved in transmission transactions in U.S. markets are not Energy Affiliates. *See* Order No. 2004 at PP 52–58 and Order No. 2004–A at PP 108–115. The Commission also stated that if a Transmission Provider utilizes a service corporation or other subsidiary as a mechanism for employment, all employees assigned, dedicated or working on behalf of a particular entity, such as a Transmission Provider or Energy Affiliate, are subject to the Standards of Conduct as if they were directly employed by the Transmission Provider or Energy Affiliate. *See* Order No. 2004–A at P 110. However, in Order No. 2004–A, the Commission also noted that agency agreements can be used to aggregate control over transmission capacity and clarified that a service company may act as agent for its affiliated Transmission Provider, Marketing or Energy Affiliate without becoming an Energy Affiliate so long as the service company is involved in only non-energy'related activities. The Commission also stated that if the service company/agent is involved in energy-related activities, it is an Energy Affiliate. *See* Order No. 2004–A at P 115.

Requests for Rehearing and Clarification and Commission Conclusions

46. EEI, INGAA, AEP, Cinergy, Entergy, Southern and Xcel argue that service companies should not become Energy Affiliates simply by acting as agents for energy-related activities. EEI claims that many service companies would have to be split in to two separate service companies and urges the Commission to allow employees to function separately within the service company by observing the Standards of Conduct. AEP argues that service companies are not Energy Affiliates unless the service companies are also entering into energy-related contracts on their own behalf. AEP also suggests that another alternative would be to prohibit the service company from entering into energy-related agreements on behalf of both the Transmission Provider and its Marketing/Energy Affiliates. Cinergy argues that the Commission has not provided any support for prohibiting an SEC-approved service company from acting as agent for its affiliates with respect to energy-related activities. Several petitioners urge the Commission to state that service companies are not Energy Affiliates provided they maintain the separation of functions requirements when acting on behalf of a Transmission Provider or Energy Affiliate. Southern argues that the Public Utility Holding Company Act of 1935 (PUHCA) requires service companies to act on behalf of all their affiliates.

47. The Commission grants clarification, in part. Petitioners raise a valid point that the language in P 115 swallows the exception described in Order No. 2004 and the previous paragraphs in Order No. 2004–A. In addition, although Order No. 2004–A expressed some concern about service company employees acting as agents for energy-related transactions, such service company employees will be subject to the Standards of Conduct, and the Commission will treat them as if they were directly employed by the Transmission Provider or Marketing/Energy Affiliate. Accordingly, the Commission adopts petitioners' requests and excludes service companies from the definition of Energy Affiliate unless they are engaging on their own behalf in any energy-related transactions covered under §§ 358.3(d)(1), (2), (3) or (4) and on the condition that the service company employees assigned, dedicated or working on behalf of a particular entity are subject to the Standards of Conduct as if they were directly employed by that entity.

viii. Parent Companies

Order Nos. 2004 and 2004–A

48. Section 358.3(d)(6)(iii) excludes from the definition of Energy Affiliate, a holding, parent or service company that does not engage in energy or natural gas commodity markets or is not involved in transmission transactions in U.S. energy markets. In Order No. 2004–

A,[16] the Commission noted in response to a question from Kinder Morgan Pipelines that it would consider individual requests if a parent company/LDC can demonstrate an acceptable level of independent functioning by an LDC division.

Requests for Rehearing and/or Clarification and Commission Conclusions

49. Kinder Morgan Pipelines request clarification that its parent company will not lose the exemption from Energy Affiliate status afforded by § 358.3(d)(6)(iii) due to the fact that its parent company is an LDC which participates in wholesale energy and capacity markets to serve on-system load, as long as its LDC operations also qualify for the exemption afforded in § 358.3(d)(6)(v). Kinder Morgan Pipelines argue that the Commission erroneously concluded that its LDC function made off-system sales in concluding that Kinder Morgan Pipelines' parent company did not qualify for the parent company exemption.[17] Kinder Morgan Pipelines argue that its parent company/LDC does not make off-system sales, and therefore should qualify for the exemption afforded LDCs.

50. The Commission clarifies that a parent or holding company will not lose the exemption from Energy Affiliate status provided by § 358.3(d)(6)(iii) if it is also an LDC, as long as the LDC qualifies for the LDC exemption provided by § 358.3(d)(6)(v). However, as noted in our earlier discussion, Kinder Morgan Pipelines' LDC operations, to the extent they include service to competitive retail markets, at market-based prices would not qualify for the LDC exemption of § 358.3(d)(6)(v).

ix. Affiliates Buying Power for Themselves

Order Nos. 2004 and 2004–A

51. Section 358.3(d)(6)(iv) excludes from the definition of Energy Affiliate, ''an affiliate that purchases natural gas or energy solely for its own consumption and does not use an affiliated Transmission Provider for transmission of that natural gas or energy.'' In Order No. 2004–A, the Commission clarified that an affiliate buying gas or power for its own consumption ''may use an affiliated Transmission Provider,'' and cautioned that ''the Transmission Provider must treat the affiliate as an Energy Affiliate unless the gas or power is for its own consumption.'' *See* Order No. 2004–A at P 118.

Requests for Rehearing and/or Clarification and Commission Conclusions

52. To reflect the Commission's intent, INGAA requests that the Commission revise the regulatory text of § 358.3(d)(6)(iv) to delete the words ''and does not use an affiliated Transmission Provider for transmission of that natural gas or energy.'' The Commission agrees that the regulatory text at § 358.3(d)(6)(iv) needs to be revised to reflect the Commission's clarifications in Order No. 2004–A. However, the specific change suggested would not fully reflect the Commission's intent because it is overly broad. Accordingly, the Commission will revise § 358.3(d)(6)(iv) to read as follows:

(iv) An affiliate that purchases natural gas or energy solely for its own consumption. ''Solely for its own consumption'' does not include the purchase of natural gas or energy for the subsequent generation of electricity.

C. Independent Functioning

53. One of the most significant elements of the Standards of Conduct is the requirement that Transmission Providers function independently of their Marketing and Energy Affiliates. The independent functioning of the Transmission Provider limits its ability to give its Marketing and Energy Affiliates unduly preferential service or access to information. Therefore, § 358.4(a)(1) requires the transmission function employees of the Transmission Provider to function independently of the Transmission Provider's Marketing or Energy Affiliates' employees.[18] In Order Nos. 2004 and 2004–A, the Commission codified certain exceptions that permit a Transmission Provider to share certain categories of employees with its Marketing or Energy Affiliate. Specifically, a Transmission Provider may share with its Marketing and/or Energy Affiliates: (1) Support employees and field and maintenance employees;[19] (2) senior officers and directors who are not Transmission Function Employees;[20] and (3) risk management employees that are not engaged in Transmission Functions of sales or commodity functions.[21] However, the Commission has also stated that although certain categories of employees are permitted to be shared, the Commission will look to employees' actual functions and duties to determine whether the Transmission Provider is appropriately applying this exemption to particular employees. *See* Order No. 2004–A at P 131.

i. Sharing of Senior Officers and Directors

Order Nos. 2004 and 2004–A

54. In Order No. 2004, the Commission stated that it would allow senior officers and directors who do not engage in transmission functions, or have day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations, to maintain such positions with the Transmission Provider and its Marketing or Energy Affiliates. The Commission, however, cautioned that shared executives may not serve as conduits for sharing transmission, customer or market information with a Marketing or Energy Affiliate.

55. In Order No. 2004–A, the Commission codified the exemption for senior officers and directors in the regulatory text.[22] In addition, the Commission revised the regulatory text in § 358.4(a)(5) to better reflect that the Commission did not intend to restrict corporate governance functions.[23]

Requests for Rehearing and/or Clarification and Commission Conclusions

56. AGA, INGAA, LPPC, NiSource, Southern and Xcel requested clarification regarding the sharing of senior officers and directors. Southern claims that it is still unclear regarding which officers and directors can be shared. NiSource argues that Transmission Providers should be permitted to share senior officers and directors serving policy roles that do not involve day-to-day transmission operations with their Energy Affiliates and make it clear that such senior officers and directors may communicate with their counterparts employed by the Energy Affiliates. AGA queries whether a senior officer or director who approves a limited number of transactions or

[16] *See* Order No. 2004–A at P 105.

[17] KM Pipelines cite to Order No. 2004–A, P 105.

[18] Section 358.4(a)(2) provides an exception to this requirement in the event of emergency circumstances that affect system reliability.

[19] *See* 18 CFR 358.4(a)(4).

[20] *See* 18 CFR 358.4(a)(5).

[21] *See* 18 CFR 358.4(a)(6).

[22] The Commission had included the language for the regulatory text in the preamble of Order No. 2004, but inadvertently omitted it from the regulatory text for codification.

[23] Section 358.4(a)(5) of the Commission's regulations provides that ''A Transmission Provider may share transmission information covered by §§ 358.5(a) and (b) with its senior officers and directors provided that they do not (1) participate in directing, organizing or executing transmission system operations or marketing functions; or (2) act as a conduit to share such information with a Marketing or Energy Affiliate.''

investments or who is involved in corporate planning (capacity expansion), as opposed to day-to-day planning for transmission is a Transmission Function Employee. LPPC seeks clarification that senior officers and directors may, upon occasion, review and execute transmission function or energy affiliate transactions when such transactions exceed the delegated authority for middle management to approve.

57. Permitting the sharing of high-level officers and directors is a balance between the Commission's requirement to have a Transmission Provider function independently of its Marketing/Energy Affiliates and the need for the company to have officers and directors who are accountable, can exercise their fiduciary responsibilities and can engage in corporate governance functions. High-level officers and directors have significantly different roles and responsibilities at various Transmission Providers. To the extent that senior officers or directors conduct transmission functions or are involved in planning, directing or organizing transmission functions, the officers' or directors' status does not automatically exempt them from also being a Transmission Function Employee.

58. INGAA requests clarification and regulatory text revisions that § 358.3(a)(5) does not prohibit senior officers of the pipeline who are Transmission Function Employees from receiving transmission-related information. The Commission so clarifies, and will clarify the regulatory text to indicate that § 358.3(a)(5) pertains to shared senior officers and directors.

ii. Sharing of Field and Maintenance Personnel

Order Nos. 2004 and 2004–A

59. Section 358.4(a)(4) codifies the Commission's historical policy of allowing Transmission Providers to share field and maintenance personnel with their Marketing and Energy Affiliates. In Order No. 2004–A, the Commission clarified that shared field and maintenance employees include field supervisors who do not take part in advance planning for facility closures or are involved in shutting down facilities based on economic reasons. The Commission also clarified that the field and maintenance employees' exception applies to technicians, mechanics and their immediate supervisors who are responsible for electric transmission activities. *See* Order No. 2004–A at PP 145 and 146.

Requests for Rehearing and Clarification and Commission Conclusions

60. Shell Offshore questions whether it is permissible to share second-level supervisors, some of whom are located onshore, that ''control'' a gas pipeline's operations such as shutting in production on a platform.

61. Without reviewing the specific job descriptions for Shell Offshore's second-level supervisors, the Commission cannot generically state whether these individuals are permissibly shared field and maintenance personnel. The field and maintenance personnel exception was developed to allow the sharing of employees who would not be in a position to give undue preferences to Energy Affiliates either by sharing information or through physical control of facilities.

62. Shell Offshore may request that the Commission address its specific configuration in an individual filing in which it describes in detail the duties and functions of affected employees.

iii. Risk Management Employees

Order Nos. 2004 and 2004–A

63. Order No. 2004 prohibits the sharing of risk management employees who are operating employees of either Transmission Providers or their Marketing or Energy Affiliates.[24] The Final Rule also prohibits risk management employees from being conduits for improperly sharing information because they are in a position to use transmission, customer and market information to give Marketing and Energy Affiliates undue advantages. In Order No. 2004–A, the Commission codified an exception in § 358.4(a)(6) that permits Transmission Providers to share risk management employees that are not engaged in transmission functions or sales or commodity functions with their Marketing and Energy Affiliates. The Commission also stated that it is permissible for the risk management function to: (1) Manage corporate-wide business risk exposure of the corporation and/or its affiliates; (2) evaluate business risk exposure for third parties on an aggregate basis; (3) manage overall corporate investment for the entire corporation; (4) approve expansion projects; and (5) establish spending, trading and capital authorities for each business unit. *See* Order No. 2004–A at P 153. However, the Commission stated that the risk management function is not permitted to assess creditworthiness of a particular customer under a pipeline's tariff. *Id.* This is consistent with the Commission's previously articulated policy, in which the Commission held that the ''act of deciding whether a potential shipper can become an actual shipper by satisfying the creditworthiness requirements under [a pipeline's] tariff is a transportation function.''[25] Finally, in Order No. 2004–A, the Commission emphasized that the risk management function cannot be used to share information with Marketing or Energy Affiliates that the Transmission Provider is prohibited from sharing under § 358.5(a). The limitations on shared risk management functions or employees are intended to prevent unduly discriminatory behavior in favor of a Marketing or Energy Affiliate. *See* Order No. 2004–A at P 154.

Requests for Rehearing and/or Clarification and Commission Conclusions

64. Duke Energy, EEI and INGAA request additional clarification and/or rehearing regarding the employees engaged in risk management functions for Transmission Providers and their Marketing/Energy Affiliates.

65. EEI claims that the Commission should permit the sharing of certain critical functions, such as risk management, because such employees must be knowledgeable and have intimate knowledge of their companies, the customers and the various issues affecting transmission service and retail/wholesale energy sales. Duke Energy expressed concern because Commission Staff stated at the May 10, 2004, Technical Conference that under the Standards of Conduct, risk management employees would be prohibited from engaging in certain activities or receiving certain information. Duke Energy requests clarification that the Standards of Conduct will not restrict the essential functions of corporate risk management.

66. INGAA claims that for a corporate risk management group to be able to function, it must be able to understand, and obtain information from all business units concerning their business and their business strategies. INGAA is concerned that the Commission allows the risk management group to evaluate risk, but will not allow the risk management group to take action on the risks because such action would make the risk management employees operating employees of an Energy Affiliate. INGAA also requests clarification whether the risk

[24] Order No. 2004 at P 112.

[25] *See* Vector Pipeline, L.P., 97 FERC ¶ 61,085 (2001).

management personnel would be allowed to direct action (subject to a no conduit rule) to minimize risk.

67. INGAA also requests clarification that the corporate risk management unit is permitted to receive creditworthiness information from the pipeline, evaluate and communicate the results of that creditworthiness analysis to the pipeline. In INGAA's view, the corporate risk management unit could communicate to an Energy Affiliate that a particular company had exceeded its corporate-wide credit limit or that the customer's credit rating had been downgraded, but could not inform the Energy Affiliate that the particular company had not paid its pipeline transportation fees or had acquired significant amounts of additional pipeline capacity.

68. The Commission is denying the requests for clarification. Sharing of risk management functions is permitted to allow companies to assess corporate-wide risk. It is not intended to allow the shared risk management employees to serve as operators of Transmission Providers or Marketing/Energy Affiliates. Therefore, shared risk management employees should not direct Transmission Providers' or Marketing/Energy Affiliates' responses to the risks they identify. A shared risk management employee cannot decide whether a transmission customer receives service, sets prices, or sets other rates, terms or conditions of transmission service, such as a specific amount of collateral a non-creditworthy shipper must post before receiving service. A shared risk management employee may: (1) Manage corporate-wide business risk exposure of the corporation and/or its affiliates; (2) evaluate business risk exposure for third parties on an aggregate basis; (3) manage overall corporate investment for the entire corporation; (4) approve expansion projects; and (5) establish spending, trading and capital authorities for each business unit.[26]

69. Furthermore, the Commission is troubled by the implication, as suggested by INGAA, that in the absence of specific tariff authority a Transmission Provider might use communications from a corporate-level risk management group as a reason to deny service to particular customers. A Transmission Provider's creditworthiness process must be described in its tariff so that the Commission may determine whether any use of corporate-wide credit review and screening processes are just and reasonable and not unduly discriminatory.

iv. Lawyers as Transmission Function Employees

Order Nos. 2004 and 2004–A

70. INGAA and others requested clarification of Order No. 2004 regarding the classification of lawyers as Transmission Function Employees. In Order No. 2004–A, the Commission stated that ''if lawyers participate in transmission policy decisions on behalf of a Transmission Provider, the Commission considers that activity as a Transmission Function and the lawyer is a Transmission Function Employee. For example, a lawyer who participates in a decision on whether the Transmission Provider should seek a contract with a customer is acting as a Transmission Function Employee. If, however, the lawyer is asked to implement the Transmission Provider's business decision and negotiate a contract with that customer, the lawyer would not be a Transmission Function Employee.'' *See* Order No. 2004–A at P 157.

Requests for Rehearing and/or Clarification and Commission Conclusions

71. EEI, Entergy, INGAA and Sempra request rehearing and/or additional clarification on when lawyers become Transmission Function Employees. Specifically, EEI requests that the Commission clarify that lawyers acting in their traditional and fiduciary role of providing advice to their clients can continue to be shared employees and be housed in shared services legal departments. Entergy repeats some of its previous rehearing requests and seeks further guidance on the Commission's clarification on when lawyers become Transmission Function Employees. Specifically, Entergy points out that lawyers are often called upon by individuals involved in business decisions to provide legal opinions regarding regulatory requirements and the impact of those requirements on business decisions. Entergy seeks clarification that the provision of legal advice to a business person does not constitute a Transmission Function or Energy Affiliate activity, and does not render the employee as improperly shared between the Transmission Provider and Marketing or Energy Affiliate. Entergy also seeks clarification whether Order Nos. 2004 and 2004–A mandate separate legal departments, physical separation of lawyers within such departments, or lack of physical access by Energy Affiliate employees to legal department offices or floors where there are lawyers who meet the definition of Transmission Function Employee.

72. INGAA requests the Commission to clarify that a Transmission Provider's lawyer's participation in a Transmission Provider's business decisions is for the exclusive or predominant purpose of rendering legal or regulatory advice, and that such lawyers are not treated as Transmission Function Employees. INGAA argues that a lawyer whose participation is limited solely or predominantly to rendering legal or regulatory advice should not be considered a Transmission Function employee because s/he is not ''conducting'' transmission system operations or planning, directing or organizing transmission-related operations. INGAA claims the court affirmed the Commission's previous determination that lawyers could be shared by stating that ''professionals such as attorneys and accountants are regularly entrusted with information which they must hold confidential from other clients, the public and even other personnel in their own firms or companies.''[27] Finally, INGAA identifies cases, in the context of attorney-client privilege, which distinguishes the lawyer's traditional role as a legal advisor in business decisions.

73. Sempra expresses concern whether shared services lawyers and other shared services personnel who help develop and advocate policy in public forums are deemed Transmission Function Employees for purposes of the Standards of Conduct. Sempra queries whether the lawyer who drafts pleadings, provides legal and regulatory advice relating to public policy positions but does not have transmission information can be shared. Sempra also queries whether shared services lawyers who advise Transmission Function Employees on legal and regulatory requirements associated with business operations should be deemed Transmission Function Employees. If a lawyer performs some Transmission functions, is s/he dedicated to that function and can no longer be shared.

74. The Commission clarifies that lawyers may provide legal or regulatory advice in their traditional roles without becoming Transmission Function Employees. However, to the extent that they conduct transmission functions, or

[26] Also, INGAA is correct that the Standards of Conduct prohibit a risk management employee from disclosing to an Energy Affiliate that a transmission customer has not paid its transmission bills.

[27] INGAA cites *Tenneco* v. *FERC,* 969 F.2d 1187 at 1207–8 (D.C. Cir. 1992).

are involved in planning, directing or organizing transmission functions, the lawyers' status as ''lawyers'' does not exempt them from also being Transmission Function Employees. If a lawyer performs some Transmission Functions, then s/he is dedicated to that function, and cannot be shared with the Marketing or Energy Affiliate. Lawyers who help develop and advocate policy in public forums are not necessarily Transmission Function Employees. Such advocacy may fall within the lawyers' traditional role of publicly representing their clients' positions.

75. In many instances, lawyers have a significant amount of access to the Transmission Providers' transmission, customer and marketing information. Lawyers, like other employees or agents, are prohibited from being conduits for improperly sharing information between a Transmission Provider and its Marketing or Energy Affiliates. See 18 CFR 358.5(b)(7). Lawyers, like other Transmission Provider employees are expected to restrict access to transmission, customer or market information using appropriate measures, such as locked file rooms/drawers and password protection for computer files. Securing the Transmission Providers' information will limit the ability of Marketing/Energy Affiliate employees to improperly obtain access to information while visiting the legal department offices or floors where lawyers work. The Commission is not mandating separate legal departments or physical separation of lawyers within a legal department, although either of those measures might simplify compliance. A Transmission Provider's organizational chart should reflect any sharing of lawyers. Shared office space should also be identified as required by § 358.4(b)(2).

D. Information To Be Posted on the Internet or OASIS

i. Posting Organizational Charts

Order Nos. 2004 and 2004–A

76. Section 358.4(b) requires all Transmission Providers to post information, including organizational charts and job descriptions, with respect to Marketing and Energy Affiliates on their OASIS or Internet websites. The Transmission Provider is also required to update the organizational charts and job descriptions within seven business days of a change. In Order No. 2004-A, the Commission explained that the purpose of posting organizational charts and job descriptions is to provide a mechanism for the Commission and market participants to determine whether the Transmission Provider is functioning independently of its Marketing and Energy Affiliates.

Requests for Rehearing and/or Clarification and Commission Conclusions

77. On rehearing, NiSource argues that the Commission should: (1) Make clear that Transmission Providers need only post information identifying the particular support units (non-Transmission Function Employees) that are shared with their Energy Affiliates; (2) clarify that Transmission Providers are not required to post full organizational charts for their service companies or shared support units; and (3) not require that Transmission Providers post organizational charts for non-affiliated companies that may provide certain non-transmission related services to the Transmission Provider.

78. As the Commission stated in Order No. 2004–A (at P 163), the Transmission Provider must post an organizational chart that identifies the parent corporation with the relative position in the corporate structure of the Transmission Provider, Marketing and Energy Affiliates. The Transmission Provider is not required to post detailed organizational charts for the shared non-Transmission Function support units, but these units must be identified as shared in the organizational chart that identifies the corporate structure of the Transmission Provider and its relative position to the parent company and other Marketing/Energy Affiliates.

79. Similarly, the Transmission Provider must include the service company in the organizational chart that identifies the corporate structure. With respect to whether a detailed organizational chart is also required for a service company, the answer depends on the functions that the service company is performing. If the service company is performing transmission functions, additional detail is required. As the Commission stated in Order No. 2004–A at P 163, there may be instances where a corporation should post both functional and structural organizational charts to accurately reflect its operations. NiSource may seek specific guidance from the Commission on the information to include in its organizational chart postings with respect to service companies.

80. With respect to NiSource's last request, the Commission clarifies that Transmission Providers are not required to post organizational charts regarding non-affiliated companies that may provide non-transmission functions for the Transmission Provider.

81. Section 358.4(b)(3)(iii) provides that, for all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates, the Transmission Provider must post the name of the business unit within the marketing or sales unit or the Energy Affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or Energy Affiliate, and the employee's position within the chain of command of the Marketing or Energy Affiliate.

82. On rehearing, INGAA argues that as written, § 358.4(b)(3)(iii), which requires the posting of all shared employees engaged in transmission functions, appears to contradict the independent functioning requirement in § 358.4(a) by suggesting that employees engaged in transmission functions for the Transmission Provider can be employees of an Energy Affiliate. INGAA, therefore, requests the Commission to reword § 358.4(b)(3)(iii) to avoid contradicting § 358.4(a), or if the Commission so intended, to clarify under what non-emergency circumstances an Energy Affiliate employee may perform transmission functions for the Transmission Provider. The Commission denies the request for clarification. Section 358.4(b)(3)(iii) is intended to identify the shared employees of Transmission Providers which have received exemptions of the independent functioning requirements of the Standards of Conduct.[28]

ii. Posting of Merger Information

Order Nos. 2004 and 2004–A

83. Section 358.4(b)(v) requires the Transmission Provider to post on the OASIS or Internet website the name(s) and address(es) of potential merger partner(s) as affiliates within seven days after the potential merger is announced.

Requests for Clarification and Commission Conclusions

84. INGAA and Enbridge urge the Commission to clarify that the seven-day posting requirement is only triggered by a public announcement, when, and to the extent, such an announcement is required by other applicable law, such as the securities laws administered by the Securities and Exchange Commission (SEC). They argue that the Commission should

[28] *See* Bear Creek Storage Company, 108 FERC ¶ 61,011 (2004.

clarify that Order No. 2004–A does not impose any new, independent obligation to publicly announce a proposed merger.

85. As noted by INGAA, mergers are customarily subject to various contingencies that must be satisfied prior to consummation. The Commission clarifies that it is not imposing a new, independent obligation to publicly announce a proposed merger in advance of applicable SEC requirements. However, once a public announcement has been made, the Transmission Provider must post the name(s) and address(es) of potential merger partner(s) and related Energy Affiliates on the OASIS or internet Web site.

iii. Transfer of Employees

Order Nos. 2004 and 2004–A

86. Section 358.4(c) requires a Transmission Provider to post notices of employee transfers on the OASIS or Internet Web site. In Order No. 2004–A, the Commission clarified that the requirement is intended to capture the transfers between a Transmission Provider on the one hand and its Marketing or Energy Affiliates on the other.

Requests for Rehearing and/or Clarification and Commission Conclusions

87. NiSource requests clarification whether the Commission is requiring the posting of transfers between Energy and Marketing Affiliates. The Commission clarifies that it is not requiring the posting of transfers between Energy and Marketing Affiliates. The posting requirement applies only to transfers involving both a Transmission Provider and an Energy or Marketing Affiliate.

iv. Posting of Shared Facilities

Order Nos. 2004 and 2004–A

88. Section 358.4(b)(2) requires Transmission Providers to post the facilities shared with Marketing or Energy Affiliates.

Requests for Clarification and Commission Conclusions

89. Allegheny, AEP and NiSource request clarification on the information that needs to be posted with respect to shared facilities. ITC and NiSource assert that Transmission Providers should not be required to post all field facilities that are shared by a Transmission Provider and Marketing/Energy Affiliate. Similarly, Allegheny seeks clarification as to what shared facilities need to be identified. It claims that if a Transmission Provider has spun off generation to an affiliate, shared facilities would include every substation where such generation interconnects with the Transmission Provider. Allegheny and ITC request that the Commission clarify that the types of facilities that are required to be posted are office buildings and computer systems, and not physical infrastructure (such as substations or other transmission equipment that do not house transmission personnel).

90. The Commission grants the requests for clarification. Transmission Providers need not post notice of shared physical field infrastructure such as substations or other transmission equipment that is not housed with any employees.

v. Posting of Discretionary Waivers

Order Nos. 2004 and 2004–A

91. As proposed in the NOPR and codified in the Final Rule, § 358.5(c)(4) requires a Transmission Provider to maintain a written log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of its tariff. The information contained in the log is to be posted on the OASIS or internet Web site within 24 hours of when a Transmission Provider exercises its discretion under any terms of the tariff. This requirement superseded former Standard K from the gas Standards of Conduct,[29] but used language identical to the former electric Standards of Conduct at 18 CFR 37.4(b)(5)(iii). There were no timely requests for rehearing of this provision following issuance of Order No. 2004 and this provision was not referenced in Order No. 2004–A.

Requests for Clarification and Commission Conclusions

92. Questar Pipeline claims, as a procedural matter, that the requirement to post exercises of discretion was a ''new'' burden that was not disclosed in the rulemaking proceeding or to the Office of Management and Budget. The Commission rejects Questar Pipeline's argument as incorrect. The Commission included the proposed regulatory text for § 358.5(c)(4) in the NOPR and in the regulatory text of Order No. 2004. *See* NOPR, FERC Stats. & Regs., Proposed Regulations 1999—2003 ¶ 32,555 at 34,096 and in proposed regulatory text and Final Rule at P 162 and in regulatory text. Moreover, Questar Pipeline's request is untimely because all requests for rehearing of the Final Rule were due within 30 days of its issuance (by December 29, 2003). *See* section 19a of the NGA, 15 U.S.C. 717r (2000) and section 313 of the FPA, 16 U.S.C. 825l(a) (2000).

93. AGA, Duke Energy, El Paso, INGAA and Questar Pipeline each sought additional clarifications on implementation of the requirement to post exercises of discretion. INGAA and Duke Energy are concerned that the Order No. 2004 requirement is much broader than the former Standards of Conduct and would apply to any number of Gas Tariff provisions which use discretionary terms such as ''may,'' ''may in its discretion,'' and ''may use its best efforts.'' Petitioners are concerned that it could be a burden if a pipeline has to post every discretionary action and might result in the pipelines reducing service flexibility. El Paso argues that the Commission should clarify that the discretionary posting requirement only applies where the pipeline exercises such discretion with regard to a shipper requirement under its FERC Gas Tariff.

94. INGAA requests that the waiver log posting not apply to the following discretionary activities: (1) Operational activities; (2) when the service itself has a discretionary component; or (3) when posting is already mandated by regulation or tariff provision.

95. INGAA also argues that with respect to some tariff provisions, for example those involving interruptible service, discretion is an inherent part of the service. INGAA notes that for some exercises of discretion, the Commission has already required or approved posting obligations, *e.g.*, curtailment of interruptible services, discounts or issuance of operational flow orders.

96. AGA, INGAA, and Questar Pipeline request clarification that the posting requirement does not apply where a pipeline exercises flexibility, the pipeline's tariff specifies the flexibility that is available and all parties are on notice (through the tariff) that the flexibility is available. For example, correction of an invoice due to a mutual mistake of fact or additional nomination opportunities if the pipeline can accommodate such requests on a best efforts basis. AGA is concerned that this requirement will present a disincentive for pipelines to provide valued flexibility to any customer.

97. Finally, Questar Pipeline urges that the Commission not require the posting of discretionary waivers where the posting might reveal customers' identity or sensitive business

[29] Under former 18 CFR 161.3(k)(2003), the Commission required a pipeline to maintain a written log of waivers that the pipeline grants with respect to tariff provisions that provide for such discretionary waivers and provide the log to any person requesting it within 24 hours of the request.

information. For example, if a pipeline makes a negative determination of a customer's credit, is the pipeline required to post on its website a log detailing the circumstances and manner in which it determined to deny credit or require collateral. Questar Pipeline is concerned about the impact that such a posting might have on a customer's dealings with other creditors.

98. The Commission clarifies that when a posting is already mandated by the tariff or other requirement, such as operational flow orders, available capacity or curtailments, the requirement to post exercises of discretion will not trigger a duplicate posting requirement.[30] Also, in response to Questar Pipeline, a posting need not reveal confidential customer information or sensitive business information. Rather, a Transmission Provider shall post information regarding the date of its action and the type of discretion it exercised (*e.g.*, a creditworthiness determination) without revealing the name of the customer.

99. INGAA's request not to post waivers logs with respect to pipeline operations, such as determinations of available capacity, has merit. The Commission's regulations at § 284.13 already require the posting of capacity information. But, INGAA's request not to post waiver logs with respect to services that have discretionary components is too broad. The purpose of this rule, which is to allow non-affiliates to determine whether they have been treated in a non-discriminatory manner, would not be achieved under INGAA's service proposal. The way in which a pipeline exercises its discretion in providing services is valuable information in assessing its compliance with the non-discrimination requirements of the NGA. As El Paso acknowledges, exercises of discretion with respect to shipper requirements should be posted.

E. Training

Order Nos. 2004 and 2004–A

100. Section 358.4(e)(5) requires a Transmission Provider to train all of its employees and sign an affidavit certifying that they have been trained regarding the Standards of Conduct. In Order No. 2004–A, the Commission revised the regulatory text to state that electronic certification is an acceptable substitute for an affidavit to permit Transmission Providers to use computer-based training.

101. In Order No. 2004–A, the Commission stated that one of the goals of training a broad group of employees is to ensure that employees with access to information about transmission, energy, power, gas or marketing functions understand the restrictions on sharing information and the prohibition on acting as a conduit for sharing information. Therefore, the Commission clarified that for employees without access to information about transmission, energy or natural gas functions training would not be required.

Requests for Rehearing and/or Clarification and Commission Conclusions

102. Questions at the May 10th Technical Conference and petitions for clarification reveal that some Transmission Providers are still unclear about which employees must be trained. *See* requests of CenterPoint, EEI, El Paso, INGAA, NiSource, Texas Gas and Xcel. Petitioners urge the Commission to acknowledge that employees without access to information regarding transmission, energy or gas functions need not be trained and that only employees with access to transmission information or information about gas or electric purchases or sales or marketing must be trained. The Commission so clarifies, and as discussed below, will revise the regulatory text accordingly. In addition, the Commission denies EEI's suggestion that the decision to train Marketing or Energy Affiliate employees or other Transmission Provider employees should be left to the discretion of the Transmission Provider.

103. The Commission clarifies that all officers and directors of the Transmission Provider, as well as its employee with access to transmission information or information concerning gas or electric purchases, sales or marketing functions must be trained. For those employees without access to transmission information or information concerning gas or electric purchases, sales or marketing functions, however, training will not be required.

104. CenterPoint urges the Commission to clarify that the Transmission Provider is obliged to distribute Standards of Conduct material to the employees of the Transmission Provider and Marketing and Energy Affiliates, but is not obliged to train the employees of the Marketing or Energy Affiliates. At PP 181 and 184 of Order No. 2004–A, the Commission stated that Transmission Providers are not required to train employees of their Marketing or Energy Affiliates, but must distribute the Standards of Conduct to those employees with access transmission information or information regarding gas or electric purchases or sales or marketing either in paper copy or electronically. Marketing and Energy Affiliates should train their employees to ensure that they understand and observe the Standards of Conduct requirements.

105. INGAA, Texas Gas, Westar and Xcel note that the regulatory text is inconsistent with the preamble language in Order No. 2004–A because the regulatory text requires the training of all employees, yet the discussion in Order No. 2004–A stated that training was not required for all employees.

106. Finally, EEI, Texas Gas and Xcel ask the Commission to delete the ''affidavit'' requirement and, as was discussed at the May 10th Technical Conference, require adequate documentation in a reasonable form, such as electronic certification or sign in sheets.

107. The Commission will grant the requests and revise the regulatory text of § 358.4(e)(5) as follows:

Transmission Providers shall train officers and directors as well as employees with access to transmission information or information concerning gas or electric purchases, sales or marketing functions. The Transmission Provider shall require each employee to sign a document or certify electronically signifying that s/he has participated in the training.

F. Information Access and Disclosure Prohibitions

Order Nos. 2004 and 2004–A

108. Generally, §§ 358.5(a) and (b) prevent a Transmission Provider from giving its Marketing or Energy Affiliate unduly preferential access to transmission, customer or marketing information. The Commission has also established several specific exemptions from the information disclosure prohibitions that permit a Transmission Provider to communicate with its Marketing or Energy Affiliate, including: (1) Information relating to specific transactions (transaction specific exemption);[31] and (2) crucial operating information (crucial operating information exemption).[32]

i. No Conduit Rule

109. In Order No. 2004–A, the Commission added additional regulatory text in § 358.4(a)(5) to provide that ''A Transmission Provider may share transmission information * * * with its senior officers and

[30] *See* Part II(G) for the discussion concerning posting of discounts.

[31] 18 CFR 358.5(b)(5).

[32] 18 CFR 358.5(b)(8).

directors provided that they do not (1) participate in directing, organizing or executing transmission system operations or marketing functions; or (2) act as a conduit to share such information with a Marketing or Energy Affiliate.'' The Commission also revised § 358.5(b)(7) to provide that ''A Transmission Provider may share information * * * with employees permitted to be shared under §§ 358.4(a)(4), (5) and (6) provided that such employees do not act as a conduit to share such information with any Marketing or Energy Affiliates.''

Requests for Rehearing and/or Clarification and Commission Conclusions

110. On rehearing, Entergy argues that these revisions may reinstate an ''automatic imputation rule,[33] because shared employees receiving the information will themselves be employees of Marketing or Energy Affiliates. Entergy seeks clarification that the Commission means what it said and the regulatory revisions in §§ 358.4(a)(5) and 358.4(b)(7) result in a No Conduit Rule without the overlay of the automatic imputation rule.

111. The Commission clarifies that the additional regulatory text added in §§ 358.4(a)(5) and 358.5(b)(7) was not intended to impose the automatic imputation rule on the No Conduit Rule. As provided in § 358.5(b)(7), neither a Transmission Provider nor an employee of a Transmission Provider is permitted to use anyone as a conduit for sharing information covered by the prohibitions of § 358.5(b)(1) and (2) with a Marketing or Energy Affiliate. As the Commission stated in Order No. 2004–A, notwithstanding the prohibitions of §§ 358.5(b)(1) and (2), the Commission intends to allow a Transmission Provider to share information with employees that permissibly may be shared so that they can engage in certain functions, *e.g.*, corporate governance, risk management, or certain ''support-type'' services. The additional regulatory text was intended to reflect that the No Conduit Rule also will apply to such shared employees.

ii. Operating Information Exemption

Order Nos. 2004 and 2004–A

112. Order No. 2004 permitted a Transmission Provider to share crucial operating information with its Energy Affiliates to maintain the reliability of the transmission system. In Order No. 2004–A, the Commission clarified that ''crucial'' operating information is that information necessary to operate and maintain the transmission system on a day-to-day basis; it does not include transmission or marketing information that would give a Transmission Provider's Marketing or Energy Affiliate undue preference over a Transmission Provider's nonaffiliated customers in the energy marketplace. The Commission revised the regulatory text at § 358.5(b)(8) eliminating the term ''crucial'' and providing that a Transmission Provider is permitted to share information necessary to maintain the operations of the transmission system with its Energy Affiliates.

Requests for Rehearing and/or Clarification and Commission Conclusions

113. Shell Offshore requests the Commission to clarify the relationship between the ''crucial operating information exemption in § 358.5(b) and the ''No Conduit Rule.'' Specifically Shell Offshore requests the Commission to clarify that, in the ''crucial operating information exemption,'' the ''No Conduit Rule'' applies only to the employees of the Transmission Provider and not to the employees of an Energy Affiliate. Shell Offshore argues that applying the ''No Conduit Rule'' to the crucial operating information exemption is unnecessary and unworkable because the information that is to be shared is the information necessary to operate and maintain the transmission system on a day-to-day basis and it does not include transmission or marketing information that would give a Transmission Provider's Marketing or Energy Affiliate undue preference over a Transmission Provider's non-affiliated customers in the Energy marketplace. Shell Offshore argues that, since the crucial operating information will not give the Energy Affiliate an undue preference, there is no reason to make the communication of this information subject to the No Conduit Rule.

114. The Commission's clarification of operating information makes clear that information necessary to operate a transmission system on a day-to-day basis may be shared with an Energy Affiliate. However, Energy Affiliate Employees who receive such transmission information are, by definition, employees engaged in the physical operations of the Energy Affiliate. These operational employees may not share with other Energy Affiliate employees (serve as a conduit of) the transmission information the operational employees receive.

115. INGAA and Duke Energy request the Commission to clarify that the sharing of operational information under § 358.5(b)(8) will not violate the functional separation requirement codified in § 358.4. They are concerned that § 358.4, without referencing § 358.5(b)(8), contains an exception that applies only ''in emergency circumstances affecting system reliability.'' Therefore, they seek clarification that the functional separation requirement of § 358.4 does not limit the sharing of operational information permissible under § 358.5(b)(8).

116. The Commission clarifies that sharing of information necessary to maintain the operations of the transmission system under § 358.5(b)(8) does not compromise the independent functioning required in § 358.4.

iii. Transaction Specific Exemption and Scoping Meetings

Order Nos. 2004 and 2004–A

117. In the Final Rule, the Commission codified a ''transaction specific exemption'' in § 358.5(b)(5). Under the exemption, Transmission Providers do not have to contemporaneously disclose information covered by § 358.5(b)(1) if the communication between the Transmission Provider and its Marketing or Energy Affiliates relates solely to the Marketing or Energy Affiliate's specific request for transmission service.

118. Order No. 2004–A required that when a Transmission Provider and an Energy Affiliate participate in scoping meetings or discussions about capacity expansion or new development (scoping meetings), the Transmission Provider must: (1) Post an advance notice to the public on its OASIS or Internet website of its intent to conduct a meeting with its Energy Affiliate; (2) transcribe the meeting in its entirety; and (3) retain the transcript of the scoping meeting for three years and make it available to the Commission upon request.[34] Order No. 2004–A stated, further, that a Transmission Provider cannot provide advance information to a Marketing or Energy Affiliate regarding a general expansion project because that would not be transaction-specific and such information would give the Marketing or Energy Affiliate an undue competitive advantage.

[33] Under an ''automatic imputation rule,'' any transmission information given to an employee shared by the Transmission Provider and it Marketing or Energy Affiliate would be deemed to have been given to the Marketing or energy Affiliate.

[34] These conditions are consistent with similar requirements provided in Order No. 2003–A.

Requests for Rehearing and Clarification and Commission Conclusions

119. AGA and INGAA argue that the requirement to post notice of and transcribe scoping meetings is an unjust, unreasonable and undue burden on the Energy Affiliate to its disadvantage vis-à-vis non-affiliated customers. They argue that the requirement to notice and transcribe these meetings will chill a Transmission Provider's willingness to engage in any facility-related discussions with its Energy Affiliates although the Transmission Provider would have no such disincentive in regard to similar discussions with non-affiliated customers or potential customers. Others, such as ATC, BP, CenterPoint, Duke Energy, EEI, El Paso, Large Public Power Counsel, NiSource, Questar Pipeline and Southern make similar arguments that the advance notice and transcription safeguards for scoping meetings are burdensome and should be removed or clarified. They contend that the safeguards ignore the differences between electric utilities and natural gas pipelines such as the difference in the type of requests for information and the differences in the way energy projects are developed.

120. BP illustrates these differences by pointing out that electric scoping meetings take place after a service request is submitted and the queue/priority has been established, while gas scoping meetings take place before a shipper requests transmission and before the pipeline's open season. BP also notes that electric scoping meetings are part of a structured interconnection process that requires the Transmission Provider to provide detailed transmission data after a request for transmission has been made. On the other hand, BP notes that, due to the cost of exploring for natural gas, a producer often will hold preliminary, informal discussions with a pipeline regarding the producer's plans to develop a region very early in a development project process. According to BP, these preliminary, informal discussions enable a pipeline to assess whether it is possible to build the infrastructure necessary to support a project. BP contends that a pipeline's open season provision, which allows all interested parties to seek capacity on the pipeline, is a current non-discriminatory safeguard that will protect other potential pipeline shippers. At a minimum, BP requests that discussions held prior to submission of a written request should not be subject to the rules regarding scoping meetings.

121. The Commission is granting petitioners' requests for rehearing. The Standards of Conduct will not require Transmission Providers to post notice of or transcribe scoping meetings.[35] The Commission is persuaded that the requirement to post notice of and transcribe scoping meetings could have a chilling effect on natural gas infrastructure development.

iv. Information Sharing for Jointly-Owned Transmission Providers

122. In Order No. 2004–A, the Commission explained that Transmission Providers may share information with affiliated Transmission Providers (an affiliated Transmission Provider is not considered an Energy Affiliate) and may share operating information consistent with § 358.3(b)(8).

Requests for Rehearing/Clarification and Commission Conclusions

123. On rehearing, Duke Energy and INGAA argue that the provisions referenced by the Commission in Order No. 2004–A do not address their concern, which is that the Standards of Conduct will preclude a jointly-owned pipeline from providing information to an owner that also may be an Energy Affiliate. According to Duke and INGAA, Order No. 2004–A does not address circumstances where one or more of the owners of a pipeline happens to be an Energy Affiliate, but not a Transmission Provider. They request the Commission to clarify that a joint owner of a Transmission Provider can receive non-public transmission system information for corporate governance and investment management purposes, subject to the no-conduit rule, even if the joint owner is an Energy Affiliate as long as the employees receiving such information are not involved in ''energy affiliate'' activities listed in § 358.3(d) and are subject to the no-conduit rule.

124. Duke and INGAA explain that, typically, joint owners of pipelines create management committees whose function is to oversee the operations of the pipeline. They assert that management committees that typically govern jointly-owned Transmission Providers are the functional equivalent of a company's board of directors and thus, an employee of an Energy Affiliate who serves on the management committee of a jointly-owned Transmission Provider is the functional equivalent of a non-operating officer or director shared by the Transmission Provider and its Energy Affiliate. According to them, the Standards of Conduct as clarified in Order No. 2004–A could be interpreted to prohibit communication of non-public transmission information necessary to manage and operate the jointly-owned pipeline asset.

125. Duke and INGAA concede, however, that restrictions on how transmission information is provided to an Energy Affiliate owner are appropriate. They agree that no Energy Affiliate employee that is engaged in ''energy affiliate'' activities identified in § 358.3(d) should receive the Transmission Provider's information, and that recipients of non-public transmission information should be subject to the no-conduit rule. They state that this approach of allowing such communications, subject to appropriate restrictions, is consistent with § 358.4(a)(5), which permits Transmission Providers to share senior officers and directors who are not transmission function employees with Energy Affiliates and allows those senior officers and directors to receive non-public information (subject to a no-conduit rule) as long as they do not participate in the directing, organizing or executing transmission system operations or marketing functions.

126. The Commission clarifies that employees of an Energy Affiliate owner of a jointly-owned Transmission Provider may receive non-public transmission information (subject to a no-conduit rule) that is necessary for corporate governance and investment management purposes as long as the employees who receive the transmission information do not engage in the activities listed in § 358.3(d)(1), (2), (3), or (4).

G. Discounts

Order Nos. 2004 and 2004–A

127. Section 358.5(d) requires a Transmission Provider to post on its OASIS or Internet website, any offer of a discount at the conclusion of negotiations, ''contemporaneous with the time that the offer is contractually binding.'' In Order No. 2004–A, the Commission clarified that the time the offer is contractually binding means the time that both parties are bound to the contract.

Requests for Rehearing and/or Clarification and Commission Conclusions

128. El Paso, INGAA and Texas Gas seek additional clarification regarding the posting of discounts. Petitioners ask

[35] This, however, does not exempt electric Transmission Providers from complying with the requirements of Order No. 2003.

the Commission to modify § 358.5(d) to apply only to discounts to Marketing and Energy Affiliates (and not all discounts) and to make the timing of discount posting consistent with the requirements of Order No. 637. Texas Gas queries whether the Commission intended to apply the discount requirements to all discounts (affiliated and non-affiliated) or only to affiliated discounts, with non-affiliated discounts continuing to be reported under Order No. 637's discount posting requirements at § 284.13(b) of the Commission's regulations.

129. The requests for clarification are denied. Under the former gas Standards of Conduct, Transmission Providers were required to post only discounts to affiliates. *See* former § 161.3(h) of the Commission's regulations. However, under the former electric Standards of Conduct, Transmission Providers were required to post discounts to all transmission customers. *See* former §§ 37.6(c)(3) and(d)(2) of the Commission's regulations. Under Order No. 2004 and 2004–A, the Commission adopted the broader posting requirements of the electric Standards of Conduct and required that Transmission Providers post all discounts to improve communication of discount information and improve transparency.

130. Some petitioners from the gas industry argue that this will result in duplicative posting of discount information because rates are also posted in the Transactional Reports required under § 284.13(b) of the Commission's regulations. The Transactional Reports and the Discount Posting information serve different purposes, however. The discount information is easily accessible and quickly identifies which transactions are discounted so that shippers can quickly assess whether they are similarly situated and entitled to a ''comparable discount.'' However, the Transactional Data posts information concerning all transmission transactions and identifies current rates, but do not specifically flag discounts. Many times, Transmission Providers do not execute or revise long-term interruptible transmission agreements and these discounts have not been posted. Therefore, the Discount Posting information better alerts non-affiliated shippers to possible undue discrimination.

131. Section 358.5(d) requires that a discount posting include, among other things, the quantity of power or gas scheduled to be moved. INGAA urges the Commission to revise the requirement to post the quantity of gas scheduled to be moved, and instead to require the Transmission Provider to post the firm maximum daily contract quantity or, for interruptible transportation, the gas entitled under one's contract. The Commission denies INGAA's request to use the contract quantity or the quantity of gas the shipper is entitled to transport because the quantity of gas the shipper is entitled to transport may be significantly different than the amount of gas that the discount was based on.

H. Separate Books and Records

Order Nos. 2004 and 2004–A

132. Section 358.3(b)(1) requires a Transmission Provider to maintain separate books and records from those of its Marketing and Energy Affiliates.

Requests for Rehearing and Clarification and Commission Conclusions

133. National Grid and Entergy note that in Order No. 2004–A, the Commission clarified that an affiliate includes a division that operates as a functional unit. See § 358.3(b)(1). Although National Grid is supportive of the Commission's change, it seeks clarification whether a Transmission Provider with company divisions must also maintain separate books, records and financial reports for the divisions. National Grid notes that in § 358.4(d), the Commission stated that internal business units and divisions should be treated as Energy Affiliates. National Grid argues that requiring every business unit within a corporation to maintain separate reports, books and records would be the accounting equivalent of corporate restructuring and would impose a significant burden.

134. The Commission grants the request for clarification. In the former gas Standards of Conduct in Part 161, the Commission did not require divisions to comply with the requirement of maintaining separate books and records. A Transmission Provider with a company division that operates as a functional unit is not required to maintain separate books and records to comply with the Standards of Conduct.[36]

I. Applicability of the Standards of Conduct to Newly Formed Transmission Providers

Order on Rehearing

135. In Order No. 2004–A, the Commission stated that new Transmission Providers should take appropriate steps to comply with the Standards of Conduct as soon as practicable and clarified that the Standards of Conduct apply to all Transmission Providers, including those which have not yet begun operations.

Requests for Rehearing and Clarification and Commission Conclusions

136. Entrega and INGAA argue that the Commission has no jurisdiction to impose the Standards of Conduct on new pipelines that are not yet natural gas companies. They argue that a new interstate pipeline project should not become subject to the Standards of Conduct until it is granted and accepts a certificate of public convenience and becomes subject to the Commission's Natural Gas Act jurisdiction. INGAA argues that as a matter of policy, the Commission should not add to the regulatory burdens of developing new infrastructure.

137. The Commission grants clarification. A new pipeline will have a reasonable time (30 days) after it accepts its certificate or otherwise becomes subject to the Commission's jurisdiction (whichever comes first) to come into compliance with the Standards of Conduct.[37] Most pipeline development is undertaken by existing natural gas companies and the Standards of Conduct would apply to the parent company in full. Claims of affiliate preference or abuse can also be addressed in a new pipeline's certificate proceeding.

IV. Document Availability

138. In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's home page *http://www.ferc.gov* and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

139. From the Commission's home page on the internet, this information is available in the eLibrary. The full text of this document is available on eLibrary in PDF and Word format for viewing, printing, and/or downloading. To access this document in eLibrary,

[36] However, this does not mean that Transmission Providers are authorized to change their accounting practices to maintain joint books and records. To the extent Transmission Providers are required to keep separate books and records for other purposes, this rule does not modify those requirements.

[37] When applying Order No. 497, the Commission gave pipelines 30 days from the date of the first transportation transaction with a marketing affiliate to comply with the Standards of Conduct. *See e.g., Garden Banks Pipeline, LLC,* 99 FERC ¶ 61,066 (1999); *TransColorado Gas Transmission Company,* 78 FERC ¶ 61,249 (1997); *Nautilus Pipeline Company, LLC,* 88 FERC ¶ 61,088 (1999).

type the docket number excluding the last three digits of this document in the docket number field.

140. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support by phone at (866) 208–3676 (toll free) or for TTY, contact (202) 502–8659, or by e-mail at *FERCOnlineSupport@ferc.gov.*

V. Effective Date

141. This revisions in this order on rehearing will be effective September 9, 2004.

List of Subjects in 18 CFR Part 358

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By the Commission. Commissioners Brownell and Kelliher dissenting in part with separate statements attached.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission revises part 358, Chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 358—STANDARDS OF CONDUCT

■ 1. The authority citation for part 358 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 1. In § 358.3:

■ (a) paragraph (d)(5) is revised,

■ (b) paragraph (d)(6)(iv) is revised,

■ (c) in paragraph (d)(6)(v), the terms ''on-system customers'' and ''on-system customer sales'' are removed and the words ''on-system sales'' are added in their place, and

■ (d) paragraph (d)(6)(vi) is added, to read as follows:

§ 358.3 Definitions.

* * * * *

(d) * * *

(5) An LDC division of an electric public utility Transmission Provider shall be considered the functional equivalent of an Energy Affiliate, unless it qualifies for the exemption in § 358.3(d)(6)(v).

(6) * * *

(iv) An affiliate that purchases natural gas or energy solely for its own consumption. ''Solely for its own consumption'' does not include the purchase of natural gas or energy for the subsequent generation of electricity.

* * * * *

(vi) A producer, gatherer, Hinshaw pipeline or an intrastate pipeline that makes incidental purchases or sales of *de minimus* volumes of natural gas to remain in balance under applicable pipeline tariff requirements and otherwise does not engage in the activities described in §§ 358.3(d)(1), (2), (3) or (4).

* * * * *

■ 2. In § 358.4:

■ (a) in paragraph (a)(5), the word ''shared'' is inserted between the words ''its'' and ''senior'' in the second sentence, and

■ (b) in paragraphs (e)(2) and (e)(3), the words ''September 1, 2004'' are removed and the words ''September 22, 2004'' are inserted in their place.

■ (c) paragraph (e)(5) is revised to read as follows:

§ 358.4 Independent functioning.

(e) *Written procedures.*

* * * * *

(5) Transmission Providers shall train officers and directors as well as employees with access to transmission information or information concerning gas or electric purchases, sales or marketing functions. The Transmission Provider shall require each employee to sign a document or certify electronically signifying that s/he has participated in the training.

* * * * *

Appendix A

This Appendix A will not be published in the *Code of Federal Regulations.*

List of Petitioners Requesting Rehearing or Clarification or Submitting Comments

Allegheny Energy, Inc. (Allegheny)
American Electric Power Service Corp. (AEP)
American Gas Association (AGA)
American Public Gas Association (APGA)
American Transmission Company, LLC
BP America Production and BP Energy Company (BP)
CenterPoint Energy Gas Transmission Company (CenterPoint)
Cinergy Services, Inc. (Cinergy)
Duke Energy Corporation (Duke Energy)
Edison Electric Institute (EEI)
El Paso Corporation (El Paso)
Enbridge Offshore Pipelines (Enbridge)
Entergy Services, Inc. (Entergy)
Entrega Gas Pipeline Inc. (Entrega)
Gulf South Pipeline, Company, L.P. (Gulf South)
Interstate Natural Gas Association of America (INGAA)
Kinder Morgan Interstate Pipelines (Kinder Morgan Pipelines)
Large Public Power Counsel (LPPC)
National Association of State Utility Consumer Advocates (NASUCA)
National Fuel Gas Distribution Corporation (National Fuel—Distribution)
National Grid USA (National Grid)
National Rural Electric Cooperative Association (NRECA)
Natural Gas Supply Association (NGSA)
NiSource, Inc. (NiSource)
Questar Pipeline Co. (Questar Pipeline)
Questar Gas Co. (Questar-Gas)
Saltville Gas Storage Co., LLC (Saltville)
Sempra Energy (Sempra)
Shell Gas Transmission, LLC (Shell Gas)
Shell Offshore, Inc. (Shell Offshore)
Southern Company Services, Inc. (Southern)
Texas Gas Transmission Co. (Texas Gas)
Westar Energy, Inc. (Westar)
Williston Basin Interstate Pipeline Company (Williston Basin)
XCEL Energy Services, Inc. (Xcel)

Nora Mead BROWNELL, Commissioner, dissenting in part.

1. For the reasons set forth in my dissent in part to Order No. 2004, Standards of Conduct for Transmission Providers, 68 FR 69134 (Dec 11, 2003), III FERC Stats. & Regs. ¶ 31,155 (Nov. 25, 2003), I would have retained the existing exemptions under Order No. 497 for affiliated producers.

Nora Mead Brownell.

Kelliher, Commissioner, *dissenting in part.*

For the reasons set forth in my dissent in part on the Order on Rehearing, Order No. 2004–A, Standards of Conduct for Transmission Providers, I believe the Standards of Conduct rule is fundamentally flawed. That flaw is the lack of record evidence supporting expanding the scope of the rule beyond Marketing Affiliates.

Accepting nonetheless that new Standards of Conduct are being adopted, I would further limit application of the rule. With respect to this order, I agree with the clarifications provided by the Commission, which may make the Standards of Conduct rule more workable.

Joseph T. Kelliher,

Commissioner.

[FR Doc. 04–18091 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket Nos. RM02–4–002, PL02–1–002, RM03–6–001; Order No. 649]

Critical Energy Infrastructure Information

Issued August 3, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this final rule amending its regulations for gaining access to critical energy infrastructure information (CEII). These changes are being made based on comments filed in response to the February 13, 2004 notice seeking public comment on the effectiveness of the Commission's CEII rules. The final rule

primarily eases the burden on agents of owners or operators of energy facilities that are seeking CEII relating to the owner/operator's own facility. The rule also simplifies federal agencies' access to CEII. These changes will facilitate legitimate access to CEII without increasing vulnerability of the energy infrastructure.

EFFECTIVE DATE: The rule will become effective September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Office of the General Counsel, GC–13, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8521.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. On February 13, 2004, the Commission issued a ''Notice Soliciting Public Comment'' (the Notice) on its procedures for dealing with critical energy infrastructure. 69 FR 8636 (Feb. 25, 2004). The Commission's CEII procedures were established by Order Nos. 630 and 630–A. *See* Critical Energy Infrastructure Information, Order No. 630, 68 FR 9857 (Mar. 3, 2003), FERC Stats. & Regs. ¶ 31,140 (2003); *order on reh'g,* Order No. 630–A, 68 FR 46456 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003). In Order Nos. 630–A and 643,[1] the Commission committed to solicit public comment after six months in order to identify any potential problems with the Commission's regulations regarding CEII. The Notice provided an opportunity for those with experience under Order Nos. 630, 630–A, and 643 to provide feedback on the CEII process. The Commission received comments on Order Nos. 630 and 630–A from the following five entities: the American Public Power Association and Transmission Access Policy Study Group (APPA/TAPS), the Hydropower Reform Coalition (HRC), the National Hydropower Association (NHA), Southern California Edison Company (SCE), and the United States Department of Interior (DOI). No comments were received regarding Order No. 643. In light of those comments and the Commission's own experience, this order amends 18 CFR 388.113 and clarifies some other points regarding CEII.

Background

2. The Commission began its efforts with respect to CEII shortly after the attacks of September 11, 2001. *See* Statement of Policy on Treatment of Previously Public Documents, 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,130 (2001). The Commission's initial step was to remove from its public files and Internet page documents such as oversized maps that were likely to contain detailed specifications of facilities licensed or certified by the Commission, directing the public to request such information pursuant to the Freedom of Information Act (FOIA) process detailed in 5 U.S.C. 552 and in the Commission's regulations at 18 CFR 388.108. In September 2002, the Commission issued a notice of proposed rulemaking regarding CEII, which proposed an expanded definition of CEII to include detailed information about proposed facilities as well as those already licensed or certificated by the Commission. Notice of Rulemaking and Revised Statement of Policy, 67 FR 57,994 (Sept. 13, 2002); FERC Stats. & Regs. ¶ 32,564 (2002). The Commission issued its final rule on CEII on February 21, 2003, defining CEII to include information about proposed facilities, and to exclude information that simply identified the location of the infrastructure. Order No. 630, 68 FR 9857, FERC Stats. & Regs. ¶ 31,140. After receiving a request for rehearing on Order No. 630, the Commission issued Order No. 630–A on July 23, 2003, denying the request for rehearing, but amending the rule in several respects. Order No. 630–A, 68 FR 46456, FERC Stats. & Regs. ¶ 31,147. Specifically, the order on rehearing made several minor procedural changes and clarifications, added a reference in the regulation regarding the filing of non-Internet public (NIP) information, a term first described in Order No. 630, and added the aforementioned commitment to review the effectiveness of the new process after six months. The Notice issued on February 13, 2004, facilitated the review contemplated in Order No. 630–A. This order addresses the comments received in response to the Notice.

Summary and Discussion of Comments Received

A. Clarification and Guidance on What Constitutes CEII

3. The comments received fall primarily into the following two broad categories: Concerns about inconsistencies and over-designation of material as CEII, and concerns regarding the CEII clearance/approval process. The HRC and NHA both indicate that there is a need for additional guidance and clarity regarding which materials qualify for CEII and NIP protection. HRC at p. 2; NHA at pp. 1–3. The HRC states that submitters are over-designating information as CEII, and claims that ''the breadth of information submitted as CEII has led to an unnecessary withholding of information that does not meet the regulatory definition.'' HRC at pp. 2–3. The HRC notes that permitting some filers to over-designate information as CEII is unfair both to those who claim CEII status prudently and those who are unable to access information that should be publicly available. The HRC encourages the Commission to assume responsibility for reviewing information as it is submitted to determine whether it qualifies as CEII, and classify it accordingly. HRC at p. 2. As now explained, although such an approach might add consistency, the Commission does not believe such an approach is necessary or practical.

4. Even before CEII existed, the Commission's rule at 18 CFR 388.112 permitted filers to designate information for non-public treatment. Such documents received non-public treatment by default until the Commission or a member of the public (through the filing of a FOIA request) questioned whether or not the information deserved non-public treatment. The Commission never found it necessary to review claims for non-public treatment prior to affording documents such status in order to save a requester the time and expense of filing a FOIA request for the information. Indeed, the burden on the Commission associated with previewing each such filing would be excessive.

5. Similarly, the Commission presently does not see a need to review claims for CEII treatment before anyone has indicated an interest in the document by filing a CEII request. CEII requests usually present less burden and greater chance of success than FOIA requests. There is no fee associated with a request for CEII. In addition, CEII requests are granted more often than FOIA requests, giving requesters access to information that would not be available to them under the FOIA. Nevertheless, although it is not practical for Commission staff to review all material filed as CEII, staff will continue to take steps to have the status of information promptly changed if they notice information has erroneously been filed as CEII. Those steps include notice

[1] Amendments to Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule), Order No. 643, 68 FR 52089 (Sept. 2, 2003), FERC Stats. & Regs. ¶ 31,149 (2003). Order No. 643 amended several Commission regulations to eliminate requirements that filers provide outsiders with information that qualifies as CEII under 18 CFR 388.113.

and an opportunity for the submitter to defend the CEII designation, and notice to the submitter prior to denying CEII status to the document. For documents designated as CEII by the Commission, CEII status can be changed even more quickly, without notice or an opportunity for comment. The Commission encourages members of the public to bring such matters to the attention of its staff, who are committed to responding timely.[2]

6. In addition, the Commission believes improving instructions to filers and Commission staff regarding which information qualifies for treatment as CEII is an effective way to combat the problem of inconsistency in claims for CEII treatment. Therefore, the Commission will be providing additional direction to filers on this subject, and will begin this effort in the area of hydropower information because that appears to be the area of the most uncertainty. Any guidance developed will be disseminated to the appropriate entities through the relevant industry associations, namely the National Hydropower Association, the Edison Electric Institute, and the Interstate Natural Gas Association of America by the effective date of this rule. In addition, as suggested by the NHA, the Commission will designate certain staff members in each program area who will be available to answer specific questions filers may have regarding appropriate designation of certain information. This contact information will be made available on the Commission's Web site within the same timeframe.

7. The HRC also questions whether the Commission's definition of CEII is too broad. The Commission defines CEII as ''information about proposed or existing critical infrastructure that (i) Relates to the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack of critical infrastructure; (iii) Is exempt from mandatory disclosure under the [FOIA]; and (iv) Does not simply give the location of the critical infrastructure.'' 18 CFR 388.113(c)(1). The HRC is concerned that parts two and four of the definition are too broad. HRC at p. 5. As an initial matter, the Commission notes that its definition of CEII is limited to information that is exempt from disclosure under the FOIA, and the remaining elements of the definition only serve to create a subset of FOIA-exempt information that may be released to requesters who evidence a need for such information. While the Commission agrees that part two of the definition is fairly subjective, the requirement that the information fall within a FOIA exemption serves to limit its applicability appropriately. As discussed above, the Commission will provide additional guidance that will help define elements two and four of the definition.

8. The HRC also raises the issue of the Commission's reliance on FOIA Exemption 7 to protect CEII, stating ''FERC's current interpretation of FOIA's exemptions is disturbingly broad particularly with respect to information compiled for law enforcement purposes.'' HRC at p. 3. The HRC notes that Exemption 7 has traditionally been used to protect information relating to criminal investigations, and states that FERC's use of Exemption 7 to protect CEII ''is neither legally defensible nor good public policy.'' HRC at p. 4. The Commission disagrees. While it is true that Exemption 7 has most often been applied in the context of criminal investigations, it is not limited to that context. Courts have found that both the Federal Communication Commission's authority to revoke or deny licenses and the Federal Trade Commission's authority over advertising practices were law enforcement activities. *See Kay* v. *FCC,* 867 F. Supp. 11, 16–18 (D.DC 1994); *Ehringhaus* v. *FTC,* 525 F. Supp. 21, 22–23 (D.DC 1980). More recently, courts have found that the law enforcement threshold was met with respect to Bureau of Reclamation dam inundation maps used to develop emergency actions plans. *See Living Rivers, Inc.* v. *United States Bureau of Reclamation,* 272 F. Supp. 2d 1313, 1316 (D. Utah 2003). This is very similar to information protected by the Commission in the hydropower area. The Commission continues to believe that such information may appropriately be protected under Exemption 7(F).

9. The HRC indicates particular concern regarding project boundary maps. In Order No. 630, the Commission specified that ''maps of projects (including location of project works with respect to water bodies, permanent monuments, or other structures that can be noted on the map and recognized in the field) such as those found in Exhibit G'' are considered to be CEII. 68 FR at 9862, FERC Stats. & Regs. ¶ 31, 140 at p 32. In light of the concerns raised by the HRC regarding project boundary maps, the Commission has revisited this issue, and determined that such information should not be treated as CEII. The Commission hereby directs that in the future such maps generally should not be treated as CEII or submitted with requests for CEII treatment, but should instead be submitted as NIP information in accordance with 18 CFR 388.112 and instructions from the Office of the Secretary.

B. Handling CEII Requests

10. The commenters raise several issues regarding the filing and processing of CEII requests. The HRC contends that it is unnecessarily burdensome to require individual members of an organization to file separate requests and non-disclosure agreements (NDAs). *See* HRC at pp. 7–8. The Commission disagrees. When it first adopted the CEII request rules, the Commission chose not to clear entire entities, deciding instead to clear each individual requesting access. As the Commission noted in Order No. 630, ''the more people who have access to information, the greater likelihood that it may find its way into the wrong hands.'' Order No. 630, 68 FR at p. 9865, FERC Stats. & Regs. ¶ 31,140 at p 48. The Commission believes that the current approach is necessary to effectively limit the number of people getting access to CEII. Moreover, the burden associated with filing a CEII request is minimal. For the ease of requesters, the Commission has posted a form on its Web site that requesters may use to file a request, which simplifies the request process. *See http://www.ferc.gov/help/how-to/file-ceii.asp.* The average request takes approximately five minutes to complete. To read and sign a non-disclosure agreement requires about the same amount of time. Under the circumstances, the Commission believes that the current policy of requiring each requester to file separately continues to be the best way to control access to CEII, and does not pose an undue burden on requesters.

11. While noting that for the most part their members have not had problems gaining access to CEII, the HRC suggests that the Commission consider automatically allowing all parties in a proceeding access to the same information in the proceeding, including CEII. HRC at p. 8. The Commission is reluctant to automatically grant parties access to CEII because it may cause people to intervene solely to receive CEII. Under the Commission's rules, ''[i]f no answer in opposition to a timely motion to intervene is filed within 15 days after the motion to intervene is filed, the movant becomes a party at the end of the 15 day period.'' 18 CFR 385.214(c)(1). Therefore, many motions

[2] The Commission's staff responsible for processing CEII requests and other matters are located within the Office of External Affairs and the General and Administrative Law section of the Office of the General Counsel.

to intervene are granted with no evaluation of the motion. The Commission is not comfortable granting CEII access without an affirmative analysis of the requester and his or her need for the information, so it will not automatically grant interveners access to CEII. Alternatively, the HRC urges the Commission to adopt a lower threshold for parties to a proceeding where others in the proceeding have access to CEII. In effect, this already happens. Under the Commission's regulations, someone has a right to participate in a Commission proceeding if such right is granted by law, if they have or represent an interest which may be directly affected by the proceeding, or if their participation is in the public interest. 18 CFR 388.214(b)(2). Therefore, if a CEII requester puts forth the same information required in a motion to intervene, that same information would most likely suffice to show that he is a legitimate requester with a need for the information requested, making it very likely his request for CEII would be granted.

12. While the HRC is concerned that the Commission's rules are too burdensome on requesters, SCE is concerned that the Commission's threshold for granting requests for CEII is too low. SCE urges the Commission to ''provide stricter limitations on the use of the [CEII] and require a greater showing of legitimate need for the CEII requested in order to ensure its confidentiality is maintained.'' SCE at p. 2. SCE believes that absent a showing of a valid need and legitimate use of the information, little protection is afforded by the requester's willingness to sign a non-disclosure agreement. *Id.* The Commission has found that CEII such as Form Nos. 715 and 567 are heavily requested by consultants who use the information to advise clients, often not with respect to a particular docketed Commission proceeding. The Commission believes that it is not always necessary for requesters to identify a particular Commission matter or even a particular client in order to qualify as a legitimate requester, especially where the Commission has been able to verify that the individual or firm provides legitimate consulting services. These consultants often provide a valuable service by giving market participants information necessary to make business decisions regarding expansion of the infrastructure, ultimately making it less vulnerable to attack. The Commission is unwilling to restrict access to information necessary to make such critical decisions.

13. The HRC also voices concern with the notice and comment process applicable to requests for information that has been submitted to the Commission with a request for CEII treatment, stating that ''FERC has not outlined a compelling reason to provide licensees with the opportunity [to] comment on the release of CEII to a requestor.'' HRC at p. 6. The notice and comment process existed previous to September 11, 2001, with respect to information that was submitted to the Commission with a request for non-public treatment. The prior version of 18 CFR 388.112(d) stated that ''[w]hen a FOIA requester seeks a document for which privilege is claimed, the Commission official who will decide whether to make the document public will notify the person who submitted the document and give the person an opportunity (at least five days) in which to comment in writing on the request.'' This provision has its foundations in Executive Order No. 12600, which applies specifically to confidential commercial information traditionally protected by FOIA Exemption 4. For more than fifteen years, the Commission has extended the procedural safeguards found in E.O. 12600 to any information submitted with a request for privileged treatment, and more recently in Order No. 630, the Commission extended those safeguards to information submitted with a request that it be treated as CEII. The executive order aside, the Commission believes there are benefits to affording the submitter of the information an opportunity to comment on the request. First, this gives the submitter of the information an opportunity to explain in more detail which exemption applies to protect the information and the potential harm that could result from disclosure of the information. Second, in many instances the submitter is familiar with the requester, and can provide information useful to the Commission in verifying the identity of the requester, providing a better foundation for the CEII Coordinator's decision. Third, if notice and comment were only afforded where the submitter claimed that the information was confidential commercial information, it would give companies incentives to make such claims where they might otherwise not be made.

14. The HRC also claims that providing notice and an opportunity for submitters to comment on release ''could undermine a part[y's] negotiating position in a settlement proceeding.'' HRC at p. 6. The HRC goes on to state that ''[t]he CEII coordinator should be vested with the authority to determine when information qualifies as CEII and whether a requestor has demonstrated a need for the information.'' *Id.* The HRC appears to misunderstand the purpose of providing notice and an opportunity to comment. The submitter does not make the decision regarding whether the information is CEII or whether to release the information to the requester; the submitter's comments only inform the CEII Coordinator's decision. There have been numerous instances where the CEII Coordinator has released CEII despite the submitter's opposition to such a release. The Commission continues to find that the benefits of maintaining the notice and comment process outweighs the inconvenience to the requesters and concludes that there is little danger of the process undermining settlement proceedings.

15. Although generally finding that the Commission responds ''almost immediately'' to CEII requests, the HRC has indicated concern with the time it takes to process CEII requests, especially in matters with quick turnaround times, specifically referencing the Commission's integrated licensing process (ILP). HRC at p. 7. The Commission agrees that HRC has raised a legitimate concern given that the ILP has defined deadlines for all participants, including the Commission, throughout the process. However, the majority of the documents filed as part of the licensing process typically are not CEII, so the problem will not be widespread. Given the Commission's contemporaneous decision to no longer consider Exhibit G project boundary maps as CEII, the most likely information to be filed in the ILP as CEII is Exhibit F (details of project facilities),[3] which will be part of the draft license application, if prepared, and the final license application filed with the Commission. The comment deadlines for these two steps are 90 days and 120 days respectively. Given these deadlines, requesters should have little trouble getting timely access to the information. In other instances with shorter timeframes, the Commission will strive to respond as quickly as possible. Requesters should highlight short deadlines so staff can expedite the request if possible. Requesters also have the option of seeking the information directly from the applicant, and the Commission will encourage applicants

[3] In Order No. 630, the Commission listed general design drawings such as those found in Exhibit F as an example of CEII commonly found in hydropower filings. 68 FR at p. 9862; FERC Stats. & Regs. ¶ 31,147 at p 32.

to negotiate with requesters to provide CEII directly to them wherever possible. In fact, the Commission already encourages such cooperation.

16. The DOI has asked the Commission to loosen some of the requirements on federal agency requesters. Specifically, the DOI urges that ''[f]ederal agencies should be able to identify themselves one time in each proceeding, and be granted complete access to the docket from then on.'' DOI at p. 2. The Commission has reconsidered the position of federal agency requesters and agrees that once an agency has been granted access to CEII in a particular docket, it is entitled to receive subsequent CEII in that docket. However, the Commission will not assume an affirmative duty to transmit such information absent a subsequent request from the agency. Such subsequent request may be as informal as a phone call or e-mail to a staff contact requesting additional CEII in the docket. The burden must remain on the requesting agency to voice such requests; otherwise the burden on Commission staff to keep track of such ongoing requests would be too great.

17. The NHA has requested clarification of the owner/operator request process, and has suggested that the Commission designate a specific person for owner/operators to contact to obtain CEII on their own projects. NHA at 3. Currently, 18 CFR 388.113(d)(1) provides that ''[a]n owner/operator of a facility, including employees and officers of the owner/operator, may obtain CEII relating to its own facility directly from Commission staff without going through the procedures outlined in paragraph (d)(3) of this section.'' In most instances, the owner/operator representative has a contact on Commission staff and the CEII request is sent directly to that staff person. In cases where an owner/operator does not have a relationship with a staff person from the Office of Energy Projects, the request may be sent to the General and Administrative Law Section of the Commission's Office of the General Counsel, directed to the attention of Carol Johnson (*carol.johnson@ferc.gov*). The telephone number for General and Administrative Law is 202–502–6457 and the facsimile number is 202–208–0056.

18. The NHA has also requested that the Commission alter its policy that agents of an owner/operator may not file CEII requests. The current regulation requires that agents or other non-employee representatives of owner/operators obtain CEII directly from the owner/operator. In several instances this has resulted in an unwieldy process. The Commission has reconsidered its approach with respect to agents of owner/operators and has decided to permit the agents to have the same access as the owner/operator as long as they present written authorization from the owner/operator for such access. Therefore, the Commission is amending § 388.113(d)(1) to include agents of owner/operators, deleting § 388.113(d)(2), and re-designating § 388.113(d)(3) as 388.113(d)(2).

19. SCE requests that the Commission require that consultants agree to return or destroy CEII when the proceeding is finished, or within two years of receipt, arguing that Form No. 715 data does not necessarily become stale. SCE at pp. 2–3. SCE has advocated this approach in several of its responses to Form No. 715 notice and comment letters. The Commission has considered the advantages and disadvantages of placing time limits on a recipient's use of CEII. The advantage is that it limits the amount of time such information is vulnerable to disclosure. A primary disadvantage of such an approach is that it would require monitoring and follow up, which would be quite a large administrative task when one considers the volume of CEII requests, which are averaging over 200 requests per year thus far. Another problem is that some of the recipients use the CEII to develop some sort of product or database. Once the time limit expires, they would not only need to return the original information, they would have to dismantle the product or database that utilized the information. That could be an expensive proposition, and discourage recipients from undertaking the analysis in the first place. These analyses are often performed to assist market participants in making critical decisions about where to invest in new infrastructure. The Commission is reluctant to take steps that could discourage such analyses. Finally, the Commission does believe that the sensitivity of much of the information will diminish over time. For these reasons, the Commission declines to routinely place time limits on a recipient's access to CEII, but would consider doing so in a unique case where a compelling need could be shown.

C. Follow Up

20. The APPA/TAPS cautions the Commission not to presume too much given the absence of complaints to date, noting that there have not been many controversial rate requests and no significant merger applications filed since the CEII rules took effect. APPA/TAPS at p. 2. The APPA/TAPS encourages the Commission to re-evaluate the effectiveness of the rules again in another year. *Id.* at p. 3. The HRC also urges the Commission to continue to evaluate the CEII rules ''using measures of success in addition to evaluating comments and input from the public.'' HRC at p. 3. The Commission will continue to monitor and review the success of the CEII program. It will continue to be alert to situations where a party's ability to effectively participate in a proceeding may be impacted by the rules. In addition, the Commission will re-examine the effectiveness of the rules again within one year. That evaluation will take into account the potential threats and what level of protection is required given the current world situation.

Information Collection Statement

21. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule. 5 CFR 1320.12 (2004). This final rule does not impose any additional information collection requirements. Therefore, the information collection regulations do not apply to this final rule.

Environmental Analysis

22. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[4] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended. 18 CFR 380.4(a)(2)(ii). This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

23. The Regulatory Flexibility Act of 1980 (RFA)[5] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The

[4] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[5] 5 U.S.C. 601–612

Commission certifies that this proposed rule, if finalized, would not have such an impact on small entities.

Document Availability

24. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

25. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

26. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

Effective Date

27. These regulations are effective September 9, 2004. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects in 18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 388, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 388—INFORMATION AND REQUESTS

■ 1. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

■ 2. In § 388.113, paragraph (d)(1) is revised, paragraph (d)(2) is removed, and (d)(3) is redesignated as (d)(2), to read as follows:

§ 388.113 Accessing critical energy infrastructure information.

* * * * *

(d) *Optional procedures for requesting critical energy infrastructure information.* (1) An owner/operator of a facility, including employees and officers of the owner/operator, may obtain CEII relating to its own facility directly from Commission staff without going through the procedures outlined in paragraph (d)(2) of this section. Non-employee agents of an owner/operator of such facility may obtain CEII relating to the owner/operator's facility in the same manner as owner/operators as long as they present written authorization from the owner/operator to obtain such information.

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[FR Doc. 04–18189 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Doramectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for an increased period of protection from reinfection with three species of internal parasites following topical administration of doramectin solution on cattle.

DATES: This rule is effective August 10, 2004.

FOR FURTHER INFORMATION CONTACT: Janis Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578, e-mail: *janis.messenheimer@fda.gov*.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 141–095 for DECTOMAX (doramectin) Pour-On Solution for Cattle. The supplemental application provides for an increased period of protection from reinfection with three species of internal parasites following topical administration of doramectin solution on cattle. Specifically, the period of persistent effectiveness is increased from 21 days to 28 days for *Cooperia oncophora*, from 28 days to 35 days for *C. punctata*, and from 21 days to 28 days for *Dictyocaulus viviparus*. The supplemental NADA is approved as of June 30, 2004, and the regulations in 21 CFR 524.770 are amended to reflect the approval and a current format. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning June 30, 2004. Exclusivity applies only to the extension of the persistent effectiveness claims for the three species of parasites listed previously.

The agency has carefully considered the potential environmental impact of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 524.770 is revised to read as follows:

§ 524.770 Doramectin.

(a) *Specifications.* Each milliliter (mL) of solution contains 5 milligrams (mg) doramectin.

(b) *Sponsor.* See No. 000069 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.225 of this chapter.

(d) *Special considerations.* See § 500.25 of this chapter.

(e) *Conditions of use in cattle*—(1) *Amount.* Administer topically as a single dose 0.5 mg (1 mL) per kilogram (1 mL per 22 pounds) body weight.

(2) *Indications for use.* For treatment and control of gastrointestinal roundworms: *Ostertagia ostertagi* (adults and fourth-stage larvae), *O. ostertagi* (inhibited fourth-stage larvae), *O. lyrata* (adults), *Haemonchus placei*(adults and fourth-stage larvae), *Trichostrongylus axei* (adults and fourth-stage larvae), *T. colubriformis* (adults and fourth-stage larvae), *Cooperia oncophora*(adults and fourth-stage larvae), *C. punctata* (adults and fourth-stage larvae), *C. pectinata* (adults), *C. surnabada* (adults), *Bunostomum phlebotomum* (adults), *Oesophagostomum radiatum* (adults and fourth-stage larvae), *Trichuris* spp. (adults); lungworms: *Dictyocaulus viviparus*(adults and fourth-stage larvae); eyeworms: *Thelazia gulosa* (adults), *T. skrjabini*(adults); grubs: *Hypoderma bovis* and *H. lineatum*; sucking lice: *Linognathus vituli*, *Haematopinus eurysternus*, and *Solenopotes capillatus*; biting lice: *Damalinia bovis;* mange mites: *Chorioptes bovis* and *Sarcoptes scabiei*; horn flies: *Haematobia irritans*; and to control infections and to protect from reinfection with *C. oncophora*, *D. viviparus*, *O. ostertagi*, and *O. radiatum* for 28 days; and with *C. punctata*, and *H. placei* for 35 days after treatment.

(3) *Limitations.* Do not slaughter cattle within 45 days of latest treatment. Not for use in female dairy cattle 20 months of age or older. Do not use in calves to be processed for veal.

Dated: July 28, 2004.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 04–18165 Filed 8–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9148]

RIN 1545–BC06

Transfers of Compensatory Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulations that provide rules governing transfers of certain compensatory stock options (nonstatutory stock options). The regulations affect persons who have been granted nonstatutory stock options, as well as service recipients who may be entitled to deductions related to the options.

DATES: *Effective Date:* These regulations are effective August 10, 2004.

Applicability Dates: These regulations apply to transfers of nonstatutory stock options on or after July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Tackney (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These regulations amend 26 CFR part 1. On July 2, 2003, a temporary regulation (TD 9067) relating to transfers of compensatory options was published in the **Federal Register** (68 FR 39453). A notice of proposed rulemaking (REG–116914–03) was published in the **Federal Register** for the same day (68 FR 39498). No public hearing was requested or held. No written or electronic comments responding to the notice of proposed rulemaking were received. The proposed regulations are adopted without change by this Treasury decision, and the corresponding temporary regulations are removed.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these final regulations is Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for ''1.83–7T'' and continues to read in part as follows:

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

■ **Par. 2.** § 1.83–7 is amended as follows:

■ 1. Paragraph (a) is amended by adding two sentences at the end.

■ 2. Paragraphs (a)(1) and (a)(2) are added.

■ 3. Paragraph (d) is revised.

The additions read as follows:

§ 1.83–7 Taxation of nonqualified stock options.

(a) * * * The preceding sentence does not apply to a sale or other disposition of the option to a person related to the service provider that occurs on or after July 2, 2003. For this purpose, a person is related to the service provider if—

(1) The person and the service provider bear a relationship to each other that is specified in section 267(b) or 707(b)(1), subject to the modifications that the language ''20 percent'' is used instead of ''50 percent'' each place it appears in sections 267(b) and 707(b)(1), and section 267(c)(4) is applied as if the family of an individual includes the spouse of any member of the family; or

(2) The person and the service provider are engaged in trades or businesses under common control (within the meaning of section 52(a) and (b)); provided that a person is not related to the service provider if the person is the service recipient with respect to the option or the grantor of the option.

* * * * *

(d) This section applies on and after July 2, 2003. For transactions prior to

that date, see § 1.83–7 as published in 26 CFR part 1 (revised as of April 1, 2003).

§ 1.83–7T [Removed]

■ **Par. 3.** Section 1.83–7T is removed.

Linda M. Kroening,

Acting Assistance Deputy Commissioner for Services and Enforcement.

Approved: July 28, 2004.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–18159 Filed 8–9–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 49

[TD 9149]

RIN 1545–BB76

Collected Excise Taxes; Duties of Collector

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the obligations of persons that receive payments for air transportation or communications services subject to excise tax when persons liable for tax refuse to pay the tax. These temporary regulations affect persons that receive payments subject to tax and persons liable for those taxes. The text of the temporary regulations also serves as the text of the proposed regulations (REG–163909–02) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective October 1, 2004.

Applicability Dates: For dates of applicability, see §§ 40.6302(c)–3T(b)(2)(ii) and 49.4291–1T.

FOR FURTHER INFORMATION CONTACT: Taylor Cortright (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49). Section 4251 of the Internal Revenue Code (Code) imposes an excise tax on amounts paid for certain communications services. Sections 4261(a) and (b) impose excise taxes on amounts paid for taxable transportation of persons by air. Section 4261(e)(3) provides that any amount paid to an air carrier or related party for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air is treated for purposes of section 4261(a) as an amount paid for taxable transportation and is therefore subject to tax. Section 4261(c) imposes an excise tax on any amount paid for the air transportation of persons that begins or ends in the United States. Section 4271 imposes an excise tax on amounts paid for taxable transportation of property by air. These taxes collectively are referred to as collected excise taxes.

For each of the collected excise taxes, the person liable for the tax is the person making the payment on which tax is imposed (the taxpayer). Under section 4291, the person receiving the payment on which tax is imposed (the collector) generally must collect the tax from the person making the payment and pay it over to the government.

If the taxpayer refuses to pay the tax the collector is required, under § 49.4291–1, to report this refusal to the IRS. The IRS will then assert the tax against the taxpayer. Current regulations do not specify the time within which the collector must report this refusal to the IRS.

Collectors are responsible for filing returns with respect to the collected excise taxes and for making deposits of tax as required by section 6302. Section 40.6302(c)–3 provides an alternative method for computing the amount of deposits of collected excise taxes. Under the alternative method, collectors may compute the amount of tax to be deposited on the basis of amounts considered as collected instead of on the basis of actual collections of tax. A person may use the alternative method with respect to a tax only if the person separately accounts for the tax. The separate account must reflect for each month all items of tax that are included in amounts billed or tickets sold to customers during the month and items of adjustment (including bad debts and errors) relating to the tax for prior months within the period of limitations for credits or refunds. When a collector using the alternative method determines that a taxpayer has refused to pay the tax, the collector adjusts the separate account to reflect that the tax was not collected. Current regulations do not specify the time for adjusting the separate account to reflect that refusal.

The temporary regulations provide that the collector must report the refusal to pay the tax to the IRS by the due date of the return on which the tax would have been reported but for the refusal to pay. In addition, the temporary regulations provide that, for a person using the alternative method, the separate account cannot be adjusted to reflect a refusal to pay tax for the month unless such refusal has been reported.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act, please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Patrick S. Kirwan, 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 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 49

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

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 40 and 49 are amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

■ **Paragraph 1.** The authority citation for part 40 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 40.6302(c)–3T also issued under 26 U.S.C. 6302 * * *

■ **Par. 2.** Section 40.6302(c)–3 is amended by:

■ a. Removing the language ''and'' at the end of paragraph (b)(2)(ii)(A).

■ b. Redesignating paragraph (b)(2)(ii)(B) as paragraph (b)(2)(ii)(C) and removing the language ''Items'' and adding ''Other items'' in its place.

■ c. Adding new paragraph (b)(2)(ii)(B) to read as follows:

§ 40.6302(c)–3 Special rules for use of Government depositaries under chapter 33.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) [Reserved]. For further guidance, *see* § 40.6302(c)–3T(b)(2)(ii)(B).

* * * * *

■ **Par. 3.** Section 40.6302(c)–3T is added to read as follows:

§ 40.6302(c)–3T Special rules for use of Government depositaries under chapter 33 (temporary).

(a) through (b)(2)(ii)(A) [Reserved]. For further guidance, *see* § 40.6302(c)–3(a) through (b)(2)(ii)(A).

(b)(2)(ii)(B) Applicable October 1, 2004, the account required under § 40.6302(c)–3(b)(2)(i)(A) may not reflect an item of adjustment for any month during a quarter if the adjustment results from a refusal to pay or inability to collect the tax and the uncollected tax has not been reported under § 49.4291–1 of this chapter on or before the due date of the return for that quarter; and

(b)(2)(ii)(C) through (g) [Reserved]. For further guidance, *see* § 40.6302(c)–3(b)(2)(ii)(C) through (g).

PART 49—FACILITIES AND SERVICES EXCISE TAXES

■ **Par. 4.** The authority citation for part 49 continues to read, in part, as follows:

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

■ **Par. 5.** Section 49.4291–1 is amended by adding a sentence after the third sentence to read as follows:

§ 49.4291–1 Persons receiving payment must collect tax.

* * * For further guidance, *see* § 49.4291–1T. * * *

■ **Par. 6.** Section 49.4291–1T is added to read as follows:

§ 49.4291–1T Persons receiving payment must collect tax (temporary).

Applicable October 1, 2004, a person required to report uncollected tax under § 49.4291–1 must make the report on or before the due date of the return on which the refusal to pay or inability to collect such tax is reflected (or could be reflected but for the limitation in § 40.6302(c)–3T).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: June 21, 2004.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–18160 Filed 8–9–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–146]

RIN 1625–AA09

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations to test an alternate drawbridge operation schedule for the Route 70 Bridge across Manasquan River, mile 3.4, at Riviera Beach, New Jersey. Under this temporary 90-day deviation, the draw of the bridge will open on signal on the hour, except that from 5 p.m. to 7 p.m., Monday through Friday, except Federal holidays; and from 11 p.m. to 7 a.m. every day the draw need not be opened. The purpose of this temporary deviation is to test an alternate drawbridge operation schedule for 90 days and solicit comments from the public.

DATES: This deviation is effective from August 2, 2004, through October 31, 2004. Comments must reach the Coast Guard on or before 5 November 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Commander (obr), Fifth Coast Guard District maintains the public docket for this test schedule. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address.

Request for Comments

We encourage you to participate in this test deviation by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this test deviation CGD05–04–146, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: Effective on July 11, 2003, the bridge owner, the New Jersey Department of Transportation, was officially permitted to operate the Route 70 Bridge across Manasquan River with new regulations. The new operating regulations listed at 33 CFR § 117.727 allows the draw of the bridge to open on signal on the hour, except that from 4 p.m. to 7 p.m. Monday through Friday, except Federal holidays; and from 11 p.m. to 7 a.m., every day the draw need not be open.

Based on comments received on the new operating regulations of the bridge and in an effort to facilitate vessel and vehicular traffic while providing for the reasonable needs of navigation, the District Commander has offered a test period to reexamine the rush hour closure periods during the forthcoming recreational boating season. The new proposal will test a new rush hour period from 5 p.m. to 7 p.m. Monday through Friday, except Federal holidays, as opposed to the current 4 p.m. to 7 p.m. regulatory hours. Therefore, the last drawbridge opening for vessels before the rush hour will occur at 4 p.m. and first opening following the rush hour will be at 7 p.m.

Under this 90-day temporary deviation, effective from August 2, 2004 through October 31, 2004, the Route 70 Bridge across Manasquan River shall open on signal on the hour, except that from 5 p.m. to 7 p.m., Monday through Friday, except Federal holidays; and from 11 p.m. to 7 a.m., every day the draw need not be opened.

This deviation from the operating regulations is authorized under 33 CFR 117.43.

Dated: July 29, 2004.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 04–18204 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–095]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain closed from August 16 to August 21, and August 23 to August 28, 2004, to facilitate necessary bridge maintenance.

DATES: This deviation is effective from August 16, 2004 through August 28, 2004.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

The owner of the bridge, New York City Department of Transportation (NYCDOT), requested a temporary deviation from the drawbridge operation regulations to facilitate rehabilitation repairs at the bridge. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the NYCDOT Metropolitan Avenue Bridge may remain in the closed position from August 16 to August 21, and August 23 to August 28, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: July 30, 2004.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–18206 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2003–SC–0001–200416(a); FRL–7799–5]

Approval and Promulgation of Implementation Plans; South Carolina: Source Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the South Carolina State Implementation Plan (SIP) revision submitted by the South Carolina Department of Health and Environmental Control on September 4, 2002, and July 25, 2003. These revisions consist of the establishment, standardization, and clarification of source testing requirements. South Carolina is also changing the title of Regulation 62.1 to reflect that it contains general provisions.

DATES: This direct final rule is effective October 12, 2004, without further notice, unless EPA receives adverse comment by September 9, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04-OAR–2003–SC–0001, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/*. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the online instructions for submitting comments.

3. E-mail: *ward.nacosta@epa.gov*.

4. Fax: 404–562–9019.

5. Mail: ''R04–OAR–2003–SC–0001'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

6. Hand Delivery or Courier. Deliver your comments to: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2003–SC–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can also be reached via electronic mail at *ward.nacosta@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On September 4, 2002 and July 25, 2003, the South Carolina Department of Health and Environmental Control submitted revisions to the South Carolina State Implementation Plan. These revisions pertain to source testing requirements for all affected source owners or operators and source testers. The purpose of these revisions is to restore accuracy and completeness of the regulations incorporated by reference into the SIP and to clarify language specifying authorization for proposing alternate test methods.

Description of Revisions Submitted as of September 4, 2002

a. The title of Regulation 61–62.1 is being changed to ''Definitions and General Requirements'' to identify that the regulation contains general provisions.

b. Section IV—Source Tests, is being added to Regulation 61–62.1. Regulation 61–62.5, Standard No. 1, Section VII—Source Test Requirements and Standard No. 4, Section XIII—Source Test Requirements are being incorporated into Regulation 61–62.1, Section IV—Source Tests. Regulation 61–62.5, Standard No. 1, Section VII and Standard No. 4, Section XIII are being reserved for future use. Other amendments to Regulation 61–62.1 specify requirements for site-specific test plans including: a detailed discussion of the test objectives, accessibility and representativeness of sampling locations, process descriptions, in-house testing protocol, all sampling and analytical procedures, internal quality assurance/quality control, data reduction and reporting procedures, and safety considerations.

c. Amendments were made to Regulation 61–62.1, Section II—Permit Requirements and Regulation 61–62.5, Standard No. 1, Section VI—Periodic Testing to specify that the responsible official for ensuring the performance of source tests is an owner or operator of stationary sources and to provide a requirement for sources to comply with the new source test section, 61–62.1 Section IV—Source Tests.

d. Typographical corrections and clarifications were made to Regulation 61–62.5 for formatting consistency.

Description of Revisions Submitted as of July 25, 2003

e. Regulation 61–62.1 Definitions and General Requirements, Section IV—Source Tests is being amended to clarify the language concerning alternate methods of source testing. These revisions address the comments received during the comment period.

f. The words ''Section I'' were removed from Section II—Permit Requirements for formatting consistency with Regulation 61–62.5, Standard No. 7.

II. Final Action

EPA is approving the aforementioned changes to the State of South Carolina SIP because they are consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 12, 2004, without further notice unless the Agency receives adverse comments by September 9, 2004.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 12, 2004, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 12, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 27, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Chapter I, title 40, 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 PP—South Carolina

■ 2. Section 52.2120(c) is amended:
■ (a) by revising the entry for ''Regulation No. 62.1.''
■ (b) under Regulation No. 62.1, by revising the entry for ''Section II'' and adding the entry for ''Section IV.''
■ (c) under Regulation 62.5, Standard No. 1, by revising the entries for ''Section VI'' and ''Section VII.''
■ (d) under Regulation 62.5, Standard No. 4, by revising the entries for ''Section XII'' and ''Section XIII.''
■ (e) under Regulation 62.5, Standard No. 5, Section I, by adding the entry for ''Part E.''

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Federal Register Notice
Regulation No. 62.1, Definitions and General Requirements				
Regulation No. 62.1	Definitions and General Requirements	06/26/98	8/10/04	[Insert citation of publication]
*	*	*	*	*
Section II	Permit Requirements	06/27/03	08/10/04	[Insert citation of publication]
*	*	*	*	*
Section IV	Source Tests	06/27/03	08/10/04	[Insert citation of publication]
*	*	*	*	*
Regulation No. 62.5, Air Pollution Control Standards				
Standard No. 1, Emission From Fuel Burning Operations				
*	*	*	*	*
Section VI	Periodic Testing	06/26/98	08/10/04	[Insert citation of publication]
Section VII	Reserved			

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA—Continued

State citation	Title/subject	State effective date	EPA approval date	Federal Register Notice
*	* * *	*	*	*
	Standard No. 4, Emission From Process Industries			
*	* * *	*	*	*
Section XII	Periodic Testing	06/26/98	08/10/04	[Insert citation of publication]
Section XIII	Reserved			
	Standard No. 5, Volatile Organic Compounds			
	Section I, General Provisions			
Part E	Volatile Organic Compound Compliance Testing	06/26/98	08/10/04	[Insert citation of publication]
*	* * *	*	*	*

* * * * *

[FR Doc. 04–18139 Filed 8–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7799–3]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Notice of Deletion of the San Fernando Valley Basin Area 3, Verdugo Study Area Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region IX, is publishing this Direct Final Notice of Deletion for the San Fernando Valley Basin Area 3, Verdugo Study Area Superfund Site (Site). The Site is in the eastern portion of the San Fernando Valley Basin in Los Angeles, California.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The NCP sets criteria that must be met to delete a site from the NPL. EPA, in consultation with the State of California, has determined that this Site meets the following criterion for site deletion: ''The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.'' This deletion does not preclude future actions under Superfund, based on new information or conditions.

DATES: Because this deletion is considered to be noncontroversial, to streamline the deletion process EPA is publishing the Notice of Intent to Delete in the **Federal Register** concurrent with this Direct Final Notice of Deletion. This Direct Final Notice of Deletion will be effective October 12, 2004 without any further EPA action, unless EPA receives adverse comment(s) on the Notice of Intent to Delete by September 9, 2004. If adverse comment(s) are received, EPA will publish a timely withdrawal of the Direct Final Notice of Deletion before it takes effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

ADDRESSES: Comments may be mailed to Jackie Lane, Community Involvement Coordinator, U.S. EPA Region IX (SFD–3), 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3236.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Remedial Project Manager, U.S. EPA Region IX (SFD 7–1), 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3960.

Information Repositories: Information supporting the deletion is available in the Deletion Docket at the EPA Region IX Records Center and detailed Site information is available at the Information Repositories listed below:

U.S. EPA Superfund Record Center, 95 Hawthorne Street, San Francisco, California 94105–3901, (415) 536–2000, La Canada Library, 4545 Oakwood Ave., La Canada, CA 91011, (818) 952–0603.

Los Angeles Department of Water and Powers, 111 North Hope Street, Rm. 516, Los Angeles, CA 90012, (213) 367–1995.

Glendale Public Library, 222 East Harvard Street, Glendale, CA 91205, (818) 548–2021.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
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V. Deletion Action

I. Introduction

EPA Region IX is publishing this Direct Final Notice of Deletion from the NPL for the San Fernando Valley Basin Area 3, Verdugo Study Area Superfund Site. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site or new information warrant such action.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the San Fernando Valley Basin Area 3, Verdugo Study Area Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments

are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA must determine, in consultation with the State, that one of the following criteria have been met:

(1) Responsible parties or other parties have implemented all appropriate response actions required;

(2) All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(3) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

As a No Action decision was made for this Site, a Five-Year Review is not required under CERCLA section 121(c). However, EPA may decide to conduct a discretionary review to confirm that the No Action decision remains appropriate, in the future. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should new information or conditions warrant such actions.

III. Deletion Procedures

The following procedures were followed for deletion of this Site:

(1) The EPA consulted with State of California, Department of Toxic Substances Control (DTSC) on the deletion of this Site from the NPL, prior to developing the Direct Final Notice of Deletion. EPA also provided notices to the California Regional Water Quality Control Board (RWQCB), and Department of Health Services (DHS);

(2) The State of California, DTSC and RWQCB have concurred with deletion of the Site from the NPL;

(3) Concurrently with the publication of this Direct Final Notice of Deletion, a Notice of Intent to Delete is being published today in the Proposed Rules section of the **Federal Register** and in a major local newspaper of general circulation near the Site. The newspaper notice announces the 30-day public comment period for the Notice of Intent to Delete the Site from the NPL. The Notice of Intent to Delete is also being distributed to appropriate Federal, State, and local government officials and other interested parties; and

(4) The EPA placed copies of documents supporting the deletion in the Deletion Docket and the Site Information Repositories identified above.

IV. Basis for Site Deletion

The following information provides EPA's basis for deleting the Site from the NPL:

Site Location

The Verdugo Study Area comprises approximately 2,000 of the 4,400 acre Verdugo Basin, which is situated in the eastern portion of the San Fernando Valley Basin (SFVB), Los Angeles, California.

Site History

The Verdugo Study Area includes the groundwater in and around several water supply well fields in the Verdugo Basin. The Verdugo Basin is bounded on the northeast by the San Gabriel Mountains, on the west by the Verdugo Mountains, and on the southeast by the San Rafael Hills. The Verdugo Basin is generally considered a small tributary of the larger San Fernando Valley groundwater basin. Land use in the Verdugo Basin is primarily residential along the floor of the valley, and open space in the surrounding mountains, with limited commercial and agricultural activity. No significant industrial development is present and the Site does not appear to have any primary sources of groundwater contamination.

In 1986, at the request of the State of California (State), EPA placed four areas within the SFVB on the National Priorities List (NPL) as individual Superfund sites, due to the presence of volatile organic compounds (VOCs) in groundwater at concentrations exceeding State and Federal drinking water standards. The four areas are: North Hollywood (Area 1), containing the North Hollywood Operable Unit (OU) and the Burbank OU; Crystal Springs (Area 2), containing the Glendale North and South OUs; Verdugo Study Area (Area 3); and Pollock (Area 4).

Groundwater is used as a potable supply by two purveyors in the Verdugo Study Area, the City of Glendale and the Crescenta Valley Water District (CVWD). The City of Glendale operates the Glorietta well field in the southern portion of the Site and the CVWD operates the Glenwood and Mills well fields in the north-central part of the Site. Perchloroethene (PCE) in groundwater is the primary contaminant of concern (COC) for the Verdugo Study Area. Historically, the PCE plume in the Verdugo Study Area extended from the Glenwood well field in the north to the Glorietta well field in the south, and appears to flow in the direction of groundwater. The geometry of the Verdugo Basin is such that it funnels flow from the broader northern area to the more narrow southern area. The maximum historic concentration of PCE from sampling efforts in 1982 was 52 parts per billion (ppb) in the northern portion of the Site, but by 2002 the maximum level was below the maximum contaminant level (MCL) at 2.5 ppb PCE in the southern end of the Site. Based on consistently decreasing levels of contamination over time to below MCLs and risks falling within the EPA risk range, EPA selected the no action remedy for this site in a Record of Decision, signed on February 24, 2004.

Remedial Investigation and Feasibility Study (RI/FS)

In 1981, prior to the Site being listed on the NPL, the Los Angeles Department of Water and Power (LADWP) began a 2-year study to assess groundwater contamination in the SFVB, including wells located in the Glenwood, Mills and Glorietta well fields in the Verdugo Study Area. More than 600 water supply wells were sampled in the SFVB as part of this program. Additional work included a review of existing hydrogeologic data and industrial site surveys. Results of this work are presented in the *Groundwater Quality Management Plan for the San Fernando Valley Basin*, and indicate that 45 percent of LADWP supply wells in the eastern SFVB contained trichloroethene (TCE) in excess of the federal MCL and/or PCE in excess of the State action level (LADWP, 1983) of 4 ppb. The State adopted a 5 ppb MCL for PCE in May 1989. However, in the Verdugo Study Area, no TCE above the MCL was detected. PCE was the most prevalent organic contaminant at the Site. The historic high of 52 ppb PCE at the Site was detected during this study, in

Glenwood well field production well CVCWD–8.

Pursuant to California Assembly Bill 1803 (AB 1803), wells within the SFVB were sampled in 1983 for VOCs, semivolatile organic compounds (SVOCs), and pesticides/herbicides. Results of the 1983 sampling again revealed concentrations of VOCs above MCLs in several SFVB well fields, with TCE and PCE the two most common contaminants. Again, PCE was the main contaminant detected in the Verdugo Study Area, and was detected in excess of its state action levels in several water supply production wells, although the levels were below the 52 ppb detected in 1982.

After listing the four San Fernando Valley Basin sites on the NPL in 1986, EPA entered into a cooperative agreement to have the LADWP conduct a Remedial Investigation (RI) for the SFVB sites. In 1989, LADWP completed a soil gas sampling and analysis program within the SFVB, designed to better define the limits of shallow groundwater contamination. In the Verdugo Study Area, 73 soil gas samples were obtained and analyzed. Based upon results of soil gas sampling and available data from existing production wells, seven vertical profile borings in the Verdugo Study Area were converted into shallow monitoring wells in 1990.

A baseline risk assessment was conducted in conjunction with the SFVB RI in 1991. This baseline risk assessment was completed on a regional scale and did not specifically focus on the Verdugo Study Area. The risk assessment addressed compounds that exceeded MCLs in the groundwater of the entire eastern portion of the SFVB. Results indicated that the total cancer risk in the eastern SFVB was greater than EPA's acceptable range for ingestion and inhalation. However, in the Verdugo Study Area, the levels of contaminants were significantly lower than the concentration levels used to calculate risk for the entire SFVB. The primary carcinogenic risk drivers for the SFVB were 1,1-DCE, carbon tetrachloride, TCE, PCE, 1,2-DCE and arsenic; of these only PCE was present in the Verdugo Study Area. In October 2003, a screening level human and ecological risk assessment for the Verdugo Study Area indicated risks for the Site within the acceptable risk range.

To focus specifically on the Verdugo Study Area, EPA completed a hydrogeologic site assessment in 1993 (*Site Assessment and Monitoring Plan for the Verdugo Basin, Los Angeles County, California*, April 17, 1993). This document assisted in evaluating the nature and extent of groundwater contamination in the basin and provided recommendations for ongoing monitoring of groundwater contamination.

Since the completion of the RI in 1992 up through 2002, EPA continued to monitor groundwater quality by sampling monitoring wells in the Verdugo Study Area four times a year as part of the SFVB basinwide monitoring program. Due to the low levels of PCE and low risk, no Feasibility Study was prepared for the Verdugo Study Area. Groundwater sampling results for this Site from the 1980's through 2002 are summarized in the ''Final Summary of Groundwater Quality, San Fernando Valley Superfund Site, Area 3 (Verdugo Basin),'' dated May 20, 2003, prepared by CH2M Hill for EPA.

Record of Decision Findings

On February 24, 2004, consistent with the Remedy Delegation Report of March 8, 1985, EPA Region IX approved a Record of Decision (ROD) for this Site. The selected remedy was No Action.

Characterization of Risk

The results from groundwater monitoring conducted from the early 1980's through December 2002 indicate that the low levels of VOC contamination at the Site are within EPA's acceptable risk range and meet State and Federal MCLs. No activities using removal authority were conducted at this site.

Site-specific screening-level human health and ecological risk assessments were conducted to support EPA's proposal for no remedial action for the Verdugo Study Area (CH2M HILL, October 2003). Potential risks to human health associated with exposure to chemicals of potential concern in groundwater were found to be within EPA's acceptable risk range. There were no ecological risks found for the compounds present, as no completed exposure pathways exist for eco-receptors.

Five-Year Review

As no remedial action is required at this Site, a Five-Year Review is not required under CERCLA section 121(c). However, EPA may decide to conduct a discretionary review to confirm that the No Action decision remains appropriate.

Community Involvement

Public participation activities including a public meeting at the Verdugo Woodland Elementary School on November 18, 2003 have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the Deletion Docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of California, has determined that based on the Remedial Investigation, the release poses no significant threat to public health or the environment, and, therefore, taking of remedial measures is not appropriate. Therefore, EPA is deleting the Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 29, 2004.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 04–18142 Filed 8–9–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–97–3001; Amdt. Nos. 192–98, 195–82]

RIN 2137–AC54

Pipeline Safety: Periodic Underwater Inspections

AGENCY: Research and Special Programs Administration (RSPA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule amends the pipeline safety regulations to require operators of gas and hazardous liquid pipelines to prepare and follow procedures for periodic inspections of pipeline facilities located in the Gulf of Mexico and its inlets in waters less than 15 feet deep. These inspections will inform the operator if the pipeline is exposed or a hazard to navigation.

DATES: This rule is effective on September 9, 2004.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick by phone at (202) 366–5523, by

fax at (202) 366–4566, or by e-mail at *le.herrick@rspa.dot.gov*, regarding the subject matter of this rule. General information about RSPA's Office of Pipeline Safety (OPS) programs may be obtained by accessing OPS's Internet page at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

RSPA/OPS Pipeline Safety Mission

RSPA/OPS has responsibility for ensuring safety and environmental protection against risks posed by the Nation's approximately two million miles of gas and hazardous liquid pipelines. RSPA/OPS shares responsibility for inspecting and overseeing the Nation's pipelines with state pipeline safety offices.

The Need for Periodic Underwater Inspections

On July 24, 1987, the fishing vessel *Sea Chief* struck and ruptured an 8-inch submerged natural gas liquids pipeline in the Gulf of Mexico. The escaping gas ignited and exploded, killing two crew members. A similar accident occurred on October 3, 1989, when the fishing vessel *Northumberland* struck and ruptured a 16-inch submerged gas pipeline, killing 11 crew members.

The National Transportation Safety Board (NTSB) investigated the Northumberland accident and prepared a report, *Fire on Board the F/V Northumberland and Rupture of a Natural Gas Transmission Pipeline in the Gulf of Mexico Near Sabine Pass, TX* (October 3, 1989; NTIS Report Number PB90–916502), which found that the probable cause of the accident was the failure of the pipeline operator to maintain the pipeline at the burial depth to which it was initially installed.

NTSB also found that the failure of RSPA/OPS to require pipeline operators to inspect and maintain submerged pipelines in a protected condition contributed to the accident. The NTSB subsequently issued Safety Recommendation P–90–29, which directed RSPA/OPS to ''develop and implement with the assistance of the Mineral Management Service (MMS), the United States Coast Guard (USCG), and the United States Army Corp of Engineers (USACE), effective methods and requirements to bury, protect, inspect the burial depth of and maintain all submerged pipelines in areas subject to damage by surface vessels and their operations.''

Legislative Amendments and Subsequent Actions

In November 1990, Congress addressed hazards of underwater pipelines through amendments to the Hazardous Liquid Pipeline Safety Act of 1979 and the Natural Gas Pipeline Safety Act of 1968 (Pub. L. 101–599). These amendments, in part, required the operators of offshore pipeline facilities in the Gulf of Mexico and its inlets to conduct an underwater depth-of-burial inspection of the pipeline facility and to report any exposed portion or any portion of the pipeline facility which posed a hazard to navigation to the Secretary of Transportation.

The 1990 amendments also required the Secretary of Transportation to establish a mandatory, systematic, and, where appropriate, periodic inspection program of all offshore pipeline facilities and any other pipeline facility crossing under, over, or through navigable waters (as defined by the Secretary) if the Secretary decides that the location of the facility in those navigable waters could pose a hazard to navigation or public safety.

In response to the NTSB recommendation and the Congressional mandates, RSPA/OPS formed a multi-agency task force on offshore pipelines to study the issue. The task force consisted of representatives from RSPA/OPS, USCG, MMS, the Department of Commerce, the National Oceanic and Atmospheric Administration/National Oceans Service, the USACE, the Louisiana Office of Conservation, and the Texas Railroad Commission.

The task force reviewed information, views, and concerns provided by the government and the marine and pipeline industries. The assessment focused on the extent and adequacy of Federal regulations, the technology for determining pipeline location and cover, the availability of maps and charts depicting the location of pipelines, and possible government initiatives to enhance safety.

In November 1990, the task force issued a report, *Joint Task Force Report on Offshore Pipelines.* The report concluded that exposed pipelines pose a potential risk to navigation safety, especially for mariners operating in shallow, near-shore waters. The task force also concluded that underwater inspections for depth-of-burial of those pipelines were not being performed despite a requirement to place pipelines below the sea floor in shallow water.

To reduce the likelihood of further casualties, the report recommended that operators inspect these pipelines at regular intervals and re-bury exposed pipelines. A copy of the report is available in the docket for this rulemaking.

On December 5, 1991, RSPA/OPS published regulations requiring an operator to conduct inspections of its underwater pipelines in the Gulf of Mexico and its inlets in waters less than 15 feet (4.6 meters) deep as measured from mean low water (56 FR 63764). The regulations required that these inspections be completed before November 16, 1992, and that the results be submitted to RSPA/OPS.

The results of these inspections were reported to RSPA/OPS and have been used to inform this rulemaking. The regulations also established a course of action for the operator to follow if, as a result of the inspection or upon notification by any person, the operator discovers that a pipeline is exposed or a hazard to navigation.

National Research Council Report

In 1994, to gain further information on the risks posed by underwater pipelines, RSPA/OPS, in conjunction with other Federal agencies, requested that the Marine Board of the National Research Council (NRC) conduct an interdisciplinary review and assessment of the many technical, regulatory, and jurisdictional issues that affect the safety of the marine pipelines in the United States' offshore waters. The Marine Board's interdisciplinary Committee on the Safety of Marine Pipelines reviewed the causes of past pipeline failures, the potential for future failures, and the means of preventing or mitigating these failures. The NRC issued a report, *Improving the Safety of Marine Pipelines* (1994). This report is available online at: *http://books.nap.edu/books/0309050472/html/*. The report can also be ordered by mail at National Academies Press, 500 Fifth Street, NW., Lockbox 285, Washington, DC 20055. A copy of this report is also available for review in the docket for this rulemaking.

The NRC determined that the marine pipeline network does not present an extraordinary threat to human life. Pipeline accidents involving deaths or injuries are rare. The most widespread risks posed by pipelines are due to oil pollution—mainly from pipelines damaged by vessels and their gear. The NRC concluded that the risks generally could be managed with currently available technology and without major new regulations if enforcement of some current regulations is improved.

In June 1997, a comprehensive study of the pipeline surveys in the Gulf of Mexico required by §§ 192.612 and 195.413 was completed by the Texas

Transportation Institute (TTI). TTI also collected information on the available technology to conduct underwater depth-of-burial inspections and made recommendations for risk analysis, inspection intervals, and establishment of a definition of underwater natural bottom. A copy of the report, *Analysis of Pipeline Burial Surveys in the Gulf of Mexico*, is available in the docket for this rulemaking.

In addition to this final rule, many of the issues identified in these reports, in particular risks of pipelines in navigable waters, have been addressed in four other final rules: December 2000—a rule that requires integrity management programs for large liquid pipelines (65 FR 75377); January 2002—a rule that requires integrity management programs for smaller liquid pipelines (67 FR 2136); August 2002—a rule that defines ''High Consequence Areas'' (HCA) for gas transmission pipelines (67 FR 50824); and January 2003—a rule that revises the HCA definition and requires integrity management programs for gas transmission pipelines in HCAs (69 FR 69778).

Notice of Proposed Rulemaking

On December 12, 2003, RSPA/OPS issued a Notice of Proposed Rulemaking (NPRM) with request for comment (68 FR 69368). The comment period closed on March 10, 2004. Copies of the NPRM, the Draft Final Regulatory Evaluation, the Regulatory Flexibility Certification, and the comments are available in the docket for this rulemaking.

RSPA/OPS proposed to require operators of hazardous liquid and natural gas pipelines to prepare and follow a procedure to conduct periodic underwater inspections of their pipelines offshore or crossing under commercially navigable waterways in waters less than 15 feet deep to ensure that the pipeline is not exposed or a hazard to navigation.

The procedure would be used by the operator to assess the risk of an underwater pipeline becoming exposed or a hazard to navigation by taking into account the particular dynamics of the water and bottom, including the probability of flotation, scour, erosion, and the impacts of major storms. The operator would also establish a timetable for depth-of-burial inspection of shallow underwater pipelines based on the identified risks. The NPRM provided, as an example, the risk analysis procedure developed by TTI in their report.

II. Comment Discussion

RSPA/OPS received 22 comments to the NPRM: one from a private individual, one from a marine pipeline consultant, one from a fisheries company, one from a State utilities board, four from trade organizations, and fourteen from pipeline companies.

A. General Comments

1. Several commenters supported the proposed rule. One commenter stated that every 38 minutes a football sized parcel of Louisiana's wetlands turns to water and that regulations that clearly require procedures for periodic inspections of underwater pipelines is an important part of preventing pipeline damage. Another commenter noted that the chaos caused when pipelines are struck and destroyed not only hurts humans, but also causes catastrophe in the ocean by injuring fish, marine mammals, and the quality of the water.

Another commenter stated that the NPRM was timely. The commenter identified nine incidents involving collisions of vessels and underwater pipelines and stated that the Coast Guard ''Notice to Mariners'' frequently identify locations of exposed pipelines that have been discovered and marked with warning buoys.

However, many commenters raised questions and concerns about the proposed rule, in particular the inclusion of waters other than the Gulf of Mexico and its inlets. Several commenters did not believe the NPRM adequately justified expanding the pipeline survey requirements from the Gulf of Mexico to all inland waterways, noting that the NPRM did not provide evidence of accidents or incidents in shallow inland commercially navigable waters. Another commenter recommended that pipeline operating environments such as Long Beach harbor be excluded from this rule.

Several commenters suggested that this issue merited more public discussion to provide an opportunity to develop a technical basis for including crossings of navigable waters in the rulemaking. Another commenter stated that the analysis omitted the impact on up to 1,400 gas distribution operators.

Response

RSPA/OPS believes that this rule is necessary. It is expected to result in increased protection from the *Northumberland* type incidents. However, RSPA/OPS has determined that the underwater periodic inspection provision will be limited to the Gulf of Mexico and its inlets. RSPA/OPS has not been presented with sufficient evidence that the rule should include other offshore and inland waters. RSPA/OPS believes that hazards to navigation in these areas is already being adequately managed by application of the regulations in part 192 and part 195 and the regulations of other agencies.

Therefore, RSPA/OPS concludes that offshore waters outside the Gulf of Mexico and its inlets and inland waters have not been shown to pose a hazard to navigation or public safety that warrant periodic underwater inspections.

2. Another operator stated that 90% of all damage is caused by anchors and occurs most often in shallow bays and inlets. The commenter suggests that more education is needed on the part of the marine vessel industry on how to avoid areas that pose a higher than normal risk. Another commenter stated that prevention of damage to pipeline facilities must be a cooperative effort between pipeline and vessel operators.

Response

RSPA/OPS agrees and has supported efforts to develop international signage designed to warn vessel operators of pipeline hazards. In addition, RSPA/OPS works closely with other Federal and State agencies, such as USCG, MMS, USACE, and the Environmental Protection Agency (EPA) to address public safety concerns. However, RSPA/OPS' authority to implement rulemaking does not extend to the marine vessel industry.

3. Another commenter believed that there is not sufficient data to prove that natural gas pipelines account for a significant amount of pollution. The commenter stated that some distinction needs to be made between damage to hazardous liquid pipelines and damage to gas pipelines.

Response

RSPA/OPS disagrees. The 13 fatalities noted in the NPRM were the result of vessel interaction with natural gas pipelines. The study by the NRC recommended that natural gas and hazardous liquid pipelines be regulated identically under the periodic depth-of-burial inspection regulation because the higher risk to persons or property posed by natural gas pipeline facilities is balanced by the higher risk to the environment posed by hazardous liquid pipelines.

4. Another commenter believed that a mandatory ''one-call'' system, as is presently required for onshore pipelines, needs to be developed for marine pipelines.

Response

RSPA/OPS supports the concept of ''one-call'' and has forwarded this recommendation to the *Common Ground Alliance* (CGA), a nonprofit

organization dedicated to damage prevention efforts. The CGA addresses the many issues involved in protecting the nation's underground infrastructure from outside force damage.

6. A commenter stated that the cost-benefit analysis provided with the NPRM does not account for the cost of remediation, which could be significant.

Response

RSPA/OPS disagrees. The cost of remediation should not be included in the cost-benefit analysis for this rule because an operator is required to re-bury the pipeline under current regulations when it becomes aware that the pipeline is exposed or a hazard to navigation.

B. Performance-based v. Prescriptive Regulations

RSPA/OPS requested comments on the respective merits of a performance-based or a prescriptive requirement. A performance-based requirement would require an operator to use risk-based analyses to determine the periodic underwater inspection intervals for each of their pipelines and to conduct the appropriate periodic underwater inspections. A prescriptive requirement would mandate a specific periodic underwater inspection interval.

Nine commenters supported a performance-based approach. Another commenter stated that the acceptance of integrity management principles by RSPA/OPS is a practical method of ensuring pipeline safety and that performance-based regulations should be used whenever possible. Another commenter stated that the different soil and weather conditions require individual evaluations and determinations of adequate inspection intervals. Another commenter urged that predictive land loss models be used because some coastal areas require more frequent inspection than others and that performance-based language would allow operators the flexibility to address the myriad of situations encountered with underwater buried pipelines in a practical and effective manner.

Three commenters supported some combination of approaches. A commenter suggested a trigger mechanism to require an inspection following a major storm and marine event. The commenters believed that regulatory language that is entirely performance-based, without benchmarks for compliance, could lead to inconsistency in implementation and enforcement.

Two commenters supported a prescriptive approach for the inspection of liquid pipelines. Two commenters sought clarification that the recommendations in the Joint Task Force report, the NRC report, and the TTI report were discretionary guidelines for establishing risks and underwater periodic inspection intervals.

One commenter recommended that inspection intervals longer than five years should be established on a case-by-case basis and be based on knowledge and experience gained during the ongoing inspections. Another commenter supported a mandated interval of five years with provision to extend this interval for sound technical reasons. Another commenter supported deferring to MMS directives as the trigger mechanism for more frequent inspections in the Gulf of Mexico and its inlets. Another commenter stated that the value of a prescriptive approach is that it would establish unambiguous requirements for inspection intervals and protocols.

Response

RSPA/OPS agrees with most of the commenters regarding use of a performance-based approach. RSPS/OPS is implementing a performance-based approach because it offers the best overall protection without imposing overly burdensome requirements that may not reflect the operating environment of the pipeline. RSPA/OPS confirms that adoption of the risk analysis systems provided in the NPRM and further articulated in the TTI report is discretionary. RSPA/OPS provided the examples in order to demonstrate the levels of complexity for the proposed performance-based requirement.

C. Hazard to Navigation

Several commenters noted that the use of the term ''sea bed'' in the definition of ''hazard to navigation'' is inappropriate. They suggested that RSPA/OPS use the term that was defined in the proposed rule, ''underwater natural bottom,'' in place of the term ''sea bed.''

Another commenter opposed defining a ''navigational hazard'' as a pipeline that is buried less than 24 inches below the seabed in water less than 15 feet deep. The commenter stated that it was not apparent from the NPRM that there exists credible scientific or empirical evidence to support 24 inches.

Response

RSPA/OPS agrees and has incorporated the phrase ''underwater natural bottom'' (as determined by recognized and generally accepted practices) in place of the term ''seabed'' in the affected sections. RSPA/OPS also agrees that the threshold for reburial should remain at 12 inches and is retaining the threshold of 12 inches in the definition of ''hazard to navigation.'' RSPA/OPS believes that 12 inches is an appropriate threshold because there has not been a *Sea Chief* or *Northumberland* type accident since the inspection and reburial regulation issued by RSPA/OPS in 1991.

D. Commercially Navigable Waterways

Several commenters questioned the definition of commercially navigable waterways. Some commenters believed that using the Bureau of Transportation Statistics (BTS) database of commercially navigable waterways and non-commercially navigable waters helps provide consistency and certainty to the regulation, but others believed that the BTS database should not be the definitive source for defining commercially navigable waters.

Response

RSPA/OPS agrees that the description of commercially navigable water in the NPRM is confusing. In addition, RSPA/OPS did not receive comments that pipelines crossing these waters currently pose a threat to navigation that is not already being addressed by the recent integrity management rules for high consequence areas and other regulations.

RSPA/OPS is limiting the requirement to waters less than 15 feet deep in the Gulf of Mexico and its inlets. Therefore it is not necessary to define commercially navigable waterways in this rule.

E. Reporting Requirements

Several commenters requested confirmation that the existing regulations requiring operators to notify the National Response Center upon becoming aware that their pipeline is exposed or a hazard to navigation remain in effect.

Response

RSPA/OPS confirms that the existing regulations at §§ 192.612(b)(1) and 195.413(b)(1) remain in effect. These regulations require an operator to promptly, but not later than 24 hours after the discovery, notify the National Response Center upon becoming aware that their pipeline is exposed or a hazard to navigation.

F. Marking Exposed Pipelines Pending Their Reburial

One commenter encouraged a specific reference to a USCG-approved marker for identifying pipeline hazards to navigation, particularly as it relates to

night time navigation. Another commenter supported the current regulations that require marking of exposed pipelines pending their reburial.

Response

RSPA/OPS believes that the current regulations sufficiently address the marking of exposed underwater pipelines. They require an operator to promptly, but not later than 7 days after the discovery, mark the location of the pipeline in accordance with 33 CFR part 64 (the USCG regulations for identifying hazards to navigation).

G. Reburial Requirements

Many commenters believed that the final regulation should allow for operators to use sound and proven engineering alternatives, such as articulated concrete mats, riprap stone, and pre-manufactured concrete blocks, that provide a level of protection that meets or exceeds the protection derived from reburial. One commenter suggested that the proposed rule should clarify that the reburial only applies if the pipeline is a hazard to navigation, as defined in §§ 192.3 and 195.2. Several commenters requested that § 195.413(b)(3) be amended to allow operators the opportunity to petition for an extension of the 6 month requirement for re-establishing protective cover of the exposed pipeline. Another commenter stated that the application of the existing reburial requirements to offshore pipelines is inconsistent. The initial construction requirements differentiate burial for offshore pipelines in less than 12 feet of water and those in at least 12 feet of water. For initial construction, pipelines in at least 12 feet of water are to be placed below the natural bottom. However, under § 192.612(b)(3), pipelines between 12 and 15 feet of water will require reburial to a greater depth, 36 inches for soil (18 inches for rock). These pipelines that were in compliance at initial construction located below the natural bottom will now have to be re-buried to 36 inches.

Response

RSPA/OPS agrees with the commenters that concrete mats or other engineered alternatives to reburial can provide for a measure of safety equal to or greater than reburial, particularly in areas of high erosion or soft silty bottoms. RSPA/OPS has modified this final rule to allow for a performance-based alternative to reburial.

H. Abandoned Pipelines

Three commenters expressed support for RSPA/OPS' clarification that these proposed requirements would not apply to abandoned pipelines. They agreed that abandoned pipelines do not pose a hazard to navigation, and therefore should not be included in this rule.

Response

RSPA/OPS concurs with these commenters and has not included abandoned pipelines in this rule.

I. Exposed Pipeline

Several commenters supported RSPA/OPS' efforts to clarify that there are two types of exposed pipelines—those underwater and those that are on land. The commenters suggested that the definition of ''exposed underwater pipeline'' be clarified to ''an underwater pipeline where the top of the pipe protrudes above the underwater natural bottom.''

Response

RSPA/OPS agrees and has amended the language in the final rule.

J. Gulf of Mexico and its Inlets

Several operators supported RSPA/OPS' proposed amendment to the definition of ''Gulf of Mexico'' to clarify that the Gulf of Mexico includes waters beyond 15 feet deep. Another commenter sought clarification on the application of the revised rule. The commenter believed that the proposed language of § 192.612(a) implied that the entire length of an offshore pipeline is subject to the inspection and reburial requirements, regardless of water depth. In contrast, another operator encouraged RSPA/OPS to retain the current definition of Gulf of Mexico and its inlets because revising the definition would cause confusion with current permits and agreements.

Response

RSPA/OPS appreciates the support for modifying the definition of the Gulf of Mexico and its inlets to reflect that Gulf of Mexico includes waters beyond 15 feet deep. RSPA/OPS confirms that the proposed change was not intended to have a material affect on the scope of pipelines in the Gulf of Mexico affected by this rule. However, to avoid unintentional impacts on any existing contracts, RSPA/OPS is not changing the definition of Gulf of Mexico in this final rule. RSPA/OPS has clarified that certain requirements only apply to waters less than 15 feet deep by amending the affected §§ 192.612(a), 195.246(b), 195.413, 195.248(a), and 195.248(b).

K. Underwater Natural Bottom

One commenter believed that the use of the term ''surface'' in the new definition of ''underwater natural bottom'' was confusing. The commenter stated that surface is usually interpreted to be the top, especially when dealing with water bodies. Another commenter recommended that RSPA/OPS revise the term ''natural bottom'' as used in § 192.327(e) to read ''underwater natural bottom.'' Several commenters questioned RSPA/OPS' proposal to use a 50 kHz fathometer signal to determine the underwater bottom, stating that a 50 kHz fathometer may not work properly in 15 feet or less of water. The commenters were generally supportive of the use of a frequency or some sound engineering method to determine the underwater natural bottom, but believed that the choice should be performance-based.

Response

RSPA/OPS agrees. This final rule amends §§ 192.327(e), 192.612(b)(3), 195.246(b), 195.248(a), and 195.413(b)(3) to clarify that the natural bottom or seabed is the underwater natural bottom (as determined by recognized and generally accepted practices).

In addition, during the initial Gulf of Mexico underwater inspections, many operators reported confusion in establishing the point of the underwater natural bottom. In order to resolve this concern, TTI conducted an analysis of pipeline burial in the Gulf of Mexico. The study recommended that the underwater natural bottom be defined as the surface which reflects a fathometer signal. The study further recommended the use of a 50 kHz signal as most appropriate for the very soft, silty bottoms in the Gulf of Mexico and for the water depths of 15 feet or less.

However, RSPA/OPS agrees that allowing for the use of recognized and generally accepted practices would provide the operators with greater flexibility without compromising safety and has amended this final rule accordingly.

III. Advisory Committees

The Technical Hazardous Liquid Pipeline Safety Standards Committee is a Federal advisory committee established under Section 204 of the Hazardous Liquid Pipeline Safety Act of 1974 (HLPSA) (49 App. U.S.C. 2003). The Technical Pipeline Safety Standards Committee is a Federal advisory committee established under Section 4 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA). These

committees advise DOT on the feasibility, reasonableness, and practicability of standards imposed under HLPSA and NGPSA.

The committees members convened on June 30, 2004, for a telephonic public meeting to discuss the NPRM, the public comments, and RSPA/OPS' evaluation of the comments, and to vote on the proposal. The advisory committees voted unanimously in favor of the motion that the NPRM, ''Pipeline Safety Underwater Periodic Inspections'' (68 FR 69368), which published on December 12, 2003, and the draft final regulatory evaluations are technically feasible, reasonable, and cost-effective if the following changes are made: (1) Provisions for alternative protective measures, other than burial, including engineered protection; (2) a process to ensure that RSPA/OPS is notified of delays in the issuance of environmental permits, and (3) inspection procedures to address environmental risks.

The committees also recommended that RSPA/OPS conduct further studies to collect additional data on the risks of exposed pipelines and possible hazards to navigation in offshore waters other than the Gulf of Mexico and its inlets.

The transcript of these advisory committee meetings is available in the docket for this rulemaking.

Response

RSPA/OPS incorporated the advisory committee recommendations in the final rule to allow operators to employ engineered alternatives to burial that meet or exceed the level of protection provided by burial. In addition, RSPA/OPS has incorporated a provision in the final rule to require an operator to notify RSPA/OPS if it cannot obtain required state or Federal permits in time to comply with the regulation.

RSPA/OPS has provided examples of several environmental risk assessment procedures which were developed in conjunction with this rule. These procedures are described in detail in the National Research Council Report *Improving the Safety of Marine Pipelines* (1994) and in the Texas Transportation Institute Report *Analysis of Pipeline Burial Surveys in the Gulf of Mexico.* These reports are available in the docket for this rulemaking.

RSPA/OPS will consider issuing a notice to request further public comment on the risks of exposed pipelines and possible hazards to navigation in offshore waters other than the Gulf of Mexico and its inlets.

IV. Regulatory Analyses and Notices

A. Paperwork Reduction Act

A copy of the Paperwork Reduction Analysis for this proposal has been put in the public docket for this rule. The following is a summary of the highlights of this analysis.

Approximately 125 pipeline operators are potentially subject to this new requirement. It will take a pipeline operator approximately 500 hours to develop and implement a program to determine the need for periodic inspection. The total industry time to develop this program is 62,500 hours.

Comments were invited on: (a) The need for the proposed collection of information 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 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Several commenters expressed concern about the added costs to prepare and follow a procedure to identify pipelines that are at risk of being exposed underwater pipelines or hazards to navigation and to conduct appropriate periodic underwater inspections in areas other than the Gulf of Mexico and its inlets. Because the scope of the final rule is limited to the Gulf of Mexico and its inlets, the costs of applying this rule to other offshore water and inland waters do not need to be addressed.

Some commenters questioned whether RSPA/OPS was proposing some change to the current requirements for reporting to the USCG's National Response Center. Under current regulations, if an operator discovers that a pipeline is exposed it must take actions that include reporting the location to the National Response Center. In this final rule, RSPA/OPS is not changing this requirement.

B. Executive Order 12866 and DOT Policies and Procedures

A final regulatory evaluation for this rule has been prepared and placed in the public docket. This rule is a response to Congressional requirements that pipelines posing a hazard to navigation or public safety be periodically inspected to notify the operator of the exposure or hazard. The Congressional requirements responded to two accidents in the late 1980s in which fishing vessels collided with underwater natural gas pipelines in the Gulf of Mexico, resulting in multiple fatalities.

Approximately 125 companies operate underwater pipelines in the shallow waters of the Gulf of Mexico and its inlets. Under this rule, each of these companies will be required to prepare and follow a procedure to identify pipelines in waters less than 15 feet deep that are at risk of being an exposed underwater pipeline or a hazard to navigation and to conduct appropriate periodic underwater inspections.

A survey conducted by RSPA/OPS in 1992 determined that less than two percent of the affected underwater pipeline were exposed or a hazard to navigation. RSPA/OPS believes that at most 10% of the affected pipelines may need to be reinspected periodically. RSPA/OPS estimates that the initial cost of this proposal is $6.25 million with annual reinspection costs of approximately $200,000 per year. More details of the costs and benefits of this rule can be found in the public docket.

Several commenters questioned the need for extending inspection requirements outside of the Gulf of Mexico and its inlets. RSPA/OPS agrees with these comments and has limited the scope of the final rule to the Gulf of Mexico and its inlets.

Most commenters agreed with RSPA/OPS' proposal that the rule should be performance-based rather than prescriptive. RSPA/OPS is allowing operators some flexibility in complying with this rule by adopting a performance-based approach. The varied risks faced by underwater pipelines require each operator to determine the hazards posed by each of its pipelines and to develop appropriate responses to the risks. This flexibility is expected to lead to lower costs of compliance.

One commenter was concerned with the impacts on gas distribution operators who operate in inland navigable waterways. The final is limited to the Gulf of Mexico and its inlets and is not expected to have any measurable impact on gas distribution pipeline operators.

Some commenters stated that RSPA/OPS underestimated the costs of this rule by not including remediation costs. However, an operator is currently required to take action if they discover that a pipeline is exposed. Therefore, remediation is not an additional cost imposed by this rule.

C. Regulatory Flexibility Act

Several commenters were concerned that the inclusion of pipelines in navigable waterways in the proposed rule would add significant costs without added benefits. As discussed above, distribution pipeline operators had particular concerns. The great majority of small pipeline operators in the United States are distribution operators. By limiting this final rule to pipelines in the Gulf and its inlets RSPA/OPS has eliminated most, if not all, small operators from the impact of this regulation. Based on the facts available about the anticipated impact of this rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this action will not have a significant economic impact on a substantial number of small entities.

D. Environmental Assessment

A preliminary draft Environmental Assessment (EA) was prepared and is available in the docket. No comments on the EA were received from the public. The inspection and reburial of the pipelines should not have a significant impact on the environment. Previous inspections of underwater pipelines in the Gulf of Mexico found less than two percent of pipelines required reburial. RSPA/OPS anticipates that very few pipelines will require reburial as a result of this rule. Therefore, this rule will not have a significant impact on the human environment. A Final EA has been placed in the docket.

E. Executive Order 12612—Federalism

RSPA/OPS analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685).

RSPA/OPS has determined that the action does not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 192

Agency procedures, Gas, Natural gas, Pipeline safety, Reports, Transportation.

49 CFR Part 195

Agency procedures, Hazardous liquid, Oil, Petroleum, Pipeline safety, Reports, Transportation.

■ In consideration of the foregoing, RSPA/OPS amends parts 192 and 195 of title 49 of the Code of Federal Regulations as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 5121, 60102, 60103, 60104, 60108, 60117, 60118, 60124; and 49 CFR 1.53.

■ 2. Amend § 192.3 by removing the definition of *Exposed pipeline* and adding a definition for *Exposed underwater pipeline* and revising the definition of *Hazard to navigation* to read as follows:

§ 192.3 Definitions.

* * * * *

Exposed underwater pipeline means an underwater pipeline where the top of the pipe protrudes above the underwater natural bottom (as determined by recognized and generally accepted practices) in waters less than 15 feet (4.6 meters) deep, as measured from mean low water.

* * * * *

Hazard to navigation means, for the purposes of this part, a pipeline where the top of the pipe is less than 12 inches (305 millimeters) below the underwater natural bottom (as determined by recognized and generally accepted practices) in waters less than 15 feet (4.6 meters) deep, as measured from the mean low water.

* * * * *

■ 3. Amend § 192.327 by revising paragraph (e) to read as follows:

§ 192.327 Cover.

* * * * *

(e) Except as provided in paragraph (c) of this section, all pipe installed in a navigable river, stream, or harbor must be installed with a minimum cover of 48 inches (1,219 millimeters) in soil or 24 inches (610 millimeters) in consolidated rock between the top of the pipe and the underwater natural bottom (as determined by recognized and generally accepted practices).

* * * * *

■ 4. Section 192.612 is revised to read as follows:

§ 192.612 Underwater inspection and reburial of pipelines in the Gulf of Mexico and its inlets.

(a) Each operator shall prepare and follow a procedure to identify its pipelines in the Gulf of Mexico and its inlets in waters less than 15 feet (4.6 meters) deep as measured from mean low water that are at risk of being an exposed underwater pipeline or a hazard to navigation. The procedures must be in effect August 10, 2005.

(b) Each operator shall conduct appropriate periodic underwater inspections of its pipelines in the Gulf of Mexico and its inlets in waters less than 15 feet (4.6 meters) deep as measured from mean low water based on the identified risk.

(c) If an operator discovers that its pipeline is an exposed underwater pipeline or poses a hazard to navigation, the operator shall—

(1) Promptly, but not later than 24 hours after discovery, notify the National Response Center, telephone: 1–800–424–8802, of the location and, if available, the geographic coordinates of that pipeline.

(2) Promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR part 64 at the ends of the pipeline segment and at intervals of not over 500 yards (457 meters) long, except that a pipeline segment less than 200 yards (183 meters) long need only be marked at the center; and

(3) Within 6 months after discovery, or not later than November 1 of the following year if the 6 month period is later than November 1 of the year of discovery, bury the pipeline so that the top of the pipe is 36 inches (914 millimeters) below the underwater natural bottom (as determined by recognized and generally accepted practices) for normal excavation or 18 inches (457 millimeters) for rock excavation.

(i) An operator may employ engineered alternatives to burial that meet or exceed the level of protection provided by burial.

(ii) If an operator cannot obtain required state or Federal permits in time to comply with this section, it must notify OPS; specify whether the required permit is State or Federal; and, justify the delay.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

■ 2. Amend § 195.2 by removing the definition of *Exposed pipeline* and adding a definition for *Exposed underwater pipeline* and revising the definition of *Hazard to navigation* to read as follows:

§ 195.2 Definitions.

* * * * *

Exposed underwater pipeline means an underwater pipeline where the top of the pipe protrudes above the underwater natural bottom (as determined by recognized and generally accepted practices) in waters less than 15 feet (4.6 meters) deep, as measured from mean low water.

* * * * *

Hazard to navigation means, for the purposes of this part, a pipeline where the top of the pipe is less than 12 inches (305 millimeters) below the underwater natural bottom (as determined by recognized and generally accepted practices) in waters less than 15 feet (4.6 meters) deep, as measured from the mean low water.

* * * * *

■ 3. Amend § 195.246 by revising paragraph (b) to read as follows:

§ 195.246 Installation of pipe in a ditch.

* * * * *

(b) Except for pipe in the Gulf of Mexico and its inlets in waters less than 15 feet deep, all offshore pipe in water at least 12 feet deep (3.7 meters) but not more than 200 feet deep (61 meters) deep as measured from the mean low water must be installed so that the top of the pipe is below the underwater natural bottom (as determined by recognized and generally accepted practices) unless the pipe is supported by stanchions held in place by anchors or heavy concrete coating or protected by an equivalent means.

* * * * *

■ 4. Amend § 195.248 by revising paragraphs (a) and (b) introductory text to read as follows:

§ 195.248 Cover over buried pipeline.

(a) Unless specifically exempted in this subpart, all pipe must be buried so that it is below the level of cultivation. Except as provided in paragraph (b) of this section, the pipe must be installed so that the cover between the top of the pipe and the ground level, road bed, river bottom, or underwater natural bottom (as determined by recognized and generally accepted practices), as applicable, complies with the following table:

Location	Cover inches (millimeters)	
	For normal excavation	For rock excavation [1]
Industrial, commercial, and residential areas	36 (914)	30 (762)
Crossing of inland bodies of water with a width of at least 100 feet (30 millimeters) from high water mark to high water mark	48 (1219)	18 (457)
Drainage ditches at public roads and railroads	36 (914)	36 (914)
Deepwater port safety zones	48 (1219)	24 (610)
Gulf of Mexico and its inlets in waters less than 15 feet (4.6 meters) deep as measured from mean low water	36 (914)	18 (457)
Other offshore areas under water less than 12 ft (3.7 meters) deep as measured from mean low water	36 (914)	18 (457)
Any other area	30 (762)	18 (457)

[1] Rock excavation is any excavation that requires blasting or removal by equivalent means.

(b) Except for the Gulf of Mexico and its inlets in waters less than 15 feet (4.6 meters) deep, less cover than the minimum required by paragraph (a) of this section and § 195.210 may be used if—

* * * * *

■ 5. Section 195.413 is revised to read as follows:

§ 195.413 Underwater inspection and reburial of pipelines in the Gulf of Mexico and its inlets.

(a) Except for gathering lines of 4½ inches (114mm) nominal outside diameter or smaller, each operator shall prepare and follow a procedure to identify its pipelines in the Gulf of Mexico and its inlets in waters less than 15 feet (4.6 meters) deep as measured from mean low water that are at risk of being an exposed underwater pipeline or a hazard to navigation. The procedures must be in effect August 10, 2005.

(b) Each operator shall conduct appropriate periodic underwater inspections of its pipelines in the Gulf of Mexico and its inlets in waters less than 15 feet (4.6 meters) deep as measured from mean low water based on the identified risk.

(c) If an operator discovers that its pipeline is an exposed underwater pipeline or poses a hazard to navigation, the operator shall—

(1) Promptly, but not later than 24 hours after discovery, notify the National Response Center, telephone: 1–800–424–8802, of the location and, if available, the geographic coordinates of that pipeline.

(2) Promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR Part 64 at the ends of the pipeline segment and at intervals of not over 500 yards (457 meters) long, except that a pipeline segment less than 200 yards (183 meters) long need only be marked at the center; and

(3) Within 6 months after discovery, or not later than November 1 of the following year if the 6 month period is later than November 1 of the year of discovery, bury the pipeline so that the top of the pipe is 36 inches (914 millimeters) below the underwater natural bottom (as determined by recognized and generally accepted practices) for normal excavation or 18 inches (457 millimeters) for rock excavation.

(i) An operator may employ engineered alternatives to burial that meet or exceed the level of protection provided by burial.

(ii) If an operator cannot obtain required state or Federal permits in time to comply with this section, it must notify OPS; specify whether the required permit is State or Federal; and, justify the delay.

Issued in Washington, DC on July 29, 2004.

Samuel G. Bonasso,

Deputy Administrator.

[FR Doc. 04–17746 Filed 8–9–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 040407106–4219–03, I.D. 040104A]

RIN 0648–AS04

List of Fisheries for 2004

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is publishing its final List of Fisheries (LOF) for 2004, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2004 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: This final rule is effective September 9, 2004. However, compliance with the requirement to register with NMFS and to obtain an authorization certificate is not required until January 1, 2005, for fisheries added or elevated to Category I in this final rule. For fisheries affected by the delay, see **SUPPLEMENTARY INFORMATION.**

Compliance Date for Registration Under the MMPA

Compliance with the requirement to register with NMFS and to obtain an authorization certificate is not required until January 1, 2005, for the Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line Fishery (Hawaii longline fishery), which is elevated to Category I for the 2004 LOF. The abovementioned fishery is considered to be a Category I fishery on September 9, 2004, and is required to comply with all requirements of Category I fisheries (*i.e.*, complying with applicable take reduction plan requirements and carrying observers, if requested), other than the registration requirement on that date.

ADDRESSES: Registration information, materials, and marine mammal reporting forms may be obtained from several regional offices. Registration information, materials, and marine mammal reporting forms may be obtained from the following regional offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs;

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin;

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Don Peterson;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office; or

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: For additional information or general questions on the LOF, please contact the following NMFS staff:

Kristy Long, Office of Protected Resources, 301–713–1401;

David Gouveia, Northeast Region, 978–281–9328;

Juan Levesque, Southeast Region, 727–570–5312;

Cathy Campbell, Southwest Region, 562–980–4060;

Brent Norberg, Northwest Region, 206–526–6733;

Tamra Faris, Pacific Islands Region, 808–973–2937;

Bridget Mansfield, Alaska Region, 907–586–7642.

Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What Is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals occurring in each fishery (16 U.S.C. 1387 (c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Stock Assessment Reports and other relevant sources and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How Does NMFS Determine in Which Category a Fishery Is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 at 50 CFR 229.2.

Tier 1: If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Since fisheries are categorized on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically categorized on the LOF at its highest level of classification (*e.g.*, a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II).

Other Criteria That May Be Considered

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery,

NMFS will determine whether the incidental serious injury or mortality qualifies for Category II by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

How Do I Find Out if a Specific Fishery Is in Category I, II, or III?

This final rule includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Am I Required To Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization from NMFS in order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

Fishers must register with the Marine Mammal Authorization Program (MMAP) by contacting the relevant NMFS Regional Office (see **ADDRESSES**) unless they participate in a fishery that has an integrated registration program (described below). Upon receipt of a completed registration, NMFS will issue vessel or gear owners physical evidence of a current and valid registration that must be displayed or in the possession of the master of each vessel while fishing in accordance with section 118 of the MMPA (16 U.S.C. 1387(c)(3)(A)).

What Is the Process for Registering in an Integrated Fishery?

For some fisheries, NMFS has integrated the MMPA registration process with existing State and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the $25 registration fee. Following is a list of integrated fisheries and a summary of the integration process for each Region. Fishers who operate in an integrated fishery and have not received registration materials should contact their NMFS Regional Office (see **ADDRESSES**).

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA:

1. All Alaska Category II fisheries;

2. All Washington and Oregon Category II fisheries;

3. Northeast Regional fisheries for which a State or Federal permit is required.

Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Northeast Regional Office (see **ADDRESSES**); and

4. All North Carolina, South Carolina, Georgia, and Florida Category I and II fisheries for which a State permit is required.

How Do I Renew My Registration Under the MMPA?

Regional Offices, except for the Northeast Region, annually send renewal packets to previously registered participants in Category I or II fisheries. However, it is the responsibility of the fisher to ensure that registration or renewal forms are completed and submitted to NMFS at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 or are registering for the first time should request a registration form from the appropriate Regional Office (see **ADDRESSES**).

Am I Required To Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required To Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required To Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans.

Sources of Information Reviewed for the Proposed 2004 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS SARs are based on the best scientific information available, including information on the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels of marine mammal stocks. NMFS also reviewed other sources of new, relevant information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that is not included in the SARs. Additionally, NMFS took into account information presented at a workshop from June 2–3, 2004, to review data used in the proposed categorization of the Hawaii longline fishery.

The information contained in the SARs is reviewed by regional scientific review groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and the Caribbean. The SRGs were created by the MMPA to review the science that goes into the SARs, and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

The LOF for 2004 was based, among other things, on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), and the draft SARs for 2003 (68 FR 51561, August 27, 2003).

Comments and Responses

NMFS received 10 comment letters on the proposed 2004 LOF (69 FR 19365, April 13, 2004) from environmental, commercial fishing, and Federal and State interests. Issues outside the scope of the LOF are not responded to in this final rule. Any comments received after

the public comment period closed on June 14, 2004, are not responded to in this final rule.

General Comments

Comment 1: One commenter disapproved of the fishery classification criteria used for the LOF, but did not offer an alternative suggestion for the criteria.

Response: The current fishery classification system is based on a two-tiered, stock-specific approach that first addresses the total impacts of all fisheries on each marine mammal stock and then addresses the impacts of individual fisheries on each stock (60 FR 31666, June 16, 1995). Tier 1 considers the additive fishery mortality and serious injury for a particular stock, while Tier 2 considers fishery-specific mortality for a particular stock. This approach is based on the rate, in numbers of animals per year, of serious injuries and mortalities due to commercial fishing relative to a stock's PBR level. Under the Tier 1 analysis, if the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of such a stock, then all fisheries interacting with this stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier to determine their classification. Under the Tier 2 analysis, those fisheries in which annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the stock's PBR level are placed in Category I, while those fisheries in which annual mortality and serious injury is greater than 1 percent and less than 50 percent of the stock's PBR level are placed in Category II. Individual fisheries in which annual mortality and serious injury is less than or equal to 1 percent of the PBR level would be placed in Category III. The threshold between Tier 1 and Tier 2 was set at 10 percent of the PBR level based on recommendations that arose from a PBR Workshop held in La Jolla, California in June 1994. The Workshop Report indicated if the total annual incidental serious injury and mortality level for a particular stock did not exceed 10 percent of the PBR level, the amount of time necessary for that population to achieve the optimum sustainable population level would only increase by 10 percent. Thus, 10 percent of the PBR level for a particular stock was equated to ''biological insignificance.'' This approach ensures that fisheries are categorized based on their impacts on stocks and allows NMFS to focus resources on those fisheries that have a significant impact on marine mammals.

This approach is based on the fact that the MMPA established both a short-term and a long-term goal with respect to take reduction plans for reducing marine mammal mortality and serious injury incidental to commercial fishing operations. MMPA section 118(f)(2) provides: ''The immediate goal of a take reduction plan for a strategic stock shall be to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the potential biological removal established for that stock under section 117. The long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans.'' NMFS established the tier-based fishery classification system with each goal in mind and to ensure that fisheries progressively move toward the long-term goal of the MMPA.

Comment 2: One commenter called into question NMFS' execution of the LOF, particularly that all fisheries should be listed as Category I.

Response: Section 118 of the MMPA (16 U.S.C. 1387(c)(1)) and the regulations implementing that section (50 CFR part 229) specify how NMFS executes the annual LOF. NMFS reexamines commercial fisheries each year to determine whether changes are needed. Proposed and final LOFs must categorize each commercial fishery based on the definitions of Category I, II, and III fisheries (50 CFR 229.2), list the marine mammals that have been incidentally injured or killed by commercial fishing operations, and estimate the number of vessels or persons involved in each commercial fishery. See Response to Comment 1.

Comment 3: One commenter stated that all high seas fisheries conducted by U.S. flagged vessels should be listed on the LOF. In particular, the commenter suggested adding the U.S. Patagonian toothfish longline fishery and the U.S. trawl fishery for krill as Category II fisheries until further information is available. The commenter noted several other fisheries, including the Cobb Seamount, Pacific pelagic squid jig, and South Pacific tuna purse seine, that should be analyzed for interactions with marine mammals and appropriately classified on the LOF.

Response: NMFS must publish any proposed changes to the LOF in the **Federal Register** to allow for notice and opportunity for public comment. Therefore, NMFS cannot add these new fisheries to the 2004 final LOF because it is beyond the scope of what was included in the proposed 2004 LOF. NMFS will consider this comment and whether the LOF applies to high seas fisheries during development of future proposed LOFs.

Comments on Fisheries in the Pacific Ocean

Comment 4: One commenter stated that gillnet fisheries in Alaska may require more observer coverage than current fishery classifications allow.

Response: NMFS works annually through the National Observer Program to obtain resources necessary to monitor Alaska gillnet fisheries. Funds are limited; therefore NMFS rotates observer coverage among gillnet fisheries based on statutory priorities (16 U.S.C. 1387(d)) and specific time cycles. The Alaska gillnet fisheries on the LOF (nearshore salmon drift and set gillnet fisheries) are managed by the State of Alaska's Department of Fish and Game. These fisheries were originally placed into Category II as unobserved fisheries. The Category II designation was made for these fisheries, where little or no information on marine mammal takes for the specific fisheries was available, because gillnet fisheries worldwide have been demonstrated as having the capability of causing significant numbers of mortalities and serious injuries to marine mammals. The only Alaska gillnet fisheries currently in Category III are those fisheries that have been observed and subsequent analyses of observer data indicate these fisheries meet the threshold for a Category III designation. The remainder of the unobserved Alaska gillnet fisheries continue to remain in Category II until such time that they can be observed and data are obtained that indicate a change in fishery classification is warranted. Several Alaska gillnet fisheries that have been observed remain in Category II due to analyses of observer data that indicate a Category II threshold has been met for each of those fisheries.

Comment 5: NMFS received several comments supporting the delineation of Alaska fisheries. One commenter stated that NMFS should reclassify fisheries appropriately after analyses on the new fisheries are completed. Another commenter was concerned that subdividing Alaska fisheries creates the

appearance of fewer impacts on marine mammals, when a larger fishery as previously delineated may have met the threshold for classification as a Category I or II fishery.

Response: NMFS plans to complete the analyses on all Alaska fisheries and appropriately propose reclassification of those fisheries that meet the criteria for Category I and II fisheries in the 2005 proposed LOF. The analysis for fishery classification is designed to take into effect the cumulative impacts of multiple fisheries on marine mammal stocks. NMFS continues to work toward supporting increased observer coverage in all Category I and II fisheries across the country, including fisheries in Alaska, to improve the accuracy of marine mammal bycatch estimates.

The Alaska fisheries delineated in the 2004 proposed LOF as individual fisheries were separated to more accurately reflect the actual management and operational practices of those fisheries and to keep better track of marine mammal serious injuries and mortalities occurring in different sectors of the fishery. This is being implemented as a two-step process, the delineation of the fisheries in 2004 followed by analyses to reclassify the fisheries as appropriate in the 2005 proposed LOF. The analyses will be performed according to the existing protocol used to categorize fisheries. Documented mortalities and serious injuries used in previous analyses to categorize the fisheries will be assigned to one of the newly delineated fisheries. Any additional documented serious injuries or mortalities will likewise be assigned to the appropriate fishery. These changes will also be made in the SARs for each of the relevant marine mammal stocks. These changes will provide a more accurate understanding of the interactions between marine mammals and various Alaska fisheries. Prior to these changes, large groups of diverse fisheries were artificially lumped together based only on gear type over vast geographic areas of the Bering Sea and the Gulf of Alaska.

Comment 6: One commenter suggested that NMFS update relevant SARs with the new Alaska fishery delineations, determine which trawl and pot fisheries interact with the central and western North Pacific stocks of humpback whales, and recategorize the fisheries accordingly.

Response: Delineating the Alaska trawl and pot fisheries by area and target species will allow NMFS to better evaluate interactions between the central and western North Pacific humpback whale stocks and specific fisheries. NMFS will analyze relevant data and propose fishery classifications accordingly. See Response to Comment 5.

Comment 7: One commenter suggested separating out the yellowfin sole fishery from the Bering Sea and Aleutian Islands (BSAI) flatfish trawl fishery because the fishery has its own total allowable catch (TAC) and prohibited species catch (PSC). The commenter also noted that some vessels that target yellowfin sole do not target other flatfish species. Additionally, the yellowfin sole fishery operates in the relatively shallow waters along the sand bottom shelf areas of the central and northern portions of the Bering Sea where interactions with marine mammals seems unlikely.

Response: The BSAI flatfish trawl fishery was designated as a single fishery in the proposed 2004 LOF based on information indicating an overlap in the prosecution of the flatfish trawl fisheries of the BSAI. As noted in the public comment, the yellowfin sole fishery has its own TAC and PSC quotas, as do other flatfish fisheries, and some separation exists in time and areas of prosecution of these fisheries. However, while the yellowfin sole fishery can be prosecuted at times with few interactions with marine mammals, significant overlap of the fishery occurs particularly with the rock sole, flathead sole, and Alaska plaice fisheries, with vessels catching these other species together with yellowfin sole in the same trip and haul. The overlap of these fisheries prevents listing the yellowfin sole fishery separately in the LOF.

Comment 8: One commenter stated that the reclassification of the CA/OR thresher shark/swordfish drift gillnet fishery (≥14 in. mesh) from Category I to Category II was premature and should be reversed. The commenter noted that the fishery still interacts with a wide range of stocks and the annual take of sperm whales is 47.8 percent of the stock's PBR level, just under the threshold for inclusion in Category I.

Response: The CA/OR thresher shark/swordfish drift gillnet fishery (≥14 in. mesh) was moved from Category I to Category II in the 2003 final LOF (68 FR 41725, July 15, 2003). This change in fishery classification was based on observer data from 1997–2001 that indicated the take of marine mammals incidental to this fishery was less than 50 percent of the PBR level for those stocks that interact with the fishery. One observed take of a sperm whale occurred in this fishery in 1998, but no takes have been observed in the most recent 5 years of data from 1999–2003. Therefore, NMFS does not believe a change in fishery classification is warranted at this time. In an effort to reduce marine mammal serious injury and mortality, the owners and operators of CA/OR drift gillnet vessels operating in this fishery have been complying with the requirements of the Pacific Offshore Cetacean Take Reduction Plan, including carrying observers, using acoustic deterrents (pingers) on the nets, and complying with other gear modification requirements. Observers will continue to monitor this fishery, and if sperm whales are observed taken, NMFS will reevaluate this fishery.

Comment 9: Several commenters requested NMFS to extend the public comment period on the proposed 2004 LOF to accommodate a workshop on false killer whale population abundance and fishery interactions in the central Pacific Ocean (Workshop).

Response: NMFS agreed and the public comment period was extended from May 13, 2004, to June 14, 2004 (69 FR 26539, May 13, 2004), to accommodate the Workshop, which was held June 2–3, 2004 in Honolulu, Hawaii, and public comment resulting from the Workshop. The purpose of the Workshop was to discuss MMPA fishery classification requirements, specifically concerning the abundance and fishery interactions for false killer whales (*Pseudorca crassidens*) within the U.S. Exclusive Economic Zone (EEZ) around the Hawaiian Islands. The workshop also covered background information and procedures used to categorize the Hawaii longline fishery in the LOF. For a summary of the Workshop, please contact the Pacific Islands Regional Office (see **ADDRESSES**).

Comment 10: One commenter requested that NMFS reopen the comment period on the 2004 proposed LOF once the results of the Workshop on the Hawaii longline fishery and false killer whales were made available for public review.

Response: NMFS convened the Workshop to review available information and the process to reclassify the Hawaii longline fishery based on that information. NMFS staff, scientific experts, fishery representatives, and other interested members of the public participated in this Workshop. NMFS considered all information presented and discussed at the Workshop and public comment resulting from the Workshop in the decision to reclassify this fishery. See Response to Comment 9.

Comment 11: NMFS received several comments supporting the proposed elevation of the Hawaii longline fishery from Category III to Category I.

Response: NMFS has reclassified and elevated the fishery from Category III to Category I in the 2004 LOF.

Comment 12: One commenter recommended elevating the Hawaii longline fishery from Category III to Category II, instead of Category I, based on uncertainties surrounding the population abundance and mortality data. The commenter maintains that the NMFS 2002 survey on cetacean abundance in Hawaiian waters is flawed for two reasons. First, it was conducted between August and November when false killer whales are generally less abundant in Hawaiian waters. Second, the survey covered the entire EEZ while false killer whales are known to occur around islands rather than in the open ocean.

Response: At the June 2004 Workshop, relevant information was presented indicating that there was no evidence of seasonality in abundance of false killer whales in waters surrounding Hawaii (Baird, Workshop presentation; Kobayashi, Workshop presentation). In addition, limited data that are available from year-round surveys may actually suggest lower encounter rates during the late spring/early summer than during November-December. The commenter cited a reference (Stacey *et al*, 1994) to indicate evidence of seasonality in false killer whale abundance. However, that study discussed seasonality in false killer whales in temperate waters around Japan and off the coast of the former Soviet Union, not in tropical waters surrounding the Hawaiian Islands. The marine ecosystems surrounding Japan and the Hawaiian Islands are very different and, therefore, NMFS does not believe that the information in this reference is relevant to false killer whales in Hawaiian waters.

Based on the data, NMFS concludes false killer whales are not more common around the Hawaiian Islands than in the open ocean. Relevant data indicate false killer whale occurrences on the open sea, and published literature indicates that ''False killer whales are found most often offshore, although there are occasional records from inshore waters * * *'' (Stacey and Baird, 1991). Furthermore, nearshore sightings data from studies conducted around the main Hawaiian Islands since 1993 (Baird, Workshop presentation; Mobley 2003) have demonstrated that sightings are not frequent around the main Hawaiian Islands. Particularly, during the two most recent spring aerial surveys, conducted in 2000 and 2003, no false killer whales were seen around the Hawaiian Islands. The NMFS 2002 survey was conducted in the area where the Hawaii longline fishery operates around the Hawaiian Islands and was compared to the mortality and serious injury of false killer whales in the same area for purposes of classifying the fishery.

Comment 13: One commenter disagreed with NMFS' abundance estimates of the Hawaiian stock of false killer whales for the following reasons. The commenter noted, first, that NMFS' data indicate that the Hawaiian stock of false killer whales exhibit seasonal abundance, possibly peaking coincident to yellowfin tuna peak abundance. Second, the commenter maintained there is information indicating false killer whale distribution varies not only by season, but possibly over years, which may be linked to El Nino effects on prey species. Third, the commenter criticized NMFS' extrapolation of one sighting during the 2002 shipboard survey to a group of 10 individuals. The commenter noted that it is well-accepted that false killer whales are a highly social species found in group sizes averaging from 20 to 50 individuals. Fourth, the commenter disapproved of NMFS' diving correction factor, stating that it does not reflect false killer whale behavior.

Response: NMFS disagrees with this comment. The abundance estimates are based on established scientific methods and were reviewed and accepted by the Pacific Scientific Review Group. The issues raised by the commenter are not indicative of deficiencies in the abundance estimates. First, neither the cited NMFS data (Walsh and Kobayashi, Draft Report, May 21, 2004), nor the data presented by independent scientists (Baird, Mobley) at the June workshop, provide any evidence for seasonality in the abundance of false killer whales around Hawaii. The NMFS draft report states ''False killer whales (Figure A3c) were the most frequently sighted species, present in every EEZ except Jarvis, *with no apparent seasonality*'' [emphasis added]. Second, NMFS agrees that interannual variability in false killer whale distribution may occur, and that additional years of data will improve the precision of the abundance estimate. However, the marine mammal stock assessment process under the MMPA was specifically designed to allow for levels of uncertainty in abundance similar to those observed for Hawaiian false killer whales. Third, the references cited by the commenter do not indicate substantially greater mean group sizes for false killer whales in tropical waters, such as those surrounding Hawaii. In the eastern tropical Pacific, Stacey and Baird (1991) report a mean group size of 18.1 false killer whales, contrasting with a mean group size of 55 in temperate waters off Japan (Stacey *et al.*, 1994). Extensive NMFS survey data for tropical Pacific waters yielded an average group size of 11.4 false killer whales (Wade and Gerrodette, 1993). Thus, published estimates for tropical waters are similar to the group size of 10 false killer whales observed during the 2002 survey. Finally, the dive correction factor used in the estimation of abundance (Barlow, 2003) reflects a combination of false killer whale diving behavior and the search behavior of the observer team aboard NMFS research vessels during marine mammal surveys. Observations of false killer whales from longline vessels are fundamentally different in nature, and the proportion of animals missed is expected to differ. See also Response to Comment 12.

Comment 14: Two commenters noted that false killer whale abundance around Hawaii may actually be overestimated, not underestimated, as stated in the proposed 2004 LOF. Several reasons were given: (1) The relative proportion of false killer whales to all delphinids is similar between the Hawaiian EEZ and the ETP; (2) false killer whales in Hawaiian waters do not appear to dive for particularly long periods ; (3) two independent research projects found false killer whales to be uncommon around Hawaii; and (4) the abundance estimate may be biased because it is based on a correction factor developed for a suite of similar-sized delphinids, which often occur in groups smaller than false killer whale groups and are, therefore, more difficult to observe.

Response: NMFS agrees that it is possible that the abundance estimate for the Hawaiian stock of false killer whales may be overestimated. NMFS recognizes that the correction factor used for animals missed on the trackline during a survey could possibly be overestimated if false killer whales are more active and visible around Hawaii than false killer whales and similar-sized cetaceans in the ETP, which is where the correction factor was developed. These potential sources of minor upward bias in the false killer whale abundance estimates do not affect the classification of the Hawaii-based longline fishery, because there would be no change in the classification of the fishery or the designation of the Hawaiian stock of false killer whales as a strategic stock if potential sources of upward bias were identified and removed. The total annual mortality and serious injury of the Hawaiian stock of false killer whales would still exceed the PBR level. Therefore, the available

abundance estimates are considered reliable for purposes of the classification of the fishery as Category I.

Comment 15: One commenter noted that a revised aerial survey abundance estimate that includes data from 2000 and 2003 would be lower than that presented in Mobley (2000).

Response: If aerial survey data from 2000 and 2003 (Mobley) were revised and combined with the results of the offshore surveys (Barlow 2003), the abundance estimate would be equal to or less than the estimate presented in Barlow (2003). If an updated abundance estimate including the 2000 and 2003 aerial survey results were available, the Hawaiian stock of false killer whales would remain a strategic stock, and the Hawaii-based longline fishery would remain a category I fishery. See also the Response to Comment 14.

Comment 16: One commenter recommended that NMFS undertake a new population survey that accounts for the known seasonality of false killer whale abundance in the Hawaiian Islands EEZ before publishing the 2005 LOF.

Response: There is no known seasonality of false killer whales in the Hawaiian Islands EEZ. Neither NMFS observer data (Walsh and Kobayashi, Draft Report, May 21, 2004), nor data presented by independent scientists (Baird, Mobley) at the June 2004 workshop, provide any evidence for seasonality in the abundance of false killer whales around Hawaii.

Comment 17: One commenter noted that NMFS has defined the false killer whale stock in the Hawaiian EEZ as a strategic stock, based on genetic evidence suggesting false killer whales between the central North Pacific (Hawaii) are separate, reproductively isolated populations from false killer whales in the ETP. However, the commenter notes the degree of separation between these false killer whales is not known, and the geographic boundaries for the populations cannot yet be identified. False killer whales have been taken by the Hawaii longline fishery in an area ranging from north of the Hawaiian EEZ to the equator. Are all of these false killer whales from the same population or from separate isolated populations? If from the same population, then the designation of a strategic stock in the Hawaii EEZ would be questionable.

Response: The Hawaiian stock of false killer whales is considered a strategic stock under the MMPA because fishery-related mortality and serious injury exceeds the PBR level for this stock (see 16 U.S.C. 1362(19)).

Genetic analysis of samples from false killer whales in the North Pacific Ocean indicates population structure, but geographic boundaries of the various populations cannot yet be identified. However, the evidence for reproductive isolation and strong genetic differentiation of individuals sampled around Hawaii from individuals sampled in the ETP is solid. Furthermore, NMFS'' current mortality and serious injury estimates are based only on takes within the U.S. EEZ and compared to PBR levels derived from abundance estimates for waters within the U.S. EEZ. In addition, even if the actual boundaries of the Hawaiian stock of false killer whales extended beyond the EEZ, the strategic status of the stock would not be changed. NMFS'' guidelines for preparing marine mammal stock assessment reports contain specific instructions for calculating PBR of trans-boundary stocks. (The guidelines are available in electronic form at *http://nmml.afsc.noaa.gov/library/gammsrep/gammsrep.htm*.) In cases such as false killer whales in the Hawaiian EEZ, where the stock could extend into international waters, the PBR would be based on the abundance of animals within the EEZ. This guideline was established to prevent underestimating the effects of mortality and serious injury incidental to U.S. fisheries in international waters where unknown levels of additional human-caused mortality and serious injury (*e.g.*, incidental to foreign fisheries in the same waters) may also be affecting the stock. NMFS does, however, plan to try to obtain additional genetic samples from a broader geographic range to help define stock boundaries.

Comment 18: One commenter stated that estimated mortality of false killer whales in the Hawaii longline fishery may be underestimated for several reasons, including: (1) some hooked and thus seriously injured whales may break free of the gear before reaching the boat, (2) some false killer whales from the Hawaiian stock may be taken outside the U.S. EEZ; (3) false killer whales observed taken in Palmyra's EEZ may be part of the Hawaiian stock; and (4) several observed interactions with unidentified cetaceans are likely to have been false killer whales. If the number of unidentified cetaceans seriously injured or killed in the Hawaii longline fishery was pro-rated in proportion to the known mortality and serious injury of the potential species involved, the estimated takes of false killer whales within the Hawaiian EEZ would increase.

Response: Mortality of false killer whales in the Hawaii longline fishery may be underestimated. NMFS intends to obtain additional data to clarify the stock structure and genetic differentiation of animals found in waters surrounding Palmyra Island versus those in the Hawaiian EEZ and in international waters of the tropical Pacific . See Response to Comment 17.

Comment 19: One commenter noted that NMFS incorrectly states, ''Since 1998, only one false killer whale has been observed killed in the Hawaiian EEZ'' (69 FR 19368, May 13, 2004). The commenter stated that serious injury and mortality estimates should not have been based on this interaction because it is over five years old.

Response: The proposed 2004 LOF does contain an error; since 1998, only one false killer whale has been observed seriously injured in the Hawaiian EEZ. The individual was released with a hook in the mouth and trailing line. Based on NMFS'' serious injury guidelines, any cetacean released with trailing gear is considered seriously injured. By definition, a serious injury is one that will likely result in mortality (50 CFR 229.2). Furthermore, section 118 of the MMPA treats mortality and serious injury equally.

NMFS mortality estimates are based on information presented in the most recent SAR. Based on NMFS'' guidelines for preparing SARs, serious injury and mortality rates are generally based on the most recent 5-year averages of data available when the SAR is drafted (*e.g.*, 1997–2001 for the 2003 SARs).

Comment 19a: One commenter stated re-opening the area closed to swordfish fishing will likely increase takes of false killer whales by the Hawaii longline fishery.

Response: Comment noted.

Comment 20: Two commenters expressed concerns regarding NMFS protocols for assessing serious injuries of false killer whales and requested NMFS to revisit its serious injury guidelines or develop a more refined assessment method. In particular, one commenter requested NMFS to convene a workshop to specifically address serious injury guidelines for false killer whales, since the commenter does not believe an individual hooked in the mouth is likely to die.

Response: NMFS convened a workshop of experts in marine mammal biology, marine mammal medicine, and fishing technologies in April 1997. The results of this workshop included guidelines for differentiating serious and non-serious injuries of marine mammals incidental to commercial

fishing operations, which were published as a NOAA Technical Memorandum (NMFS–OPR–13 1998), and have been used to determine severity of injuries to false killer whales and other cetaceans in the Hawaii longline fishery. The publication process included scientific peer review. These guidelines represent a compilation of the best scientific information available at the time and have not been updated since 1997. Additional data, particularly on large whales, have been collected since the workshop was convened. When these additional data have been compiled and analyzed, NMFS will update the guidelines as needed.

Comment 21: One commenter urged NMFS to increase observer coverage to more accurately estimate serious injury and mortality of marine mammals incidental to the Hawaii longline fishery.

Response: There is 100-percent observer coverage in the shallow-set component and 20-percent observer coverage in the deep-set component of the Hawaii longline fishery beginning in 2004, as mandated by an Endangered Species Act section 7 biological opinion on sea turtle interactions with the fishery, and these observers are trained to collect information on interactions with all protected species. Given the relatively long history of the deep-set component and our understanding of fishing practices, catch, and interactions with protected species, 20 percent is a sufficient level of coverage in the deep-set component of the fishery.

Comment 22: One commenter stated that, under the National Environmental Policy Act (NEPA), NMFS should not rely on the Environmental Assessment (EA) prepared for regulations to implement section 118 of the MMPA (1995 EA) for the 2004 LOF.

Response: The 1995 EA concluded that implementation of these regulations would not have a significant impact on the human environment. This final rule would not make any significant change in the management of reclassified fisheries, and therefore, this final rule is not expected to change the analysis or conclusion of the 1995 EA. If NMFS takes a management action, for example, through the development of a TRP, NMFS will first prepare the appropriate environmental analysis as required under NEPA specific to that action.

Comment 23: One commenter stated that NMFS did not comply with the Regulatory Flexibility Act (RFA) in preparing the 2004 LOF.

Response: NMFS complied with the RFA. The Chief Counsel for Regulation of the Commerce Department certified to the Chief Counsel for Advocacy of the Small Business Administration that the rule would not have a significant economic impact on a substantial number of small entities. (See 5 U.S.C. 605 and the Classification section of the proposed rule, 69 FR 19365, April 13, 2004.) As a result, no initial or final regulatory flexibility analysis was required. For convenience, the factual basis leading to the certification is repeated below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA, obtain an Authorization Certificate, and pay a fee of $25. Additionally, fishers may be subject to a take reduction plan and requested to carry an observer. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 41,600 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register. However, registration has been integrated with existing State or Federal registration programs for the majority of these fisheries so that the majority of fishers do not need to register separately under the MMPA. Currently, approximately 5,800 fishers register directly with NMFS under the MMPA authorization program.

This rule proposes to elevate the Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line Fishery to Category I in the LOF. Therefore participants in this fishery (140 participants) would be required to register under the MMPA.

Though this proposed rule would affect a number of small entities, the $25 registration fee, with respect to anticipated revenues, is not considered a significant economic impact. If a vessel is requested to carry an observer, fishers will not incur any economic costs associated with carrying that observer. As a result of this certification, an initial regulatory flexibility analysis was not prepared. In the event that reclassification of a fishery to Category I or II results in a take reduction plan, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions.

Comments on Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico

Comment 24: Several commenters recommended elevating the Gulf of Mexico blue crab trap/pot fishery from Category III to Category II due to interactions with bottlenose dolphins. One commenter also recommended that NMFS institute an observer program in this fishery to obtain more reliable information.

Response: As stated in the 2004 proposed LOF (69 FR 19365, 19370, April 13, 2004), NMFS believes it is necessary to investigate stock structure of bottlenose dolphins in the Gulf of Mexico and intends to reevaluate this fishery as relevant information becomes available. The vast majority of NMFS resources for bottlenose dolphin research is being expended in the Atlantic Ocean to satisfy the needs of the Atlantic Bottlenose Dolphin Take Reduction Team (TRT). As the needs of this existing TRT are met, NMFS plans to shift resources to the Gulf of Mexico to better define bottlenose dolphin stock structure and interactions with fisheries in this area. However, NMFS does not have adequate information at this time to change the classification of this fishery.

Comment 25: One commenter recommended NMFS reclassify the Gulf of Mexico menhaden purse seine fishery as a Category I fishery and direct more observer effort to determining the level of fishery interactions with bottlenose dolphins.

Response: NMFS believes it is necessary to investigate the stock structure of bottlenose dolphins in the Gulf of Mexico and monitor interactions between bottlenose dolphins and the Gulf of Mexico menhaden purse seine fishery and Gulf of Mexico gillnet fishery. NMFS intends to reevaluate this fishery as relevant information becomes available. However, NMFS does not have adequate information at this time to change the classification of this fishery. See Response to Comment 24. See also the 2003 LOF, for the response to a similar comment (68 FR 41725, 41730; July 15, 2003).

Comment 26: One commenter recommended NMFS reclassify the Gulf of Mexico gillnet fishery as a Category I fishery given that bottlenose dolphin population structure in the Gulf of Mexico is composed of numerous stocks with low PBR levels.

Response: See Response to Comment 25.

Comment 27: One commenter strongly urged NMFS to promptly respond to, and necropsy, strandings in the southeast U.S. to assess patterns and levels of marine mammal interactions with the Gulf of Mexico blue crab trap/pot fishery.

Response: The marine mammal stranding network has established protocols in place for responding to and investigating stranding events. The Level A data form that responders are required to use has a specific field to note any evidence of a fishery interaction. In the event that a fishery interaction is suspected, the network and the appropriate NMFS Regional Office and/or Science Center have protocols in place to investigate further and identify the fishery.

Comment 28: One commenter noted the expansion of open ocean aquaculture operations may warrant

further consideration related to the LOF. The commenter stated that a proposal to expand aquaculture operations to old oil platforms in the Gulf of Mexico may cause interactions with bottlenose dolphins if the operation uses high intensity acoustic harassment devices. The commenter noted that the finfish or shellfish aquaculture fisheries currently listed on the LOF would not include this new operation.

Response: NMFS is aware of the expansion of aquaculture and growing concerns with aquaculture operations particularly as they relate to harassment of marine mammals. On January 12–13, 1999, NMFS held a marine aquaculture workshop to evaluate the potential effects of aquaculture operations on marine mammals and sea turtles. NMFS is considering additional workshops to further evaluate these operations for cases involving serious injuries and mortalities of marine mammals. NMFS believes the fishery classification criteria sufficiently address fishery-related interactions with aquaculture operations. NMFS is not aware of any proposals for the use of oil platforms as aquaculture facilities. The current marine aquaculture fisheries listed on the LOF, ''Finfish aquaculture'' and ''Shellfish aquaculture,'' apply to all aquaculture operations conducted in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Summary of Changes to the LOF for 2004

The following summarizes changes to the LOF in 2004 in fishery classification, fisheries listed on the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery. The LOF for 2004 is identical to the LOF for 2003 with the following exceptions.

Fishery Classification

The ''Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line Fishery'' is elevated from Category III to Category I.

Addition of Fisheries to the LOF

The following fisheries are added to the LOF as Category III fisheries: ''AK Bering Sea and Aleutian Islands Atka Mackerel Trawl Fishery,'' ''AK Bering Sea and Aleutian Islands Flatfish Trawl Fishery,'' ''AK Bering Sea and Aleutian Islands Pacific Cod Trawl Fishery,'' ''AK Bering Sea and Aleutian Islands Pollock Trawl Fishery'', ''AK Gulf of Alaska Flatfish Trawl Fishery,'' ''AK Gulf of Alaska Pacific Cod Trawl Fishery,'' ''AK Gulf of Alaska Pollock Trawl Fishery,'' ''AK Gulf of Alaska Rockfish Trawl Fishery,'' ''AK Aleutian Islands Sablefish Pot Fishery,'' ''AK Bering Sea Sablefish Pot Fishery,'' ''AK Bering Sea and Aleutian Islands Pacific Cod Pot Fishery,'' ''AK Gulf of Alaska Pacific Cod Pot Fishery,'' ''AK Southeast Alaska Shrimp Pot Fishery,'' ''AK Southeast Alaska Crab Pot Fishery,'' ''AK Gulf of Alaska Crab Pot Fishery,'' ''AK Bering Sea and Aleutian Islands Crab Pot Fishery,'' ''AK Bering Sea and Aleutian Islands Greenland Turbot Longline Fishery,'' ''AK Bering Sea and Aleutian Islands Pacific Cod Longline Fishery,'' ''AK Bering Sea and Aleutian Islands Rockfish Longline,'' ''AK Bering Sea and Aleutian Islands Sablefish Longline Fishery,'' ''AK Gulf of Alaska Sablefish Longline Fishery,'' ''AK Gulf of Alaska Pacific Cod Longline Fishery,'' ''AK Gulf of Alaska Flatfish Longline Fishery,'' and ''AK Gulf of Alaska Rockfish Longline.''

Removal of Fisheries From the LOF

The following fisheries are removed from the 2004 LOF: The ''AK Bering Sea and Gulf of Alaska Finfish Pot Fishery,'' ''AK Crustacean Pot Fishery,'' ''AK Bering Sea and Aleutian Islands Groundfish Longline/Set Line Fishery (federally regulated waters, including miscellaneous finfish and sablefish),'' ''AK Gulf of Alaska Groundfish Longline/Set Line Fishery (federally regulated waters, including miscellaneous finfish and sablefish),'' ''AK Bering Sea and Aleutian Islands Groundfish Trawl Fishery,'' and ''AK Gulf of Alaska Groundfish Trawl Fishery.''

Number of Vessels/Persons

The estimated number of participants in the ''OR Swordfish Floating Longline Fishery'' is updated to 1.

The estimated number of participants in the ''WA Puget Sound Region Salmon Drift Gillnet Fishery'' is updated to 210 based on 2003 permit data.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the most recent LOF is used.

The tables also list the marine mammal species or stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience serious injury or mortality in a given fishery, but also includes species or stocks for which there are anecdotal or historical, but not necessarily current, records of interaction. Additionally, species identified by logbook entries may not be verified. Not all species or stocks identified are the reason for a fishery's placement in a given category. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of ''Category II fishery'' in 50 CFR 229.2.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category I		
Gillnet Fisheries:		
CA angel shark/halibut and other species set gillnet (>3.5 in. mesh) ..	58	Harbor porpoise, Central CA. Common dolphin, short-beaked, CA/OR/WA. Common dolphin, long-beaked CA. California sea lion, U.S. Harbor seal, CA. Northern elephant seal, CA breeding. Sea otter, CA.
Longline/Set Line Fisheries:		
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Humpback whale, Central North Pacific. False killer whales, HI. Risso's dolphin, HI. Bottlenose dolphin, HI. Spinner dolphin, HI. Short-finned pilot whale, HI. Sperm whale, HI.
Category II		
Gillnet Fisheries:		
AK Bristol Bay salmon drift gillnet	1,903	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific. Harbor seal, Bering Sea. Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Spotted seal, AK. Pacific white-sided dolphin, North Pacific.
AK Bristol Bay salmon set gillnet	1,014	Harbor seal, Bering Sea. Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Northern fur seal, Eastern Pacific. Spotted seal, AK.
AK Cook Inlet salmon drift gillnet	576	Steller sea lion, Western U.S. Harbor seal, GOA. Harbor porpoise, GOA. Dall's porpoise, AK. Beluga whale, Cook Inlet.
AK Kodiak salmon set gillnet	188	Harbor seal, GOA. Harbor porpoise, GOA. Sea otter, AK.
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented.
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Northern fur seal, Eastern Pacific. Harbor seal, GOA. Harbor porpoise, GOA. Dall's porpoise, AK.
AK Peninsula/Aleutian Islands salmon set gillnet	116	Steller sea lion, Western U.S. Harbor porpoise, Bering Sea.
AK Prince William Sound salmon drift gillnet	541	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific. Harbor seal, GOA. Pacific white-sided dolphin, North Pacific. Harbor porpoise, GOA. Dall's porpoise, AK. Sea Otter, AK.
AK Southeast salmon drift gillnet	481	Steller sea lion, Eastern U.S. Harbor seal, Southeast AK. Pacific white-sided dolphin, North Pacific. Harbor porpoise, Southeast AK. Dall's porpoise, AK. Humpback whale, Central North Pacific.
AK Yakutat salmon set gillnet	170	Harbor seal, Southeast AK. Gray whale, Eastern North Pacific.
CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh)	113	Steller sea lion, Eastern U.S. Sperm whale, CA/OR/WA. Dall's porpoise, CA/OR/WA. Fin whale, CA/OR/WA. Gray whale, Eastern North Pacific. Northern Pacific white-sided dolphin, CA/OR/WA

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
		Southern Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Bottlenose dolphin, CA/OR/WA offshore. Short-beaked common dolphin, CA/OR/WA. Long-beaked common dolphin, CA/OR/WA. Northern right-whale dolphin, CA/OR/WA. Short-finned pilot whale, CA/OR/WA. Baird's beaked whale, CA/OR/WA. Mesoplodont beaked whale, CA/OR/WA. Cuvier's beaked whale, CA/OR/WA. Pygmy sperm whale, CA/OR/WA. California sea lion, U.S. Northern elephant seal, CA breeding. Humpback whale, CA/OR/WA-Mexico. Minke whale, CA/OR/WA. Striped dolphin, CA/OR/WA. Killer whale, CA/OR/WA Pacific coast. Northern fur seal, San Miguel Island.
CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery(mesh size > 3.5 inches and < 14 inches).	24	None documented.
WA Puget Sound Region salmon drift gilnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded).	210	Harbor porpoise, inland WA. Dall's porpoise, CA/OR/WA. Harbor seal, WA inland.
Purse Seine Fisheries:		
AK Southeast salmon purse seine	416	Humpback whale, Central North Pacific.
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Harbor seal, CA.
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA.
Trawl Fisheries:		
AK miscellaneous finfish pair trawl	2	None documented.
Longline/Set Line Fisheries:		
CA pelagic longline	30	California sea lion.
OR swordfish floating longline	1	None documented.
OR blue shark floating longline.	1	None documented.
Category III		
Gillnet Fisheries:		
AK Cook Inlet salmon set gillnet	745	Steller sea lion, Western U.S. Harbor seal, GOA. Harbor porpoise, GOA. Dall's porpoise, AK. Beluga whale, Cook Inlet.
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea.
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Steller sea lion, Western U.S. Harbor seal, GOA.
AK roe herring and food/bait herring gillnet	2,034	None documented.
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented.
Hawaii gillnet	115	Bottlenose dolphin, HI. Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast.
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented.
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast.
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast. Northern elephant seal, CA breeding.
Purse Seine, Beach Seine, Round Haul and Throw Net Fisheries:		
AK Metlakatla salmon purse seine	10	None documented.
AK miscellaneous finfish beach seine	1	None documented.
AK miscellaneous finfish purse seine	3	None documented.
AK octopus/squid purse seine	2	None documented.
AK roe herring and food/bait herring beach seine	8	None documented.
AK roe herring and food/bait herring purse seine	624	None documented.
AK salmon beach seine	34	None documented.
AK salmon purse seine (except Southeast Alaska, which is in Category II).	953	Harbor seal, GOA.

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
CA herring purse seine	100	California sea lion, U.S. Harbor seal, CA.
CA sardine purse	120	None documented.
HI opelu/akule net	16	None documented.
HI purse seine	18	None documented.
HI throw net, cast net	47	None documented.
WA (all species) beach seine or drag seine	235	None documented.
WA, OR herring, smelt, squid purse seine or lampara	130	None documented.
WA salmon purse seine	440	None documented.
WA salmon reef net	53	None documented.
Dip Net Fisheries:		
CA squid dip net	115	None documented.
WA, OR smelt, herring dip net	119	None documented.
Marine Aquaculture Fisheries:		
CA salmon enhancement rearing pen	>1	None documented.
OR salmon ranch	1	None documented.
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters.
Troll Fisheries:		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,530 (330 AK)	None documented.
AK salmon troll	2,335	Steller sea lion, Western U.S. Steller sea lion, Eastern U.S.
American Samoa tuna troll	<50	None documented.
CA/OR/WA salmon troll	4,300	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented.
Guam tuna troll	50	None documented.
HI net unclassified	106	None documented.
HI trolling, rod and reel	1,795	None documented.
Longline/Set Line Fisheries:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	36	Killer whale, Eastern North Pacific resident. Killer whale, Eastern North Pacific transient.
AK Bering Sea, Aleutian Islands cod longline	114	None documented.
AK Bering Sea, Aleutian Islands rockfish longline	17	None documented.
AK Bering Sea, Aleutian Islands sablefish longline	63	None documented.
AK Gulf of Alaska halibut longline	1,302	None documented.
AK Gulf of Alaska Pacific cod longline	440	None documented.
AK Gulf of Alaska rockfish longline	421	None documented.
AK Gulf of Alaska sablefish longline	412	None documented.
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.
AK octopus/squid longline	7	None documented.
AK state-managed waters groundfish longline/set line(including sablefish, rockfish, and miscellaneous finfish).	731	None documented.
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented.
WA, OR North Pacific halibut longline/set line	350	None documented.
Trawl Fisheries:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	8	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands flatfish trawl	26	Steller sea lion, Western U.S. Killer whale, Eastern North Pacific resident. Killer whale, Eastern North Pacific transient.
AK Bering Sea, Aleutian Islands Pacific cod trawl	87	None documented.
AK Bering Sea, Aleutian Islands pollock trawl	120	Steller sea lion, Western U.S. Killer whale, Eastern North Pacific resident. Killer whale, Eastern North Pacific transient. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific.
AK Bering Sea, Aleutian Islands rockfish trawl	9	None documented.
AK Gulf of Alaska flatfish trawl	52	None documented.
AK Gulf of Alaska Pacific cod trawl	101	None documented.
AK Gulf of Alaska pollock trawl	83	None documented.
AK Gulf of Alaska rockfish trawl	45	None documented.
AK food/bait herring trawl	3	None documented.
AK miscellaneous finfish otter or beam trawl	6	None documented.
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented.
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl.	2	None documented.
WA, OR, CA groundfish trawl	585	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, Central North Pacific. Dall's porpoise, CA/OR/WA.

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
		California sea lion, U.S. Harbor seal, OR/WA coast.
WA, OR, CA shrimp trawl	300	None documented.
Pot, Ring Net, and Trap Fisheries:		
AK Aleutian Islands sablefish pot	8	None documented.
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific. Humpback whale, Western North Pacific.
AK Bering Sea, Aleutian Islands Pacific cod pot	76	None documented.
AK Bering Sea, Aleutian Islands crab pot	329	None documented.
AK Gulf of Alaska crab pot	(1)	None documented.
AK Gulf of Alaska Pacific cod pot	154	None documented.
AK Southeast Alaska crab pot	(1)	None documented.
AK Southeast Alaska shrimp pot	(1)	None documented.
AK octopus/squid pot	72	None documented.
AK snail pot	2	None documented.
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA.
OR, CA hagfish pot or trap	25	None documented.
WA, OR, CA crab pot	1,478	None documented.
WA, OR, CA sablefish pot	176	None documented.
WA, OR shrimp pot & trap	254	None documented.
HI crab trap	22	None documented.
HI fish trap	19	None documented.
HI lobster trap	15	Hawaiian monk seal.
HI shrimp trap	5	None documented.
Handline and Jig Fisheries:		
AK miscellaneous finfish handline and mechanical jig	100	None documented.
AK North Pacific halibut handline and mechanical jig	93	None documented.
AK octopus/squid handline	2	None documented.
American Samoa bottomfish	<50	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented.
Guam bottomfish	<50	None documented.
HI aku boat, pole and line	54	None documented.
HI deep sea bottomfish	434	Hawaiian monk seal.
HI inshore handline	650	Bottlenose dolphin, HI.
HI tuna	144	Rough-toothed dolphin, HI. Bottlenose dolphin, HI. Hawaiian monk seal.
WA groundfish, bottomfish jig	679	None documented.
Harpoon Fisheries:		
CA swordfish harpoon	228	None documented.
Pound Net/Weir Fisheries:		
AK herring spawn on kelp pound net	452	None documented.
AK Southeast herring roe/food/bait pound net	3	None documented.
WA herring brush weir	1	None documented.
Bait Pens:		
WA/OR/CA bait pens	13	None documented.
Dredge Fisheries:		
Coastwide scallop dredge	108 (12 AK)	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
AK abalone	1	None documented.
AK clam	156	None documented.
WA herring spawn on kelp	4	None documented.
AK dungeness crab	3	None documented.
AK herring spawn on kelp	363	None documented.
AK urchin and other fish/shellfish	471	None documented.
CA abalone	111	None documented.
CA sea urchin	583	None documented.
HI coral diving	2	None documented.
HI fish pond	10	None documented.
HI handpick	135	None documented.
HI lobster diving	6	None documented.
HI squiding, spear	267	None documented.
WA, CA kelp	4	None documented.
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented.
WA shellfish aquaculture	684	None documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented.

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
HI "other"	114	None documented.
Live Finfish/Shellfish Fisheries:		
CA finfish and shellfish live trap/hook-and-line	93	None documented.

List of Abbreviations used in Table 1: AK—Alaska; CA—California; GOA—Gulf of Alaska; HI—Hawaii; OR—Oregon; WA—Washington.

TABLE 2.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery description	Estimated number of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category I		
Gillnet Fisheries:		
Mid-Atlantic coastal gillnet	>655	Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. Bottlenose dolphin, WNA offshore. Bottlenose dolphin, WNA coastal. Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Long-finned pilot whale, WNA. Short-finned pilot whale, WNA. White-sided dolphin, WNA. Common dolphin, WNA.
Northeast sink gillnet	341	North Atlantic right whale, WNA. Humpback whale, WNA. Minke whale, Canadian east coast. Killer whale, WNA. White-sided dolphin, WNA. Bottlenose dolphin, WNA offshore. Harbor porpoise, GME/BF. Harbor seal, WNA. Gray seal, WNA. Common dolphin, WNA. Fin whale, WNA. Spotted dolphin, WNA. False killer whale, WNA. Harp seal, WNA.
Longline Fisheries:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	<200	Humpback whale, WNA. Minke whale, Canadian east coast. Risso's dolphin, WNA. Long-finned pilot whale, WNA. Short-finned pilot whale, WNA. Common dolphin, WNA. Atlantic spotted dolphin, WNA. Pantropical spotted dolphin, WNA. Striped dolphin, WNA. Bottlenose dolphin, WNA offshore. Bottlenose dolphin, GMX Outer Continental Shelf. Bottlenose dolphin, GMX Continental Shelf Edge and Slope. Atlantic spotted dolphin, Northern GMX. Pantropical spotted dolphin, Northern GMX. Risso's dolphin, Northern GMX. Harbor porpoise, GME/BF. Pygmy sperm whale, WNA.
Trap/Pot Fisheries:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	North Atlantic right whale, WNA. Humpback whale, WNA. Fin whale, WNA. Minke whale, Canadian east coast. Harbor seal, WNA.

TABLE 2.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Trawl Fisheries:		
Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA. Risso's dolphin, WNA. Long-finned pilot whale, WNA. Short-finned pilot whale, WNA. White-sided dolphin, WNA.
Category II		
Gillnet Fisheries:		
Gulf of Mexico gillnet	724	Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX Bay, Sound, and Estuarine.
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal.
Northeast anchored float gillnet	133	Humpback whale, WNA. White-sided dolphin, WNA. Harbor seal, WNA.
Northeast drift gillnet	(1)	None documented.
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal.
Southeastern U.S. Atlantic shark gillnet	6	Bottlenose dolphin, WNA coastal. North Atlantic right whale, WNA. Atlantic spotted dolphin, WNA.
Trawl Fisheries:		
Atlantic herring midwater trawl (including pair trawl)	17	Harbor seal, WNA.
Trap/Pot Fisheries:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal. West Indian manatee, FL.
Atlantic mixed species trap/pot	(1)	Fin whale, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. Harbor porpoise, GM/BF.
Purse Seine Fisheries:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal.
Haul/Beach Seine Fisheries:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal. Harbor porpoise, GME/BF.
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal.
Stop Net Fisheries:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal.
Pound Net Fisheries:		
Virginia pound net	187	Bottlenose dolphin, WNA coastal.
Category III		
Gillnet Fisheries:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA. West Indian manatee, Antillean.
Chesapeake Bay inshore gillnet	45	Harbor porpoise, GME/BF.
Delaware Bay inshore gillnet	60	Humpback whale, WNA. Bottlenose dolphin, WNA coastal. Harbor porpoise, GME/BF.
Long Island Sound inshore gillnet	20	Humpback whale, WNA. Bottlenose dolphin, WNA coastal. Harbor porpoise, GME/BF.
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA. Bottlenose dolphin, WNA coastal. Harbor porpoise, GME/BF.
Trawl Fisheries:		
Calico scallops trawl	12	None documented.
Crab trawl	400	None documented.
Georgia, South Carolina, Maryland whelk trawl	25	None documented.
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented.
Gulf of Maine northern shrimp trawl	320	None documented.
Gulf of Mexico butterfish trawl	2	Atlantic spotted dolphin, Eastern GMX. Pantropical spotted dolphin, Eastern GMX.
Gulf of Mexico mixed species trawl	20	None documented.

TABLE 2.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Mid-Atlantic mixed species trawl	>1,000	None documented.
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA. Short-finned pilot whale, WNA. Common dolphin, WNA. White-sided dolphin, WNA. Striped dolphin, WNA. Bottlenose dolphin, WNA offshore.
Southeastern U.S. Atlantic, Gulf of Mexico coastal shrimp trawl	>18,000	Bottlenose dolphin, WNA.
U.S. Atlantic monkfish trawl	(1)	Common dolphin, WNA.
Marine Aquaculture Fisheries:		
Finfish aquaculture	48	Harbor seal, WNA.
Shellfish aquaculture	(1)	None documented.
Purse Seine Fisheries:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF. Harbor seal, WNA. Gray seal, WNA.
Gulf of Maine menhaden purse seine	50	None documented.
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal.
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal. Humpback whale, WNA.
U.S. Atlantic tuna purse seine	5	None documented.
U.S. Mid-Atlantic hand seine	>250	None documented.
Longline/Hook-and-Line Fisheries:		
Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line	46	Harbor seal, WNA. Gray seal, Northwest North Atlantic. Humpback whale, WNA.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/ harpoon.	26,223	Humpback whale, WNA.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/ hook-and-line.	<125	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	1,446	None documented.
Trap/Pot Fisheries		
Caribbean mixed species trap/pot	>501	None documented.
Caribbean spiny lobster trap/pot	>197	None documented.
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX Bay, Sound, & Estuarine. West Indian manatee, FL.
Gulf of Mexico mixed species trap/pot	(1)	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented.
U.S. Mid-Atlantic eel trap/pot	>700	None documented.
Stop Seine/Weir/Pound Net Fisheries:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA. Humpback whale, WNA. Minke whale, Canadian east coast. Harbor porpoise, GME/BF. Harbor seal, WNA. Gray seal, Northwest North Atlantic.
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented.
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the North Carolina roe mullet stop net).	751	None documented.
Dredge Fisheries:		
Gulf of Maine mussel	>50	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented.
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented.
Haul/Beach Seine Fisheries:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean.
Gulf of Mexico haul/beach seine	(1)	None documented.
Southeastern U.S. Atlantic, haul/beach seine	25	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.

TABLE 2.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented.
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	(1)	None documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented.

List of Abbreviations Used in Table 2: FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; NC—North Carolina; SC—South Carolina; TX—Texas; WNA—Western North Atlantic.

[1]Unknown.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification appears elsewhere in the preamble to this rule and is not repeated here. As a result, no regulatory flexibility analysis was prepared. One comment was received regarding compliance with the RFA (Comment 23) and is responded to above. That comment did not cause a change in the certification previously made.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.25 hours per report for new registrants and 0.15 hours per report for renewals). The requirement for reporting marine mammal injuries or moralities has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES**).

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

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

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). The 1995 EA concluded that implementation of those regulations would not have a significant impact on the human environment. This final rule would not make any significant change in the management of reclassified fisheries, and therefore, this final rule is not expected to change the analysis or conclusion of the 1995 EA. If NMFS takes a management action, for example, through the development of a Take Reduction Plan (TRP), NMFS will first prepare an environmental document as required under NEPA specific to that action.

This final rule will not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this final rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under section 7 of the ESA for that action.

This final rule will have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs or take reduction teams.

This final rule will not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: August 5, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–18252 Filed 8–9–04; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 69, No. 153
Tuesday, August 10, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18814; Directorate Identifier 2003–NM–286–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD would require repetitive inspections for discrepancies of the elevator tab control rod assemblies and/or damage to the surrounding structure, and related corrective action. This proposed AD is prompted by reports indicating loose jam nuts and/or thread wear at the rod ends on the elevator tab control rod assembly. We are proposing this AD to find and fix excessive freeplay in the tab control mechanism, which could result in elevator tab flutter and consequent loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by September 24, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6468; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–18814; Directorate Identifier 2003–NM–286–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

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

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received several reports indicating loose jam nuts and/or thread wear at the rod ends on the elevator tab control rod assembly on certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. If the jam nuts of the elevator tab control rod are not properly torqued, the control rod ends can loosen and the threads at the rod end can become worn, causing increased freeplay in the tab control loop. Airframe vibration can occur if there is sufficient freeplay. Additionally, if both control rods on one side of the airplane loosen, significant damage can be done to the elevator tab, elevator, and horizontal stabilizer. Excessive freeplay in the elevator tab control mechanism, if not found and

fixed, could result in elevator tab flutter and consequent loss of controllability of the airplane.

Related AD

On April 30, 2001, we issued AD 2001–09–51, amendment 39–12251 (66 FR 31141, June 11, 2001). That AD is applicable to certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. That AD requires inspection of the small jam nut on the elevator tab control rods to detect inspection putty and to determine its condition; a torque check of the small and large jam nuts on the tab control rod, if necessary; and corrective actions, as applicable. For certain airplanes, that AD also requires a one-time inspection for torque of the small and large jam nuts on the tab control rods; and corrective actions, as applicable.

Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 737–27A1266, dated September 18, 2003, which describes procedures for a one-time inspection of the elevator tab control rod assemblies for discrepancies, which includes the following, as specified in Part I of the Accomplishment Instructions of the service bulletin:

- Inspect for missing or damaged inspection putty.
- Inspect for binding of the control rod.
- Inspect for inadequate clearance between the rod end bearing and the clevis of the tab mast fitting; damage to the control rod, tab mast fitting, or tab control mechanism clevises.
- Inspect for damage to the elevator tab control rod assemblies and/or damage to the surrounding structure.

The service bulletin also describes procedures for related corrective action, which includes the following, as specified in Part II of the Accomplishment Instructions of the service bulletin:

- Adjust the control rod.
- Adjust the space between the rod and bearing to provide adequate clearance.
- Tighten the jam nuts until correct torque is obtained.
- Replace damaged components with new components.
- Realign the rod ends.

The service bulletin also describes procedures for operational tests and a flight test, if necessary, after the corrective action is done. Affected airplanes are separated into Groups 1, 2, and 3, and the Accomplishment Instructions of the service bulletin provide the inspection/corrective action procedures for each group.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. The proposed AD would require you to perform the actions using the service bulletin described previously, except as discussed under ''Differences Between the Proposed AD and the Service Bulletin.''

Differences Between the Proposed AD and the Service Bulletin

The service bulletin recommends doing a one-time inspection of the elevator tab control rod assemblies. However, we have determined that a one-time inspection would not address the identified unsafe condition, which could occur again after the one-time inspection is done. Therefore, in conjunction with the manufacturer, we have determined that this proposed AD would require repetitive inspections at intervals not to exceed 4,500 flight cycles or 6,000 flight hours, whichever is first. We find that doing repetitive inspections allows affected airplanes to continue to operate without compromising safety.

The service bulletin refers only to an inspection for discrepancies of the elevator tab control rod assemblies and/or damage to the surrounding structure. We have determined that the inspection should be described as a ''detailed inspection.'' Note 1 in this proposed AD defines this type of inspection.

Costs of Compliance

This proposed AD would affect about 1,078 airplanes of U.S. registry and 2,878 airplanes worldwide. The proposed inspection would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $140,140, or $130 per airplane, per inspection cycle.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–18814; Directorate Identifier 2003–NM–286–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by September 24, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports indicating loose jam nuts and/or thread wear at the rod ends on the elevator tab control rod assembly. We are issuing this AD to find and fix excessive freeplay in the elevator tab control mechanism, which could result in elevator tab flutter and consequent loss of controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Repetitive Inspections

(f) Within 4,500 flight cycles or 6,000 flight hours after the effective date of this AD,

whichever is first: Do a detailed inspection for discrepancies of the elevator tab control rod assemblies and/or damage to the surrounding structure, including corrective action, by doing all the actions in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1266, dated September 18, 2003. Do any related corrective action before further flight, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles or 6,000 flight hours, whichever is first.

Note 1: For the purposes of this AD, a detailed inspection is: ''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.''

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on August 3, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–18221 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18809; Directorate Identifier 2004–NM–91–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A319, A320, and A321 series airplanes. This proposed AD would require revising the Airplane Flight Manual (AFM) to prohibit operators from performing CAT 2 or CAT 3 automatic landings or roll-outs at certain airports. This proposed AD also provides for an optional terminating action for the AFM revision. This proposed AD is prompted by data showing that the magnetic variation table installed in the Honeywell Inertial Reference System (IRS) is obsolete at certain airports. We are proposing this AD to prevent the airplane from departing the runway during a CAT 2 or CAT 3 automatic landing or roll-out, due to magnetic and IRS deviations.

DATES: We must receive comments on this proposed AD by September 9, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, on the plaza level of the Nassif Building, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18809; Directorate Identifier 2004–NM–91–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

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

Examining the Docket

You can examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes with certain Honeywell

Inertial Reference Systems (IRS) installed. The DGAC advises that the magnetic variation table installed in the Honeywell IRS is obsolete at certain airports. Studies have shown that, for a given airport, a difference greater than 3 degrees between the real magnetic deviation and the deviation in the IRS could result in misinformation to the flightcrew during the phases of CAT 2 or CAT 3 automatic landing or roll-out. Such conditions could result in the airplane departing the runway during a CAT 2 or CAT 3 automatic landing or roll-out.

Relevant Service Information

Airbus has issued the following service information:

- Temporary Revision (TR) 2.05.00/52, dated June 13, 2003 (for Model A318/319/320/321 series airplanes), which provides the flightcrew with operational limitations that prohibit operators from performing CAT 2 or CAT 3 automatic landings or roll-outs at airports where there is a difference greater than 3 degrees between the real magnetic deviation and the deviation in the IRS. The TR lists affected airports and date by which autoland/roll-out are prohibited.
- Service Bulletin A320–34–1231, Revision 02, dated October 10, 2002 (for Model A320 series airplanes), which describes procedures for replacing the three existing Honeywell Air Data Inertial Reference Units (ADIRUs) with new Honeywell ADIRUs. The service bulletin recommends prior or concurrent accomplishment of Airbus Service Bulletin A320–34–1084, dated September 15, 1994. The concurrent service bulletin describes procedures for replacing the ADIRUs with new ADIRUs, and recommends prior or concurrent accomplishment of the modification of certain ADIRU equipment, as specified in Airbus Service Bulletin A320–34–1010, dated September 6, 1989. The service bulletin also references Honeywell Service Bulletin HG1150AC–34–06, Revision 6, dated January 30, 2003, as an additional source of service information for replacing the ADIRUs. Service Bulletin A320–34–1231, Revision 02, also references Honeywell Service Bulletin HG1150AC–34–0007, Revision 001, dated September 18, 2001, an additional source of service information for replacing the ADIRUs.
- Service Bulletin A320–34–1240, Revision 01, dated October 10, 2001 (for Model A319, A320, and A321 series airplanes), which describes procedures for replacing the three existing Honeywell ADIRUs with new Honeywell ADIRUs. The service bulletin recommends prior or concurrent accomplishment of Airbus Service Bulletin A320–34–1129, Revision 01, dated July 22, 1997. The concurrent service bulletin describes procedures for replacing the three Honeywell ADIRUs with new Honeywell ADIRUs. Service Bulletin A320–34–1240, Revision 01, also references Honeywell Service Bulletin HG2030AC–34–0009, Revision 1, dated October 1, 2002, as an additional source of service information for replacing the ADIRUs.
- Service Bulletin A320–34–1249, dated June 25, 2001 (for Model A319, A320, and A321 series airplanes), which describes procedures for replacing the three existing Honeywell ADIRUs with new, electrically and mechanically interchangeable Honeywell ADIRUs. The service bulletin recommends prior or concurrent accomplishment of Airbus Service Bulletins A320–34–1136, dated June 5, 1997, and A320–34–1214, dated July 28, 2000. The concurrent service bulletins also describe procedures for replacing the three existing Honeywell ADIRUs with new ADIRUs; however, Service Bulletin A320–34–1214 describes procedures for replacing the Litton ADIRUs with Honeywell ADIRUs. Service Bulletin A320–34–1249 also references Honeywell Service Bulletin HG2030AD–34–0007, Revision 1, dated June 4, 2001, as an additional source of service information for replacing the ADIRUs.

We have determined that accomplishing the actions specified in the TR will adequately address the unsafe condition. The DGAC mandated the TR and issued French airworthiness directive 2003–270(B), dated July 23, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

The proposed AD would require you to use the Airbus service information described previously to perform these actions.

Costs of Compliance

This proposed AD would affect about 242 airplanes of U.S. registry. The proposed AFM revision would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AFM revision for U.S. operators is $15,730, or $65 per airplane.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2004–18809; Directorate Identifier 2004–NM–91–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by September 9, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model A319, A320, and A321 series airplanes; certificated in any category; equipped with a Honeywell Air Data Inertial Reference Unit (ADIRU) having any part number (P/N) listed in Table 1 of this AD; on which Airbus Modification 30652, 30941, or 30942 has not been done.

TABLE 1.—HONEYWELL ADIRU P/N

HG1150AC05
HG1150AC06
HG2030AC05
HG2030AC06
HG2030AC08
HG2030AC09
HG2030AD09

(d) This AD was prompted by data showing that the magnetic variation table installed in the Honeywell inertial reference system (IRS) is obsolete at certain airports. We are issuing this AD to prevent the airplane from departing the runway during a CAT 2 or CAT 3 automatic landing or roll-out, due to magnetic and IRS deviations.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Airplane Flight Manual (AFM) Revision

(f) Within 14 days after the effective date of this AD: Revise the Limitations Section of the Airbus A318/319/320/321 AFM to prohibit operators from performing CAT 2 or CAT 3 automatic landings or roll-outs at certain airports by incorporating Airbus Temporary Revision (TR) 2.05.00/52, dated June 13, 2003, into the AFM, and operate the airplane in accordance with those limitations.

(g) When the information incorporating Airbus TR 2.05.00/52, dated June 13, 2003, has been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, and the TR may be removed from the AFM.

Optional Terminating Action

(h) Replacement of Honeywell ADIRUs having a P/N listed in Table 1 of this AD with new ADIRUs having new P/Ns, by doing all the actions using the Accomplishment Instructions of Airbus Service Bulletin A320–34–1231, Revision 02, dated October 10, 2002 (for Model A320 series airplanes); A320–34–1240, Revision 01, dated October 10, 2001 (for Model A319, A320, and A321 series airplanes); or A320–34–1249, dated June 25, 2001 (for Model A319, A320, and A321 series airplanes); as applicable; terminates the AFM revision required by paragraph (f) of this AD. Following accomplishment of the replacement, the TR must be removed from the AFM.

(i) Prior to or concurrently with accomplishment of paragraph (h) of this AD: Do the replacements using Airbus Service Bulletin A320–34–1084, dated September 15, 1994 (for Model A320 series airplanes); A320–34–1129, Revision 01, dated July 22, 1997 (for Model A319, A320, and A321 series airplanes); or A320–34–1136, dated June 5, 1997 (for Model A319, A320, and A321 series airplanes); as applicable.

(j) Prior to or concurrently with accomplishment of Airbus Service Bulletin A320–34–1084: Do the modification of certain ADIRU equipment using Airbus Service Bulletin A320–34–1010, dated September 6, 1989 (for Model A320 series airplanes).

(k) Honeywell Service Bulletins HG1150AC–34–0007, Revision 001, dated September 18, 2001; HG2030AC–34–0009, Revision 1, dated October 1, 2002; and HG2030AD–34–0007, Revision 1, dated June 4, 2001; are referenced in the Airbus Service Bulletins specified in paragraph (h) of this AD as additional sources of service information for accomplishment of the replacement of the ADIRUs.

Alternative Methods of Compliance (AMOCs)

(l) The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(m) The subject of this AD is addressed in French airworthiness directive 2003–270(B), dated July 23, 2003.

Issued in Renton, Washington, on August 2, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–18222 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150562–03]

RIN 1545–BC67

Section 1045 Application to Partnerships; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to proposed regulations that were published in the **Federal Register** on July 15, 2004 (69 FR 42370). This regulation relates to the application of section 1045 of the Internal Revenue Code to partnerships and their partners.

DATES: These corrections are made as of July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Charlotte Chyr at (202) 622–3070 or Jian H. Grant at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 1045 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–150562–03), which was the subject of FR Doc. 04–15964, is corrected as follows:

1. On page 42371, column 1, in the preamble, under the subject heading ''Background'', line 3, the language ''the sale of QSB stock held by non-'' is corrected to read ''the sale of qualified small business (QSB) stock (as defined in section 1202 (c)) held by non-''.

2. On page 42371, column 1, in the preamble, under the subject heading ''Background'' lines 8 through 10 is corrected to read ''percent of gain on the sale of QSB stock from gross income if''.

3. On page 42372, column 1, in the preamble, under the subject heading ''Explanation of Provisions'' paragraph 2, line 7, the language ''though approach to the sale and'' is corrected to read ''through approach to the sale and''.

§ 1.1045–1 [Corrected]

4. On page 42377, column 1, § 1.1045–1, paragraph (g), *Example 2*, line 5, the language ''PRS interest for $50x, realizing $25 of capital'' is corrected to read ''PRS interest for $50, realizing $25 of capital''.

LaNita Van Dyke,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 04–18270 Filed 8–9–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–129706–04]

RIN 1545–BD53

Corporate Reorganizations; Guidance on the Measurement of Continuity of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance regarding the satisfaction of the continuity of interest requirement for corporate reorganizations. These proposed regulations affect corporations and their shareholders. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by November 8, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–129706–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–129706–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–129706–04).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Christopher M. Bass, (202) 622–7770; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–3693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Internal Revenue Code of 1986 (Code) provides general nonrecognition treatment for reorganizations described in section 368 of the Code. In addition to complying with the statutory requirements and certain other requirements, to qualify as a reorganization, a transaction generally must satisfy the continuity of interest (COI) requirement.

Section 1.368–1(e) provides that the purpose of the COI requirement is to prevent transactions that resemble sales from qualifying for nonrecognition of gain or loss available to corporate reorganizations. COI requires that, in substance, a substantial part of the value of the proprietary interests in the target corporation be preserved in the reorganization. A proprietary interest in the target corporation is preserved if, in a potential reorganization, it is exchanged for a proprietary interest in the issuing corporation, it is exchanged by the acquiring corporation for a direct interest in the target corporation enterprise, or it otherwise continues as a proprietary interest in the target corporation.

In a transaction in which the shareholders of the target corporation receive both money and acquiring corporation stock, commentators have expressed concern that the transaction could fail to satisfy the COI requirement as a result of a decline in the value of the acquiring corporation's stock between the date the parties agree to the terms of the transaction (the signing date) and the date the transaction closes. Commentators have noted that attempts to mitigate this concern have led to complexity in structuring transactions intended to qualify as reorganizations. These proposed regulations provide guidance to help address those concerns.

Explanation of Provisions

The IRS and Treasury Department believe that there are certain cases in which the determination of whether the COI requirement is satisfied should be made by reference to the signing date value of the issuing corporation stock to be issued in the transaction. In these cases, the target corporation shareholders generally can be viewed as being subject to the economic fortunes of the issuing corporation as of the signing date. Therefore, these proposed regulations provide that in determining whether the COI requirement is satisfied, the consideration to be exchanged for the proprietary interests in the target corporation is valued as of the end of the last business day before the first date there is a binding contract to effect the potential reorganization, provided the consideration to be provided to the target corporation shareholders is fixed in such contract and includes only stock of the issuing corporation and money.

For this purpose, a binding contract is an instrument enforceable under applicable law against the parties to the instrument. The IRS and Treasury Department understand that tender offers are a frequent acquisition vehicle. Because the terms of a tender offer that is subject to section 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) and the regulations promulgated thereunder are fixed in a manner similar to those of a binding contract, these proposed regulations provide that such a tender offer, even if not pursuant to a binding contract, will be treated as a binding contract for purposes of these regulations.

The proposed regulations provide that the presence of a condition outside the control of the parties shall not prevent an instrument from being a binding contract. For example, the fact that the completion of a tender offer is subject to a shareholder vote or the target shareholders tendering a sufficient amount of target stock will be considered a condition outside the control of the parties.

Finally, these proposed regulations provide that consideration is fixed if the contract states the exact number of shares of the issuing corporation and the exact amount of money, if any, to be exchanged for the proprietary interests in the target corporation. However, where the consideration is comprised of only issuing corporation stock and money, variable consideration will be treated as fixed consideration if a target corporation shareholder has an election to receive stock and/or money in respect of target corporation stock and the minimum amount of issuing corporation stock and the maximum amount of money that the target shareholders might receive can be determined. For purposes of determining whether a transaction that involves such variable consideration satisfies the continuity of interest requirement, these proposed regulations assume the issuance of the minimum number of shares and the maximum amount of money allowable under the contract, without regard to the number of shares and amount of money actually exchanged for proprietary interests in the target corporation.

In the course of developing these regulations, the IRS and Treasury Department considered whether the rule provided in these proposed regulations should be applied in other cases and what presumptions or conventions would be necessary to assess whether the COI requirement has been satisfied in such other cases. The IRS and Treasury Department request comments in this regard.

This regulation is proposed to apply to transactions occurring pursuant to binding contracts entered into after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments regarding the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Christopher M. Bass, Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting, and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.368–1 is amended by:

1. Redesignating paragraphs (e)(2) through (e)(7) as (e)(3) through (e)(8), respectively.
2. Adding new paragraph (e)(2).
3. Newly redesignated paragraph (e)(7) is further redesignated as paragraph (e)(7)(i), and *Examples 10, 11,* and *12* are added.
4. Adding paragraph (e)(7)(ii).

The additions read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(e) * * *

(2) *Measuring continuity of interest*—(i) *In general.* In determining whether a proprietary interest in the target corporation is preserved, the consideration to be exchanged for the proprietary interests in the target corporation shall be valued as of the end of the last business day before the first date there is a binding contract to effect the potential reorganization, provided the consideration is fixed in such contract and includes only stock of the issuing corporation and money.

(ii) *Binding contract*—(A) *In general.* A binding contract is an instrument enforceable under applicable law against the parties to the instrument. The presence of a condition outside the control of the parties (including, for example, regulatory agency approval) shall not prevent an instrument from being a binding contract. Further, the fact that insubstantial terms remain to be negotiated by the parties to the contract, or that customary conditions remain to be satisfied, shall not prevent an instrument from being a binding contract. If a term of a binding contract that relates to the amount or type of the consideration the target shareholders will receive in a potential reorganization is modified before the closing date of the potential reorganization, and the contract as modified is a binding contract, the date of the modification shall be treated as the first date there is a binding contract.

(B) *Tender offers.* For purposes of this paragraph (e)(2), a tender offer that is subject to section 14(d) of the Securities and Exchange Act of 1934 [15 U.S.C. 78n(d)(1)] and Regulation 14D [17 CFR 240.14d–1 through 240.14d–101] and is not pursuant to a binding contract, is treated as a binding contract made on the date of its announcement, notwithstanding that it may be modified by the offeror or that it is not enforceable against the offerees. If a modification of such a tender offer is subject to the provisions of Regulation 14d–6(c) [17 CFR 240.14d–6(c)] and relates to the amount or type of the consideration received in the tender offer, then the date of the modification shall be treated as the first date there is a binding contract.

(iii) *Fixed consideration*—(A) *In general.* Consideration is fixed in a contract if the contract states the number of shares of the issuing corporation and the amount of money, if any, to be exchanged for the proprietary interests in the target corporation. Placing part of the stock issued or money paid in escrow to secure customary target representations and warranties will not prevent the consideration from being fixed.

(B) *Special rule for shareholder elections.* Notwithstanding the provisions of paragraph (e)(2)(iii)(A) of this section, consideration is also treated as fixed if a target corporation shareholder has an election to receive stock and/or money in respect of target corporation stock and the contract states the minimum number of shares of the issuing corporation and the maximum amount of money to be exchanged for the proprietary interests in the target corporation. In this case, the determination of whether a proprietary interest in the target corporation is preserved shall be made by assuming the issuance of the minimum number of shares and the maximum amount of money allowable under the contract and without regard to the number of shares and amount of money actually exchanged thereafter for proprietary interests in the target corporation.

(iv) *Effective date.* Paragraph (e)(2) applies to transactions occurring pursuant to binding contracts entered into after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

(7)(i) Examples. * * *

* * * * *

Example 10. Fixed consideration on signing date. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 2 of Year 1. Pursuant to the contract, the T shareholders will receive 40 P shares and $60 in exchange for all of the outstanding stock of T. Ten of the P shares, however, will be placed in escrow to secure customary target representations and warranties. At the end of the day on January 2 of Year 1, the P stock trades for $1 per share. On June 1 of Year 1, the P stock trades for $.25 per share. Under paragraph (e)(2) of this section, there is a binding contract with fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock as of the end of the day on January 2 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for $40 of P stock and $60, the transaction preserves a substantial part of the

value of the proprietary interest in T. Therefore, the transaction satisfies the continuity of interest requirement.

Example 11. Modification of binding contract. The facts are the same as in Example 10, except that on April 1 of Year 1, the parties modify their contract. Pursuant to the modified contract, which is a binding contract, the T shareholders will receive 50 P shares and $60 in exchange for all of the outstanding T stock. At the end of the day on March 31 of Year 1, the P stock trades for $.80 per share. Under paragraph (e)(2) of this section, although there was a binding contract with fixed consideration as of January 3 of Year 1, terms of that contract relating to the consideration to be provided to the target shareholders were modified on April 1 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock as of the end of the day on March 31 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for $40 of P stock and $60, the transaction preserves a substantial part of the value of the proprietary interest in T. Therefore, the transaction satisfies the continuity of interest requirement.

Example 12. The facts are the same as in *Example 11* except that, at the end of the day on March 31 of Year 1, the P stock trades for $.51 per share. As in *Example 11,* whether the transaction satisfies COI is determined by reference to the value of the P stock as of the end of the day on March 31 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for $25.50 of P stock and $60, a substantial part of the value of the proprietary interest in T is not preserved. Therefore, the transaction does not satisfy the continuity of interest requirement.

(ii) *Effective date.* Paragraph (e)(7) *Examples 10, 11,* and *12* apply to transactions occurring pursuant to binding contracts entered into after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Approved: June 29, 2004.

Nancy Jardini,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–18271 Filed 8–9–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–154077–03]

RIN 1545–BC71

Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the application of the unified partnership audit procedures to disputes regarding the ownership of residual interests in a Real Estate Mortgage Investment Conduit (REMIC). These regulations will affect taxpayers that invest in REMIC residual interests.

DATES: Written or electronically generated comments and requests for a public hearing must be received by November 8, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–154077–03), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–154077–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs* or the Federal eRulemaking Portal at *www.regulations.gov* (IRS—REG–154077–03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Arturo Estrada, (202) 622–3900(not a toll-free number); concerning the submissions of comments, or a request for a public hearing, LaNita VanDyke (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This proposed regulation amends 26 CFR part 1 under section 860F of the Internal Revenue Code (Code) relating to the application of the unified partnership audit procedures of subchapter C of chapter 63 of the Code to REMICs and the holders of residual interests. Section 860F(e) provides that a REMIC is treated as a partnership (and holders of residual interests in that REMIC shall be treated as partners) for purposes of subtitle F of the Code, which includes the unified partnership audit procedures. The taxable income of a holder of a REMIC residual interest is determined under the REMIC provisions of part IV of subchapter M, which require the holder to take into account its daily portion of the REMIC's taxable income or net loss for each day during the taxable year on which the holder holds its interest. Section 860C(a)(1). The provisions of subchapter K relating to the determination of the taxable income of a partnership and its partners do not apply to REMICs or the holders of REMIC residual interests. Section 860A(a).

Questions have arisen regarding whether the identity of the holder of a REMIC residual interest is treated as a partnership item for purposes of the unified partnership audit procedures. Questions also have arisen regarding the applicability of the unified partnership audit procedures when a determination is made under the REMIC regulations to disregard certain transfers of REMIC residual interests and continue to treat the transferor as the holder of the transferred REMIC residual interests. See §§ 1.860E–1(c) and 1.860G–3.

The IRS and Treasury Department have determined that the identity of a holder of a REMIC residual interest is more appropriately determined at the residual interest holder level than at the REMIC entity level.

Explanation of Provisions

The proposed regulations provide that the determination of the identity of a holder of a REMIC residual interest is not a partnership item for purposes of the unified partnership audit procedures as applied to REMICs, whether or not such determination involves the application of a disregarded transfer rule. Unlike the identity of a partner in a partnership subject to subchapter K, the identity of the holder of a REMIC residual interest does not affect the calculation of the REMIC's taxable income or net loss.

Proposed Dates of Applicability

These regulations are proposed to apply after December 31, 1986. *See* § 1.860A–1(b)(1)(ii).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and

eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Arturo Estrada, Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 860F–4 issued under 26 U.S.C. 860G(e) and 26 U.S.C. 6230(k).* * *

Par. 2. In § 1.860F–4, paragraph (a) is amended by adding a sentence at the end to read as follows:

§ 1.860F–4 REMIC reporting requirements and other administrative rules.

(a) * * * The identity of a holder of a residual interest in a REMIC is not treated as a partnership item with respect to the REMIC for purposes of subchapter C of chapter 63.

* * * * *

Nancy J. Jardini,

Acting Deputy Commissioner of Services and Enforcement.

[FR Doc. 04–18269 Filed 8–9–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 49

[REG–163909–02]

RIN 1545–BB75

Collected Excise Taxes; Duties of Collector

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the obligations of persons that receive payments for air transportation or communications services subject to excise tax when persons liable for the tax refuse to pay the tax. The text of those temporary regulations also serves as the text of these proposed regulations. These proposed regulations affect persons liable for those taxes and persons that receive payments subject to tax.

DATES: Written and electronic comments and requests for a public hearing must be received by November 8, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–163909–02), room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–163909–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *www.irs.gov/regs,* or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–163909–02).

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Publication and Regulations Unit, (202) 622–7180; concerning the regulations, Taylor Cortright, (202) 622–3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

These proposed regulations relate to the obligations of persons that receive payments for air transportation or communications services subject to excise tax when persons liable for the tax refuse to pay the tax. These proposed regulations would amend the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49). The text of temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Patrick S. Kirwan, 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 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 49

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

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 40 and 49 are proposed to be amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read, in part, as follows:

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

Par. 2. Section 40.6302(c)–3 is amended by revising paragraph (b)(2)(ii)(B) to read as follows:

§ 40.6302(c)–3 Special rules for use of Government depositaries under chapter 33.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) [The text of this proposed paragraph is the same as the text of § 40.6302(c)–3T(b)(2)(ii)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

PART 49—FACILITIES AND SERVICES EXCISE TAXES

Par. 3. The authority citation for part 49 continues to read in part as follows:

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

Par. 4. Section 49.4291–1 is amended by revising the fourth sentence to read as follows:

§ 49.4291–1 Persons receiving payment must collect tax.

* * * [The text of this proposed sentence is the same as the text of § 49.4291–1T published elsewhere in this issue of the **Federal Register**].

* * *

Approved: June 21, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–18161 Filed 8–9–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA88

TRICARE Program; Rare Diseases Definition and Partial List of Examples of Unproven Drugs, Devices, Medical Treatments or Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed Rule.

SUMMARY: This proposed rule revises the definition of rare diseases, clarifies case-by-case review of benefits for rare diseases, and removes the partial list of examples of unproven drugs, devices, medical treatments or procedures.

DATES: Written comments received at the address indicated below by October 12, 2004, will be accepted.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission or e-mail. Mail written comments to the following address ONLY: TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9066. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

FOR FURTHER INFORMATION CONTACT: René Morrell, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3618.

SUPPLEMENTARY INFORMATION: TRICARE supplements the availability of health care in military hospitals and clinics.

Rare Diseases

On January 6, 1997, the Office of the Secretary of Defense published a final rule in the **Federal Register** (62 FR 627–631) clarifying the TRICARE exclusion of unproven drugs, devices, medical treatments and procedures and adding the TRICARE definition of rare diseases. This rule also added the provision for reviewing benefits for rare diseases on a case-by-case basis. Currently, TRICARE defines a rare disease as one which affects fewer than one in 200,000 Americans. The basis for this definition was not documented. Upon further review, we propose to revise our definition to be more in compliance with the definition of other Federal agencies and national organizations specializing in the identification of rare diseases. Our revised definition is based on the following:

(1) For the purpose of designating drugs for rare diseases or conditions, the Food and Drug Administration defines the term rare disease, in part, as any disease or condition which affects less than 200,000 persons in the United States (21 U.S.C. 360(bb)(a)(2)).

2. Section 3 of the Rare Diseases Act of 2002, Public Law 107–28, defines a rare disease or condition as any disease or condition that affects less than 200,000 persons in the United States.

3. The National Institutes of Health Office of Rare Diseases considers an orphan or rare disease or condition to have a prevalence of less than 200,000 affected individuals in the United States.

4. The National Organization for Rare Disorders defines a rare or orphan disease as affecting fewer than 200,000 people in the United States.

We also propose to clarify the provision for review of benefits for rare diseases on a case-by-case basis. We are not removing the provision for case-by-case review only clarifying that case-by-case review is not required for treatment that has already been established as safe and effective.

Partial List of Examples of Unproven Drugs, Devices, Medical Treatment or Procedures

The current regulation and program policy exclude coverage of unproven drugs, devices, medical treatment or procedures. The current regulation and program policy provide a partial list of examples of unproven drugs, devices, medical treatment or procedures that are excluded from benefits. The intent of this partial list was to provide information on specific examples of emerging drugs, devices, medical treatment or procedures determined to be unproven by TRICARE based on review of current reliable evidence. Due to the rapid and extensive changes in medical technology it is not feasible to maintain this list in the regulation. Removal of the partial list of examples does not change the exclusion of unproven drugs, devices, medical treatment or procedures. Removal of the partial list of examples does not change the process TRICARE follows in determining for purposes of benefit coverage when a drug, device, medical treatment or procedure has moved from the status of unproven to proven medical effectiveness. Removal of the partial list of examples does not mean the drugs, devices, medical treatment or procedures cited in the partial list have now been determined to be proven. The intent of this revision is to ensure that benefit determinations are made based on current reliable evidence rather than relying on outdated regulatory provisions.

Regulatory Procedures

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a Regulation which would have a significant impact on a substantial number of small entities.

This rule has been designated as significant and has been reviewed by the Office Management and Budget as required under the provisions of E.O. 12866 however, it would not have a significant impact on small entities. The changes set forth in the proposed rule are minor revisions to the existing regulation. In addition, this proposed rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

This is a proposed rule. Public comments are invited.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2, paragraph (b) is proposed to be amended by revising the definition of ''Rare Diseases'' to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Rare Diseases. TRICARE defines a rare disease as any disease or condition that affects less than 200,000 persons in the United States.

* * * * *

3. Section 199.4 is proposed to be amended by revising paragraph (g)(15)(ii) and removing paragraph (g)(15)(iv) as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) * * *

(15) * * *

(ii) CHAMPUS benefits for rare diseases are reviewed on a case-by-case basis by the Director, TRICARE Management Activity, or a designee. Case-by-case review is not required for drugs, devices, medical treatments and procedures that have already been established as safe and effective for treatment of rare diseases. In reviewing the case, the Director, or a designee, may consult with any or all of the following sources to determine if the proposed therapy is considered safe and effective.

* * * * *

Dated: August 4, 2004.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–18182 Filed 8–9–04; 8:45 am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2003–SC–0001–200416(b); FRL–7799–4]

Approval and Promulgation of Implementation Plans; South Carolina: Source Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) on September 4, 2002, and July 25, 2003. The proposed revisions are to establish, standardize, and clarify source testing requirements. South Carolina is also changing the title of Regulation 62.1 to reflect that it contains general provisions. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 9, 2004.

ADDRESSES: Comments may be submitted by mail to: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can also be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: July 27, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04–18138 Filed 8–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7799–2]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the San Fernando Valley Basin Area 3, Verdugo Study Area Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region IX is publishing this Notice of Intent to Delete the San Fernando Valley Basin Area 3, Verdugo Study Area Superfund Site (Site) from the National Priorities List (NPL), and requests public comments on this

action. The Site is in the eastern portion of the San Fernando Valley Basin in Los Angeles, California.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The NCP sets criteria that must be met to delete a site from the NPL. EPA, in consultation with the State of California, has determined that the Site meets the following criterion for site deletion: ''The remedial investigation has shown that the release poses no significant threat to public health or the environment, and, therefore, taking of remedial measures is not appropriate.'' However, this deletion does not preclude future actions under Superfund, based on new information or conditions.

In the Rules and Regulations section of today's **Federal Register**, we are concurrently publishing a Direct Final Notice of Deletion for the Site, because we view this as a noncontroversial action and anticipate no adverse comments. This is a streamlined approach for site deletion. We have provided further information on the Site and explained our reasons for this deletion in Section IV. of the Direct Final Notice of Deletion.

If we receive no adverse comment(s) on this Notice of Intent to Delete or the Direct Final Notice of Deletion, the deletion will become final 30 days after the end of the public comment period. If we receive adverse comment(s), we will publish a timely withdrawal of the Direct Final Notice of Deletion before it takes effect. We will, as appropriate, prepare a Responsiveness Summary to address public comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will not be another comment period on the Notice of Intent to Delete/Direct Final Notice of Deletion. Any parties interested in commenting must do so at this time.

DATES: Comments concerning deletion of this Site must be received by September 9, 2004.

ADDRESSES: Written comments should be addressed to Jackie Lane, Community Involvement Coordinator, U.S. EPA Region IX (SFD–3), 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3236.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Remedial Project Manager, U.S. EPA Region IX (SFD 7–1), 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3960.

SUPPLEMENTARY INFORMATION: For additional Site information, see the Direct Final Notice of Deletion which is located in the Rules and Regulations section of this **Federal Register**.

Information Repositories: Information supporting the deletion is available in the Deletion Docket at the EPA Region IX Records Center and at the Information Repositories. The Information Repositories have been established to provide comprehensive Site related information, at the following addresses:

U.S. EPA Superfund Record Center, 95 Hawthorne Street, San Francisco, California 94105–3901, (415) 536–2000.

La Canada Library, 4545 Oakwood Ave., La Canada CA 91011, (818) 952–0603.

Los Angeles Department of Water and Powers, 111 North Hope Street, Rm. 516, Los Angeles, CA 90012 (213) 367–1995.

Glendale Public Library, 222 East Harvard Street, Glendale, CA 91205, (818) 548–2021.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 29, 2004.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 04–18141 Filed 8–9–04; 8:45 am]

BILLING CODE 6560–50–P

DENALI COMMISSION

45 CFR Chapter IX

National Environmental Policy Act Implementing Procedures

AGENCY: Denali Commission.

ACTION: Proposed rule.

SUMMARY: The Denali Commission proposes to establish 45 CFR chapter IX and to add regulations for implementing the National Environmental Policy Act of 1969 (NEPA) and invites public comment on the proposed rule. All comments will be considered in preparing the final version.

DATES: Comments and related material must be received by September 9, 2004.

ADDRESSES: Submit comments to the Denali Commission, Attn: NEPA Comments; 510 L Street, Suite 410; Anchorage, AK 99501. Comments may be inspected in Suite 410 between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Al Ewing, Denali Commission; 510 L Street, Suite 410; Anchorage, AK 99501. Telephone: (907) 271–1414. E-mail: *communications@denali.gov.*

SUPPLEMENTARY INFORMATION:

Background

Introduced by Congress in 1998, the Denali Commission (Commission) is an innovative federal-state partnership designed to provide critical utilities, infrastructure, and economic support throughout Alaska. With the creation of the Commission, Congress acknowledged the need for increased inter-agency cooperation and focus on Alaska's remote communities. Since its first meeting in April 1999, the Commission is credited with providing numerous cost-shared infrastructure projects across the State that exemplify effective and efficient partnership between federal and state agencies, and the private sector.

The National Environmental Policy Act (NEPA) and implementing regulations promulgated by the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508) establish a broad national policy to protect the quality of the human environment and to ensure that environmental considerations and associated public concerns are given careful attention and appropriate weight in all decisions of the federal government. Sections 102(2) of NEPA and 40 CFR 1505.1 and 1507.3 require federal agencies to develop and, as needed, revise implementing procedures consistent with the CEQ regulations. The Denali Commission proposes the following as policy and procedures for complying with NEPA and CEQ regulations.

Section 1508.4 of the CEQ regulations provides for categories of action that do not individually or cumulatively have significant effects on the human environment, and therefore, do not require the preparation of an environmental impact statement (EIS) or an environmental assessment (EA). In keeping with both the Congressional mandate of interagency cooperation and the CEQ's goals of eliminating duplication and reducing delay, per the CEQ suggestion, the Denali Commission examined existing categorical exclusions from other federal agencies to determine whether similar categorical

exclusions might be applicable to Denali Commission actions that are similar in nature, scope, intensity and effect. Attachment A to part 900 contains a list of proposed categorical exclusions.

Request for Comment

The Denali Commission encourages interested persons to submit written data and comments. Written comments should include the name, address, and contact information of the submitter and should be submitted to the address provided above. A stamped, self-addressed postcard or envelope should be submitted with comments for acknowledgement of receipt. The Denali Commission will consider all comments received during the comment period.

List of Subjects in 45 CFR Part 900

Administrative practice and procedure, Environmental impact statements, Environmental protection.

For the reasons stated in the preamble, the Denali Commission proposes to establish title 45 of the CFR, chapter IX, consisting of parts 900 through 999, and to add part 900 reading as follows:

CHAPTER IX—DENALI COMMISSION

PART 900—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Subpart A—General

Sec.
900.101 Purpose.
900.102 Environmental policy.
900.103 Terms and abbreviations.
900.104 Applicability.
900.105 Applicant responsibility.
900.106 Denali Commission responsibility.
900.107 Role of lead and cooperating agencies.
900.108 Public involvement.

Subpart B—Environmental Review Procedures

900.201 Environmental review process.
900.202 Emergency actions and variance.
900.203 Determination of Federal actions.
900.204 Categorical exclusions.
900.205 Environmental assessment.
900.206 Environmental impact statement.

Subpart C—Environmental Assessments

900.301 Content.
900.302 Adoption and incorporation by reference.
900.303 Public involvement.
900.304 Actions resulting from assessment.
900.305 Findings of no significant impact.
900.306 Proposals normally requiring an EA.

Subpart D—Environmental Impact Statements

900.401 Notice of Intent and Scoping.
900.402 Preparation and filing of draft and final EISs.
900.403 Supplemental EIS.
900.404 Adoption.
900.405 Proposals normally requiring an EIS.

Appendix A to Part 900—Categorical Exclusions

Authority: 42 U.S.C. 3121; 4321; 40 CFR parts 1500–1508.

Subpart A—General

§ 900.101 Purpose.

This regulation (45 CFR part 900) prescribes the policies and procedures of the Denali Commission (Commission) for implementing the National Environmental Policy Act of 1969 (NEPA) as amended (42 U.S.C. 4321–4347); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500 through 1508); and other related Federal environmental laws, statutes, regulations, and Executive Orders that apply to Commission programs and administrative actions. This part supplements, and is to be used in conjunction with, 40 CFR parts 1500 through 1508.

§ 900.102 Environmental policy.

It is the policy of the Commission to:

(a) Comply with the procedures and policies of NEPA and other related environmental laws, regulations, and orders applicable to Commission actions;

(b) Provide guidance to applicants responsible for ensuring that proposals comply with all appropriate Commission requirements;

(c) Integrate NEPA requirements and other planning and environmental review procedures required by law or Commission practice so that all such procedures run concurrently rather than consecutively;

(d) Encourage and facilitate public involvement in Commission decisions that affect the quality of the environment;

(e) Use the NEPA process to identify and assess reasonable alternatives to proposed Commission actions to avoid or minimize adverse effects upon the quality of the human environment;

(f) Use all practicable means consistent with NEPA and other essential considerations of national policy to restore or enhance the quality of the human environment and avoid or minimize any possible adverse effects of the Commission's actions upon the quality of the human environment; and

(g) Consider and give important weight to environmental factors, along with other societal needs, in developing proposals and making decisions in order to achieve a proper balance between the development and utilization of natural, cultural and human resources and the protection and enhancement of environmental quality (*see* NEPA section 101 and 40 CFR 1508.14).

§ 900.103 Terms and abbreviations.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508.

(1) *Action.* A project, program, plan, or policy, as discussed in 40 CFR 1508.18, subject to the Commission's control and responsibility.

(2) *Applicant.* The partner or organization applying for financial assistance or other approval.

(3) *Commission proposal (or proposal).* A proposal, whether initiated by the Commission, another Federal agency, or an applicant, for any action that requires a Commission decision, as discussed at 40 CFR 1508.23.

(4) *Federal Co-Chair.* One of the seven members of the Commission, appointed by the Secretary of Commerce, as defined in the Denali Commission Act of 1998, 42 U.S.C. 3121.

(b) The following abbreviations are used throughout this part:

(1) CATEX—Categorical exclusions;

(2) CEQ—Council on Environmental Quality;

(3) EA—Environmental assessment;

(4) EIS—Environmental impact statement;

(5) FONSI—Finding of no significant impact;

(6) NEPA—National Environmental Policy Act of 1969, as amended;

(7) NOI—Notice of intent;

(8) ROD—Record of decision.

§ 900.104 Applicability.

The Denali Commission was created to deliver the services of the Federal government in the most cost-effective manner practicable. In order to reduce administrative and overhead costs, the Commission partners with Federal and State agencies and commonly depends on these agencies for project management. Consequently, the Commission generally relies on the expertise and processes already in use by partnering Federal and State agencies to prepare NEPA analysis and documents.

§ 900.105 Applicant responsibility.

Applicants, under Commission direction (contact Chief of Staff at 907–271–1414), shall generally assume the following responsibilities of environmental review:

(a) Comply with the provisions of NEPA (42 U.S.C. 4321–4347), the CEQ

regulations (40 CFR parts 1500 through 1508), and the requirements set forth in this part;

(b) Prepare and disseminate the applicable environmental documentation concurrent with a proposal's engineering, planning, and design;

(c) Submit all environmental documents created pursuant to this part to the Commission for review and approval before public distribution;

(d) Create and distribute public notices;

(e) Coordinate public hearings and meetings as required;

(f) Participate in all Commission-conducted hearings or meetings;

(g) Consult with the Commission prior to obtaining the services of an environmental consultant; in the case that an environmental impact statement (EIS) is required, the consultant or contractor will be selected by the Commission;

(h) Implement mitigation measures stated in environmental documents.

§ 900.106 Denali Commission responsibility.

(a) The Denali Commission's Chief of Staff shall provide environmental guidance to the Commission's approving official and to the applicant;

(b) The Commission's approving official shall provide guidance and oversight in the identification and development of required documentation;

(c) The Commission's approving official shall make an independent evaluation of the environmental issues, take responsibility for the scope and content of the environmental document (EA or EIS), and make the environmental finding, where applicable.

§ 900.107 Role of lead and cooperating agencies.

In accordance with § 900.104, the Commission will defer lead agency role to other Federal agencies whenever appropriate in accordance with 40 CFR 1501.5, and the Commission will exercise its role as a cooperating agency in accordance with 40 CFR 1501.6.

§ 900.108 Public involvement.

(a) Interested persons and the affected public shall be provided notice of the availability of environmental documents, NEPA-related hearings, and public meetings.

(b) Applicants, when conducting the NEPA process, shall provide the opportunity for public participation and shall consider the public comments on the proposal as described in subparts C and D to this part.

(c) Interested persons can obtain information or status reports on EISs and other elements of the NEPA process from the Commission's office at 510 L Street, Suite 410; Anchorage, Alaska 99501. Telephone: (907) 271–1414.

Subpart B—Environmental Review Procedures

§ 900.201 Environmental review process.

(a) *General.* The environmental review process is the investigation of potential environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.

(b) *Early coordination.* Applicants will begin the environmental review process as soon as Denali Commission assistance is projected. Environmental issues shall be identified and considered early in the proposal planning process. Applicants shall use a systematic, interdisciplinary approach that includes community involvement and intergovernmental coordination to expand the potential sources of information and identify areas of concern. Environmental permits and other forms of approval, concurrence, or consultation may be required. The planning process shall include permitting and other review processes to ensure that necessary information will be collected and provided to permitting and reviewing agencies in a timely manner.

§ 900.202 Emergency actions and variance.

(a) *Emergency actions requiring EISs.* The Commission may take an action without observing all provisions of this part or the CEQ Regulations (40 CFR parts 1500 through 1508), in accordance with 40 CFR 1506.11, in emergency situations that demand immediate action and require preparation of an EIS. The Commission shall notify the CEQ as early as possible when it is considering such action. The Commission shall document emergency actions and identify impacts from the actions taken, as well as further mitigation necessary. Further analyses and documentation may be required.

(b) *Emergency actions requiring EAs.* In emergency situations that demand immediate action and require preparation of an environmental assessment (EA), any variance from the requirements of this part (45 CFR part 900) must be based on the interests of national security or public health, safety, or welfare. Emergency actions must have the advance written approval of the Federal Co-Chair or his/her designee. The Commission shall publish a notice in the **Federal Register** specifying the variance granted and its basis. Under no circumstances is the Federal Co-Chair or his/her designee authorized to waive or grant a variance from any requirement of the CEQ Regulations, except as provided for in those regulations.

(c) *Reduction of time periods.* In the interests of national security or the public health, safety, or welfare, the Commission may reduce any time periods that are not required by the CEQ Regulations. The Commission shall publish a notice in the **Federal Register** and notify interested parties (*see* 40 CFR 1506.6) specifying the revised time periods and the rationale for the reduction.

§ 900.203 Determination of Federal actions.

(a) The Commission shall determine, under the procedures detailed in the CEQ Regulations (40 CFR parts 1500 through 1508) and this part, whether any Commission proposal:

(1) Is statutorily exempt from a portion or all of the NEPA process;

(2) Is categorically excluded from preparation of either an EIS or an EA;

(3) Requires preparation of an EA; or

(4) Requires preparation of an EIS.

(b) Notwithstanding any other provision of this part, the Commission may prepare a NEPA document for any Commission action at any time in order to further the purposes of NEPA. This NEPA document may be done to analyze the consequences of ongoing activities, to support Commission planning, to assess the need for mitigation, to disclose fully the potential environmental consequences of Commission actions, or for any other reason. Documents prepared under this paragraph shall be prepared in the same manner as Commission documents prepared under paragraph (a) of this section.

§ 900.204 Categorical exclusions.

(a) *General.* A categorical exclusion (CATEX) is defined by 40 CFR 1508.4 as an action having no significant individual or cumulative effect on the human environment and, for which in the absence of extraordinary circumstances or sensitive resources, neither an EA nor an EIS is required. Actions consistent with any of the categories listed in section A of appendix A of this part are eligible for categorical exclusion and no documentation is required. All other activities, as listed in section B of appendix A, require satisfactory completion of a CATEX checklist.

(b) *Organization.* All CATEXs may be applied by any organizational element of the Commission. The sectional divisions in Appendix A of this part are solely for purposes of organization of that appendix and are not intended to be limiting.

(c) *Extraordinary circumstances.* Any action that normally would be classified as a CATEX but could involve extraordinary circumstances will require appropriate environmental review to determine if the CATEX classification is proper. Extraordinary circumstances to be considered include those likely to:

(1) Have a reasonable likelihood of significant impacts on public health, public safety, or the environment;

(2) Have effects on the environment that are likely to be highly controversial or involve unresolved conflicts concerning alternative uses of available resources;

(3) Have possible effects on the human environment that are highly uncertain, involve unique or unknown risks, or are scientifically controversial;

(4) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects;

(5) Relate to other actions with individually insignificant but cumulatively significant environmental effects;

(6) Have a greater scope or size than is normal for the category of action;

(7) Have the potential to degrade already existing poor environmental conditions or to initiate a degrading influence, activity, or effect in areas not already significantly modified from their natural condition;

(8) Have a disproportionately high and adverse effect on low income or minority populations; or

(9) Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or adversely affect the physical integrity of such sacred sites.

(d) *Sensitive resources.* A proposal that adversely affects environmentally sensitive resources may not be categorically excluded unless the impact has previously been resolved through another environmental process, such as coordination or consultation under the Coastal Zone Management Act or National Historic Preservation Act. Environmentally sensitive resources to be considered include the following:

(1) Properties listed, or eligible for listing, in the National Register of Historic Places;

(2) Species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or their habitat; or

(3) Natural resources and unique geographic characteristics such as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; and other ecologically significant or critical areas.

§ 900.205 Environmental assessment.

(a) An EA is required for all proposals, except those exempt or categorically excluded under this part, and those requiring or determined to require an EIS. EAs provide sufficient evidence and analysis to determine whether to prepare an EIS or a finding of no significant impact (FONSI).

(b) In addition, an EA may be prepared on any action at any time in order to assist in planning and decisionmaking, to aid in the Commission's compliance with NEPA when no EIS is necessary, or to facilitate EIS preparation.

(c) EAs shall be prepared in accordance with subpart C of this part and shall contain analyses to support conclusions regarding environmental impacts.

§ 900.206 Environmental impact statement.

An EIS is required when the project is determined to have a potentially significant impact on the human environment. EISs shall be prepared in accordance with subpart D of this part.

Subpart C—Environmental Assessments

§ 900.301 Content.

(a) An EA must include brief discussions of the need for the proposal; of alternatives to the proposal as required by NEPA section 102(2)(E); and of the environmental impacts of the proposal and alternatives. The EA must also include a listing of agencies and persons consulted.

(b) An EA may describe a broad range of alternatives and proposed mitigation measures to facilitate planning and decisionmaking.

(c) The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that those requirements can be met.

(d) The level of detail and depth of impact analysis will normally be limited to the minimum needed to determine the significance of potential environmental effects.

§ 900.302 Adoption and incorporation by reference.

(a) An environmental document prepared for a proposal before the Commission by another agency, entity, or person (including an applicant) may be adopted as an EA if, upon independent evaluation by the responsible Commission official, it is found to comply with this part and relevant provisions of 40 CFR parts 1500 through 1508.

(b) A responsible official may use an environmental document that, upon independent evaluation, is found not to comply with the requirements of an EA, if the responsible official incorporates the document by reference in accordance with 40 CFR 1502.21 and augments it as necessary to meet the requirements of an EA or an EIS.

(c) If such an EA is adopted or incorporated by reference, the responsible Commission official shall prepare a notice of availability and proposed FONSI; or, if the EA results in the decision to do an EIS, the responsible Commission official shall prepare a notice of intent (NOI). In either case, the FONSI or NOI shall acknowledge the origin of the EA and take full responsibility for its scope and content.

§ 900.303 Public involvement.

The public must be provided notice of the availability of EAs in accordance with 40 CFR 1506.6. Commission approval is required before an EA is made available to the public and the notice of availability is published. The applicant is responsible for making the EA available for public inspection and sending an EA notice of availability to the affected units of Alaska Native/American Indian tribal organizations, and Federal, State and local government. Final Commission action will be taken after public comments are reviewed and considered.

§ 900.304 Actions resulting from assessment.

(a) *Accepted without modification.* A proposal may be accepted without modifications if the EA indicates that the proposal does not have significant environmental impacts and a FONSI is prepared.

(b) *Accepted with modification.* If an EA identifies potentially significant environmental impacts, the proposal may be modified to eliminate such impacts. Proposals so modified may be accepted if the proposed changes are evaluated in an EA and a FONSI is

prepared. The FONSI shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable and describe applicable monitoring and enforcement measures intended to ensure the implementation of the mitigation measures.

(c) *Rejected.* A proposal should be rejected if significant and unavoidable adverse environmental impacts would still exist after modifications have been made to the proposal and an EIS is not prepared.

(d) *Prepare an EIS.* A proposal shall require an EIS, prepared in accordance with subpart D to this part, if the EA indicates significant environmental impacts.

§ 900.305 Findings of no significant impact.

(a) *Definition.* Finding of no significant impact means a document by the Commission briefly presenting the reasons why an action, not otherwise excluded as provided in subpart B of this part, will not have a significant impact on the human environment and for which an EIS will not be prepared.

(b) *Applicant responsibility.* The applicant shall furnish the Commission with a copy of the EA; the public hearing summary or minutes, where applicable; and copies of any written comments received and responses thereto. In addition, the applicant shall recommend the Commission prepare a FONSI.

(c) *Content.* A FONSI shall include the EA or a summary of it and shall note any other environmental documents related to it (40 CFR 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

(d) *Public involvement.* The Commission shall make the FONSI available to the public and to the affected units of Alaska Native/American Indian tribal organizations, and Federal, State and local government as specified in 40 CFR 1506.6.

(e) *Special circumstances.* The FONSI notice of availability will be made available for 30 days in cases described in 40 CFR 1501.4(e)(2).

§ 900.306 Proposals normally requiring an EA.

Proposals that normally require preparation of an EA include the following:

(a) Initial field demonstration of a new technology;

(b) Field trials of a new product or new uses of an existing technology;

(c) Alteration of a sensitive resource, as defined in § 900.204(d), by physical, chemical or biological means.

Subpart D—Environmental Impact Statements

§ 900.401 Notice of Intent and Scoping.

(a) The Commission shall publish a NOI, as described in 40 CFR 1508.22, in the **Federal Register** as soon as practicable after a decision is made to prepare an EIS, in accordance with 40 CFR 1501.7. If there will be a lengthy period of time between the Commission's decision to prepare an EIS and its actual preparation, the Commission may defer publication of the NOI until a reasonable time before preparing the EIS, provided that the Commission allows a reasonable opportunity for interested parties to participate in the EIS process. Through the NOI, the Commission shall invite comments and suggestions on the scope of the EIS.

(b) Publication of the NOI in the **Federal Register** shall begin the public scoping process. The public scoping process for a Commission EIS shall allow a minimum of 30 days for the receipt of public comments.

§ 900.402 Preparation and filing of draft and final EISs.

(a) *General.* Except for proposals for legislation as provided for in 40 CFR 1506.8, EISs shall be prepared in two stages and may be supplemented.

(b) *Format.* The EIS format recommended by 40 CFR 1502.10 shall be used unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

(c) *Applicant & Commission responsibility.* The draft or final EIS shall be prepared by the Commission in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance from the Commission.

(d) *Third-party consultants.* A third-party consultant selected by the Commission or in cooperation with a cooperating agency may prepare the draft or final EIS. The Commission shall provide guidance, participate in its preparation, independently evaluate, and take responsibility for the draft or final EIS.

(e) *Filing.* After a draft or final EIS has been prepared, the Commission and applicant shall concurrently file the draft or final EIS with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability in accordance with 40 CFR 1506.9 and 1506.10.

(f) *Draft to final EIS.* When a final EIS does not require substantial changes from the draft EIS, the Commission may document required changes in errata sheets, insertion pages, and revised sections. The Commission will then circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as its final EIS. The Commission will not circulate the draft EIS again; however, the Commission will provide the draft EIS if requested.

(g) *ROD.* A record of decision (ROD) will be prepared in accordance with 40 CFR 1505.2.

§ 900.403 Supplemental EIS.

(a) Supplements to either draft or final EISs shall be prepared, as prescribed in 40 CFR 1502.9, when substantial changes are proposed in a project that are relevant to environmental concerns; or when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(b) Where action remains to be taken and the EIS is more than a year old, the Commission will review the EIS to determine whether it is adequate or requires supplementation.

(c) The Commission and applicant shall prepare, circulate and file a supplement to an EIS in the same fashion (exclusive of scoping) as a draft and final EIS. In addition, the supplement and accompanying administrative record shall be included in the administrative record for the proposal.

(d) An NOI to prepare a supplement to a final EIS will be published in those cases where a ROD has already been issued.

§ 900.404 Adoption.

(a) The Commission may adopt a federal draft or final EIS.

(b) If the actions covered by the original EIS and the proposal are substantially the same, the Commission shall recirculate it as a final statement. Otherwise, the Commission shall treat the statement as a draft and recirculate it.

(c) Where the Commission is a cooperating agency, it may adopt the EIS of the lead agency without recirculating it when, after an independent review of the EIS, the Commission concludes that its comments and suggestions have been satisfied.

§ 900.405 Proposals normally requiring an EIS.

The responsible official shall assure that an EIS will be prepared and issued for proposals when it is determined that any of the following conditions exist:

(a) The proposal may significantly affect the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or the growth and distribution of population;

(b) The effects resulting from any structure or facility constructed or operated under the proposal may conflict with local, regional or State land use plans or policies;

(c) The proposal may have significant adverse effects on wetlands, including indirect and cumulative effects, or any major part of a structure or facility constructed or operated under the proposal may be located in wetlands;

(d) The proposal may likely adversely affect species protected under the Endangered Species Act or their habitats, such as when a structure or a facility constructed or operated under the proposal may be located in the habitat;

(e) Implementation of the proposal may directly cause or induce changes that significantly:

(1) Displace population;

(2) Alter the character of existing residential areas;

(3) Adversely affect a floodplain.

Appendix A to Part 900—Categorical Exclusions

A. General Categorical Exclusions

Actions consistent with any of the following categories are eligible for a categorical exclusion:

A1. Routine administrative and management activities including, but not limited to, those activities related to budgeting, finance, personnel actions, procurement activities, compliance with applicable executive orders and procedures for sustainable or ''greened'' procurement, retaining legal counsel, public affairs activities (*e.g.*, issuing press releases, newsletters and notices of funding availability), internal and external program evaluation and monitoring (*e.g.*, site visits), database development and maintenance, and computer systems administration.

A2. Routine activities that the Commission does to support its program partners and stakeholders, such as serving on task forces, ad hoc committees or representing Commission interests in other forums.

A3. Approving and issuing grants for administrative overhead support.

A4. Approving and issuing grants for social services, education and training programs, including but not limited to support for Head Start, senior citizen programs, drug treatment programs, and funding internships, except for projects involving construction, renovation, or changes in land use.

A5. Approving and issuing grants for facility planning and design.

A6. Nondestructive data collection, inventory, study, research, and monitoring activities (*e.g.*, field, aerial and satellite surveying and mapping).

A7. Research, planning grants and technical assistance projects that are not reasonably expected to commit the Federal government to a course of action, to result in legislative proposals, or to result in direct development.

B. Program Categorical Exclusions

Actions consistent with any of the following categories are eligible for a categorical exclusion upon completion of the Denali Commission categorical exclusion checklist:

B1. Acquisition and installation of equipment including, but not limited to, EMS, emergency and non-expendable medical equipment (*e.g.*, digital imaging devices and dental equipment) and communications equipment (*e.g.*, computer upgrades) provided all requirements for permits, registrations, and licenses are met and provided the equipment involves use of generally accepted technology.

B2. Routine upgrade, repair, maintenance, replacement or minor renovations, and additions to buildings, roads, airfields, grounds, equipment, and other facilities including, but not limited to, roof replacement, foundation repair, ADA access ramp and door improvements, HVAC renovations, painting, floor system replacement, repaving parking lots and ground maintenance that do not result in a change in the functional use of the real property.

B3. Engineering studies and investigations, including soil boring and test well drilling, to gather data for the purpose of determining engineering feasibility and permitting facility design.

B4. Construction or lease of new facilities including, but not limited to, portable facilities, trailers, health care facilities, bulk commodity storage and power generation facilities where such lease or construction:

(a) Is at the site of an existing facility and the facility capacity is not substantially increased;

(b) Is for buildings of less than 12,000 square feet of useable space when less than five acres of surface land area are involved at a new site; or

(c) Is for projects other than buildings when one of the following conditions exist:

1. The project lies within existing boundaries of a previously disturbed site;

2. Less than two acres of surface land area involving known high-value wetlands are involved at a new site; or

3. Less than five acres of surface land area not involving high-value wetlands are involved at a new site.

B5. Actions associated with construction of sanitation facilities to serve rural homes and communities with the exception of the following actions: (a) Construction of a sanitary landfill at a new solid waste disposal site, and (b) Construction of a new wastewater treatment facility with direct discharge of treated sewage to surface waters.

B6. Construction of electric power stations (including switching stations and support facilities) with power delivery at 480 kV or below, modification (other than voltage increases) of existing stations and support facilities that could involve the construction of electric powerlines approximately ten miles in length or less, or relocation of existing electric powerlines approximately twenty miles in length or less, but not the integration of major new generation resources into a main transmission system.

B7. Construction of electric powerlines approximately ten miles in length or less that are not intended to integrate major new generation resources into a main transmission system.

B8. Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric powerlines approximately twenty miles in length or less to enhance environmental and land use values. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas.

Dated: July 29, 2004.

Jeffrey B. Staser,

Federal Co-Chair.

[FR Doc. 04–18100 Filed 8–9–04; 8:45 am]

BILLING CODE 3300–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 80

[WT Docket No. 04–257; RM–10743; FCC 04–171]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission addresses petitions for rulemaking that were filed by Maritel, Inc. (Maritel), a VHF public coast (VPC) station licensee, on May 16, 2003, and Mobex Network Services, LLC (Mobex), an automated maritime telecommunications system (AMTS) station licensee, on June 13, 2003. Both petitions seek additional flexibility for public coast station licensees. The Commission proposes to amend its rules to permit VPC and AMTS licensees to provide private mobile radio service to units on land. The proposed rule changes further the Commission's ongoing goal of establishing a regulatory framework that will enhance operational flexibility and enable maritime spectrum licensees to compete more effectively against other commercial mobile radio service

(CMRS) providers. The Commission tentatively concludes that the actions proposed herein will not adversely affect the essential purpose of the Maritime Services to promote safety of life and property at sea and on inland waterways. At the same time, the Commission tentatively concludes that Maritel's suggested broader rule changes, which would permit VPC licensees essentially to choose whether or not to comply with various regulatory obligations pertaining to the Maritime Services, are not in the public interest.

DATES: Written comments are due on or before October 12, 2004, and reply comments are due on or before November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), WT Docket No. 04–257, FCC 04–171, adopted on July 8, 2004, and released on July 30, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. In the NPRM, the Commission tentatively agrees that prohibiting VPC and AMTS licensees from providing private correspondence to mobile units on land appears to conflict with the Commission's goal of providing CMRS licensees with optimal operational flexibility in utilizing their authorized spectrum. Accordingly, the Commission proposes to permit VPC and AMTS licensees to provide private land mobile radio service to units on land by deleting the reference ''public correspondence'' in 47 CFR 80.123, and removing the discussion of ''ships'' in 47 CFR 80.475(c). The Commission also proposes to amend 47 CFR 20.9 to give AMTS geographic licensees the same flexibility as VPC geographic area licensees to choose between offering commercial and private services. The Commission seeks comment on these tentative conclusions. The Commission also seeks comment on how VPC and AMTS stations can technically and practically serve both maritime and land mobile interests in areas near navigable waterways, especially in the VPC service, where maritime and mobile users may utilize different equipment. In addition, the Commission seeks comment on how these providers can ensure that priority would always be given to maritime communications.

2. The Commission also tentatively agrees that AMTS stations providing private correspondence service should not be required to be interconnected to the public switched network. Consequently, the Commission proposes to retain the interconnection requirement for AMTS licensees providing public correspondence service, but to amend 47 CFR 80.475 to provide that such licensees may also provide non-interconnected service, and that AMTS licensees providing only private mobile radio service need not be interconnected. In this regard, the Commission also proposes to revise 47 CFR 80.5 to remove ''interconnected'' as a required characteristic of all AMTS operations.

3. The Commission declines to propose other rule changes requested by Maritel that would permit VPC geographic area licensees to choose whether to provide maritime public correspondence services; and to have VPC licensees governed by the rules and decisions applicable to the particular type of service they elect to provide, and not necessarily the rules governing the Maritime Services. The Commission is concerned that the rule changes requested by Maritel would undermine the core purpose of the Maritime Services—providing for the unique distress, operational, and personal communications needs of vessels at sea and on inland waterways.

I. Procedural Matters

A. Ex Parte Rules—Permit-but-Disclose Proceeding

4. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Paperwork Reduction Act of 1995

5. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–193, *see* 44 U.S.C. 3506(c)(4).

C. Comments

6. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 12, 2004 and reply comments on or before November 8, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

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.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get 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. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Filings can be sent first class by the U.S. Postal Service, by an overnight courier or hand and message-delivered. Hand and message-delivered paper filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Filings delivered by overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

8. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Jeffrey Tobias, Wireless Telecommunications Bureau, 445 12th St., SW., Room 3–A432, Washington, DC 20554. Such a submission should be

on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, WT Docket No. 04–257), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th St., SW., Room CY–B402, Washington, DC 20054.

II. Initial Regulatory Flexibility Analysis

9. As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the rules proposed or discussed in the NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM in WT Docket No. 04–257, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

A. Need for, and Objectives of, the Proposed Rules

10. In the NPRM, the Commission seeks comment on whether it is in the public interest, convenience, and necessity to provide VHF public coast stations and AMTS stations with the additional flexibility to offer non-interconnected private communications to units on land.

B. Legal Basis for Proposed Rules

11. The proposed action is authorized under sections 4(i), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 332(a) and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a) 302, 303(b), 303(f), 303(g), 303(r), 332(a) and 332(c).

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

12. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by adoption of rules discussed in the NPRM.

13. The proposed rules would affect licensees using AMTS and VHF public coast spectrum. In the *Third Report and Order* in PR Docket No. 92–257, the Commission defined the term ''small entity'' specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order,* PR Docket No. 92–257, 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812, now NAICS Code 513322). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. There are three AMTS public coast station licensees and approximately thirty-five VPC licensees. It is unlikely that more than seven more AMTS or five more VPC licensees will be authorized in the future. Therefore, we estimate that no fewer than fifty small entities will be affected.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. The NPRM neither proposes nor anticipates any additional reporting, recordkeeping or other compliance measures.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

16. The NPRM solicits comment on a variety of alternatives set forth herein. For example, the Commission seeks comment on its proposal to reduce the regulatory burden for all entities, including small entities, by eliminating the current requirement that part 80 public coast licensees provide interconnected service to land units. It also seeks comment on the proposal of Maritel, Inc. that licensees elect to provide either Commercial Mobile Radio Service or Private Mobile Radio Service and then be regulated by the Commission rules that govern that service.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

III. Ordering Clauses

17. This *Notice of Proposed Rule Making* is contained in Sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

18. The proposed regulatory changes described in the *Notice of Proposed Rule Making* are contained in rule changes.

19. The petition for rulemaking filed by Maritel, Inc. on May 16, 2003 *is granted in part* and *denied in part,* to the extent set forth herein, and the petition for rulemaking filed by Mobex Network Services, LLC on June 13, 2003 *is granted.*

20. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Parts 20 and 80

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 20 and 80 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 4, 10, 251–254, 303, and 332; 47 U.S.C. 154, 160, 251–254, 303, and 332, unless otherwise noted.

2. Section 20.9 is amended by revising paragraphs (b) introductory text and (b)(1) to read as follows:

§ 20.9 Commercial mobile radio service.

* * * * *

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and VHF Public Coast Station geographic area licensees or applicants, and automated maritime telecommunications system (AMTS) geographic area licensees or applicants, proposing to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service, VHF Public Coast, and AMTS Stations are commercial mobile radio services.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service, VHF Public Coast Station, or AMTS service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in § 20.3. Any application requesting to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

* * * * *

Part 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.5 is amended by revising the definition of automated maritime telecommunications system to read as follows:

§ 80.5 Definitions.

* * * * *

Automated maritime telecommunications system (AMTS). An automatic, integrated maritime communications system.

* * * * *

3. Section 80.123 is amended by revising the introductory paragraph to read as follows:

§ 80.123 Service to stations on land.

Marine VHF public coast stations, including AMTS coast stations, may provide service to stations on land in accordance with the following:

* * * * *

4. Section 80.475 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).

* * * * *

(c) In lieu of public correspondence service, an AMTS system may provide a private mobile radio service. However, such communications may be provided only to stations whose licensees make cooperative arrangements with the AMTS coast station licensees. In emergency and distress situations, services must be provided to ship stations without prior arrangements.

(d) AMTS systems providing private mobile radio service in lieu of public correspondence service are not required to be interconnected to the public switched network. AMTS systems providing public correspondence service must be interconnected to the public switched network, but the licensee may also offer non-interconnected services.

[FR Doc. 04–18258 Filed 8–9–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2392; MB Docket No. 04–287, RM–11044; MB Docket No. 04–288, RM–11045]

Radio Broadcasting Services; Booneville, KY and Rhinelander, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes new allotments in separate communities, Booneville, Kentucky and Rhinelander, Wisconsin. The Audio Division requests comment on a petition filed by East Kentucky Educational Radio, proposing the allotment of Channel 227A at Booneville, Kentucky, as the community's first local aural transmission service. Channel 227A can be allotted to Booneville in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.1 kilometers (8.8 miles) northwest of the community. The reference coordinates for Channel 227A at Booneville are 37–34–24 NL and 83–46–40 WL, 24–55–05 NL and 80–38–04 WL. The Audio Division also requests comments on a petition filed by Results Broadcasting of Rhinelander, Inc., proposing the allotment of Channel 243C3 at Rhinelander, Wisconsin, as the community's fourth local aural l transmission service. Channel 243C3 can be allotted to Rhinelander in compliance with the Commission's

minimum distance separation requirements with a site restriction of 14.9 kilometers (9.3 miles) east of the community. The reference coordinates for 243C3 at Rhinelander are 45–39–43 NL and 89–13–25 WL. *See* **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Comments must be filed on or before September 20, 2004, and reply comments on or before October 5, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve each petitioner, its counsel, or consultant, as follows: East Kentucky Educational Radio, 146 Paul Drive, Hazard, Kentucky 41701; Results Broadcasting of Rhinelander, Inc., c/o Mark Blacknell, Esq., Womble, Carlyle, Sandridge & Rice, Seventh Floor, 1401 Eye Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 04–287 and 04–288, adopted July 28, 2004 and released July 30, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Booneville, Channel 227A.

3. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel 243C3 at Rhinelander.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–18261 Filed 8–9–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 228

[DFARS Case 2003–D033]

Defense Federal Acquisition Regulation Supplement; Bonds

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the use of fidelity and forgery bonds under DoD contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 12, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D033, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D033 in the subject line of the message.
- Fax: Primary: (703) 602–7887; Alternate: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Thaddeus Godlewski, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, (703) 602–2022.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dp/dars/transf.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes—

- Amend DFARS 228.105 to clarify that fidelity and forgery bonds are authorized for use under certain circumstances; and
- Amend DFARS 228.106–7(a) to update a cross-reference.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates and clarifies DFARS text, but makes no substantive change to policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D033.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 228

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 228 as follows:

1. The authority citation for 48 CFR part 228 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 228—BONDS AND INSURANCE

2. Section 228.105 is revised to read as follows:

228.105 Other types of bonds.

Fidelity and forgery bonds generally are not required but are authorized for use when—

(1) Necessary for the protection of the Government or the contractor; or

(2) The investigative and claims services of a surety company are desired.

228.106–7 [Amended]

3. Section 228.106–7 is amended in paragraph (a) by revising the parenthetical to read ''(*see* FAR 32.112–1(b))''.

[FR Doc. 04–18085 Filed 8–9–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 229

[DFARS Case 2003–D032]

Defense Federal Acquisition Regulation Supplement; Resolving Tax Problems

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to resolution of tax problems under DoD contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 12, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D032, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D032 in the subject line of the message.
- Fax: Primary: (703) 602–7887; Alternate: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602–0296.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dp/dars/transf.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes revise DFARS 229.101 to remove text pertaining to (1) resolution of issues regarding the applicability of taxes under DoD contracts; and (2) tax relief agreements between the United States and European governments. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A proposed rule describing the purpose and structure of PGI was published at 69 FR 8145 on February 23, 2004. The draft PGI text related to this proposed rule is available at *http://www.acq.osd.mil/dpap/dfars/changes.htm.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule relocates DoD procedural information related to tax relief, with no change to policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D032.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 229

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 229 as follows:

1. The authority citation for 48 CFR Part 229 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 229—TAXES

2. Subpart 229.1 is revised to read as follows:

Subpart 229.1—General

Sec.

229.101 Resolving tax problems.

229.101 Resolving tax problems.

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General.

(c) For guidance on directing a contractor to litigate the applicability of a particular tax, see PGI 229.101(c).

(d) For information on tax relief agreements between the United States and European foreign governments, see PGI 229.101(d).

[FR Doc. 04–18084 Filed 8–9–04; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register

Vol. 69, No. 153

Tuesday, August 10, 2004

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

Commodity Credit Corporation

Conservation Reserve Program—Long-Term Policy

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Request for comments.

SUMMARY: The Conservation Reserve Program (CRP) has provided significant environmental benefits across the nation, primarily by providing wildlife habitat, improving stream quality, and reducing soil erosion. The U.S. Department of Agriculture (USDA) is committed to full enrollment of CRP up to the authorized level of 39.2 million acres. To ensure that the environmental benefits of CRP continue, and because of the significant acreage expirations beginning in 2007, the Department will offer early re-enrollments and extensions of existing contracts to current CRP participants.

Between September 30, 2007, and 2010, CRP contracts for more than 28.7 million acres are scheduled to expire. The Farm Security and Rural Investment Act of 2002 (2002 Act) authorizes CRP enrollment of up to 39.2 million acres under rental agreements of 10 to 15 years. The expected contract expirations and re-enrollment or replacement of the expiring acreage represent a management challenge concerning: (1) CRP environmental objectives; (2) USDA staffing needs; and (3) technical service provider resources.

The purpose of this notice is to: (1) Describe the Department's commitment to full enrollment of CRP by offering early re-enrollments and contract extensions; (2) Obtain public input on management of expiring acreage as it relates to program goals and objectives; (3) Improve the design and delivery of CRP to most cost effectively provide natural resource conservation benefits; (4) Identify areas of concern where further research or analysis is required to determine program impacts and performance measures; and (5) Assist in the development of administrative infrastructure to support potential enrollment of a large volume of contracts.

DATES: Comments must be received in writing by December 8, 2004.

ADDRESSES: The Commodity Credit Corporation (CCC) invites interested persons to submit comments on this notice. The preferred manner to submit comments is via the Internet at: *http://www.fsa.usda.gov/pas/*. However, comments may also be submitted by any of the following methods:

- E-Mail: Send comments to: *CRPRULE.CRPRULE@wdc.usda.gov*.
- Mail: Send comments to: Director, Conservation and Environmental Programs Division (CEPD), Farm Service Agency (FSA), Room 4714–S, Stop 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513.
- Hand Delivery or Courier: Deliver comments to the above address.

All comments, including names and addresses, provided by respondents become a matter of public record. Comments may be inspected in the office of the Director, CEPD, FSA, at the above address. Make inspection arrangements by calling 202–720–6221.

FOR FURTHER INFORMATION CONTACT: Beverly Preston, Program Manager, USDA/CCC/CEPD/STOP 0513, 1400 Independence Avenue SW., Washington, DC 20250–0513; telephone 202–720–9563; email: *Beverly.Preston@usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at 202–720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The CRP was authorized by Title XII of the Food Security Act of 1985 (1985 Act) to provide farm and ranch owners, operators, and tenants a voluntary long-term land retirement program that emphasized reducing soil erosion. The 1985 Act authorized enrollment in the CRP of 40 to 45 million acres. By the end of 1990, a total of 33.9 million acres were enrolled in the CRP.

Initially, the CRP emphasized reducing soil erosion; however, the public was beginning to become more sensitive to other environmental issues such as condition of streams, lakes, and rivers, and the need to preserve game and non-game wildlife species. In the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act), Congress extended the CRP enrollment period through 1995 and broadened the program's focus. The program's objectives expanded to include improving water quality, turning marginal pasture land into riparian areas, increasing wildlife habitat, and other environmental goals.

During 1991 to 1995 an additional 2.5 million acres were enrolled in the CRP, bringing the total enrollment to 36.4 million acres in 1993. Subsequent appropriations legislation and budget reconciliations prohibited further enrollment or reduced the authorized enrollment level, effectively capping CRP enrollment at 38 million acres through 1995.

Through 1995, land was enrolled during competitive ''general'' signup periods normally lasting two to four weeks. Soon after original enactment, there was interest to enroll more acreage in the program than could be accepted and the Farm Service Agency (CCC) began to consider offers on a competitive basis, considering certain environmental benefits and cost.

In September 1996, CCC initiated ''continuous'' signups that focus on enrolling acreage in the CRP that utilize certain high-priority conservation practices that yield highly desirable environmental benefits. Because this land is highly desirable for its environmental benefits and would rank comparatively high under a ''general'' competitive signup, such acreage may be enrolled under the ''continuous'' signup process so that all eligible acres could be offered and accepted at any time.

Continuous signup allows management flexibility in implementing certain special conservation practices on cropland and certain marginal pasture land. These practices are designed to achieve significant environmental benefits, giving participants an opportunity to help protect and enhance wildlife habitat, improve air quality, reduce soil erosion, and protect surface and ground water quality.

In April 1996, the Federal Agriculture Improvement and Reform Act (1996 Act) further amended the 1985 Act and

confirmed the new CRP focus. The maximum enrollment authority was 36.4 million acres through 2002. The primary goals under the new CRP were reducing soil erosion, enhancing wildlife habitat, and ensuring water quality. The new goals brought about a change to how offers were selected. CCC began ranking all eligible CRP offers using an Environmental Benefits Index (EBI) under an open competition. Prior to the open competition, only broad factors were disclosed without a detailed, public disclosure of how these broad factors were considered in deciding which offers to accept or reject.

The new, publicly-available EBI was used to evaluate and rank offers based on the potential net environmental benefits of enrolling the land in the CRP. This ensured that only the most environmentally-sensitive lands were selected. The criteria used to determine the EBI rankings included benefits to wildlife habitat, erosion control, water quality, enduring benefits, air quality, and cost. CCC's goal was to enroll the most environmentally-fragile lands in a cost-effective manner by scoring and ranking offers based on potential environmental benefits and estimated contract costs. The first CRP signup under the provisions of the 1996 Act was conducted in March 1997, when contracts enrolled in the mid-1980's were beginning to expire. Much of the land under these contracts was eligible to be reoffered for enrollment. This signup yielded the largest single-signup contract acceptance under the program, and over 16 million acres were enrolled. Approximately 11.7 million acres of the total 16 million acres were subject to contracts that expired in September 1997.

In 1997, CCC implemented the Conservation Reserve Enhancement Program (CREP), which is a voluntary initiative using State, tribal, Federal and non-government funding to help grassroots environmental issues related to agriculture. Under CREP agreements, CCC works with State governments, tribal, and local interests to create individual programs tailored for each State. The objective is to share costs and resources to address specific, high priority local environmental problems in targeted areas.

In 2000, Congress authorized the Farmable Wetlands Pilot Program (FWP), which was a six-State pilot that provides for enrollment of certain wetlands and buffer acreage on a pilot basis into the CRP. Certain wetlands, not to exceed 5 acres in size, could be enrolled if certain eligibility requirements were met. The pilot was limited to a total of no more than 500,000 acres in Iowa, Minnesota, Montana, Nebraska, North Dakota and South Dakota.

Also in 2000, Congress authorized Biomass Pilot Projects. These projects allowed producers enrolled in the CRP to harvest certain CRP acreage for biomass to be used for energy production.

The 2002 Act amended the 1985 Act to extend the program to December 31, 2007, and expand the CRP enrollment authority from 36.4 million acres to 39.2 million acres. The 2002 Act amendments also expanded the FWP from a six-State pilot program to a nationwide program. In addition, authority was provided to allow for managed haying and grazing, including harvesting for biomass purposes. The 2002 Act also expanded eligibility authority for marginal pastureland to include marginal pasture land to be devoted to appropriate vegetation, including trees, in or near riparian areas, or devoted to similar water quality purposes. This allowed for creation of new wetland and wildlife habitat buffer practices.

Further, the 2002 Act amendments to the 1985 Act require that cropland must be planted or considered planted for four of the six years preceding enactment, created new eligibility criteria for conservation of ground or surface water, permitted entire fields to be enrolled through the continuous CRP as buffers when more than 50 percent of the field is eligible for enrollment and the remainder of the field is infeasible to farm, and made land enrolled in CRP basically eligible for re-enrollment.

New Continuous Signup Initiatives

Since the 2002 Act was enacted, CCC began a number of initiatives to target important environmental issues, including:

- Wetland Restoration in Flood Plains. In 2003, CCC moved enrollment of lands for wetland restoration from the competitive general signup to the continuous signup. Restoring wetlands enhances water quality, reduces impacts of flooding, enhances wildlife habitat, and protects and restores flood plains.
- Hardwood Tree Initiative. In December 2003, CCC created a 500,000 acre Hardwood Tree Initiative and provided a new practice, under the CRP continuous signup, to enroll bottomland hardwood trees in the flood plains. This practice was designed to restore floodplains, reduce nutrient and sediment loading, enhance wildlife habitat, and restore critical ecosystems.
- Isolated Wetland Restoration Initiative. Other initiatives under the CRP include a 250,000 acre Wetland Restoration Initiative for restoration of wetlands, including playa lakes. The practice, Wetland Restoration Non-Flood Plain, is designed to enroll the larger wetland complexes and playa lakes not served through the FWP or the current Wetland Restoration practice that is limited to acreage within the 100-year flood plain.
- Northern Bobwhite Quail Habitat Initiative. In addition, a new 250,000 acre Northern Bobwhite Quail Initiative provides a new practice under the CRP continuous signup that provides habitat buffers for upland birds. Over the past 20 years, the Northern Bobwhite Quail populations have decreased from 59 million to 20 million birds. The practice is designed to provide food and cover for quail, upland birds, and other species. The practice may be applied around the field edges on eligible cropland provided the cropland is suitably located and adaptable to the establishment of wildlife habitat for primarily quail and upland birds.

Addressing the Future of CRP

CCC is also working to change the way it does business in order to make it easier for farmers and ranchers to participate in agency programs. One of the main tools in this effort is the adoption of new information technologies. Software is being developed that will allow customers and employees to harness the power of the Internet to manage their program benefits and responsibilities. With respect to implementation of CRP, CCC is part of a USDA-wide process in which standards will be developed in order to eliminate unnecessary complexity from a producer's online interaction with CRP. Geographic Information Systems (GIS) and other sophisticated technologies are being used to make it easier for farmers and ranchers to understand how complicated program rules may apply to them and to their land. As an initial step, FSA has developed new web-enabled software to process offers for general CRP signups. This software is currently for use only by FSA employees but represents a critical step in being able to deliver programs directly to potential CRP participants who use the Internet.

Investing in new technology and reorganizing business processes is consistent with the President's Management Agenda as is development of better-defined performance measures.

In May 2004, USDA's Economic Research Service (ERS) issued a legislatively-mandated report, ''CRP's Effect on Local Economies,'' which indicates that, in the aggregate, local

economic impacts have been limited. High CRP enrollment did not have a statistically significant adverse effect on population trends in farm counties across the U.S. and, while CRP enrollment was associated with some job loss in rural counties between 1986 and 1992 (the years immediately following the program's introduction); this negative relationship did not persist throughout the 1990's. Further, ERS research uncovered no statistically significant evidence that CRP participation encourages absentee ownership or that high levels of CRP participation affected local government services or tax burdens in a systematic way.

At a recent USDA meeting in Fort Collins, Colorado, on the future of CRP, discussions illustrated the currents and crosscurrents within the CRP program. At the core of these discussions was the central issue: ''What is the purpose of CRP?'' The 1985 Act states that the purpose of CRP is conservation of water, soil, and wildlife and that there must be an equitable balance of these three goals. Despite this mandate, however, other, and at times conflicting, goals persist. Some consider CRP to be a soil reserve program, akin to the former Soil Bank Program of the 1950's and 1960's. Others think of it as a land retirement system, a way to give the land a rest to improve future productivity of farmland. These conflicting visions of CRP's purpose carry through to technical, policy, and programmatic decisions. They also affect the degree of satisfaction and support for the program because, when expectations do not align with perceived program goals, key stakeholders can be disappointed.

At the Fort Collins meeting, experts in wildlife and conservation familiar with the programs authorized by the 2002 Act discussed how to better balance wildlife benefits with soil and water enhancement through the EBI, the ranking criteria at the heart of this balancing act. In addition, numerous researchers called for more attention to be focused on monitoring the wildlife benefits of CRP. Case studies demonstrated that wildlife benefits accrue as a result of CRP practices, but little systematic research takes place. Experts called for baseline monitoring to become a part of the program and for both long- and short-term monitoring to be funded to both demonstrate the accomplishments of the CRP program and to help fine-tune and better focus the program to achieve maximum environmental benefits.

The costs of CRP were also addressed. Economists and representatives of farming communities debated whether or not CRP has adverse economic impacts on rural communities. Some experts rejected the idea, pointing to other compounding factors, such as consolidation of farms, overseas competition and trade barriers to explain economic stress of rural communities. Proponents of the idea that CRP reduces community productivity and undercuts the demand for goods and services in small agriculture-dependant communities argued that there is a strong correlation between numbers of acres taken out of production and loss of rural economic vitality. The experts continued to disagree, except that both sides embraced the need for further economic studies of this issue.

Entities other than USDA have a strong interest in the CRP, including nonprofit conservation and environmental groups, private landowners, State and other Federal agencies. These entities voiced strong concern over the need for increased funding and more staffing for technical services. Nonprofit organizations were especially interested in the potential for supporting CRP in the role of technical service providers. Beyond technical services, these entities voiced eagerness to be more involved with program development and policy-making and they applauded the efforts of USDA to reach out to nonprofit conservation and environmental groups for ideas, support, funding partnerships and technical support for the program.

The CRP enrollment through June 2004 was 34.8 million acres. Contracts for 16 million acres are scheduled to expire, beginning on September 30, 2007. An additional 6 million acres in 2008, 4 million acres in 2009 and 2 million acres in 2010 are also scheduled to expire.

CRP contracts expiring in 2007 through 2010 represent (like contracts that expired in 1996) a ''milestone'' in program evolution. The Administration and Department are committed to utilizing full enrollment authority.

Key Issues for Comment

CCC invites public comment on the following issues:

1. *How should CCC address the large number of expiring CRP contracts and their associated acres in a manner that achieves the most environmental benefits but is also administratively feasible and cost effective? What methods should be pursued that would address the large acreage expiring beginning in 2007 (for example, how could CCC stagger the contract expirations over several year intervals, and what criteria could CCC use to select and extend contracts)?*

The Department is committed to maintaining the environmental benefits of CRP by offering early re-enrollments and contract extensions. The 1985 Act provides enrollment authority for 39.2 million acres through December 31, 2007. Replacing the contracts expiring in 2007 with new or the same acres will require significant USDA expenditures for salaries and expenses. Extending existing contracts over time would spread workflow over several years and reduce the cost to implement than if large numbers of contracts and acres expired at one time.

2. *What factors should be considered in determining the acceptability of offers for CRP to provide an equitable balance between soil erosion, water quality, and wildlife benefits, and why?*

The 1985 Act requires that, in determining the acceptability of offers for CRP, an equitable balance be provided for the conservation purposes of soil erosion, water quality, and wildlife benefit. Offers and practices are accepted and contracts approved based, in part, on equal weighting of water quality, soil erosion, and wildlife environmental factors. Other environmental factors are considered in ranking offers such as enduring benefits, the likeliness of the practice continuing past the contract expiration as though enrolled, and emphasis on planting native vegetation historically suited to the site. These factors were primarily considered in anticipating measures to provide the greatest environmental benefits across the nation. Cost was also considered.

3. *How could the Environmental Benefits Index (EBI) be modified?*

CCC has used EBI to rank offers nationally. The EBI for an offer is based on points given for five environmental factors plus a cost factor. The factors are wildlife, water quality, erosion, enduring benefits, air quality, and cost.

The wildlife factor scores the expected benefits of offers on a scale of 0 to 100 points, and has three components: wildlife habitat cover, wildlife enhancement, and wildlife priority.

The water quality factor ranges from 0 to 100 points and has three components: location, groundwater quality, and surface water quality.

The erosion factor ranges from 0 to 100 points and evaluates the potential for land to erode as the result of wind or water. Points are based on an Erodibility Index (EI) and are awarded for the weighted average of the higher value of either the wind or water EI.

The enduring benefits factor ranges from 0 to 50 points and considers the likelihood of certain practices remaining in place beyond the contract period.

The air quality factor ranges from 0 to 45 points and evaluates the air quality improvements gained by reducing cropland airborne dust and particulate from wind erosion. In addition, this factor has points for the value of CRP land that provides carbon sequestration.

The cost factor is an evaluation of the cost of environmental benefits per dollar expended. This provides farmers and ranchers with an incentive to offer cost-effective offers. This factor provides a weighted average to assist in considering optimizing environmental benefits per dollar for CRP rental payments.

4. *How could the program be better targeted, whether to certain practices (e.g., filter strips, riparian buffers), geographically, or on some other basis?*

Historically, conservation programs, including CRP, have employed a variety of targeting approaches. For example, one of the CRP eligibility criteria is for highly erodible land. This targets enrollment based on geographic, soil, and topographical characteristics. CRP has also used a bidding system to enroll farmers and ranchers into the program who are willing to participate at the lowest cost, a form of cost targeting. The most complete form of targeting used in the CRP has been the use of the EBI, which is intended to balance the environmental benefits associated with enrolling a parcel of land in the program (items such as water and air quality, wildlife habitat, and soil quality among others) against costs. Future adjustments to the program could favor other aspects of the program, including targeting certain practices, such as use of native species, certain areas of the country, such as watersheds contributing to hypoxia in the Gulf of Mexico or the Chesapeake Bay, or economic status, such as favoring smaller family farms over larger operations.

5. *If CCC offered CRP re-enrollment without competition, how could it ensure that program goals are achieved in a manner that results in the most environmental benefits but is also administratively feasible and cost effective? How could CCC determine which contracts and acres would be most environmentally valuable to re-enroll into CRP without competition through a standard EBI ranking process?*

Over 33 million acres were enrolled in the program from 1986 to 1990. During the mid-1990's, the early contracts began to expire. Over 85 percent of the producers offered their land for re-enrollment. The offers were ranked based on the EBI and the highest-ranked offers were selected. A majority of the expiring contracts were re-enrolled based on their relatively high ranking under the EBI. Offering re-enrollment without competition could entail, for example, automatically re-enrolling offers with an EBI score above a certain level, without having to compete. This would permit the Agency to spread out work flow through the year while protecting the most environmentally sensitive land.

6. *In what ways and for what purposes could acreage be set aside to assist local areas to meet local priority concerns?*

Under CREP, States identify resources with CRP to address local environmental issues of importance to the State and nation. CCC has reserved approximately 4 million acres to prioritize and address State and local environmental issues under the continuous CRP enrollments, including acres eligible under CREP, the FWP, and wetland restoration, bottomland, and other initiatives.

7. *Because CCC is concerned about the supply, quality, and cost of seed and tree stock, how can the agency manage large CRP enrollments in future years to address the need to seed and plant vegetation on newly enrolled acres?*

On September 30, 2007, CRP contracts on approximately 16 million acres will expire. Enrollment of large amounts of new land or reseeding large portions of the 16 million acres of expiring land may tax the availability of seed and tree stock.

8. *How can Geographical Information System (GIS) technology be used more effectively?*

GIS technology is being used for CRP's general signup to assess and capture information for environmental benefits and to assist farmers and ranchers understand the impacts of various offer scenarios. GIS is also utilized for program data capture and analysis through the recording of program practice boundaries. It is anticipated that GIS will serve a more comprehensive role in the CRP signup process.

9. *How can local adverse economic impacts, if any, be mitigated?*

Landowners and farm operators have voluntarily enrolled approximately 34 million acres of highly erodible and environmentally sensitive cropland into CRP. In return for planting qualifying land to grasses, trees, and other protective vegetative cover, enrollees receive an annual rental payment and reimbursement for roughly half the cost of establishing approved ground cover. The program provides a stable source of income to participants and produces a wide range of environmental benefits but, by retiring farmland, it also reduces demand for farm inputs, marketing services, and labor. To limit the local economic impact of taking land out of production, no more than 25 percent of a county's cropland can normally be enrolled in the CRP without formal approval to exceed this cap. Nonetheless, critics of the program contend that CRP contributes to the loss of farm-related jobs and the depopulation of nearby communities that provide agricultural and retail services.

10. *What performance measures can be adopted that are most meaningful and accurately reflect CRP's benefits, but also can be reasonably measured and evaluated?*

Consistent with the President's Management Agenda, a set of performance measures is needed to accurately measure and communicate the benefits of CRP. CRP outcomes include improved soil, water, wildlife habitat, and air quality. Perhaps the greatest obstacle to demonstrating the effectiveness of the program is the complexity of the environmental systems. The complexities include the lag between the adoption of conservation systems and the change in environmental quality, the need to enroll sufficient participants in a program to achieve a measurable change in environmental conditions, and difficulties in explaining how the conservation measures affect the system.

11. *How could CRP be designed to most effectively address hypoxic conditions in the Gulf of Mexico?*

Hypoxia refers to a process driven by high nutrient loads in which water does not have enough dissolved oxygen to support life, essentially creating a ''dead zone.'' This dead zone has been an increasing problem in the Gulf of Mexico and can lead to progressively severe effects on the ecosystem. The area affected averaged 5,400 square miles between 1996 and 2000, about the size of the State of New Jersey.

A Congressionally-mandated task force led by the National Oceanic and Atmospheric Administration and the Environmental Protection Agency concluded that changes in agricultural practices in the Mississippi River Basin, including increased CRP acreage to achieve certain goals, would significantly reduce the nutrient loading thought to be the primary cause of hypoxia. CRP could help achieve the goal of halving the area of hypoxia through enrollment of wetlands and buffers, which would reduce nutrient loading to streams and groundwater.

Other benefits include habitat for waterfowl, migratory birds and other wildlife, flood control, safer drinking water supplies and carbon sequestration.

Signed at Washington, DC, on July 30, 2004.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 04–18185 Filed 8–9–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Dakota Prairie Grasslands, McKenzie Ranger District; North Dakota; NE McKenzie Allotment Management Plan Revisions

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The McKenzie Ranger District, Dakota Prairie Grasslands, proposes to authorize grazing on 28 allotments in Pastures 12, 13, and 14 in a manner consistent with direction set forth in the Dakota Prairie Grasslands Land and Resource Management Plan and applicable laws. The EIS will lay the groundwork for revising the Allotment Management Plans (AMPs). Site-specific resource objectives, allowable grazing strategies, and adaptive management tools will be set forth in the EIS in order to allow managers flexibility to meet objectives.

DATES: Comments concerning the scope of the analysis must be received within 14 days of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected by January 2005 and the final environmental impact statement is expected by April 2005.

ADDRESSES: Send written comments to Frank Guzman, District Ranger, McKenzie Ranger District, 1901 South Main Street, Watford City, ND 58854 or e-mail your comments to *comments-northern-dakota-prairie-mckenzie@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Libby Knotts, Project Leader, McKenzie Ranger District, USDA Forest Service at the above address or call (701) 842–2393.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Forest Service needs to revise existing allotment management plans to be consistent with direction of the recently developed Dakota Prairie Grasslands Land and Resource Management Plan, referred to as the Grasslands Plan. A Record of Decision was signed for the Grasslands Plan on July 31, 2002. As required by its Record of Decision, a scientific review team is analyzing 64 sample allotment management plans to determine whether the Grasslands Plan can be implemented with effects similar to those anticipated by the Forest Service. Planning efforts, such as this project, may occur during the scientific review, but final decisions will not be made on allotment management plans until the review process is complete. If the review process requires changes in the Grasslands Plan, the changes will be incorporated into this project as appropriate.

Proposed Action

The Forest Service proposes to authorize grazing on 28 allotments in Pastures 12, 13, and 14 of the McKenzie Ranger District in a manner consistent with direction in the Grasslands Plan and applicable laws. The proposal takes an adaptive management approach to allow flexibility for both the Forest Service and the livestock operators to manage properly under changing conditions.

The Forest Service has developed allotment-specific desired conditions, needs, and adaptive management proposals designed to meet the overall purpose and need for the project area. Stocking rates will be determined annually based on progress toward desired conditions, weather conditions and considering needs of the livestock operators.

Affected resources will be monitored to determine whether they are moving toward or meeting desired conditions. If desired conditions are not being met, or measurable progress is not being made toward them, then adaptive management practices will be employed.

Possible Alternatives

A No-Action alternative, which would continue grazing, as currently authorized, will be considered. A No-Grazing alternative, which would exclude all domestic livestock grazing, will also be considered. Other alternatives may be developed in response to comments.

Responsible Official

Frank Guzman, McKenzie District Ranger, is the responsible official. See address under the **ADDRESSES** section above.

Nature of Decision To Be Made

The District Ranger will decide whether to authorize grazing, whether to implement specific changes in grazing management to meet desired conditions, what optional grazing strategies may be used to meet desired conditions, what monitoring items need to be included, and whether any amendments to the Grasslands Plan are required.

Scoping Process

The Forest Service mailed scoping packages on the proposed action to 115 potentially interested or affected individuals, organizations, local and state governments, and local, state and federal agencies on April 9, 2004, with a request for responses by May 14, 2004. In the cover letter, it was stated that the Forest Service's intent was to prepare an environmental assessment for the project, but that if scoping results or further analysis indicated that the project might have significant environmental impacts, an environmental impact statement would be prepared. A public open house was held in Watford City, ND on April 29, 2004. The Forest Service has decided to prepare an environmental impact statement. This notice of intent invites additional public comment on the proposal and initiates the preparation of the environmental impact statement. Due to the extensive scoping effort already conducted, no further scoping meetings or mailings are planned. The public is encouraged to take part in the planning process and to visit with Forest Service officials any time during the analysis and prior to the decision. While public participation in this analysis is welcome at any time, comments received within 14 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement.

Preliminary Issues

Issues identified through preliminary work and previous scoping of similar projects include effects of implementing the proposed action on individual livestock grazing operators and the local economy, effects of livestock grazing on habitat for the management indicator species sharp-tailed grouse, effects of livestock grazing on riparian areas, effects of livestock grazing on sensitive species, and effects of the drought strategy on livestock operations, wildlife and plants.

Comment Requested

This notice of intent initiates the scoping process which guides the

development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 3, 2004.

Frank V. Guzman,

District Ranger.

[FR Doc. 04–18218 Filed 8–9–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Monday, August 30th, 2004, in Alturas, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting August 30th begins at 6 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include the review and rank order for projects submitted for fiscal year 2005. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION: Contact Stan Sylva, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. 04–18217 Filed 8–9–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5170 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784 FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5170 South Building, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: 7 CFR Part 1744, Subpart b, ''Lien Accommodations and Subordination Policy''.

OMB Control Number: 0572–0126.

Type of Request: Extension of a currently approved information collection.

Abstract: Recent changes in the telecommunications industry, including deregulation and technological developments, have caused Rural Utilities Service (RUS) borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new

telecommunications services and other telecommunications services not ordinarily financed by RUS. To facilitate the financing of those projects and services, this program helps to facilitate funding from non-RUS sources in order to meet the growing capital needs of rural Local Exchange Carriers (LECs).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Business or other for-profit institutions.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 30

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 23.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 5, 2004.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Services.

[FR Doc. 04–18250 Filed 8–9–04; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Seminole Electric Cooperative, Inc.; Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, is issuing an environmental assessment with respect to the environmental impacts related to the construction of a 310 megawatt, simple-cycle electric generation facility at Seminole Electric Cooperative's Payne Creek Generating Station. RUS may provide financing assistance to Seminole Electric Cooperative for the project.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone: (202) 720–0468. Mr. Quigel's e-mail address is *bquigel@rus.usda.gov*. Information is also available from James Frauen of Seminole Electric Cooperative. Mr. Frauen may be contacted by telephone at (813) 739–1213. Mr. Frauen's e-mail address is *jfrauen@seminole-electric.com*.

SUPPLEMENTARY INFORMATION: Seminole Electric Cooperative's proposed electric generation project will involve the construction and operation of nominal 310 MW of simple-cycle combustion turbine electric generating units and associated support facilities at its existing 1,300-acre Payne Creek Generating Station site in Hardee and Polk Counties, Florida. The proposed electric generating facilities will consist of five Pratt & Whitney (P&W) FT8–3 Twin Pac aeroderivative combustion turbine units. Each Twin Pac unit will consist of two simple-cycle combustion turbines coupled with one common electric generator with a nominal generating capacity of 62 MW. The proposed combustion turbine units and associated substation will be constructed in an approximately 8-acre area located adjacent to the east of the existing Payne Creek Generating Station units. A small (*i.e.*, 0.15-acre), isolated freshwater marsh wetland, which will be impacted by construction of the proposed project, is present in the southern portion of the area.

The Payne Creek Generating Station site is located approximately 9 miles northwest of the city of Wauchula, 16 miles south-southwest of the city of Bartow, and 40 miles east of the Tampa Bay area. The site is bordered on the east by County Road 663, a CSX Railroad line, and the CF Industries Hardee Complex phosphate mine.

The simple-cycle combustion turbines will be fired primarily with natural gas via gas pipeline systems which currently provide natural gas for the existing Payne Creek Generating Station units. Low-sulfur distillate fuel oil will serve as backup fuel. The proposed project will require the construction of a new aboveground 1.4-million-gallon fuel oil storage tank to be located adjacent to the existing 1.4-million-gallon storage tank within an expanded spill containment area.

To facilitate interconnection of the proposed project with the Florida power grid, the existing 8-mile-long 230-kV transmission line extending from the Payne Creek Generating Station site to the Vandolah Substation will be upgraded. The line upgrade will consist of replacing the existing conductors with higher current-carrying conductors. Also, both the associated transmission line terminals and switches will be upgraded. These upgrades will not require any additional right-of-way, replacement of any transmission line structures, or any expansion of the Vandolah substation.

Seminole Electric Cooperative submitted an environmental analysis to RUS which describes the project and assesses its potential environmental impacts. RUS has conducted an independent evaluation of the environmental analysis and believes that it accurately assesses the potential impacts of the proposed project. This environmental analysis will serve as RUS' environmental assessment of the project.

The environmental assessment can be reviewed at Seminole Electric Cooperative's headquarters located at 16313 North Dale Mabry Highway, Tampa, Florida 33618, and at the headquarters of RUS at the address provided above. The environmental assessment is also available for review at the Hardee County Library, 315 North 6th Street, Suite 114, Wauchula, Florida 33873, telephone (863) 773–6438 and the Bartow Public Library, 2150 South Broadway Avenue, Bartow, Florida 33830, telephone (863) 534–0131.

Questions and comments should be sent to RUS at the address provided. RUS will accept questions and comments on the environmental assessment for 30 days.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR Part 1794, Environmental Policies and Procedures.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR Part 1794, Environmental Policies and Procedures.

Dated: August 5, 2004.

Glendon D. Deal,

Director, Engineering and Environmental Staff, Water and Environmental Programs.

[FR Doc. 04–18251 Filed 8–9–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes from Thailand: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the 2002–2003 antidumping duty administrative review of the antidumping order on certain welded carbon steel pipes and tubes from Thailand until no later than October 5, 2004. This review covers the period March 1, 2002, through February 28, 2003. The extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

EFFECTIVE DATE: August 10, 2004.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on circular welded carbon steel pipes and tubes from Thailand (51 FR 8341). On March 3, 2003, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 2002, through February 28, 2003 (68 FR 9974). A timely request for an administrative review of the antidumping duty order, with respect to sales by Saha Thai Steel Company, Ltd. (''Saha Thai'') during the POR, was filed on behalf of two domestic producers, Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, ''the petitioners''). The Department published a notice of initiation of this antidumping duty administrative review on April 21, 2003 (68 FR 19498).

Because the Department determined that it was not practicable to complete this review within the statutory time limits, we extended the time limit for the preliminary results of this review on November 7, 2003. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review*, 69 FR 4113 (January 28, 2004). From December 9 through 17, 2003, the Department verified the sales and cost questionnaire responses of Saha Thai in Thailand. As a result, we extended the deadline for the preliminary results to March 30, 2004. The preliminary results of review were subsequently published in the **Federal Register**. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 18539 (April 8, 2004) (''*Preliminary Results*'').

Extension of Time Limits for Final Results

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant review, the Department has determined that it is not practicable to complete the review within the statutory time limit due to the need for analysis of certain complex issues, including the treatment of duty exemptions and foreign antidumping duties. Accordingly, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results to no later than October 5, 2004, which is 180 days from publication of the *Preliminary Results*.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: August 3, 2004.

Jeffrey A. May,

Deputy Assistant Secretaryfor Import Administration, Group I.

[FR Doc. 04–18262 Filed 8–9–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes from Thailand: Notice of Rescission of Antidumping Duty Administrative Review for the Period March 1, 2003 through February 29, 2004

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to timely requests from Saha Thai Steel Pipe Co., Ltd. (''Saha Thai''), a producer/exporter of the subject merchandise, and two domestic producers, Allied Tube & Conduit Corp. and Wheatland Tube Co. (collectively, ''the petitioners''), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand, covering the period of March 1, 2003, through February 29, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 23170 (April 28, 2004). Because all requests for an administrative review have been withdrawn, the Department is rescinding this review of certain welded carbon steel pipes and tubes from Thailand, in accordance with section 351.213(d)(1) of the Department's regulations.

EFFECTIVE DATE: August 10, 2004.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Mark Hoadley, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–2243 or (202) 482–3148, respectively.

SUPPLEMENTARY INFORMATION:

Background

Based on timely requests from Saha Thai and the petitioners, the Department initiated an administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 23170 (April 28, 2004) (*Initiation Notice*). Saha Thai was the only company included in the *Initiation Notice* with respect to the instant review.

Rescission of the Administrative Review

Pursuant to the Department's regulations, the Department may rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' *See* 19 CFR 351.213(d)(1). In accordance with this section of the Department's regulations, all parties that requested a review in the instant proceeding submitted timely withdrawals of their request for an administrative review (April 30, 2004, by the petitioners, and July 6, 2004, by Saha Thai).

Since there were no other requests for review from any other interested party,

the Department finds it appropriate to accept these withdrawal requests and is rescinding the review of Saha Thai, covering the period of March 1, 2003, through February 29, 2004, in accordance with section 351.213 (d)(1) of the Department's regulations. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) within 15 days of publication of this notice. The Department will direct CBP to assess antidumping duties for Saha Thai at the cash deposit rate in effect on the date of entry for entries during the period March 1, 2003, through February 29, 2004.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

APO Notification

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: August 3, 2004.

Jeffrey A. May,

Deputy Assistant Secretaryfor Import Administration, Group I.

[FR Doc. 04–18263 Filed 8–9–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 040511147–4147–01; I.D. 042804B]

Listing Endangered and Threatened Species and Designating Critical Habitat: Petitions to List the Cherry Point Stock of Pacific Herring as an Endangered or Threatened Species

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

ACTION: Notice of findings; request for information; and initiation of status review.

SUMMARY: NMFS received a petition on January 22, 2004, to list the Cherry Point (Puget Sound, Washington) stock of Pacific herring (*Clupea pallasi*) as a threatened or endangered species under the Endangered Species Act (ESA). NMFS finds that the January 22, 2004, petition fails to present substantial scientific and commercial information indicating that the petitioned action may be warranted. On May 14, 2004, the same petitioners submitted additional scientific information, including information regarding the stock structure of the Cherry Point and other Pacific Northwest herring stocks. NMFS considers the petitioners' supplemental submission (in conjunction with the original January 22, 2004, submission) as a distinct petition received by the agency on May 14, 2004. NMFS finds that the supplemental May 14, 2004, petition does present substantial scientific and commercial information indicating that the petitioned action may be warranted. Accordingly, NMFS is initiating a status review of the species. To ensure that the status review is complete and based upon the best available scientific and commercial information, NMFS is soliciting information regarding: the population structure and viability of nearshore stocks of Pacific herring in Puget Sound (Washington) and the Strait of Georgia (Washington and British Columbia); efforts being made to protect the species; and potential peer reviewers.

DATES: Information and comments on the subject action must be received by October 12, 2004.

ADDRESSES: You may submit comments, identified by Docket No. 040511147–4147–01, by any of the following methods:

- E-mail: *herring.nwr@.noaa.gov*. Include Docket No. 040511147–4147–01 in the subject line of the message.
- Agency Web Site: *http://ocio.nmfs.noaa.gov/ibrm-ssi/index.shtml*. Follow the instructions for submitting comments at: *http://ocio.nmfs.noaa.gov/ibrm-ssi/process.shtml*.
- Mail: Submit written comments and information to Chief, NMFS, Protected Resources Division, 525 NE Oregon Street, Suite 500, Portland, Oregon, 97232–2737. You may hand-deliver written comments to our office during normal business hours at the street address given above.
- Hand Delivery/Courier: NMFS, Protected Resources Division, 525 NE Oregon Street, Suite 500, Portland, Oregon, 97232–2737.
- Fax: 503–230–5435

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice contact Garth Griffin, NMFS, Northwest Region, (503) 231–2005, or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 2004, NMFS received a petition (hereafter referred to as ''the January 22nd petition'') from the Northwest Ecosystem Alliance, the Center for Biological Diversity, Ocean Advocates, People for Puget Sound, Public Employees for Environmental Responsibility, Sam Wright, and the Friends of the San Juans to find that the Cherry Point (Washington) stock of Pacific herring qualifies as a Distinct Population Segment (DPS) and warrants listing as a threatened or endangered species under the ESA. Subsequently, on May 14, 2004, the same petitioners submitted additional information including new genetic information on the stock structure of Pacific herring in Puget Sound and the Strait of Georgia (Washington) that had become available since NMFS' receipt of the January 22nd petition. Upon receipt of the supplemental information, NMFS had not made its 90–day finding on the January 22nd petition. NMFS is treating the supplemental submission, in conjunction with the information already submitted by the same petitioners on January 22, 2004, as a new petition received by the agency on May 14, 2004 (hereafter referred to as the ''May 14th petition''). Copies of the two petitions are available from NMFS (See **ADDRESSES** section, above, and ''References'' section, below).

ESA Statutory and Policy Provisions

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the

Secretary of Commerce (Secretary) to list species under the ESA (16 U.S.C. 1533(b)(3)(A)). Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific and commercial information indicating that the petitioned action may be warranted. NMFS' ESA implementing regulations define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating a petitioned action, the Secretary considers several factors, including whether the petition contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species (50 CFR 424.14(b)(2)(ii)). In addition, the Secretary considers whether the petition provides information regarding the status of the species over all or a significant portion of its range (50 CFR 424.14(b)(2)(iii)).

For the subject January 22nd and May 14th petitions, NMFS evaluated whether the information provided and cited therein meets the ESA's standard for ''substantial information.'' The agency also reviewed other information readily available to NMFS scientists (i.e., currently within agency files) to determine whether there is general agreement with the information presented in the petitions. NMFS further consulted with co-manager Pacific herring experts from the Washington Department of Fish and Wildlife (WDFW), and from Washington tribes including the Swinomish Indian Tribal Community, the Lummi Indian Nation, the Suquamish Tribe, and the Northwest Indian Fisheries Commission.

Under the ESA, a listing determination may address a species, subspecies, or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(15)). On February 7, 1996, the U.S. Fish and Wildlife Service and NMFS adopted a policy to clarify the agencies' interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' (ESA section 3(15)) for the purposes of listing, delisting, and reclassifying a species under the ESA (51 FR 4722). The joint DPS policy identified two elements that must be considered when making DPS determinations: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs.

A population segment may be considered discrete if it satisfies either one of the following conditions: (1) it is markedly separated from other populations of the same biological taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries across which there is a significant difference in exploitation control, habitat management or conservation status. Under the joint DPS policy, if a population is determined to be discrete, the agency must then consider whether it is significant to the taxon to which it belongs. Considerations in evaluating the significance of a population include: persistence of the discrete population in an unusual or unique ecological setting for the taxon; evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere outside its historical geographic range; or evidence that the discrete population segment has marked genetic differences from other populations of the species.

A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA Sections 3(6) and 3(19), respectively).

Life History of Pacific Herring

Pacific herring in the Eastern Pacific Ocean range from northern Baja California north to Cape Bathurst in the Beaufort Sea (Hart, 1973; Lassuy, 1989). They are also found in Arctic waters from Coronation Gulf, to the Chukchi Sea, and the Russian Arctic. In the Western Pacific they are found from Toyama Bay, Japan, west to Korea and the Yellow Sea (Haegele and Schweigert, 1985; Wang, 1986).

Pacific herring adults move inshore during winter and early spring and reside in holding areas before moving to adjacent spawning grounds (Hay, 1985). Spawning grounds are typically in sheltered inlets, sounds, bays, and estuaries (Haegele and Schweigert, 1985). Pacific herring usually spawn in shallow subtidal zones, depositing adhesive eggs over algae, vegetation, or other substrates (Emmett et al., 1991). The location and timing of spawning for individual stocks are generally consistent and predictable from year to year (Hay et al., 1989; O'Toole et al., 2000).

Herring spawning time varies with latitude, with earlier spawning times (e.g., early winter) occurring in the more southern latitudes of the species' range, and later spawning times (e.g., mid-summer) occurring toward the north of the species' range (Hay, 1985). In Puget Sound, spawning generally occurs from January to April, with peak spawning activity in February and March (Bargmann, 1998).

Pacific herring larvae drift in the ocean currents after hatching and are abundant in shallow nearshore waters (Lassuy, 1989; Hay and McCarter, 1997). After 2 to 3 months, larvae metamorphose into juveniles which form large schools and remain primarily in inshore waters during their first summer. Juveniles usually stay in nearshore shallow-water areas until fall. After their first summer, juveniles may disperse to deeper offshore waters to mature (Stocker and Kronlund, 1985), or reside year-round nearshore or in estuaries prior to spawning (Hay, 1985). For example, in Puget Sound some herring stocks spend their entire life residing within Puget Sound, while other stocks are migratory and occur during summer in the coastal areas off Washington and southern British Columbia (Trumble, 1983). The age at first maturity is generally 2 to 5 years (Hay, 1985), with lengths ranging from 13 to 26 cm (Garrison and Miller, 1982; Emmett *et al.*, 1991). In Puget Sound, Pacific herring reach sexual maturity at age–2 to age–4 (Bargmann, 1998), while stocks in the Strait of Georgia and other major Pacific herring assessment areas in British Columbia reach sexual maturity at age–3 (Hay and McCarter, 1999). Herring may spawn annually for several years (Bargmann, 2001), with fecundity increasing as their body size increases (Hart, 1973).

In the state of Washington there are 21 documented spawning stocks: 19 stocks in Puget Sound (including the Cherry Point stock and the recently re-discovered Woolochet Bay stock), and two on the Washington Coast (Bargmann, 1998; Koenings, 2000). The Cherry Point herring stock spawns along the coastline from the north end of Bellingham Bay and Lummi Island (Washington), north to Point Roberts (Canada) (Lemberg *et al.*, 1997). The Cherry Point stock exhibits later spawning time (late March to early June) than other Puget Sound stocks (January to late April) (Lemberg *et al.*, 1997), but

similar to some locations in British Columbia (Stout *et al.*, 2001).

Relationship of Stock and DPS Concepts

Pacific herring in the vicinity of Cherry Point (Washington) are considered to be a stock for management purposes in the state of Washington (Bargmann, 1998). There is no definition of the term ''stock'' that is generally accepted by all fisheries biologists (Stout et al., 2001). The term stock has been used to refer to: fish spawning in a particular place or time, separated to a substantial degree from fish spawning in a different place or time (Ricker, 1972); a population sharing a common environment that is sufficiently discrete to warrant consideration as a self-perpetuating system that can be managed separately (Larkin, 1972); a species group or population of fish that maintains and sustains itself over time in a definable area (Booke, 1981); and, an intraspecific group of randomly mating individuals with temporal or spatial integrity (Ihssen *et al.*, 1981). None of these definitions imply that a fish stock is ecologically, biologically, or physiologically significant in relation to the biological species as a whole. Hence, information establishing a group of fish as a stock, such as the Cherry Point stock of Pacific herring, does not necessarily qualify it as a DPS. A DPS may be composed of a group of related stocks, or in some cases (if the evidence warrants) a single stock, that form(s) a discrete population and are (is) significant to the biological species as a whole.

2001 Pacific Herring Status Review

NMFS completed a status review of Pacific Herring in 2001 (Stout *et al.*, 2001). NMFS initiated this review in response to a petition received in February 1999 to list 18 species of marine fishes in Puget Sound, including Pacific herring. NMFS concluded that the Pacific herring stocks in Puget Sound do not constitute a DPS, and thereby do not qualify as a ''species'' under the ESA. NMFS found that these stocks, including the Cherry Point herring stock, belonged to a larger Georgia Basin Pacific herring DPS consisting of inshore stocks from Puget Sound and the Strait of Georgia (64 FR 17659; April 3, 2001). The stocks within the Georgia Basin DPS exhibit consistent spawning times and locations. There is considerable evidence of straying by adults and juveniles (Hay *et al.*, 1999), resulting in little genetic differentiation among stocks. NMFS noted that several herring stocks within the Georgia Basin DPS (including the Cherry Point stock) have shown marked declines in range and abundance, and are classified as ''depressed'' or ''critical'' by the state of Washington (Bargmann, 1998). However, NMFS concluded that the Georgia Basin Pacific herring DPS is not threatened or endangered throughout all or a significant portion of its range (64 FR 17659; April 3, 2001).

Analysis of the Petitions

NMFS evaluated the petitions to determine if they present substantial scientific and commercial information to suggest that the Cherry Point herring stock may qualify as a DPS, and, if so, that such a DPS may be threatened or endangered throughout all or a significant portion of its range. NMFS was especially interested in information that was not considered in the Stout *et al.* (2001) Pacific herring status review. Essential considerations in evaluating the petitions included whether they present substantial information indicating: (1) the discreteness of the Cherry Point herring stock; (2) the significance of the Cherry Point herring stock; and, if these first two were satisfied, (3) the risk to the survival of a putative Cherry Point Pacific herring DPS throughout all or a significant portion of its range.

Upon receipt of the January 22nd petition, scientists at NMFS' Northwest Fisheries Science Center (NWFSC) evaluated the information contained therein, as well as other information available to the agency. Additionally, NMFS consulted with co-manager Pacific herring experts from the WDFW and Washington tribes. The NWFSC presented its review of the January 22nd petition in a March 30, 2004, memorandum (NMFS, 2004a). Upon receipt of the May 14th petition, the NWFSC evaluated the information contained therein, in conjunction with the material previously submitted in the January 22nd petition. This latter review is presented in a July 19, 2004 memorandum (NMFS, 2004b). NMFS' analysis of the petitions is summarized below, and organized with respect to the discreteness, significance, and survival risk of the Cherry Point Pacific herring stock.

January 22nd Petition

Discreteness of the Population Segment

Genetic Information NMFS' 2001 determination of a Georgia Basin Pacific herring DPS considered, in part, genetic analyses of protein variants called ''allozymes'' (Utter, 1972; Utter *et al.*, 1974; Grant, 1979, 1981; Grant and Utter, 1984). Allozyme variation in Pacific herring indicates genetic differentiation over relatively large geographic areas, such as among herring in Asia, the East Bering Sea, the Gulf of Alaska, and the Eastern North Pacific (Grant and Utter, 1984). The January 22nd petition presents genetic information that the petitioners contend suggest that the Cherry Point herring stock is discrete under the joint DPS policy. The January 22nd petition presents new genetic information from the Canadian Department of Fisheries and Oceans (Beacham *et al.*, 2001, 2002) addressing the Cherry Point stock and stocks in British Columbia.

Beacham *et al.* (2001), using microsatellite DNA analyses, compared levels of genetic distance among 65 herring samples from Southeast Alaska, British Columbia, and Washington. Microsatellite DNA markers, such as those used in Beacham *et al.* (2001), can potentially detect stock structure on finer spatial and temporal scales than can other DNA or protein markers (Stout *et al.*, 2001). Beacham *et al.* (2001) found no genetic differentiation among samples from the five British Columbia herring management stocks. However, a few samples, including the sample from Cherry Point, exhibited statistically significant allele frequency differences at some microsatellite loci compared to other samples in the study. The petitioners conclude in the January 22nd petition, on the basis of the Beacham *et al.* (2001) study, that Cherry Point herring are genetically discrete compared to other herring stocks.

NMFS does not agree with the interpretation of Beacham *et al.* (2001) presented in the January 22nd petition. The study lacks the necessary spatial and temporal coverage of samples to draw any firm conclusions regarding the discreteness of the Cherry Point stock. First, the study focused on the stock structure of herring in British Columbia. The Cherry Point sample analyzed in this study was the only sample from herring stocks in Washington State and Puget Sound; hence the study design does not inform considerations of population structure within the Puget Sound, Washington portion of the Georgia Basin DPS. Second, although Beacham et al. (2001) did indeed find statistically significant differentiation between the (single) Cherry Point sample and the geographically closest Canadian sampling sites, a single sample does not provide persuasive evidence of population discreteness. The authors noted that the result may be a sampling artifact. The individual Strait of Georgia samples were collected over several years from 1997–2000, while the Cherry Point sample was collected in 2000. The authors

cautioned that it is premature to reach conclusions about population structure given the samples analyzed; additional samples are needed to evaluate whether differentiation among sites is stable over time. For genetic differences to signify substantial reproductive isolation among populations, rather than annual variation or sampling error, differences among putative populations over time must generally be larger than the temporal variation within populations (Beacham *et al.*, 2001; Waples, 1998).

An updated version of the Beacham et al., (2001) study has included additional sampling locations, and has added additional temporal samples at several locations (Beacham et al., 2002). However, as in the Beacham et al. (2001) study, only a single May 2000 Cherry Point sample is included in the analysis. Without samples collected in multiple years it is impossible to analyze the temporal stability of genetic differences found between the single Cherry Point sample and British Columbia samples collected in other years (Beacham *et al.*, 2002).

Although NMFS is very supportive of ongoing genetic research on the stock structure of Pacific herring, such as the research of Beacham *et al.* (2001, 2002) and others, the new genetic information included in the January 22nd petition does not present substantial information to suggest that the Cherry Point stock is discrete, or that NMFS' 2001 determination of a Georgia Basin Pacific Herring DPS otherwise needs to be re-examined (NMFS, 2004a).

Physiological Information – The January 22nd petition presents new physiological information to suggest that the Cherry Point stock is discrete under the joint DPS policy. Gao *et al.* (2001) analyzed the composition of herring otoliths (small calcium carbonate structures found in the heads of all bony fishes that function in fish hearing and balance) among three stocks in Puget Sound. The ratios of stable isotopes of oxygen and carbon vary naturally in the marine environment, predominantly due to temperature and salinity. Otoliths deposit daily growth increments, incorporating the stable isotopic composition of the surrounding environment. Fish that rear in environments with distinct isotopic signatures can be distinguished by analyzing the isotopic composition of their otoliths. Gao *et al.* (2001) compared the isotopic ratios of otolith nuclei (representing the isotopic composition during the first 6 months of growth) among spawning adult herring from Cherry Point and two locations in south Puget Sound. Gao *et al.* (2001) found a statistically significant difference in isotopic composition between the Cherry Point samples and the samples from the two south Puget Sound locations. Their findings suggest that Cherry Point herring are a separate stock, consistent with the findings of Bargmann (1998) and Lemberg *et al.* (1997). However, some of the Cherry Point samples in Gao *et al.* (2001) exhibited isotopic ratios characteristic of the south Puget Sound samples. This observation suggests that some herring adults that reared elsewhere in Puget Sound may have strayed to the Cherry Point vicinity to spawn, or that water conditions characteristic of the south Puget Sound locations may also occur in the vicinity of Cherry Point. In NMFS' 2001 status review, considerable evidence of straying by adults and juveniles among stocks differing in spawning time and location argued for the delineation of the larger Georgia Basin DPS. NMFS concludes that the findings of Gao *et al.* (2001) are consistent with its 2001 DPS finding (NMFS, 2004a). While the stable isotope analysis may provide useful insights to early rearing conditions and stock structure, they do not provide substantial information regarding the physiological discreteness of the Cherry Point stock.

Behavioral and Ecological Information – In the January 22nd petition the petitioners also discuss distinct patterns in spawning time and location (Lemberg *et al.*, 1997), and parasitic communities (O'Toole *et al.*, 2000; Trumble, 1983; Hershberger, 2002) in Cherry Point herring relative to other stocks. These patterns, however, were discussed in detail in NMFS' 2001 status review (Stout *et al.*, 2001) in identifying the Georgia Basin Pacific herring DPS. As noted in the ''Relationship of Stock and DPS Concepts'' section above, patterns that establish a group of fish as a stock do not necessarily indicate that it is a DPS.

The January 22nd petition fails to present substantial information relevant to the discreteness of the Cherry Point stock (NMFS, 2004a).

Significance of the Population Segment

With respect to the considerations for significance articulated in the DPS policy, the petitioners assert in the January 22nd petition that the Cherry Point herring stock is significant to the taxon to which it belongs because it: exhibits marked differences in genetic characteristics from other populations; and occupies a unique ecological setting for the taxon. Except for the study by Beacham *et al.* (2001) discussed above, the January 22nd petition does not present any information pertaining to the potential genetic significance of the Cherry Point stock to Pacific herring that was not considered in NMFS' 2001 status review. For the reasons set forth above (in the ''Discreteness – Genetic Information'' section), the Beacham *et al.* (2001, 2002) studies do not indicate that the Cherry Point stock exhibits marked differences in genetic characteristics, or is otherwise significant to the taxon to which it belongs. In the 2001 status review NMFS concluded that the Cherry Point herring stock does not represent a unique ecological setting for Pacific herring, as similar environmental conditions exist for several herring populations in British Columbia (Stout *et al.*, 2001). The January 22nd petition fails to present substantial information pertaining to the significance of the Cherry Point ecological setting with respect to the species (NMFS, 2004a).

Survival Risk

Since the January 22nd petition does not present substantial information to suggest that the Cherry Point stock may warrant delineation as a separate DPS (NMFS, 2004a), it is unnecessary to consider survival risk in evaluating whether the petitioned action may be warranted.

Finding on January 22nd Petition

After reviewing the information contained in the January 22nd petition, as well as information readily available to NMFS scientists, NMFS determines that it fails to present substantial scientific and commercial information indicating the petitioned action may be warranted for the Cherry Point stock of Pacific herring.

May 14th Petition

Discreteness of the Population Segment

The May 14th petition presents additional new genetic information from WDFW (Small *et al.*, 2004) addressing the relatedness of the Cherry Point and other herring stocks in Puget Sound. Small *et al.* (2004) describe microsatellite DNA variation within and among 16 samples of Pacific herring, including 12 samples from Puget Sound, 4 of which were samples from the Cherry Point stock from different years. Similar to the Beacham *et al.* (2001, 2002) studies (described above under the January 22nd petition), the Small *et al.* (2004) study found low levels of genetic differentiation among samples. However, the four Cherry Point samples were consistently differentiated from other Puget Sound samples, providing some evidence for potential population discreteness. The new information

presented in the May 14th petition, in combination with the information presented in the January 22nd petition (e.g., the Beacham *et al.* 2001, 2002 studies), represents substantial information pertaining to the discreteness of the Cherry Point stock of Pacific herring (NMFS, 2004b).

The results of Small *et al.* (2004) need to be reconciled with other studies (not presented in the petitions but currently within agency files) that seem to indicate that the Cherry Point stock is not discrete. Three recent studies evaluating the distribution patterns of Pacific herring, using an extensive herring tagging database for British Columbia, do not appear to point to the discreteness of the Cherry Point stock (Hay *et al.*, 2001; Hay and McKinnell, 2002; Ware and Schweigert, 2001). Additionally, two other studies (Markiewicz *et al.*, 2001; Landis *et al.*, 2004) provide some evidence of episodic immigration into the Cherry Point stock from other stocks in years of high abundance, although the data are subject to alternative interpretations. These studies suggesting that the Cherry Point herring stock may be part of a larger metapopulation need to be reconciled with the genetic differentiation described by Small *et al.* (2004).

Significance of the Population Segment

Under the joint DPS policy, a discrete population segment may be significant to the taxon to which it belongs if there is evidence that it differs markedly from other populations its genetic characteristics (61 FR 4722; February 7, 1996). The new genetic information presented in the May 14th petition (i.e., Small et al., 2004) presents substantial information indicating that the Cherry Point Pacific herring stock may be significant with respect to the species.

Survival Risk

The majority of the information in the January 22nd petition and the May 14th petition regarding the abundance, trends, and survival risk of the Cherry Point stock was evaluated in NMFS' 2001 status review. The petitions provide additional information regarding spawner biomass estimates for 2001–2004 for the period since the status review. The petitioners note that the Cherry Point herring stock has declined dramatically over the last three decades, with the spawning biomass in 2000 representing a 94 percent decline from historical observations. The 2001 status review noted that a decline of this magnitude meets an International Union for the Conservation of Nature and Natural Resources (IUCN) criterion for ''vulnerable'' species considered to be facing a high risk of extinction in the wild (Stout *et al.*, 2001). Additionally, a quantitative analysis of trends in Cherry Point herring biomass indicated that, at the time of the 2001 status review, there was a 50 percent chance that the Cherry Point stock would decline to one ton or less in 100 years (Stout *et al.*, 2001). Although the Cherry Point stock has more than doubled in spawner biomass over the past 4 years and is at its highest level since 1996, the spawner biomass is at half the level set by WDFW (Bargmann, 2001) as necessary for the stock to maintain itself and provide harvest (although a stock below optimal harvest levels is not necessarily in danger of extinction or likely to become so in the foreseeable future). Given that the May 14th petition presents substantial information that the Cherry Point stock may warrant delineation as a separate DPS (see May 14th petition ''Discreteness'' and ''Significance'' sections, above), the information previously reviewed in 2001 (Stout *et al.*, 2001) and reiterated in the petitions represents substantial information indicating that a putative Cherry Point DPS may be threatened or endangered throughout all or a significant portion of its range (NMFS, 2004b).

Finding on May 14th Petition

After reviewing the information contained in the petitions regarding the Cherry Point stock of Pacific herring, consulting with co-manager herring experts, and reviewing information readily available to NMFS scientists, NMFS determines that the May 14th petition presents substantial scientific and commercial information indicating that the petitioned action may be warranted. In accordance with section 4(b)(3)(B) of the ESA and NMFS' implementing regulations (50 CFR 424.14(b)(2)), NMFS will commence a review of the status of the species concerned and make a determination of whether the petitioned action is warranted within 12 months of receiving the May 14th petition.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered based on any of the following factors: (1) The present or threatened destruction, modification, or curtailment of a species' habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting the species continued existence. Listing determinations are based solely on the best available scientific and commercial data after taking into account any efforts being made by any state or foreign nation to protect the species.

Information Solicited

DPS Structure and Extinction Risk of Pacific Herring

To ensure that the updated status review is complete and based on the best available and most recent scientific and commercial data, NMFS is soliciting information and comments (see **DATES** and **ADDRESSES**) concerning the Georgia Basin DPS of Pacific herring, inclusive of the Cherry Point herring stock. NMFS is soliciting information on inshore herring stocks from Puget Sound (Washington) and the Strait of Georgia (Washington and British Columbia) such as: (1) biological or other data relevant to determining the DPS structure of Pacific herring in Puget Sound and the Strait of Georgia (e.g., age structure, genetics, migratory patterns, morphology, physiology); (2) the abundance and biomass, as well as the spatial and temporal distribution of herring stocks in Puget Sound and the Strait of Georgia; (3) trends in abundance and distribution; (4) natural and human-influenced factors that cause variability in survival, distribution, and abundance; and (5) current or planned activities and their possible impact on Pacific herring (e.g., harvest measures and habitat actions). NMFS is particularly interested in such information for the period since the 2001 status review of Pacific herring.

Efforts Being Made to Protect Pacific Herring

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of a species and after taking into account efforts being made to protect the species. Therefore, in making its listing determinations, NMFS first assesses the status of the species and identifies factors that have led to the decline. NMFS then assesses conservation measures to determine whether they ameliorate a species' extinction risk (50 CFR 424.11(f)). In judging the efficacy of conservation efforts, NMFS considers the following: the substantive, protective, and conservation elements of such efforts; the degree of certainty that such efforts will reliably be implemented; the degree of certainty that such efforts will be effective in furthering the conservation

of the species; and the presence of monitoring provisions to determine effectiveness of recovery efforts and that permit adaptive management (68 FR 15100; March 28, 2003). In some cases, conservation efforts may be relatively new or may not have had sufficient time to demonstrate their biological benefit. In such cases, provisions of adequate monitoring and funding for conservation efforts are essential to ensure that the intended conservation benefits are realized. NMFS encourages all parties to submit information on ongoing efforts to protect and conserve Pacific herring in Washington and British Columbia, as well as information on recently implemented or planned activities (i.e., since the 2001 status review) and their likely impact(s).

Identification of Peer Reviewers

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. If NMFS determines that listing is warranted, the agency will solicit the expert opinions of at least three qualified specialists, concurrent with the public comment period following the publication of a proposed rule. In advance of any such determination, NMFS is soliciting the names and affiliations of potential independent peer reviewers from the academic and scientific community, Native American tribal groups, federal and state agencies, and the private sector.

References

Copies of the petition and related materials are available on the Internet at *http://www.nwr.noaa.gov/1salmon/salmonesa/herring/reference.html*, or upon request (see **ADDRESSES** section above).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 4, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–18254 Filed 8–9–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080204F]

Fisheries of the Gulf of Mexico; Reef Fish Resources of the Gulf of Mexico; Draft Amendment 26 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico; Individual Fishing Quota (IFQ) Program and Vessel Monitoring System (VMS) Requirement; Commercial Red Snapper Fishery; Scoping Meetings

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

ACTION: Notice of intent; notice of scoping meetings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) intends to prepare a draft supplemental environmental impact statement (DSEIS) in support of proposed Amendment 26 to the Reef Fish FMP (Red Snapper IFQ Amendment). The DSEIS will evaluate alternatives for actions that would establish an IFQ program and set forth a VMS requirement for the commercial red snapper fishery. The purpose of this notice of intent is to solicit public comments on the scope of the issues to be addressed in the DSEIS.

DATES: Ten scoping meetings will be held throughout the Gulf region during August 2004. See **SUPPLEMENTARY INFORMATION** for specific dates, locations, and times.

Written comments must be received in the Council's office (see **ADDRESSES**) by 5 p.m., September 9, 2004.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific locations, times, and dates.

Written comments on the scope of the DSEIS and requests for the Scoping Document may be directed to the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815; fax: 813–225–7015. Comments may also be submitted via e-mail to *redsnapper.IFQ@noaa.gov*. Include in the subject line the following document identifier: Red Snapper IFQ Amendment.

Scoping documents (*IFQ Profile Scoping Document for an IFQ and System for the Gulf of Mexico Commercial Red Snapper Fishery*) are available to download at *http://www.gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle; phone: 813–228–2815; fax: 813–225–7015; e-mail: *Wayne.Swingle@gulfcouncil.org* or Phil Steele; phone: 727–570–5305; fax: 727–570–5583; e-mail: *Phil.Steele@noaa.gov* or visit the Council's web page at: *http://www.gulfcouncil.org*.

SUPPLEMENTARY INFORMATION: The Council intends to prepare a DSEIS in support of the Red Snapper IFQ Amendment to evaluate actions that would establish an IFQ program and a VMS requirement in the commercial red snapper fishery. Alternatives considered under the IFQ action are described in the Council's *IFQ Profile* document under the following categories: IFQ structure; initial allocation of IFQ shares and annual coupons; ownership and transfer controls; monitoring and transfers of IFQ share certificates and annual coupons; and appeals process. Alternatives considered under the VMS action are described in the Council's *Scoping Document for an IFQ System for the Gulf of Mexico Commercial Red Snapper Fishery* (see **ADDRESSES** for information on obtaining the IFQ profile and scoping document). In addition to requiring (or not requiring) the use of VMS on commercial vessels harvesting red snapper, these alternatives would establish whether NMFS or vessel owners would be responsible for the costs of VMS devices.

The Council is soliciting public comment on the range of alternatives and scope of issues that should be considered under the IFQ and VMS actions. Scoping documents will be mailed to persons with commercial red snapper licenses. Others may request these documents from the Council (see **ADDRESSES** for contact information).

Additionally, 10 scoping hearings will be held at the following locations and dates beginning at 7 p.m. and concluding no later than 10 p.m.:

1. Wednesday, August 11, 2004, Harrah's Lake Charles Casino Hotel, 505 North Lakeshore Drive, Lake Charles, LA 70601; telephone: 337–437–1546;
2. Thursday, August 12, 2004, Holiday Inn Houma, 210 South Hollywood Road, Houma, LA 70360; telephone: 877–800–9383;
3. Friday, August 13, 2004, New Orleans Airport Hilton, 901 Airline Drive, Kenner, LA 70062; telephone: 504–469–5000;
4. Monday, August 16, 2004, Holiday Inn Emerald Beach, 1102 South Shoreline Boulevard, Corpus Christi, TX 78401; telephone: 361–883–5731;
5. Tuesday, August 17, 2004, Palacios Recreation Center, 2401 Perryman, Palacios, TX 77465; telephone: 361–972–2387;

6. Wednesday, August 18, 2004, San Luis Resort, 5222 Seawall Boulevard, Galveston Island, TX 77551; telephone: 409–740–8616;

7. Monday, August 23, 2004, MS Department of Marine Resources, 1141 Bayview Drive, Biloxi, MS 39530; telephone: 228–374–5000;

8. Tuesday, August 24, 2004, Perdido Beach Resort, 27200 Perdido Beach Boulevard, Orange Beach, AL 36561; telephone: 251–981–9811;

9. Monday, August 30, 2004, National Marine Fisheries Service, 3500 Delwood Beach Road, Panama City, FL 32408; telephone: 850–234–6541; and

10. Tuesday, August 31, 2004, Radisson Bay Harbor Hotel, 7700 Courtney Campbell Causeway, Tampa, FL 33607; telephone: 813–281–8900.

These meetings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**).

The completed DSEIS associated with the Draft Red Snapper IFQ Amendment will be filed with the U.S. Environmental Protection Agency, announced in the **Federal Register**, and open to public comment for 45–day period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the National Environmental Policy Act (NEPA) (and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations).

The Council will consider public comments received on the DSEIS in developing the final supplemental environmental impact statement (FSEIS), and before taking final action on the Red Snapper IFQ Amendment. The Council will submit both the final Amendment and the supporting FSEIS to NMFS for conduction of the referendum, Secretarial review, approval, and implementation under the requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS will announce, through a notice published in the **Federal Register**, the availability of the final Red Snapper IFQ Amendment for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FSEIS with the EPA for a final 30–day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the final Red Snapper IFQ Amendment.

NMFS will announce, through a notice published in the **Federal Register**, all public comment periods on the final Red Snapper IFQ Amendment, its proposed implementing regulations, and its associated FSEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are or are not on the final Amendment, the proposed regulations, or the FSEIS, prior to final agency action.

Dated: August 4, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–18253 Filed 8–9–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073004B]

Notice of Meeting and Review of the Analytical Framework for Conducting Jeopardy Analyses Under the Endangered Species Act

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Meeting

SUMMARY: The National Marine Fisheries Service is hosting a meeting to solicit constructive criticism from an expert panel on the analytical framework used for conducting jeopardy analyses under the Endangered Species Act.

DATES: The meeting will span three days from 8 a.m. to 5 p.m. each day, beginning Tuesday, August 24 and concluding on Thursday, August 26, 2004.

ADDRESSES: The meeting will be held in a conference room at the Four Points Sheraton Bethesda, 8400 Wisconsin Avenue, in Bethesda, MD.

SUPPLEMENTARY INFORMATION: The meeting will be facilitated and structured to allow panelists to ask questions and discuss ideas freely. Invited panelists have been asked to provide constructive criticism of the analytical framework for conducting jeopardy analyses under the Endangered Species Act and identify options for assessing species risk under varying circumstances. The meeting is open to the public, although space is limited. Interested persons may present comments, in writing, on the issues before the panel.

Written submissions will be accepted at the meeting and addressed during the meeting, as time allows, and in the meeting summary.

Special Accommodations

This meeting is accessible to people with disabilities or special needs. If you require special accommodations due to a disability, please contact us as soon as possible.

For additional information or to reserve a space at the meeting contact, Phil Williams, Chief of Endangered Species, Protected Resources, 1315 East West Highway, SSMC3, Silver Spring, MD 20910; telephone(301) 713–1401, or email *phil.Williams@noaa.gov*.

Dated: August 4, 2004.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–18184 Filed 8–9–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

August 4, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: August 12, 2004.

FOR FURTHER INFORMATION CONTACT: Becky Geiger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 68602, published on December 9, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 4, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 3, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004.

Effective on August 12, 2004, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
335/635	359,283 dozen.
338/339	919,435 dozen.
341/641	218,528 dozen.
347/348	1,684,889 dozen.
647/648	425,486 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–18226 Filed 8–9–04; 8:45 am]

BILLING CODE 3510– DR–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Common Request

AGENCY: Department of the Air Force and Department of the Navy.

ACTION: Notice.

SUMMARY: This serves as a request for public comment, pursuant to 36 CFR 800.14(e). The Department of the Air Force and the Department of the Navy (Navy and Marine Corps) are working to improve the quality of the housing for their Service Members. In compliance with the National Historic Preservation Act's (NHPA) Section 106 regulations, the Air Force and the Navy are consulting with the Advisory Council on Historic Preservation (Council), the National Conference of State Historic Preservation Officers (NCSHPO) and the National Trust for Historic Preservation (National Trust) to efficiently and programmatically meet their federal historic preservation responsibilities regarding Capehart and Wherry era housing as required under the NHPA rather than consult on individual undertakings, installation by installation.

DATES: Consideration will be given to all comments received by October 12, 2004.

ADDRESSES: Address comments to: HQ AF/ILE, Environmental Programs, ATTN: Lt. Col. Alan Holck, 1260 Air Force Pentagon, Washington, DC, 20030–1260 (AIR FORCE) Commander, Naval Facilities Engineering Command (BDD), ATTN: Dr. Jay Thomas, 1322 Patterson Ave SE., Ste 1000, Washington, Navy Yard DC 20374–5065.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Alan Holck at (703) 604–0632 or Dr. Jay Thomas at (202) 685–9196.

SUPPLEMENTARY INFORMATION: The Air Force and the Navy's (including the Marine Corps) Capehart and Wherry era housing may be eligible for listing to the National Register of Historic Places Under National Register Criteria A (associated with events that have made a significant contribution to the broad patterns of our history) and C (embodying distinctive characteristics of a type, period, or method of construction and representing a significant and distinguishable entity whose components may lack individual distinction). Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to consider the effects of their actions on historic properties and provide the Council a reasonable opportunity to comment. The Section 106 process seeks to accommodate historic preservation concerns with the needs of the federal agencies through consultation among the agency officials and other parties with an interest in the effects of the undertaking on historic properties. The Air Force and the Navy will request Program Comments from the Council pursuant to 36 CFR § 800.14e as an alternative way to comply with their historic preservation responsibilities for Capehart and Wherry era family housing (1949–1962). Capehart and Wherry housing is located at 46 Air Force, 41 Navy, and 13 Marine Corps installations throughout the United States. The Air Force and the Navy will request public comment on the proposed programmatic approach to comply with Section 106 of the NHPA. Potential mitigation includes augmenting and adopting research completed by the Department of the Army, pursuant to the Program Comment the Council issued on 7 June 02. Specific mitigation measures under consideration include oral histories, supplemental historic context information, adoption of the Army's design guidelines and tax credit information.

Types of management and treatment that may be made to Capehart and Wherry era housing by the Air Force and the Navy include: maintenance and repair, rehabilitation, layaway and mothballing, demolition and replacement, transfer, sale or lease out of federal control, and substantial alteration through renovation, and may include any associated structures and landscape features that may be contributing elements to Capehart and Wherry are housing's eligibility for listing to the National Register of Historic Places. Implementation of all or some of these actions may constitute an adverse effect to historic properties. Evaluation of the environmental impacts resulting from implementation of the Air Force and the Navy's housing program will be addressed separately at each installation per the National Environmental Policy Act.

The Air Force and the Navy will consult with the Council, the NCSHPO and the National Trust to identify appropriate treatment measures for its Capehart and Wherry era properties. Recommendations agreed to as a result of consultation will be published in the **Federal Register** by the Council. Agreement to and implementation of these recommendations will demonstrate the Air Force and the Navy have taken into account the effect of the undertaking on historic properties.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–18214 Filed 8–9–04; 8:45 am]

BILLING CODE 5001–05–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy.

ACTION: Notice to add system of records.

SUMMARY: The Department of the Navy proposes to add a system of records notice to 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 on September 9, 2004 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's 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 system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on August 3, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: August 4, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM05800–2

SYSTEM NAME:

DON Alternative Dispute Resolution Program.

SYSTEM LOCATION:

Department of the Navy Alternative Dispute Resolution Program, Office of the General Counsel of the Navy, 720 Kennon Street SE., Room 214, Washington Navy Yard, DC 20374–5012.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in Department of the Navy (DON) Dispute Resolution (ADR) activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to mediator, facilitator, and other neutral qualifications including security clearance, experience, training, languages spoken and read, status of certification, names, addresses, telephone numbers and e-mail addresses.

Records pertaining to ADR program activities conducted including convening and scheduling records, evaluation forms, form of ADR, case type, dates, times and locations of ADR sessions, participant information including names, addresses, telephone numbers and e-mail addresses, subject matter of the mediation or other ADR activity, outcomes of ADR activities, and notes pertaining to the ADR activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Administrative Dispute Resolution Act of 1996, Pub. L. 104–320 § 3, 110 Stat. 3872; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and SECNAVINST 5800.13, Alternative Dispute Resolution (ADR).

PURPOSE(S):

To identify Navy Certified Mediators and other neutrals for assignment to cases; to record the accomplishment of training and other prerequisites necessary to become and remain Navy Certified Mediators and to determine the certification status of Mediators and other neutrals involved in DON ADR programs and activities; to schedule ADR activities such as mediation; to notify participants of scheduled ADR activities; to assign mediators, facilitators, and other neutrals to cases; to record the outcomes of mediation activities, and to gather information to assess and evaluate the effectiveness of the DON Alternative Dispute Resolution Program.

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:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets and computerized ADR tracking system.

RETRIEVABILITY:

Name of individual.

SAFEGUARDS:

Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved the retention and disposition schedule for these records, treat them as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Dispute Resolution Specialist and ADR Counsel, General Counsel of the Navy, 720 Kennon Street SE., Room 214, Washington Navy Yard, DC 20374–5012.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Department of the Navy Alternative Dispute Resolution Program, Office of the General Counsel of the Navy, 720 Kennon Street SE., Room 214, Washington Navy Yard, DC 20374–5012.

Written requests should include the full name and address of the individual and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Department of the Navy Alternative Dispute Resolution Program, Office of the General Counsel of the Navy, 720 Kennon Street SE., Room 214, Washington Navy Yard, DC 20374–5012. Written requests should include the full name and address of the individual and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations

are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; evaluations by parties to a dispute of the effectiveness of relevant ADR efforts; and information provided by parties seeking to use Department of the Navy ADR program services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–18183 Filed 8–9–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 9, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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: August 5, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Innovation and Improvement

Type of Review: Extension.

Title: DC School Choice Incentive Program.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 3,000; Burden Hours: 1,000.

Abstract: This Program provides low-income parents that reside in DC with expanded options for acquiring a high quality education for their children. To be eligible for scholarships, participating students are DC residents and their household income does not exceed 185% of the poverty line.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2533. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–18216 Filed 8–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information, Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Improving Achievement of Children With Disabilities Under the No Child Left Behind Act; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326A.

DATES: *Applications Available:* August 10, 2004.

Deadline for Transmittal of Applications: September 9, 2004.

Deadline for Intergovernmental Review: September 14, 2004.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Estimated Available Funds: $2,000,000.

Maximum Award: We will reject any application that proposes a budget exceeding $2,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides technical assistance and information that (1) Support States and local entities in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address goals and priorities for improving State systems that provide early intervention, educational, and transitional services for children with disabilities and their families.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (*see* sections 661(e)(2) and 685 of the Individuals with Disabilities Education Act, as amended (IDEA)).

Absolute Priority: For FY 2004, this priority is an absolute priority. Under 34

CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—Improving Achievement of Children With Disabilities under the No Child Left Behind Act.

Background: The No Child Left Behind Act of 2001 (NCLB) ensures greater accountability for all students, including students with disabilities. Initial reports from States and school districts indicate that some schools may be struggling to achieve adequate yearly progress (AYP) based on the performance of students with disabilities on State assessments. This inadequate performance may be due to a variety of factors. In some cases, it may be because schools and classrooms are not organized to promote optimal learning, or curricula and instruction are not designed to include research-based interventions that support the academic achievement of students with disabilities. In other cases, appropriate classroom and assessment accommodations, including assistive technologies, are not being used. And, in other cases, appropriate assessment participation decisions are not being made for students with disabilities. Furthermore, for students with the most significant disabilities, their instructional program may not be aligned with the grade level standards that exist for typically developing children. For all of these reasons, the Office of Special Education Programs (OSEP) is proposing to fund the establishment of a technical assistance center to support States and ultimately school districts and school personnel to ensure that all students with disabilities progress toward proficiency.

Priority: This priority will support a National Center (Center) To Improve Achievement of Children With Disabilities Under No Child Left Behind Act (NCLB). The primary target for this technical assistance will be State educational agencies (SEAs).

The Center must—

(a) Establish and provide ongoing support to a community of practice for improved achievement of children with disabilities under NCLB. The membership of this community of practice must be determined with input from the Department of Education, and must include researchers and technical assistance providers, parents, state and local policy makers, and distinguished teachers and principals. The Center will support the ongoing communication of this community of practice through e-mail, teleconferences, web-based discussions, and face-to-face meetings. The community of practice will serve as an advisory group to the Center.

(b) Identify and synthesize information on effective methods/strategies that SEAs and local educational agencies (LEAs) are using to systematically analyze AYP and other data to help identify schools and classrooms in which students with disabilities are not achieving proficiency.

(c) Develop methods for States to use to assist LEAs and schools in using assessment and other information to conduct needs assessments, identify options, and target particular areas for intervention to improve the performance of students with disabilities. For example, in addition to looking at information on academic performance, schools may want to examine such factors as teacher qualifications, the quality of curricula and instruction, the technology and accommodations provided, the settings in which the instruction occurs, and school behavior management strategies. The Center must focus on helping States work with schools designated to be in ''school improvement'' status under NCLB.

(d) Help SEAs and LEAs identify effective and promising practices for improving the performance and assessment of children with disabilities by consulting sources such as the What Works Clearinghouse (WWC), by commissioning the WWC to conduct reviews of relevant research if such reviews have not already been done, and, if necessary, by conducting its own reviews of research studies using standards consistent with those of WWC. In addition, the Center will work with other technical assistance providers such as the Access Center: Improving Outcomes for All Students K–8, the National Center on Student Progress Monitoring, the National Center on Positive Behavioral Interventions and Supports, the National Center for Educational Outcomes, the comprehensive regional technical assistance centers and the regional educational laboratories as resources for incorporating effective strategies for improving the performance of students with disabilities in broader improvement efforts. The Center will also work to ensure that these efforts are coordinated with other reform/school improvement initiatives at the district and local school level.

(e) Provide technical assistance, in project years two through five, to a cadre of States and their stakeholders including members of state support systems, school support teams, teachers, principals, parents, pupil services personnel, institutions of higher education and outside consultant groups, on how to work with districts to use the results of this process to:

(1) Design and implement evidence-based and promising instructional practices or individual or school-wide interventions to help students with disabilities reach proficiency including developing criteria that would ensure that appropriate, aligned curriculum is selected;

(2) Design learning environments that support the achievement of grade level academic content standards by students with disabilities and also the attainment of alternate achievement standards aligned to academic content standards for students with the most significant cognitive disabilities;

(3) Select appropriate classroom and assessment accommodations for students with disabilities, including assistive technologies; and

(4) Make appropriate assessment participation decisions for students with disabilities.

(f) Link SEA personnel and their stakeholders to other major technical assistance providers, such as the Access Center: Improving Outcomes for All Students K–8, the National Center on Student Progress Monitoring, the National Center on Positive Behavioral Interventions and Supports, the National Center for Educational Outcomes, the comprehensive regional technical assistance centers and the regional educational laboratories, to ensure that evidence-based and promising practices to improve performance of children with disabilities are promoted and implemented with fidelity.

(g) Work with States to develop an infrastructure to support school and district improvement and to scale up effective school-based models.

(h) The projects funded under this priority must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(i) The projects Web site must include relevant information and documents in an accessible form.

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(1) The recommendation of a review team consisting of experts selected by the Secretary. The review will be conducted in Washington, DC during the last half of the project's second year. Projects must budget for the travel associated with this one-day intensive review; and

(2) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on a proposed priority. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1461 and 1485.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $2,000,000.

Maximum Award: We will reject any application that proposes a budget exceeding $2,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs, LEAs, IHEs, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of the IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of the IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.326A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 10, 2004.

Deadline for Transmittal of Applications: September 9, 2004.

We do not consider an application that does not comply with the deadline requirements.

Applications for grants under this competition may be submitted by mail or hand delivery (including a commercial carrier or courier service), or electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. For information (including dates and times) about how to submit your application by mail or hand delivery, or electronically, please refer to Section IV. 6. *Procedures for Submitting Applications* in this notice.

Deadline for Intergovernmental Review: September 14, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition. However, in order to ensure that this FY 2004 grant is made before September 30, 2004, the 60-day intergovernmental review period has been waived to 5 days.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Procedures for Submitting Applications:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you submit your application to us electronically, you must use e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You must submit your grant application electronically through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m., Washington,

DC time, on the application deadline date. The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and after 7 p.m. on Wednesdays for maintenance, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The applicant's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Improving Achievement of Children With Disabilities under the No Child Left Behind Act competition at: *http://e-grants.ed.gov.*

b. *Submission of Paper Applications By Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must send the original and two copies of your application on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326A), 400 Maryland Avenue, SW., Washington, DC 20202.

You must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service Postmark;
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;
3. A dated shipping label, invoice, or receipt from a commercial carrier; or
4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

1. A private metered postmark, or
2. A mail receipt that is not dated by the U.S. Postal Service.

If your application is post marked after the application deadline date, we will notify you that we will not consider the application.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts deliveries daily between 8 a.m. and 4:30 p.m., Washington, D.C. time, except Saturdays, Sundays and Federal holidays. A person delivering an application must show identification to enter the building.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.
2. The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the mailing of your application, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technical Assistance to Improve Services and Results for Children with Disabilities program (*e.g.*, the extent to which projects use high quality methods and materials, provide useful products and services, and contribute to improving results for children with disabilities). Data on these measures will be collected from the projects funded under this competition.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

We will notify grantees of the performance measures once they are developed.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Debra Price-Ellingstad, U.S. Department of Education, 400 Maryland Avenue, SW., room 4157, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7481.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: August 5, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–18306 Filed 8–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information, Special Education—Technology and Media Services for Individuals With Disabilities—National Instructional Materials Accessibility Standard; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327P.

DATES: *Applications Available:* August 10, 2004.

Deadline for Transmittal of Applications: September 9, 2004.

Deadline for Intergovernmental Review: September 14, 2004.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: $650,000.

Estimated Average Size of Awards: Development: $400,000; Technical assistance and dissemination: $250,000.

Maximum Award: Development: $400,000; Technical assistance and dissemination: $250,000. We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media activities designed to be of educational value to children with disabilities; (3) provide support for some captioning and video description; and (4) provide cultural experiences through appropriate nonprofit organizations.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (*see* sections 661(e)(2) and 687 of the Individuals with Disabilities Education Act, as amended (IDEA)).

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—National Instructional Materials Accessibility Standard:

Background: The No Child Left Behind Act of 2001 (NCLB) requires that all students, including those with disabilities, participate in State assessments. This requirement underscores the critical importance of IDEA requirements related to access, participation, and progress in the general curriculum. Specifically, the regulations implementing IDEA state that one of the purposes of ''specially-designed instruction'' is to adapt the content, methodology, or delivery of instruction in order ''to ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.'' 34 CFR Part 300.26(b)(3)(ii).

Currently, both special and regular educators face challenges in providing students with disabilities access to the general curriculum, especially with regard to rigorous academic content. Research indicates that the use of accessible materials substantially reduces learning barriers and demonstrates the benefits of using accessible materials in the classroom (Barker & Torgesen, 1995; Bottge, 1999; Dalton et al, 2001; Erdner, Guy & Bush, 1998; MacArthur & Haynes, 1995; Wise, Ring, & Olson, 1999). Urgent and critical needs exist for improving access to accessible instructional resources that are available in a timely manner for use in all classrooms.

To help address these critical needs, the National File Format (NFF)

Technical Panel, representing educators, publishers, technology specialists, and advocacy groups, was established. The NFF Technical Panel recently developed, with consensus, a common standard for digital files that can be used to produce accurate and reliable alternate formats for educational materials from the same source file. This standard is known as the National Instructional Materials Accessibility Standard (NIMAS, version 1.0) and should help improve the timely access to accessible materials for those students with blindness, low vision, and print disabilities. The NIMAS is available at *http://www.cast.org/NFF/NIMAS/*

Priority: The Secretary establishes an absolute priority, which supports cooperative agreements for two centers. The NIMAS Development Center must provide national leadership in furthering the development and maintenance of the NIMAS. The NIMAS Technical Assistance Center must provide assistance to States on the availability of NIMAS and how NIMAS can be used to improve the capacity of States to provide accessible instructional materials to students with disabilities in a more efficient, cost-effective manner.

Development and Maintenance Activities of the Development Center must include, but are not limited to:

(a) Making recommendations to the Department regarding whether technical updates to the NIMAS are appropriate due to advances in technology and changes in the ANSI/NISO Z39.86 standard; examining issues and making recommendations to the Department related to the development of subsequent versions of the NIMAS that address accessibility needs of a broader range of students with disabilities than the current NIMAS (Version 1.0), including consideration of the principles of universal design; and, subject to the approval of the Department, developing subsequent versions of the NIMAS;

(b) Establishing a NIMAS Committee to provide advice to the grantee on issues related to the grantee's activities, including the issues identified in paragraph (a);

(c) Evaluating the feasibility of adopting a free market distribution model and making recommendations to the Department related to steps it might take to facilitate such an approach;

(d) Maintaining communication and collaboration with the NIMAS Technical Assistance Center; and

(e) Conducting evaluations of specific activities and of the overall impact of the Center's work including whether adoption of the NIMAS standard results in greater and more timely availability of materials. The Center must report its evaluation findings at least annually to the Federal project officer.

Technical Assistance and Dissemination Activities of the Technical Assistance Center must include, but are not limited to:

(a) Developing and implementing a strategic plan of technical assistance to States that have adopted or are considering adoption of NIMAS and other entities involved with the implementation of NIMAS in collaboration with the Regional Resource Centers and the National Center on Technology Innovation;

(b) Maintaining a user-friendly Web site with relevant information and documents in an accessible format;

(c) Maintaining communication and collaboration with other Department funded projects such as the National Center on Technology Innovation, the Technology Implementation Center, the new NIMAS Development Center, the IDEA Partnerships, the Regional Resource Centers, the National Center on Secondary Education and Transition (NCSET), the K–8 Access Center, and other research, demonstration, and technical assistance centers, as appropriate, to coordinate information and dissemination activities related to NIMAS and promote consistent implementation of NIMAS;

(d) Building awareness about NIMAS among States and other relevant organizations;

(e) Establishing a Technical Maintenance Group to define strategies for valid and consistent technical implementation of the standard;

(f) Supporting a timely phase-in of the NIMAS specifications within States; and

(g) Conducting evaluations of specific activities and of the overall impact of the Center's work. The Technical Assistance Center must report its evaluation findings at least annually to the Federal project officer.

Each Center must also:

(a) Meet with the Office of Special Education Programs (OSEP) project officer in the first two months of the project to review and refine the strategic plan of support and dissemination approaches.

(b) Communicate with the Federal project officer through monthly teleconferences and e-mail communication as needed. The Center must submit annual performance reports and provide additional written materials as needed for the Federal project officer to monitor the Center's work.

(c) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project. In addition to the two-day Project Director's Meeting, each Center must budget for at least two annual planning meetings with Department officials, and at least two, two-day trips annually as requested by OSEP to attend meetings such as Department briefings, Department-sponsored conferences, and other OSEP-requested activities.

Fourth and Fifth Years of Project: If continued need for technical assistance and development exists, the Secretary will consider continuation of the projects for the fourth and fifth years under the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's third year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by each Center; and

(c) In the case of the Development Center, the degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1485 and 1487.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $650,000.

Estimated Average Size of Awards: Development: $400,000; Technical assistance and dissemination: $250,000.

Maximum Award: Development: $400,000; Technical assistance and dissemination: $250,000. We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of IDEA).

IV. Application and Submission Information

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You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327P.

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- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, the letters of support, or the appendix. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 10, 2004.

Deadline for Transmittal of Applications: September 9, 2004.

We do not consider an application that does not comply with the deadline requirements.

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Deadline for Intergovernmental Review: September 14, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition. However, in order to ensure that these FY 2004 grants are made before September 30, 2004, the 60-day intergovernmental review period has been waived to 5 days.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Procedures for Submitting Applications:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you submit your application to us electronically, you must use e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You must submit your grant application electronically through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m., Washington, DC time, on the application deadline date. The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and after 7 p.m. on Wednesdays for maintenance, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which

will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The applicant's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right-hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you give us original signatures on other forms at a later date. *Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e–GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Technology and Media Services For Individuals With Disabilities—National Instructional Materials Accessibility Standard competition at: *http://e-grants.ed.gov*.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must send the original and two copies of your application on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327P), 400 Maryland Avenue, SW., Washington, DC 20202.

You must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service Postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

3. A dated shipping label, invoice, or receipt from a commercial carrier; or

4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

1. A private metered postmark, or

2. A mail receipt that is not dated by the U.S. Postal Service.

If your application is post marked after the application deadline date, we will notify you that we will not consider the application.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327P), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays. A person delivering an application must show identification to enter the building.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

2. The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the mailing of your application, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technology and Media Services for Individuals with Disabilities program (*e.g.* the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving results for children with disabilities). Data on these measures will be collected from the projects funded under this notice.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

We will notify grantees of the performance measures once they are developed.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Bonnie Jones, U.S. Department of Education, 400 Maryland Avenue, SW., room 4153, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7395.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Dated: August 5, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–18307 Filed 8–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; Technology and Media Services for Individuals With Disabilities—Television Access; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327C.

DATES: *Applications Available:* August 10, 2004.

Deadline for Transmittal of Applications: September 9, 2004.

Deadline for Intergovernmental Review: September 14, 2004.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: $2,825,000.

Estimated Average Size of Awards: Local News and Public Information Programs: $125,000; Accessible Children's Television Programs: $300,000.

Maximum Award: Local News and Public Information Programs: $125,000; Accessible Children's Television Programs: $300,000. We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose Of Program: The purpose of the Technology and Media Services for Individuals With Disabilities—Television Access competition is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media activities designed to be of educational value to children with disabilities; (3) provide support for some captioning and video description; and (4) provide cultural experiences through appropriate nonprofit organizations.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 661(e)(2) and 687 of the Individuals with Disabilities Education Act, as amended (IDEA)).

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Television Access

Background: The Federal Communications Commission (FCC) is primarily responsible for implementing and monitoring the closed captioning requirements of the Telecommunications Act of 1996. In this Act, Congress generally requires that programming be captioned, regardless of distribution technology, to ensure access to persons with hearing disabilities.

In this Act, Congress recognized that, in some situations, requiring programming to be captioned might prove economically burdensome to video programming providers and owners. For this reason, Congress also authorized the FCC to adopt exemptions from the general captioning requirements for programs, and classes of programs, for which the FCC determines that the provision of captioning would be economically burdensome to the provider or owner of such programming. In addition, the FCC has promulgated rules for real-time captioning, which typically uses stenography but includes any methodology, to convert the entire audio portion of a live program to captions. For a fuller explanation of the FCC's requirements on captioning, please refer to *http://www.fcc.gov/cgb/consumerfacts/closedcaption.html.*

On July 21, 2000, the FCC also adopted rules to make television more accessible to people with visual disabilities by mandating that a certain amount of programming contain video description. However, in November 2002, a Federal court struck down these rules. Thus, FCC accessibility rules do not currently require video description.

Priority: Under this priority, which supports cooperative agreements, an applicant may address one or both of the following:

(a) Real-time captioning of locally produced news and public information television programming that, under the FCC's captioning requirements, is not required to be real-time captioned.

(b) Describing, or captioning and describing, widely available children's educational programs. Only children's educational programming that would not otherwise be captioned to meet the FCC's captioning requirements, or is specifically exempt from the FCC's captioning requirements, is eligible to be captioned.

A project must do the following:

(a) For children's educational programs, include criteria for selecting programs that have high educational

merit and take into account the preference of educators, students, and parents, and the diversity of the type of programming available.

(b) Identify and support a consumer advisory group, including parents and educators, which must meet at least annually.

(c) Use the expertise of this consumer advisory group to certify that each program captioned or described with project funds is educational, news, or informational programming. Following are examples of programming that is educational, news or informational:

(1) Children's programming that furthers the educational and informational needs of children, including the child's intellectual/cognitive or social/emotional needs (exception: Programs that contain adult content);

(2) News and news magazines (exception: entertainment news magazines); and

(3) Adult informational or documentary programs (exceptions: non-documentary feature films and television movies unless they are appropriate for use in the classroom; documentaries that profile entertainment personalities, or criminals).

(d) Identify the extent to which the programming is widely available.

(e) Identify the total number of program hours the project will make accessible and the cost per hour for description and for captioning.

(f) For each video program, identify the source of any private or other public support, and the projected dollar amount of that support, if any.

(g) Demonstrate the willingness of program providers or owners of programs to permit and facilitate the description or captioning of their programs.

(h) Provide assurances from program providers or owners of programs stating that programs made accessible under this project will air, and will continue to air, with descriptions and captions.

(i) Provide assurances from program providers or owners of programs stating that programs captioned under this project would not otherwise be captioned to meet the FCC's captioning requirements, or are specifically exempt from the FCC's captioning requirements.

(j) Implement procedures for monitoring the extent to which full accessibility is provided, and use this information to make refinements in project operations.

(k) Identify the anticipated shelf-life and range of distribution of the video programs that is possible without further costs to the project.

In addition, projects funded under this priority must—

(a) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(b) If a project maintains a Web site, include relevant information and documents in an accessible form.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority.

Under 34 CFR 75.105(c)(2)(i) we award up to an additional 20 points to an application, depending on the extent to which the application meets this priority.

This priority is:

Local News and Public Information Programs—In meeting this priority, the applicant:

(a) Must not have been a grantee or a subcontractor of a grantee under the Technology and Media Services for Individuals with Disabilities program during the prior fiscal year; and

(b) Will not use a subcontractor who was a grantee or a subcontractor of a grantee under this program during the current fiscal year.

Thus, an applicant meeting this competitive preference could receive a maximum possible score of 120 points.

Waiver Of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of the IDEA makes the public comment requirements inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1487.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $2,825,000.

Estimated Average Size of Awards: Local News and Public Information Programs: $125,000; Accessible Children's Television Programs: $300,000.

Maximum Award: Local News and Public Information Programs: $125,000; Accessible Children's Television Programs: $300,000. We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of the IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of the IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327C.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together

with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

• A ''page'' is 8.5″ × 11″, (on one side only) with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, the letters of support, or the appendix. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 10, 2004.

Deadline for Transmittal of Applications: September 9, 2004.

We do not consider an application that does not comply with the deadline requirements.

Applications for grants under this competition may be submitted by mail or hand delivery (including a commercial carrier or courier service), or electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. For information (including dates and times) about how to submit your application by mail or hand delivery, or electronically, please refer to Section IV. 6. *Procedures for Submitting Applications* in this notice.

Deadline for Intergovernmental Review: September 14, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition. However, in order to ensure that these FY 2004 grants are made before September 30, 2004, the 60-day intergovernmental review period has been waived to 5 days.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Procedures for Submitting Applications:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you submit your application to us electronically, you must use e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov*.

If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database.

If you participate in e-Application, please note the following:

• Your participation is voluntary.

• You must submit your grant application electronically through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m., Washington, DC time, on the application deadline date. The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and after 7 p.m. on Wednesdays for maintenance, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The applicant's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Technology and Media Services for Individuals With Disabilities—Television Access competition at: *http://e-grants.ed.gov*.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must send the original and two

copies of your application on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327C), 400 Maryland Avenue, SW., Washington, DC 20202.

You must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service Postmark;
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;
3. A dated shipping label, invoice, or receipt from a commercial carrier; or
4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

1. A private metered postmark, or
2. A mail receipt that is not dated by the U.S. Postal Service.

If your application is post marked after the application deadline date, we will notify you that we will not consider the application.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

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The Application Control Center accepts deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays. A person delivering an application must show identification to enter the building.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.
2. The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the mailing of your application, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technology and Media Services to Improve Services and Results for Children with Disabilities program (*e.g.*, the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving results for children with disabilities). Data on these measures will be collected from the projects funded under this notice.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

We will notify grantees of the performance measures once they are developed.

FOR FURTHER INFORMATION CONTACT: Jo Ann McCann, U.S. Department of Education, 400 Maryland Avenue, SW., room 4067, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7434.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Dated: August 5, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–18308 Filed 8–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

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), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Thursday, September 9, 2004, 9 a.m.–5 p.m.; Friday, September 10, 2004, 8:30 a.m.–4 p.m.

ADDRESSES: Double Tree Guest Suites, 16500 South Center Parkway, Seattle, WA 98188, Phone: (206) 575–8220, Fax: (206) 575–4743.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy, Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Thursday, September 9, 2004

- Annual Face-to Face Check-in with the Tri-Party Agreement Agencies
- End States Workshop
- River Corridor Contract
- Hanford Solid Waste Environmental Impact Statement Record of Decision

Friday, September 10, 2004

- Tank Waste Fact Sheet
- Status of Technical Assistance Request
- Board Leadership

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 Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision 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 equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy, Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC, on August 5, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–18245 Filed 8–9–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 2004–1 of the Defense Nuclear Facilities Safety Board, Oversight of Complex, High-Hazard Nuclear Operations

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board Recommendation 2004–1, concerning oversight of complex, high-hazard nuclear operations was published in the **Federal Register** on June 7, 2004 (69 FR 31815). In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Secretary transmitted the following response to the Defense Nuclear Facilities Safety Board on July 21, 2004.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before September 7, 2004.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore D. Sherry, Deputy Manager, Department of Energy, NNSA Y–12 Site Office, 200 Administration Road, P.O. Box 2001, Oak Ridge, TN 37830.

Issued in Washington, DC on August 2, 2004.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

BILLING CODE 6450–01–P

The Secretary of Energy
Washington, DC 20585

July 21, 2004

The Honorable John T. Conway
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, NW, Suite 700
Washington, DC 20004-2901

Dear Mr. Chairman:

The Department has thoroughly reviewed Recommendation 2004-1 regarding oversight of complex, high-hazard nuclear operations issued by the Defense Nuclear Facilities Safety Board (Board) on May 21, 2004.

The Department remains firmly committed to its Integrated Safety Management (ISM) program as the foundation for performing work safely throughout the Department. The Department's response will include actions to enhance the effectiveness of our ISM program. We remain committed to safety as our top priority and will not sacrifice safety to meet production goals. In January, we highlighted our commitment to continued safety improvement by establishing safety as one of the seven Department-wide Management Challenges for 2004.

As you observed as background to the recommendation, the Columbia accident and the Davis-Besse incident provide valuable lessons from which the Department can learn as we continue to improve our safety management. The lessons from these events will be key inputs in our action planning in response to your recommendation.

The Department accepts Recommendation 2004-1 and will develop an implementation plan to accomplish the following actions for nuclear operations at defense nuclear facilities:

1. Clarify and/or establish formal requirements regarding delegation of authority on safety matters to ensure that delegations are made with clear criteria. Ensure that adequate oversight and technical capability are in place to fulfill these safety responsibilities at all levels of the Department.

2. Identify applicable lessons from the Columbia accident and Davis-Besse incident and implement corrective actions to improve safety throughout the organization.

3. Establish a technically-competent, central authority or authorities with core safety responsibilities.

4. Identify safety research, analysis, and testing needs and institute a program to ensure effective management, integration, and execution of efforts to address these needs.

5. Revise and implement the Functions, Responsibilities and Authorities documents and Quality Assurance Plans, as needed, to achieve the actions described above and to ensure direct and unbroken lines of roles and responsibilities for the safety of nuclear operations.

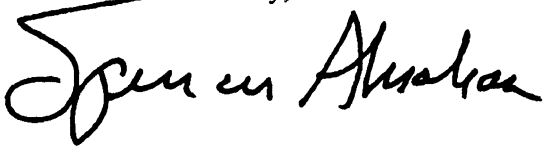
6. Validate that safety responsibilities, capabilities, and authorities are implemented and consistent with requirements.

The Department's understanding is that Recommendation 2004-1 does not require changes to the structure of the directives management system or to the existing DEAR clauses.

Regarding delegations of authority on defense nuclear safety matters, I have directed the Department's senior managers to make no new field delegations, except as approved by me or the Deputy Secretary until the Department completes the applicable actions identified in the Department's 2004-1 implementation plan. To clarify, this restriction does not apply to delegation modifications that may be required as a result of personnel changes or delegation expirations.

I have asked Mr. Ted Sherry, Deputy Manager, National Nuclear Security Administration Y-12 Site Office, to lead the response team that will develop the Department's 2004-1 implementation plan. If you have questions, please contact him at (865) 576-0752.

Sincerely,



Spencer Abraham

[FR Doc. 04–18244 Filed 8–9–04; 8:45 am]
BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–421–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 30, 2004, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective September 1, 2004:

Fourth Revised Sheet No. 100

Third Revised Sheet No. 101 revised title page.

ANR states that the purpose of this filing is to revise its tariff in order to comply with the Commission's Order No. 2004 and part 358 of the Commission's Regulations. Additionally, ANR submits proposed revised tariff sheets to clarify that the information required to be posted pursuant Order No. 2004 and part 358 as well as the appropriate contact information for complaints regarding service pursuant to ANR's tariff is available via ANR's Internet Web site. Finally, ANR submits proposed revised tariff sheets to clarify that the contact information for any person desiring information on the availability, pricing, or other terms of transportation services is available via ANR's Internet Web site.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date

need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1751 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–423–000]

ANR Storage Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 30, 2004, ANR Storage Company (ANR Storage), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective September 1, 2004: Second Revised Sheet No. 131, and a revised title page.

ANR Storage states that the purpose of this filing is to revise its tariff in order to comply with the Commission's Order No. 2004 and part 358 of the Commission's Regulations. Additionally, ANR Storage submits proposed Second Revised Sheet No. 131 to clarify that: (1) The information required to be posted pursuant Order No. 2004 and part 358 as well as the appropriate contact information for complaints regarding service pursuant to ANR Storage's tariff is available via ANR Storage's Internet Web site; and (2) the contact information for any person desiring information on the availability, pricing, or other terms of transportation services is available via ANR Storage's Internet website.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1753 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–422–000]

Blue Lake Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 30, 2004, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 131, and a revised title page, to become effective September 1, 2004.

Blue Lake states that the purpose of this filing is to revise its tariff in order to comply with the Commission's Order No. 2004 and part 358 of the Commission's Regulations. Additionally, Blue Lake submits proposed First Revised Sheet No. 131 to clarify that: (1) The information required to be posted pursuant Order No. 2004 and part 358 as well as the appropriate contact information for complaints regarding service pursuant to Blue Lake's tariff is available via Blue Lake's Internet Web site; and (2) the contact information for any person desiring information on the availability, pricing, or other terms of transportation services is available via Blue Lake's Internet Web site.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1752 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–428–000]

Dominion Cove Point LNG, LP; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 30, 2004, Dominion Cove Point LNG, LP (Dominion) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective August 30, 2004:

Fourth Revised Sheet No. 200
Original Sheet No. 250A

Dominion states that the purpose of this filing is to reinstate section 11 of the General Terms and Conditions (GT&C) of its tariff. Section 11 was inadvertently deleted when Dominion modified section 10 of its GT&C in Docket No. RP03–545–000, by order dated May 10, 2004. Dominion further states that no changes have been made to the language contained in this provision; only the sheet number has been changed.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1758 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–351–001]

Dominion Transmission, Inc.; Notice of Compliance Filing

August 3, 2004.

Take notice that, on July 29, 2004, Dominion Transmission, Inc. (DTI) submitted a compliance filing pursuant to the Commission's Letter Order, issued July 28, 2004, in Docket No. RP04–351–000.

DTI states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1745 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–337–001]

Florida Gas Transmission Company; Notice of Compliance Filing

August 3, 2004.

Take notice that on July 30, 2004, Florida Gas Transmission Company (FGT) tendered for filing additional documentation and support, as directed by Commission Order issued July 15, 2004, for the increase in FGT's Fuel Reimbursement Charge Percentage proposed to be effective July 1, 2004, in the instant proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1743 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–061]

Gas Transmission Northwest Corporation; Notice Of Negotiated Rates

August 3, 2004.

Take notice that on July 30, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Eleventh Revised Sheet No. 15, to become effective August 1, 2004.

GTN states that this sheet is being filed to reflect the continuation of a negotiated rate agreement pursuant to evergreen provisions contained in the agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested State regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1761 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–429–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 30, 2004, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective September 1, 2004:

Seventeenth Revised Sheet No. 1
Twelfth Revised Sheet No. 9
Fifth Revised Sheet No. 28
Fourth Revised Sheet No. 50K

Great Lakes states that these tariff sheets reflect administrative changes to conform to the Commission's Final Rule in Docket No. RM01–10–000, *et al.,* Standards of Conduct for Transmission Providers (Order No. 2004).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1759 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–425–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 30, 2004, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective September 1, 2004:

First Revised Sheet No. 1400
First Revised Sheet No. 1401
First Revised Sheet No. 1402
First Revised Sheet No. 1403

Gulf South proposes to modify sections 7.1 and 7.3 of its tariff to eliminate provisions related to Order 497 and to remove provisions which are otherwise covered by regulation.

Gulf South states that copies of this filing have been served upon Gulf South's customers, State commissions and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1755 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–274–010]

Kern River Gas Transmission Company; Notice of Annual Threshold Report

July 26, 2004.

Take notice that on July 21, 2004, Kern River Gas Transmission Company (Kern River) tendered for filing its Annual Threshold Report.

Kern River states that the purpose of this filing is to comply with the terms of its Settlement in this proceeding and with its tariff requirement to file an Annual Threshold Report, identifying the eligible firm shippers receiving revenue credits and the amounts received.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 pm Eastern Time on August 2, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1739 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–339–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

August 3, 2004.

Take notice that on July 30, 2004, Kern River Gas Transmission Company (Kern River) submitted a compliance filing in response to a letter order issued by the Commission on July 22, 2004. The order pertains to Kern River's filing to remove the Gas Research Institute surcharges and related references from its tariff.

Kern River states that it has served a copy of this filing upon its customers

and interested state regulatory commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1744 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–417–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

August 3, 2004.

Take notice that on July 29, 2004, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, Ninth Revised Sheet No. 4D, proposed to be effective August 1, 2004.

KMIGT states that copies of this filing are being served on all of KMIGT's customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1747 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–418–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

August 3, 2004.

Take notice that on July 30, 2004, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No.1, Sixty Sixth Revised Sheet No. 9, to become effective August 1, 2004. National explains that it submits this filing pursuant to a settlement approved by the Commission on February 16, 1996, in the proceedings in Docket Nos. RP94–367–000 *et al.* National notes that the settlement was revised in a compliance filing approved by the Commission February 7, 2001.

National states that Article II, sections 1 and 2 of the settlement provide that National will recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. National further states that section 2 of Article II provides that the IG rate will be the recalculated monthly rate, commencing on the first day of the following month, if the result is an IG rate more than 2 cents above or below the IG rate as calculated under section 1 of Article II. The recalculation produced an IG rate of $0.75 per dth and in addition, Article III, section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

National states copies of the filing has been served on all customers on the service list and interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1748 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–42–002]

NewCorp Resources Electric Cooperative, Inc.; Notice of Application

August 3, 2004.

Take notice that on July 30, 2004, NewCorp Resources Electric Cooperative, Inc. (NewCorp) submitted an application pursuant to section 204 of the Federal Power Act seeking an amendment to prior authorities granted in Docket Nos. ES03–42–000 and 001 to lower the interest rate, and make certain other minor changes in the terms of the loan previously authorized.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant. The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1740 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–265–001]

Northern Natural Gas Company; Notice of Compliance Filing

August 3, 2004.

Take notice that on July 29, 2004, Northern Natural Gas Company (Northern) submitted pro forma tariff sheets that provide for modifications to Northern's April 23, 2004, filing. Northern states that these modifications are the result of discussions between Northern and parties that opposed some or all aspects of the filing.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1742 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–419–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 30, 2004, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Volume No. 1, the following tariff sheets:

Seventh Revised Sheet No. 200
Fifth Revised Sheet No. 219
Ninth Revised Sheet No. 220
Sixth Revised Sheet No. 221
Fifth Revised Sheet No. 222

Northern states that it is filing the above-referenced tariff sheets to update tariff language in accordance with Order No. 2004.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance

with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1749 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–420–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 30, 2004, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective August 1, 2004:

68 Revised Sheet No. 50
33 Revised Sheet No. 66
69 Revised Sheet No. 51
Seventh Revised Sheet No. 109
33 Revised Sheet No. 52
Fourth Revised Sheet No. 123
67 Revised Sheet No. 53
Second Revised Sheet No. 125E
17 Revised Sheet No. 56
Second Revised Sheet No. 131
24 Revised Sheet No. 59
Third Revised Sheet No. 163
Eighth Revised Sheet No.59A
Second Revised Sheet No. 272
27 Revised Sheet No. 60
Second Revised Sheet No. 273
Eighth Revised Sheet No 60A
Eighth Revised Sheet No. 303

Northern states that it is filing to revise the indicated tariff sheets effective August 1, 2004, to reflect the discontinuance of the FERC-approved Gas Research Institute surcharges.

Northern states that copies of this filing have been mailed to all of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1750 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–416–000]

Overthrust Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 29, 2004, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, to become effective September 1, 2004:

Twelfth Revised Sheet No. 1
Fifteenth Revised Sheet No. 30
Sixth Revised Sheet No. 40
Fifth Revised Sheet No. 41
Second Revised Sheet No. 41A
Sixth Revised Sheet No. 42
Seventh Revised Sheet No. 43
Sixth Revised Sheet No. 44
Original Sheet No. 44A
Sixth Revised Sheet No. 45
Sixth Revised Sheet No. 55
Fourth Revised Sheet No. 59
Original Sheet No. 59A

Overthrust states that it is proposing to modify the tariff language for acquiring firm transportation service and clarify the process to obtain short-term firm service between bid periods to be on a first-come first-served basis. Overthrust further states that it is clarifying the process for changing primary receipt and delivery points.

Overthrust states that copies of the filing have been served upon Overthrust's customers and the public service commissions of Utah and Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1746 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–426–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 30, 2004, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to become effective September 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1756 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–374–000, CP04–375–000, and CP04–376–000]

Pearl Crossing Pipeline LP; Notice of Filing

August 3, 2004.

Take notice that on July 8, 2004, Pearl Crossing Pipeline LLC (Pearl Crossing Pipeline) filed an application, in Docket No. CP04–374–000, seeking a certificate of public convenience and necessity, pursuant to section 7(c) of the NGA and part 157, subpart A of the Commission's Regulations, to construct and operate facilities comprising: (i) Two parallel 42-inch pipelines (0.47 miles each) between an offshore interconnect and a proposed meter station near Johnsons Bayou in Cameron Parish, Louisiana; and (ii) one 42-inch pipeline (63.75 miles) between the Johnsons Bayou meter station and a proposed interconnect with Transcontinental Gas Pipe Line Company (Transco) near Starks, in Calcasieu Parish, Louisiana. Pearl Crossing Pipeline supplemented this application on July 27, 2004.

Pearl Crossing Pipeline requests, in Docket No. CP04–375–000, a blanket certificate under section 7(c) of the NGA and part 157, subpart F of the Commission's Regulations to perform routine activities in connection with the future construction, operation and maintenance of the proposed pipelines. Pearl Crossing Pipeline also requests authorization, in Docket No. CP04–376–000, to provide the natural gas transportation services on a firm and interruptible basis pursuant to section 7(c) of the NGA and part 284 of the Commission's Regulations. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

On May 25, 2004, Pearl Crossing LNG Terminal LLC (Pearl Crossing LNG Terminal) filed an application with the United States Coast Guard (USCG) for a license pursuant to the Deepwater Port Act of 1974 (DWPA), as amended by the Maritime Security Transportation Act of 2002, and the USCG Temporary Interim Rule, 33 CFR parts 148, 149, and 150, to construct, own and operate a natural gas deepwater port to be used for the receipt and storage of LNG with LNG regasification and delivery of natural gas via Pearl Crossing Pipeline's proposed pipelines.

Any questions regarding the application are to be directed to James K. Hanrahan, 800 Bell Street, Houston, Texas 77002; phone number (713) 656–8602.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and

by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: August 24, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1762 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-513-032]

Questar Pipeline Company; Notice of Negotiated Rates

August 3, 2004.

Take notice that on July 29, 2004, Questar Pipeline Company's (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirty-Third Revised Sheet No. 7 and Sixth Revised Sheet No. 7A, with an effective date of August 1, 2004.

Questar states that the tariff filing is being filed to reflect amended negotiated-rate contracts with its customers, two shippers' name changes and the deletion of an expired contract.

Questar states that its negotiated-rate contract provisions were authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.* The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar states that it submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 issued January 31, 1996.

Questar states that a copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1760 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS04-487-000]

Sabine Propylene Pipeline L.P.; Notice Requesting Briefs

August 2, 2004.

On July 30, 2004, the Commission issued an order in the above-captioned proceeding requesting briefs addressing a jurisdictional issue raised by the proposal of Sabine Propylene Pipeline L.P., to cancel its tariff covering the transportation of polymer grade propylene. *See* Sabine Propylene Pipeline L.P., 108 FERC ¶ 61,099 (2004).

Specifically, the Commission requested briefs on whether the Commission has jurisdiction over the transportation of polymer grade

propylene by oil pipelines. Initial briefs are due 30 days from the date of issuance of the July 30, 2004 orders. Because that day falls on Sunday, August 29, 2004, however, interested parties must intervene and file initial briefs no later than August 30, 2004. Reply briefs are due 15 days thereafter, which is September 14, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1741 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–424–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 30, 2004, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective September 1, 2004:

Tenth Revised Sheet No. 400
Tenth Revised Sheet No. 401

Tennessee states that the purpose of this filing is to revise its tariff in order to comply with the Commission's Order No. 2004 and part 358 of the Commission's Regulations. Additionally, Tennessee has revised its tariff to clarify that: (1) The information required to be posted by Order No. 2004 and part 358 as well as the information required to be posted by the Commission approved North America Energy Standards Board concerning capacity transactions is available via Tennessee's Internet Web site; and (2) the appropriate contact information for complaints concerning any transportation services offered by Tennessee is available via Tennessee's Internet Web site.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1754 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–427–000]

Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2004.

Take notice that on July 30, 2004, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective September 1, 2004:

First Revised Sheet No. 129
First Revised Sheet No. 130
Second Revised Sheet No. 131
First Revised Sheet No. 132
Second Revised Sheet No. 204
Second Revised Sheet No. 534

Trunkline states that this filing is being made to propose a master parking point list that would be available for all parking service agreements. Trunkline further states that a Master Parking Point List will provide shippers with flexibility to have multiple parking points on one agreement, thus reducing the administrative burden for shippers as well as Trunkline.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1757 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–815–016, et al.]

Southern Company Services, Inc., et al.; Electric Rate and Corporate Filings

August 2, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southern Company Services, Inc.

[Docket Nos. ER02–851–016 and ER04–151–001]

Take notice that on July 27, 2004, Southern Company Service, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively Southern Companies) submitted for filing a Notification of an Accounting Adjustment to the formula rate component of Southern Companies' Open Access Transmission Tariff, FERC Electric Tariff, Fourth Revised Volume No. 5.

Southern Companies states that a copy of the Notification has been served on each person designated on the official service list.

Comment Date: 5 p.m. eastern time on August 17, 2004.

2. Entergy Services, Inc.

[Docket No. ER03–861–003]

Take notice that on July 27, 2004, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a supplemental refund report in compliance with the Commission's letter order issued May 27, 2004, in Docket No. ER03–861–000, 107 FERC ¶ 61,193 (2004).

Comment Date: 5 p.m. eastern time on August 17, 2004.

3. Orion Power MidWest, L.P.

[Docket No. ER04–717–001]

Take notice that on July 28, 2004, Orion Power MidWest, L.P. (OPMW) submitted a compliance filing pursuant to the Commission's order issued May 28, 2004, in Docket No. ER04–717–000.

Comment Date: 5 p.m. eastern time on August 18, 2004.

4. PJM Interconnection, L.L.C.

[Docket No. ER04–776–001]

Take notice that, on July 28, 2004, PJM Interconnection, L.L.C. (PJM) submitted a compliance filing pursuant to the Commission's order issued June 28, 2004, in Docket No. ER04–776–000, PJM Interconnection, L.L.C., 107 FERC ¶ 61,322 (2004).

PJM states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on August 18, 2004.

5. Duke Energy Corporation

[Docket No. ER04–916–001]

Take notice that on July 27, 2004, Duke Energy Corporation on behalf of Duke Electric Transmission (collectively Duke) submitted a compliance for filing pursuant to the letter order issued July 26, 2004, in Docket No. ER04–916–000. Duke states that the filing corrects the cover sheets for the Network Integration Service Agreement with New Horizon Electric Cooperative, Inc. filed on June 4, 2004.

Comment Date: 5 p.m. eastern time on August 17, 2004.

6. Pacific Gas and Electric Company

[Docket No. ER04–1036–001]

Take notice that on July 27, 2004, Pacific Gas and Electric Company (PG&E) filed an amendment to its July 22, 2004, filing of Service Agreement for Wholesale Distribution Service and Interconnection Agreement between PG&E and Port of Stockton, designated as Service Agreement No. 18 under Pacific Gas and Electric Electric Tariff, First Revised Volume No. 4.

PG&E states that copies of this filing have been served upon the California Independent System Operator, the California Public Utilities Commission and Port of Stockton.

Comment Date: 5 p.m. eastern time on August 17, 2004.

7. Fulton Cogernation Associates, L.P., Rensselaer Plant Holdco, L.L.C.

[ER04–1044–000, ER04–1045–000, and ER04–1046–000]

Take notice that on July 27, 2004, Fulton Cogeneration Associates, L.P. (FCA), and Rensselaer Plant Holdco, L.L.C. (RPH) (jointly Applicants) filed with the Commission an application under section 205 of the Federal Power Act requesting that the Commission terminate FCA's existing, joint Market-Based Tariff for power plants located in Fulton, New York and in Rensselaer, New York and simultaneously accept for filing separate Market-Based Tariffs for FCA and RPH, and otherwise grant Applicants the authority to sell energy in wholesale transactions at negotiated, market-based rates pursuant to part 35 of the Commission's regulations.

Comment Date: 5 p.m. eastern time on August 17, 2004.

8. San Diego Gas & Electric Company

[Docket No. ER04–1048–000]

Take notice that on July 28, 2004, San Diego Gas & Electric Company (SDG&E) tendered for filing Service Agreement No. 19 under San Diego Gas & Electric FERC Electric Tariff, First Revised Volume No. 6. San Diego states that the agreement provides for SDG&E to construct, operate and maintain proposed interconnection facilities required for a pumped storage hydro-electric facility being constructed and owned by the San Diego County Water Authority in San Diego County. SDG&E requests an effective date of July 28, 2004.

SDG&E states that copies of the filing have been served on the San Diego County Water Authority, on the California Independent System Operator Corporation and on the California Public Utilities Commission.

Comment Date: 5 p.m. eastern time on August 18, 2004.

9. American Electric Power Service Corporation

[Docket No. ER04–1049–000]

Take notice that on July 27, 2004, American Electric Power Service Corporation (AEPSC) submitted for filing letter agreements between AEPSC and FPL Energy Cowboy Wind, LLC and between AEPSC and FPL Energy Callahan Wind, LP, designated as Service Agreements 581 and 548, respectively, under Operating Companies of the American Electric Power System FERC Electric Tariff, Third Revised Volume No. 1. AEPSC requests an effective date of June 14, 2004, for Service Agreement No. 581 and June 24, 2004, for Service Agreement No. 548.

AEPSC states that it has served copies of the filing on FPL Energy Cowboy Wind, LLC, FPL Energy Callahan Wind, LP and the Public Utility Commission of Texas.

Comment Date: 5 p.m. eastern time on August 17, 2004.

10. Arizona Public Service Company

[Docket No. ER04–1050–000]

Take notice that on July 28, 2004, Arizona Public Service Company, (APS) tendered for filing a Notice of Cancellation of Arizona Public Service Company's Rate Schedule 78. a service

agreement with Los Angeles Department of Water & Power. APS requests an effective date of June 15, 2004.

Arizona Public Service Company states that copies of this filing were supplied to Los Angeles Department of Water & Power and the Arizona Corporation Commission.

Comment Date: 5 p.m. eastern time on August 18, 2004.

11. Arizona Public Service Company

[Docket No. ER04–1051–000]

Take notice that on July 28, 2004, Arizona Public Service Company, (APS) tendered for filing a Notice of Cancellation of Arizona Public Service Company's Rate Schedule 92, a service agreement with Tucson Electric Power Company. APS requests an effective date of June 15, 2004.

Arizona Public Service Company states that copies of this filing were supplied to Tucson Electric Power Company and the Arizona Corporation Commission.

Comment Date: 5 p.m. eastern time on August 18, 2004.

12. Arizona Public Service Company

[Docket No. ER04–1052–000]

Take notice that on July 28, 2004, Arizona Public Service Company, (APS) tendered for filing a Notice of Cancellation of Arizona Public Service Company's Rate Schedule 102, a service agreement with Public Service Company of New Mexico. APS requests an effective date of June 15, 2004.

Arizona Public Service Company states that copies of this filing were supplied to Public Service Company of New Mexico, the New Mexico Regulation Commission and the Arizona Corporation Commission.

Comment Date: 5 p.m. eastern time on August 18, 2004.

13. Arizona Public Service Company

[Docket No. ER04–1053–000]

Take notice that on July 28, 2004, Arizona Public Service Company, (APS) tendered for filing a Notice of Cancellation of Arizona Public Service Company's Rate Schedule 110, a service agreement with El Paso Electric Company. APS requests an effective date of June 15, 2004.

Arizona Public Service Company states that copies of this filing were supplied to El Paso Electric Company, the Public Utility Commission of Texas and the Arizona Corporation Commission.

Comment Date: 5 p.m. eastern time on August 18, 2004.

14. Arizona Public Service Company

[Docket No. ER04–1054–000]

Take notice that on July 28, 2004, Arizona Public Service Company, (APS) tendered for filing a Notice of Cancellation of Arizona Public Service Company's Rate Schedule 115, a service agreement with the City of Farmington. APS requests an effective date of June 15, 2004.

Arizona Public Service Company states that copies of this filing were supplied to the City of Farmington and the Arizona Corporation Commission.

Comment Date: 5 p.m. eastern time on August 18, 2004.

15. Riverside Energy Center, LLC

[Docket No. ER04–1055–000]

Take notice that on July 28, 2004, Riverside Energy Center, LLC (Riverside) tendered for filing Riverside Energy Center, LLC Rate Schedule No. 2 for reactive power services to the Midwest Independent System Operator as transmission provider over facilities owed by American Transmission Company LLC. Riverside requests an effective date of October 1, 2004.

Riverside states that copies of the filing were served upon the American Transmission Company, Midwest Independent System Operator and Public Service Commission of Wisconsin.

Comment Date: 5 p.m. eastern time on August 18, 2004.

16. LUZ Solar Partners Ltd., III

[Docket No. QF86–734–007]

Take notice that on July 14, 2004, LUZ Solar Partners Ltd., III, (LUZ Solar) filed with the Commission an Application for Recertification of a facility as a qualifying small power facility pursuant to section 292.207(b) of the Commission's regulations.

LUZ Solar states that it is an eligible solar facility within the meaning of 16 U.S.C. 796(17)(E) with a maximum net electric power output of approximately 37 MW in the solar made using a rolling one-hour period. LUZ Solar further states that it is located near Kramer Junction, California and the electric output is sold to Southern California Edison Company. LUZ Solar states that this application is to update data to reflect changes in ownership of its facility.

Comment Date: 5 p.m. eastern time on August 16, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1738 Filed 8–9–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7797–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123, EPA ICR Number 1425.05, OMB Control Number 2050–0077

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a

continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 12, 2004.

ADDRESSES: Submit your comments, referencing docket ID number SFUND–2004–0010, to EPA online using EDOCKET (our preferred method), by email to, *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Emergency Prevention, Preparedness and Response (OEPPR), mail code 5204G, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa Boynton, Office of Emergency Prevention, Preparedness and Response, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–9052; fax number: (703) 603–9104; email address: *Boynton.Lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number SFUND–2004–0010, which is available for public viewing at the Office of Emergency Prevention, Preparedness, and Response Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Emergency Prevention, Preparedness, and Response Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are Local Governments that apply for reimbursement under this program.

Title: Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA section 123.

Abstract: The Agency requires applicants for reimbursement under this program authorized under Section 123 of CERCLA to submit an application that demonstrates consistency with program eligibility requirements. This is necessary to ensure proper use of the Superfund. EPA reviews the information to ensure compliance with all statutory and program requirements. The applicants are local governments who have incurred expenses, above and beyond their budgets, for hazardous substance response. Submission of this information is voluntary and to the applicant's benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: In the previously approved ICR, the estimated number of respondents was 200, and the annual reporting and recordkeeping burden for this collection is estimated to average 9 hours per response. The estimated total annual burden is approximately 1,800 hours, and there are no capital/startup or operations and maintenance costs associated with this ICR. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 16, 2004.

Dana S. Tulis,

Acting Director, Office of Emergency Prevention, Preparedness and Response.

[FR Doc. 04–17791 Filed 8–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7799–7]

Lead and Copper Rule: Expert Panel Workshop on Public Education and Risk Communication

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is convening an expert panel workshop to discuss issues associated with the Lead and Copper Rule (LCR). The workshop will discuss the public education requirements under the LCR and how to effectively

communicate risk to customers in a variety of situations.

DATES: The workshop will be held on September 14 and 15, 2004, 8 a.m. to 5 p.m. (EDT).

ADDRESSES: The workshop will be held at the Hilton Philadelphia Airport Hotel, 4509 Island Avenue, Philadelphia, PA 19153.

FOR FURTHER INFORMATION CONTACT: Registration is required to attend this workshop as an observer registration. To register by phone please contact Liana Pike at (703) 247–6136, or register by e-mail at *registration@epapeworkshop.com*. For administrative meeting information, contact Liana Pike, Cadmus Group, Inc., by phone at (703) 247–6136 or by e-mail at *lpike@cadmusgroup.com*. For technical information, contact Lisa Christ, Office of Water, Office of Ground Water and Drinking Water, U.S. EPA, 1200 Pennsylvania Ave., NW., (MC 4607M), Washington, DC. 20460 at (202) 564–8354 or by e-mail at *christ.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION: There is no charge for attending this workshop as an observer, but seats are limited, so register as soon as possible. Any person needing special accommodations at any of these meetings, including wheelchair access, should make this known at the time of registration.

Dated: August 4, 2004.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–18239 Filed 8–9–04; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 12, 2004, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- July 15, 2004 (Open and Closed)

B. Reports

- Corporate/Non-Corporate Report

C. New Business

1. Regulations

- Proposed Rule—Investments in Farmers' Notes

2. Other

- Amend Charter for Louisiana Ag Credit, ACA to Authorize Both Title I and II Lending in its Territory

Dated: August 5, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–18403 Filed 8–6–04; 3:05 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 96–262, 91–213, DA 04–2250]

Reconsideration of Price Cap Carrier Reallocation of General Support Facilities Costs

AGENCY: Federal Communications Commission.

ACTION: Notice, termination of proceeding.

SUMMARY: This document provides notice of the termination of the petitions for reconsideration of a 1997 Commission order regarding the reallocation of costs of general purpose computers and other general support facilities to the billing and collection account for incumbent local exchange carriers subject to price cap regulation. The petitions for reconsideration have been withdrawn by the petitioners.

DATES: Effective September 9, 2004, unless the Wireline Competition Bureau receives an opposition to the termination prior to that date.

ADDRESSES: Oppositions to the proceeding termination should be mailed to the Commission's Secretary through the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: In the 1997 *Access Charge Reform Third Report and Order*, 62 FR 65619, December 15, 1997, the Commission reallocated costs of general purpose computers and other general support facilities (GSF) to the billing and collection account for incumbent local exchange carriers (LECs) subject to price cap regulation. SBC and U S West filed petitions for reconsideration of the order on January 14, 1998. On October 7, 2003, SBC withdrew its petition for reconsideration of the order, and on May 6, 2004, Qwest withdrew the petition for reconsideration filed by its predecessor, U S West. Based on SBC's and Qwest's requests to withdraw, these petitions for reconsideration are dismissed without prejudice, see 47 CFR 1.748. There are no pending petitions for reconsideration of this order. Therefore, the proceeding will be terminated effective September 9, 2004, unless the Wireline Competition Bureau receives an opposition to the termination before that date.

Parties opposing the termination of this proceeding may file an opposition pursuant to § 1.419 of the Commission's rules, 47 CFR 1.419. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, CC Docket Nos. 96–262 and 91–213. Parties may also submit an electronic comment by Internet e-mail. To get 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.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional

copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.

—All hand deliveries must be held together with rubber bands or fasteners.

—Any envelopes must be disposed of before entering the building.

—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

—U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Jennifer McKee, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A263, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *jennifer.mckee@fcc.gov*. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com*.

Authority: 47 U.S.C. 152, 153, 154, 155, 303; 44 FR 18501, 67 FR 13223, 47 CFR 0.291, 1.749.

Federal Communications Commission.

William F. Maher, Jr.,

Chief, Wireline Competition Bureau.

[FR Doc. 04–18259 Filed 8–9–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–2454]

Rescheduling of the Third Meeting of the Advisory Committee for the 2007 World Radiocommunication Conference (WRC–07 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the third meeting of the WRC–07 Advisory Committee originally scheduled for September 27, 2004 (**Federal Register** / Vol. 69, No. 128 / Tuesday, July 6, 2004 / Notices) has been rescheduled and will now be held on November 10, 2004, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2007 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: November 10, 2004; 10 a.m.–12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, IB Docket No. 04–286, DA 04–2454, released August 4, 2004. The Federal Communications Commission (FCC) established the WRC–07 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2007 World Radiocommunication Conference (WRC–07).

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, this notice advises interested persons of the third meeting of the WRC–07 Advisory Committee. The WRC–07 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the third meeting is as follows:

Agenda—Third Meeting of the WRC–07 Advisory Committee; Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554

November 10, 2004; 10 a.m.–12 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Second Meeting
4. Reports on Recent WRC–07 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. Informal Working Group Reports and Documents relating to:
   a. Consensus Views and Issues Papers
   b. Draft Proposals
7. Future meetings
8. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 04–18260 Filed 8–9–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 24, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Jason B. Hauff, Grandin, North Dakota; to acquire voting shares of Hunter Holding Company, Hunter, North Dakota, and thereby indirectly acquire voting shares of Security State Bank of Hunter, Hunter, North Dakota; First State Bank of Hope, Hope, North Dakota; and First State Bank of Gackle, Gackle, North Dakota.

Board of Governors of the Federal Reserve System, August 4, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–18212 Filed 8–9–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 2004.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Centennial Bancshares, Inc., Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Pine State Bancshares, Inc., Kingsland, Arkansas, and thereby indirectly acquire Pine State Bank, Kingsland, Arkansas.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Wilber Co., Wilber, Nebraska; to acquire 100 percent of the voting shares of Hickman Corporation, Hickman, Nebraska, and thereby indirectly acquire First State Bank, Lincoln, Nebraska.

2. Wilber Co., Wilber, Nebraska; to acquire 100 percent of the voting shares of Yutan Bancorp., Inc., Yutan, Nebraska, and thereby indirectly acquire Bank of Yutan, Yutan, Nebraska.

In connection with this application, Wilber Co. also has applied to acquire indirect control of Yutan Insurance Agency, Inc., Yutan, Nebraska, and thereby engage in insurance agency activities pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Metroplex Capital, Inc., Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of T Bank, National Association, Dallas, Texas (in formation).

Board of Governors of the Federal Reserve System, August 4, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–18211 Filed 8–9–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. OP–1209]

Request for Information for Study on Investigations of Disputed Consumer Information Reported to Consumer Reporting Agencies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of study and request for information.

SUMMARY: Pursuant to section 313(b) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), the Board of Governors of the Federal Reserve System is conducting a study on investigations by furnishers of consumer information to consumer reporting agencies when that information is disputed. The FACT Act generally amends the Fair Credit Reporting Act. In preparing this study, the Board requests public comment on a number of issues relating to the prompt investigation, completeness, and correction or deletion of information reported to credit reporting agencies.

DATES: Comments must be received by September 17, 2004.

ADDRESSES: You may submit comments, identified by Docket No. OP–1209, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Minh-Duc T. Le or Ky Tran-Trong, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Pub. L. 108–159, 117 Stat. 1952. In general, the FACT Act amends the Fair Credit Reporting Act (FCRA) to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information. To bolster efforts to improve financial literacy among consumers, title V of the Act (entitled the ''Financial Literacy and Education Improvement Act'') creates a new Financial Literacy and Education Commission empowered to take

appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

As part of the effort to increase the accuracy of consumer reports, section 313(b) of the FACT Act requires the Board to conduct a joint study with the Federal Trade Commission (FTC) regarding the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, timelines, and requirements under the FCRA for (1) the prompt investigation of disputed information, (2) the completeness of information provided to consumer reporting agencies, and (3) the prompt correction or deletion of any inaccurate or incomplete information or information that cannot be verified. Furnishers of information to consumer reporting agencies may include banks, retailers, mortgage companies, medical establishments, and others.

The FTC and the Board must jointly submit a progress report to Congress on the results of this study no later than December 4, 2004, which is 12 months after the date of enactment of the FACT Act. The report also must contain recommendations for legislative or administrative actions as the Board and FTC jointly determine to be appropriate.

In this notice, the Board requests specific information about the current duties and practices of furnishers regarding the prompt investigation of information, the completeness of information, and the prompt correction or deletion of information. The Board also seeks comment on possible legislative and regulatory action to improve the dispute process.

II. The Fair Credit Reporting Act

The FCRA was amended in 1996 to impose duties on furnishers of consumer information. Consumer Credit Reporting Reform Act of 1996 (Pub. L. 105–347), 15 U.S.C. 1681 *et seq.* With the passage of the FACT Act, certain duties were amended and additional duties were imposed. The first section below will discuss the furnishers' duties imposed by the FCRA in effect prior to the FACT Act amendments, since the amendments have not, or have only recently become effective. The second section will discuss the new obligations arising from the FACT Act amendments.

The FCRA—Pre FACT Act

The 1996 amendments to the FCRA established duties for furnishers of consumer information. These duties, found in FCRA section 623, include the duties to report accurate information; to provide notice of a dispute; to provide notice of closed accounts; to provide notice involving delinquent accounts; and to investigate after receiving notice of a dispute from a consumer reporting agency.

Section 623(a)(1) of the FCRA prohibits a furnisher from reporting any information to a consumer reporting agency that it knows or consciously avoids knowing is inaccurate. This general prohibition, however, does not apply if a furnisher provides an address for consumers to use to notify the furnisher that specific information is inaccurate. If the furnisher provides such an address, the furnisher may not report information relating to a consumer to any consumer reporting agency if the consumer has notified the furnisher at the specified address that the information is inaccurate, and the information is in fact inaccurate.

Section 623(a)(2) of the FCRA provides that when a furnisher who regularly and in the ordinary course of business reports information to one or more consumer reporting agencies determines that the information provided is not complete or accurate, the furnisher must promptly notify the consumer reporting agency. The furnisher must also provide the consumer reporting agency any corrections to that information, or any additional information necessary to make the information provided by the furnisher to the consumer reporting agency complete and accurate. Thereafter, the furnisher must not report to the consumer reporting agency any of the information that remains incomplete or inaccurate.

Section 623(a)(3) of the FCRA requires that if the completeness or accuracy of any information reported by the furnisher to a consumer reporting agency is disputed by a consumer directly to the furnisher, the furnisher may not report that information to any consumer reporting agency without notice that the information is disputed by the consumer.

Furnishers have a duty to provide notice of closed accounts and delinquent accounts. Under section 623(a)(4), a furnisher—who regularly and in the ordinary course of business reports information to a consumer reporting agency about a consumer who has a credit account with the furnisher—must notify the consumer reporting agency of the voluntary closure of the account by the consumer. This notice must be included with information regularly furnished for the period in which the account is closed. Under section 623(a)(5), a furnisher that reports to a consumer reporting agency that a delinquent account is being placed for collection, charged off, or subjected to any similar action must notify the consumer reporting agency of the month and year of the commencement of the delinquency that immediately preceded the collection, charge off, or similar action. The month and year must be reported within 90 days of the furnisher reporting the collection, charge off, or similar action.

A furnisher also has duties when a consumer disputes information with a consumer reporting agency. Section 611 of the FCRA requires that the consumer reporting agency notify the furnisher of the dispute received from the consumer and provide the furnisher with all the information relevant to the dispute. When the furnisher receives this notification, section 623(b) of the FCRA requires the furnisher to conduct an investigation with respect to the disputed information, review all the relevant information provided, and report the results to the consumer reporting agency generally within 30 days of the consumer reporting agency having received notice of the dispute from the consumer. If the furnisher's investigation establishes that the information was incomplete or inaccurate, the furnisher must report that result to all other nationwide consumer reporting agencies to whom the furnisher provided that information. The time period for investigation, review, and report may be extended for 15 days if the consumer reporting agency receives additional relevant information from the consumer.

The FCRA—Post FACT Act Amendments

The FACT Act amends the FCRA with respect to furnishers' duties in several ways. For example, section 312(b) of the FACT Act amends the FCRA's prohibition on knowingly reporting inaccurate information to prohibit reporting of information if the furnisher ''knows or has reasonable cause to believe that the information is inaccurate.'' ''Reasonable cause to believe that the information is inaccurate'' means ''having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.''

Other provisions of the FACT Act add to a furnisher's duties. For example, section 312(c) of the FACT Act requires the Board, FTC, and other federal banking regulators to jointly prescribe regulations that would identify when a furnisher would be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request from a consumer. The furnisher, upon receiving this notice would generally have 30 days to investigate the disputed information, review all relevant information provided by the consumer, and report the results to the consumer. If the furnisher finds that the information reported was inaccurate, the furnisher also must promptly notify each consumer reporting agency to which the furnisher had reported the inaccurate information and provide any correction to that information that is necessary to make the information accurate. Section 314(b) of the FACT Act would further require furnishers that find an item disputed by a consumer to a consumer reporting agency to be inaccurate, incomplete, or unverifiable after any reinvestigation to promptly modify, delete, or permanently block the reporting of that item of information.

Since these provisions of the FACT Act generally have not become effective, the Board understands that information about a furnisher's practices with respect to reporting and dispute investigations will be mostly about practices as they exist under the FCRA prior to the FACT Act amendments.

III. Request for Specific Information

As described above, section 313(b) of the FACT Act requires the Board and the FTC to jointly study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, timelines, and requirements under the FCRA for the prompt investigation of the disputed accuracy of any consumer information. The agencies also must study the completeness of the information provided to consumer reporting agencies and the prompt correction or deletion of any inaccurate or incomplete information or information that cannot be verified. In conducting the study, the Board is requesting public comment from furnishers, consumers, and other persons on the following issues:

General Information

- What type of entity reports negative and/or positive information to a consumer reporting agency and what type of entity does not report negative and/or positive information to a consumer reporting agency? If an entity does not report information to a consumer reporting agency, why not?
- Of all disputes received by the furnisher, what percentage of the disputes or complaints comes through a consumer reporting agency? What percentage comes directly from consumers? What percentage comes from other sources (*e.g.*, credit repair entities)?
- Do the answers to the questions below vary based on industry, size of entity, type of credit, or other characteristics? Are there any generalizations that can be made based on industry, size of entity, type of credit, or other characteristics?

Disputes Communicated by Consumers Directly to Furnishers

- Does the furnisher provide an address for consumers to use if they want to dispute information directly with the furnisher? If not, why? If an address is provided, how is the consumer informed about this address?
- Regardless of whether an address is provided, what is the furnisher's process and timeline in handling disputes and complaints that come directly from consumers? Under what circumstances do furnishers currently investigate disputes regarding information in a consumer file, based on a direct request of the consumer?
- Is sufficient relevant information provided to the furnisher by the consumer? If not, what relevant information is often missing, and why? If relevant information is lacking, how does the furnisher resolve the dispute?
- What are consumers' experiences in resolving a dispute where the furnisher provided an address? What are their experiences locating and using this address to resolve their dispute?
- What are consumers' experiences in resolving disputes where the furnisher does not provide an address? How were the disputes resolved and what entity or person (*e.g.*, furnisher, consumer reporting agency, credit repair entity, legal representative, etc.) was instrumental in resolving the dispute?

Other Furnisher Duties

- How does the furnisher ensure that it complies with the applicable statutory requirements regarding the accuracy and completeness of information it reports to the consumer reporting agency?
- What are the furnisher's procedures and timelines if it finds the information is not complete or accurate?
- What are the furnisher's procedures and timelines for reporting information that has been directly disputed by a consumer?
- What are the furnisher's procedures and timelines for reporting when a delinquency began on an account that has been placed for collection, charged off, or subjected to similar action?
- What are the furnisher's procedures and timelines for notifying a consumer reporting agency that a consumer has voluntarily closed a credit account with the furnisher?
- What are consumers' experience with communicating with furnishers, with the timing of the notice of dispute appearing on the credit report, or any other matter related to having the notice of dispute placed on the credit report when disputed information continues to be reported but with a notice of the dispute?
- What are consumers' experiences with furnishers reporting that credit accounts with the furnishers have been voluntarily closed? What is the time span between the consumer closing the account and information about the closure appearing on the credit report?

Disputes Communicated by Consumers to Consumer Reporting Agencies

- When a consumer reporting agency receives notice of consumer disputes and forwards the information to the furnisher, how does the consumer reporting agency provide the furnisher with the notices and relevant information? What information does the consumer reporting agency transmit to the furnisher? Describe any guidelines or procedures, voluntary or otherwise, that apply to this process.
- How does a consumer reporting agency ensure that furnishers comply with the requirements and timelines established under the FCRA for disputes communicated to a consumer reporting agency?
- What are the furnisher's procedures and timelines for investigating the disputes and reviewing the information provided?
- Is sufficient relevant information provided to the furnisher by the consumer through the consumer reporting agency? Is all relevant information from a consumer provided to the furnisher through the consumer reporting agency? If not, what relevant information is often missing, and why? If relevant information is lacking, how does the furnisher resolve the dispute?
- If the furnisher finds that the information it reported to the consumer reporting agency was incomplete or inaccurate, what steps does the furnisher take?

• If the furnisher does not find the information reported to the consumer reporting agency to be incomplete or inaccurate, what steps does the furnisher take?

• Describe any guidelines or procedures that may apply to the treatment of information that continues to be disputed by the consumer after the formal dispute process has been concluded. How often do the furnisher and consumer fail to reach an agreement after the conclusion of the formal dispute process, for example, where the consumer maintains that the disputed information is inaccurate and the furnisher maintains that it is accurate?

Recommendations

• What, if any, legislative or regulatory changes do you recommend besides changes made by the FACT Act and its implementing rules? How would these recommendations improve the system? What benefits or burdens should be considered?

By order of the Board of Governors of the Federal Reserve System, August 5, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–18290 Filed 8–9–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Anticipated Availability of Funds for Family Planning Services Grants

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice; correction.

SUMMARY: The Office of Population Affairs, Office of Public Health and Science, DHHS, published a notice in the **Federal Register** of Wednesday, July 7, 2004 announcing the anticipated availability of funds for family planning services grants. This notice contained an error. An eligible Population/area was not listed as available for competition in 2005. This document corrects the omission of the Seattle Population/area as competitive in 2005.

FOR FURTHER INFORMATION CONTACT: Susan B. Moskosky, 301–594–4008.

Correction

In the **Federal Register** of July 7, 2004, FR Doc. 03–15514, on page 41,114, in the second column under II. Award Information, correct the 7th line of the first paragraph to read ''planning services grant awards in 17;'' and on page 41,115, correct Table I to read:

TABLE I

States/populations/areas to be served	Approximate funding available	Application due date	Approx. grant funding date
Region I:			
Massachusetts	$5,217,000	09/01/04	01/01/05
Region II:			
New York State	9,635,000	03/01/05	07/01/05
Puerto Rico	2,389,000	03/01/05	07/01/05
.			
Region III:			
Washington, DC	1,053,000	09/01/04	01/01/05
.			
Region IV:			
Kentucky	5,203,000	03/01/05	07/01/05
South Carolina	5,569,000	03/01/05	07/01/05
Tennessee	5,914,000	03/01/05	07/01/05
.			
Region V:			
No areas competitive in FY 2005.			
Region VI:			
Arkansas	3,241,000	11/01/04	03/01/05
New Mexico	2,228,000	09/01/04	01/01/05
Region VII:			
Kansas	2,332,000	03/01/05	07/01/05
Region VIII:			
No areas competitive in FY 2005.			
Region IX:			
Gila River Indian Community	251,000	03/01/05	07/01/05
Government of Guam	452,000	03/01/05	07/01/05
Republic of Palau	99,000	03/01/05	07/01/05
Federated States of Micronesia	411,000	03/01/05	07/01/05
Region X:			
Idaho	1,318,000	03/01/05	07/01/05
Oregon, Multnomah County	330,000	03/01/05	07/01/05
Washington, Seattle	158,450	03/01/05	07/01/05

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 04–18284 Filed 8–9–04; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the long-term rate of change in health spending and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic methods by which Trustees might more accurately measure health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy. This notice also announces the appointment of seven individuals to serve as members of the Panel.

DATES: August 27, 2004, 9 a.m.–5 p.m. e.d.t.

ADDRESSES: The meeting will be held at HHS headquarters at 200 Independence Ave., SW., 20201, Room 425A.

Comments: The meeting will allocate time on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Andrew Cosgrove, OASPE, 200 Independence Ave., SW., 20201, Room 443F.8. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Andrew Cosgrove (202) 205–8681, *andrew.cosgrove@hhs.gov*. Note: Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting should call or e-mail Mr. Cosgrove by August 20, 2004, so that their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION: On April 22, 2004, we published a notice announcing the establishment and requesting nominations for individuals to serve on the Panel. This notice also announces the appointment of seven individuals to serve as members of the Panel. They are: Mark Pauly, Edwin Hustead, Alice Rosenblatt, Michael Chernew, David Meltzer, John Bertko, and William Scanlon.

Topics of the Meeting: The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately estimate the long term rate of health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics that they choose to discus.

Procedure and Agenda: This meeting is open to the public. First, the appointees will be sworn in by a Federal official. Each Panel member will then be given an opportunity to make a self-introduction. The Panel will likely hear presentations from HHS staff introducing them to the topic. After any presentations, the Commission will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Commission will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: August 4, 2004.

Michael J. O'Grady,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–18213 Filed 8–9–04; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Opportunity for Businesses To Partner With NIOSH To Incorporate Electronic Sensors Into Respirator Filter Cartridges

Authority: Public Law 91–596.

AGENCY: The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

ACTION: Notice of opportunity for businesses to partner with NIOSH to incorporate Electronic Sensors into Respirator Filter Cartridges.

SUMMARY: The National Personal Protective Technology Laboratory (NPPTL), NIOSH, currently is conducting ongoing research in electronic chemical sensor development for respirator end of service life/residual service life. NPPTL is seeking to partner with businesses capable of incorporating these sensors into respirator filter cartridges. A working relationship will consist of installing sensors in cartridges during their manufacturing process. The cartridges will be used to investigate sensor performance during test loading of the cartridges with industrial solvent vapors.

DATES: Submit letters of interest within 30 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: Interested manufacturers should submit a letter of interest with information about their capabilities to: *http://www.esli@cdc.gov.*

SUPPLEMENTARY INFORMATION: NPPTL, NIOSH, is seeking to partner with businesses capable of incorporating electronic chemical sensors into respirator filter cartridges. Interested manufacturers who would like to be considered for participation need to have access to manufacturing capabilities to produce air purifying respirator cartridges.

The project currently is in the system development phase. A chemical sensor array has been defined and electronics to support it have been developed. Partners could participate in the current project as well as future projects involving sensors.

Candidate companies will be evaluated based on their capability to achieve the identified goals. Candidates selected could be requested to enter into a Cooperative Research and Development Agreement (CRADA). This

announcement does not obligate NIOSH to enter into an agreement with any respondents. NIOSH reserves the right to establish a partnership based on engineering analysis and capabilities found by way of this announcement or other searches, if determined to be in the best interest of the government.

FOR FURTHER INFORMATION CONTACT: *http://www.esli@cdc.gov.*

Dated: August 2, 2004.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 04–18219 Filed 8–9–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects: Title: Voluntary Surveys of Program Partners to Implement Executive Order 12862.

OMB No.: 0980–0266.

Description: Under the provisions of the Federal Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Administration for Children and Families (ACF) is requesting clearance for instruments to implement Executive Order 12862 within ACF. The purpose of the data collection is to obtain customer satisfaction information from those entities who are funded to be our partners in the delivery of services to the American public. ACF partners are those entities that receive funding to deliver services or assistance from ACF programs. Examples of partners are state and local governments, territories, service providers, Indian Tribes and Tribal organizations, grantees, researchers, or other intermediaries serving target populations identified by and funded directly or indirectly by ACF. The surveys will obtain information about how well ACF is meeting the needs of our partners in operating the ACF programs.

Respondents: State, Local, & Tribal Govt. or not-for-profit Organizations.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Governments, Territories and District of Columbia	54	10	1	540
Head Start Grantees & Delegates	200	1	.5	100
Other Discretionary Grant Programs	200	10	.5	1,000
Indian Tribes & Tribal Organizations	25	10	.5	125

Estimated Total Annual Burden Hours: 1,765.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 4, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–18168 Filed 8–9–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Funding Opportunity Title: CSBG T/TA Program—Earned Income Tax Credit (EITC) and Other Asset Formation Opportunities

AGENCY: Administration for Children and Families, Office of Community Services, HHS.

Announcement Type: Competitive Grant-Initial.

Funding Opportunity Number: HHS–2004–ACF–OCS–ET–0028.

CFDA Number: 93.570.

Due Date for Applications: The due date for receipt of applications is September 9, 2004.

I. Funding Opportunity Description

The Office of Community Services (OCS) within the Administration for Children and Families (ACF) announces that competing applications will be accepted for a new grant pursuant to the Secretary's authority under section 674(b) of the Community Services Block Grant (CSBG) Act, as amended, by the Community Opportunities, Accountability, and Training and Educational Services (COATES) Human Services Reauthorization Act of 1998, (Pub. L. 105–285).

The proposed grant will fund up to seven capacity-building collaborations that create or expand asset formation and financial literacy services offered by eligible entities funded under the Community Services Block Grant (CSBG) Program in support of national community action Goal 1 (''Low Income People Become More Self-Sufficient'').

Definitions of Terms

The following definitions apply:

At-Risk Agencies refers to CSBG eligible entities in crises. The problem(s) to be addressed must be of a complex or pervasive nature that cannot be adequately addressed through existing local or State resources.

Capacity-building refers to activities that assist Community Action Agencies (CAAs) and other eligible entities to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce

intended results for low-income individuals. This may include upgrading internal financial management or computer systems, establishing new external linkages with other organizations, improving board functioning, adding or refining a program component or replicating techniques or programs piloted in another local community, or making other cost effective improvements.

Community in relationship to broad representation refers to any group of individuals who share common distinguishing characteristics including residency, for example, the ''low-income'' community, or the ''religious'' community, or the ''professional'' community. The individual members of these ''communities'' may or may not reside in a specific neighborhood, county, or school district but the local service provider may be implementing programs and strategies that will have a measurable affect on them. Community in this context is viewed within the framework of both community conditions and systems, *i.e.*, (1) Public policies, formal written and unstated norms adhered to by the general population; (2) service and support systems, economic opportunity in the labor market, and capital stakeholders; (3) civic participation; and (4) an equity as it relates to the economic and social distribution of power.

Community Services Network (CSN) refers to the various organizations involved in planning and implementing programs funded through the Community Services Block Grant or providing training, technical assistance or support to them. The network includes local Community Action Agencies and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations which collaborate and participate with Community Action Agencies and other eligible entities in their efforts on behalf of low-income people.

Eligible applicants described in this announcement shall be eligible entities, organizations, (including faith-based) or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities. *See description of Eligible Entities below*.

Eligible entity means any organization that was officially designated as a Community Action Agency (CAA) or a community action program under Section 673(1) of the Community Services Block Grant Act, as amended by the Human Services Amendments of 1994 (Pub. L. 103–252), and meets all the requirements under Sections 673(1)(A)(I), and 676A of the CSBG Act, as amended by the COATES Human Services Reauthorization Act of 1998. All eligible entities are current recipients of Community Services Block Grant funds, including migrant and seasonal farm worker organizations that received CSBG funding in the previous fiscal year.

Local service providers are local public or private non-profit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

Nationwide refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the local service providers who administer CSBG funds.

Non-profit Organization refers to an organization, including faith-based, which has ''demonstrated experience in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.'' Acceptable documentation for eligible non-profit status is limited to: (1) A copy of a current, valid Internal Revenue service tax exemption certificate; (2) a copy of the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code; and/or (3) Articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Outcome Measures are definable changes in the status or condition of individuals, families, organizations, or communities as a result of program services, activities, or collaborations.

Performance Measurement is a tool used to objectively assess how a program is accomplishing its mission through the delivery of products, services, and activities.

Program technology exchange refers to the process of sharing expert technical and programmatic information, models, strategies and approaches among the various partners in the Community Services Network. This may be done through written case studies, guides, seminars, technical assistance, and other mechanisms.

Regional Networks refers to CAA State Associations within a region.

Results-Oriented Management and Accountability (ROMA) System: ROMA is a system, which provides a framework for focusing on results for local agencies funded by the Community Services Block Grant Program. It involves setting goals and strategies and developing plans and techniques that focus on a result-oriented performance-based model for management.

State means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes specified Territories.

State CSBG Lead Agency (SCLA) is the lead agency designated by the Governor of the State to develop the State CSBG application and to administer the CSBG Program.

Statewide refers to training and technical assistance activities and other capacity-building activities undertaken with grant funds that will have significant impact, *i.e.*, activities should impact at least 50 percent of the eligible entities in a State.

Technical assistance is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories refers to the Commonwealth of Puerto Rico and American Samoa for the purpose of this announcement.

Training is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences, or programs of self-instructional activities.

Priority Area

Community Action Goal 1—''Low Income People Become More Self-Sufficient''

Earned Income Tax Credit (EITC) and Other Asset Formation Opportunities.

Program Purpose, Scope and Focus

OCS is committed to promoting and funding projects that use asset formation financial strategies to increase disposable earned income in low-income households and to help direct the use of that income toward asset formation. We view such strategies as viable innovative approaches to empowering low-income individuals, and families to become more self-

sufficient and self-reliant. As part of an OCS initiative, we are forming partnerships and encouraging the creation or strengthening of partnerships aimed at increasing financial education literacy and asset formation for low wage earning households.

The EITC is a refundable federal tax credit designed to encourage employment in low-income families and to offset the effects of Medicare and Social Security payroll taxes on working-poor families. The EITC is widely viewed as a key support in welfare-to-work and asset-building strategies. EITC is regarded not only as an income supplement to meet immediate expenses, but also as a resource that might be directed toward asset-building strategies. Low-income families can be assisted to use the credit to accrue wealth, achieve economic self-sufficiency, and break the cycle of poverty.

Up to 30 percent of low-income families do not have a checking or savings account with a financial institution, have poor financial management skills and/or credit record, and need assistance with asset-building strategies; therefore, finding a way to link the EITC to affordable banking services, financial literacy, and savings and asset-building options is critical. According to recent studies by the Government Accounting Office, a substantial number of eligible individuals and families fail to claim the EITC. OCS seeks to narrow the gap between eligible households entitled to, but not receiving, this benefit. OCS also seeks to expand the use of the credit as an asset-building resource.

OCS seeks to fund formal collaboration projects that use the EITC to create or expand asset formation and financial literacy services offered by eligible entities funded under the Community Services Block Grant (CSBG) Program. Funds will be awarded to provide capacity-building assistance that enables local, State or regional CSBG networks to plan, establish, improve or expand the use of EITC outreach and free tax preparation services to provide asset formation and financial service opportunities for eligible individuals and families. These projects should be designed to include EITC outreach, free tax preparation services and financial literacy/asset formation strategies to enable low-income families and individuals to make wiser financial decisions, build financial resources and help eligible clients take advantage of asset formation opportunities, that ultimately help the community thrive and become more economically stable.

Formal State CSBG Lead Agencies and State CAA Association partnerships are especially encouraged and will receive priority consideration for funding. OCS realizes that CSBG service providers will be most effective in helping low-income individuals and families increase assets and financial literacy when they partner with others in the community. Therefore, applications that show collaborations with other community-based organizations and institutions are also strongly encouraged.

Funds will be awarded to provide capacity-building assistance that enables local and regional CSBG networks to plan, establish, improve or expand asset formation and financial service opportunities for eligible individuals and families. These projects should be designed to help low-wage earners, at or near the poverty level, become more astute in areas such as money management and other financial services. The projects must offer, or plan to offer, services that help eligible clients take advantage of asset formation opportunities, increase their disposable income, build financial resources and enable them to make wiser financial decisions that ultimately help the community thrive and become more economically stable.

At a minimum, all projects funded under this area must demonstrate proof that they have managed and operated an established Earned Income Tax Credit (EITC) component. Successful applicants for these seven (7) grants must also have a history of providing Earned Income Tax Credit and other asset formation services and training within the Community Services Network. Their curriculum must demonstrate an understanding of asset formation and financial literacy. Applicants must describe in their applications how their proposed training curriculum will improve or expand the access of eligible low-income families and individuals to asset formation information and services. Therefore, projects should include outreach to eligible families, information to help individuals and families understand the EITC and free tax filing assistance to claim the EITC and other tax credits.

Successful applicants for these grants must have a plan for providing EITC outreach, free tax preparation, and other financial and asset formation services and training within the Community Services Network. Their curriculum must demonstrate an understanding of asset formation and financial literacy. At a minimum, all projects funded in this area must present proof that within the collaborative there exists a partner with demonstrated experience in the delivery of EITC outreach and free tax preparation services, and should include a description (letters of agreement or memoranda of understanding) of the nature of the existing or proposed working relationship with the local Internal Revenue Service territory office. Applicants must also describe in their applications how their proposed plan and training curriculum will improve or expand the access of eligible low-income families and individuals to tax preparation and asset formation information and services beyond the scope of the current offerings of that or other partners so engaged, as well as identifying constituencies who have been underserved with these programs.

OCS recognizes that local, State and regional CSBG networks are in various stages with respect to offering asset formation and financial literacy services. Therefore, we plan to fund applications from applicants that are in the initial planning and development stages of asset formation services as well as applications from applicants whose CSBG network has established asset formation services, but desire to do more.

Successful applicants will propose projects that will impact more than one local CSBG service area. This Sub-Priority Area is not appropriate for projects proposing stand-alone services that impact and target only one particular community. Formal State CSBG Lead Agencies and State CAA Association partnerships and Community Service Network collaborations that address the needs of rural communities are especially encouraged to apply for these funds and will receive priority consideration for funding.

The application must clearly show the roles and responsibilities of each collaborating partner. Letters of agreement and memoranda of understanding on agency letterhead with signatures from persons authorized to act on behalf of the collaborating partner(s) must be included in the application.

Innovation is encouraged. However, the following are examples of asset formation and financial literacy activities that OSC seeks to expand:

- Help eligible individuals and families apply for and receive, the Federal and State, where appropriate, Earned Income Tax Credits and other cash benefits or services to which they are entitled.

• Ensure that staff and volunteers of local CSBG funded organizations and/or their partners are trained and certified to provide free tax preparation services.
• Recruit, support, and retain qualified volunteers committed to the goals of the initiative.
• Conduct outreach to EITC eligible individuals and families.
• Provide life skills education that helps low-income individuals and families learn and apply effective household management and budgeting techniques.
• Help clients establish and use banking and financial services, such as checking and savings accounts, thereby reducing or eliminating their reliance on the high-fee, high interest check cashing and loan services that are prevalent and widely used in low-income neighborhoods.
• Present materials in different languages based on the needs of eligible households.
• Assist families and individuals to boost savings in Individual Development Accounts (IDAs) and/or to participate in other asset-building opportunities such as pre and post purchase housing support, 529 college savings plans, and other asset tools.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $500,000 in FY 2004.

Anticipated Number of Awards: Seven (7).

Ceiling on Amount of Individual Awards: $80,000 per budget period.

An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

Floor on Amount of Individual Awards: none.

Average Projected Award Amount: $70,000 per budget period.

Project Periods for Award: This announcement is inviting applications for project periods of up to three years. Awards, offered on a competitive basis, will be for a one-year budget period, although projects may be for three years. Applications for continuation grants beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Federal Government.

An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

III. Eligibility Information

1. Eligible Applicants

Community Services Block Grant eligible entities, State Community Action Associations, non-profit organizations having 501(c)3 status, and non-profits that do not have 501(c)3 status. Faith-based organizations are eligible to apply.

Additional Information on Eligibility: As prescribed by the Community Services Block Grant Act (Pub. L. 105–285, Section 678A(c)(2), eligible applicants are eligible entities (see definitions), or statewide or local organizations, or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; a copy of a currently valid IRS tax exemption certificate; a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or any of the items referenced above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

2. Cost Sharing or Matching

None.

3. Other

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

IV. Application and Submission Information

1. Address To Request Application Package

Office of Community Services Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, VA 22209, Attn: Dr. Margaret Washnitzer, Telephone: (800) 281–9519.

2. Content and Form of Application Submission

An original and two copies of the complete application are required. The original and the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative of the applicant organization, have original signatures, and be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers. The copies may include summary salary information.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You

may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the Standard Form 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov.* You must search for the downloadable application package by The Catalog of Federal Domestic Assistance (CFDA) number.

Application Content

Each application must include the following components:

(a) *Table of Contents*

(b) *Abstract of the Proposed Project*—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population, and the major elements of the work plan.

(c) *Completed Standard Form 424*—that has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(d) *Standard Form 424A*—Budget Information-Non-Construction Programs.

(e) *Narrative Budget Justification*—for each object class category required under Section B, Standard Form 424A.

(f) *Project Narrative*—A narrative that addresses issues described in the ''Application Review Information'' and the ''Review and Selection Criteria'' sections of this announcement.

Application Format

Each application should include one signed original application and two additional copies of the same application.

Submit application materials on white 8½ x 11 inch paper only. Do not use colored, oversized or folded materials.

Please do not include organizational brochures or other promotional materials, slides, films, clips, etc.

The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

Please present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives must not exceed 35 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.

Required Standard Forms

Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Additional Requirements

(a) The application must contain a signed Standard Form 424, Application for Federal Assistance, a Standard Form 424A, Budget Information, and signed Standard Form 424B, Assurance—Non-Construction Programs, completed according to instructions provided in this Program Announcement. Forms SF–424 and SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6);

(b) The application must include a project narrative that meets the requirements set forth in this announcement;

(c) The application must contain documentation of the applicant's tax-exempt status as indicated in the ''Funding Opportunity Description'' section of this announcement;

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants.'' The forms are located on the web at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Project Summary Abstract: Provide a one page (or less) summary of the project description with reference to the funding request.

Full Project Description Requirements: Describe the project clearly in 35 pages or less (not counting supplemental documentation, letters of support or agreements) using the following outline and guidelines. Applicants are required to submit a Full Project Description and must prepare the project description statement in accordance with the following instructions. The pages of the project description must be numbered and are limited to 35 typed pages starting on page 1 with the ''Objectives and Need for Assistance''. The description must be double-spaced, printed on only one side, with at least one inch margins. Pages over the 35 page limit will be removed from the competition and will not be reviewed.

It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in

accordance with the evaluation criteria, and adheres to the page limitation. In addition, applicants should be mindful of the importance of preparing and submitting applications using language, terms, concepts and descriptions that are generally known by the Community Services Block Grant (CSBG) network.

The maximum number of pages for supplemental documentation is 10 pages. The supplemental documentation, subject to the 10-page limit, must be numbered and might include brief resumes, position descriptions, proof of non-profit status, news clippings, press releases, etc. Supplemental documentation over the 10-page limit will not be reviewed.

Applicants must include letters of support or agreement, if appropriate or applicable, in reference to the project description. Letters of support are not counted as part of the 35-page project description limit or the 10-page supplemental documentation limit. All applications must comply with the following requirements as noted:

3. Submission Date and Time

The closing time and date for receipt of applications is 4:30 p.m. eastern time (e.t.) on September 9, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, Attention: Barbara Ziegler Johnson. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time (e.t.), at the U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: ''Attention: Barbara Ziegler Johnson.'' Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

ACF will not send acknowledgements of receipt of application materials.

Required Forms:

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Abstract of Proposed Project	Brief abstract that identifies the type of project, the target population, and the major elements of the proposed project.	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Completed Standard Form 424	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Completed Standard Form 424A	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Narrative Budget Justification	As described above	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Project Narrative	A narrative that addresses issues described in the ''Application Review Information'' and the ''Review and Selection Criteria'' sections of this announcement.	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Certification regarding lobbying	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding environmental tobacco smoke.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

Additional Forms:

Private non-profit organizations are encouraged to submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants''.

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming and Palau.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities that are needed to conduct the project.

Number of Projects in Application

Each application may include only one proposed project.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two complete copies. The application must be received at the address below by 4:30 p.m. eastern time (e.t.) on or before September 9, 2004. Applications should be mailed to: U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, Attn: Barbara Ziegler Johnson.

For Hand Delivery: Applicants must provide an original application with all attachments, signed by an authorized representative and two complete copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209 Attention: Barbara Ziegler Johnson. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

V. Application Review Information

1. Criteria

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB number.

Instructions: ACF Uniform Project Description (UPD)

The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''Full Project Description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD). The generic UPD requirement is followed by the evaluation criterion specific to the Community Services Block Grant legislation.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be

included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that information included in the application is clear and complete.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be served by the program and the number of new jobs that will be targeted to the target population. Explain how the project will reach the targeted population and how it will benefit participants, including, how it will support individuals to become more economically self-sufficient.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. Account for all functions or activities identified in the application, such as, free tax preparation, financial literacy training, and asset-building activities. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project, along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the conduct of the project and the results of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate, (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status, (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

2. Evaluation Criteria

Evaluation Criterion I: Approach (Maximum: 40 points)

Factors: (1) The work program is results-oriented, approximately related to the legislative mandate and

specifically related to the priority area under which funds are being requested. The application addresses the following: specific outcomes to be achieved; discussion of how the project will verify the achievement of these targets and the data collection methodology to be used; the way that tax preparation training will be accomplished; individuals, families and households served; proposed linkage and outcomes to asset-building activities; critical milestones which must be achieved if results are to be gained; organizational support, the level of support from the applicant organization; past performance in similar work; and specific resources contributed to the project that are critical to success.

(2) The applicant defines the comprehensive nature of the project and methods that will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the description of the particular priority area.

Evaluation Criterion II: Organizational Profiles (Maximum: 20 points)

Factors: (1) The applicant demonstrates that it has experience and a successful record of accomplishment relevant to the specific activities it proposes to accomplish.

(2) If the applicant proposes to provide training and technical assistance, it details its abilities to provide those services on a community services network-wide basis. If applicable, information provided by the applicant also addresses related achievements and competence of each cooperating or sponsoring organization.

(3) The application fully describes, for example in a resume, the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project.

(4) The applicant describes how it will involve partners in the Community Services Network , the Internal Revenue Service, and other asset-building projects including the Assets for Independence Act (AFIA) grantees in its activities. Where appropriate, applicant describes how it will interface with other related organizations.

(5) The application describes how the needs of rural communities and small towns will be addressed.

(6) If sub-contracts are proposed, the application documents the willingness and capacity of the subcontracting organization(s) to participate as described.

Evaluation Criterion III: Objectives and Need for Assistance (Maximum: 20 points)

Factors: (1) The applicant documents that the proposed project addresses vital needs related to the program purposes and provides statistics and other data and information in support of its contention.

(2) The application provides current supporting documentation or other testimonies regarding needs from State CSBG Directors, CAAs and local service providers and/or State and Regional organizations of CAAs and other local service providers, including the Internal Revenue Service.

Evaluation Criterion IV: Results or Benefits Expected (Maximum: 15 points)

Factors: (1) The application describes how the project will assure long-term program and management improvements for State CSBG offices, CAA State and/or regional associations, CAAs and/or other local providers of CSBG services and activities.

(2) The applicant indicates the types and amounts of public and/or private resources it will mobilize, how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

(3) If the application proposes a project with a training and technical assistance focus, the application indicates the number of organizations and/or staff that will benefit from those services.

(4) The application describes a project with data collection focus, the application describes the mechanism to be used to collect data about EITC outreach, returns prepared, total EITC claimed, the number of individuals and families engaged in financial literacy and/or asset formation strategies and, how the applicant can assure collections from a significant number of State partners, and the number of State partners willing to submit data to the applicant.

(5) If the applicant proposes to develop a symposium series or other policy-related project(s), the application identifies the number and types of beneficiaries.

(6) The application describes methods of securing participant feedback and evaluations of activities.

Criterion V: Budget and Budget Justification (Maximum: 5 points)

Factors: (1) The resources requested are reasonable and adequate to accomplish the project.

(2) Total costs are reasonable and consistent with anticipated results.

3. Review and Selection Process

Initial OCS Screening

Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

All applications must comply with the following requirements except as noted:

OCS Evaluation of Applications

Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

Copies to Non-Federal Reviewers

Applicants are encouraged to use job titles and not specific names in developing the application budget. However, the specific salary rates or amounts for staff positions identified must be included in the application budget.

The OCS Director and program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: The timely and proper completion by the applicant of projects funded with OCS funds granted in the last five (5) years; comments of

reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

Approved But Unfunded Applications: In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in the later competition.

VI. Award Administration Information

1. Award Notices

Following approval of the application selected for funding, ACF will mail a written notice of project approval and authority to draw down project funds. The official award document is the Financial Assistance Award that specifies the amount of Federal funds approved for use in the project, the project and budget period for which support is provided and the terms and conditions of the award. The Financial Assistance Award is signed and issued via postal mail by an authorized Grants Officer.

ACF will notify unsuccessful applicants after the award is issued to the successful applicant.

2. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR part 74 (non-governmental) or 45 CFR part 92 (governmental).

3. Reporting

All grantees are required to submit semi-annual program reports and semi-annual expenditure reports (SF–269) with final reports due 90 days after the project end date. A suggested format for the program report will be sent to all grantees after the awards are made.

VII. Agency Contacts

Program Office Contact: Dr. Margaret Washnitzer, Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, VA 22209, E-Mail: *OCS@lcgnet.com*, Phone: 1–800–281–9519.

Grants Management Office Contact: Barbara Ziegler Johnson, Team Leader, Office of Grants Management, Division of Discretionary Grants, Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, VA 22209, E-Mail: *OCS@lcgnet.com,* Phone: 1–800–281–9519.

VIII. Other Information

Additional information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/ocs.*

Dated: August 4, 2004.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 04–18289 Filed 8–9–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0332]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Third-Party Review Under the Food and Drug Administration Modernization Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for medical devices; third-party review under the Food and Drug Modernization Act of 1997 (FDAMA).

DATES: Submit written and electronic comments on the collection of information by October 12, 2004.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Third-Party Review Under FDAMA (OMB Control Number 0910–0375)—Extension

Section 210 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) established section 523 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360m), directing FDA to accredit persons in the private sector to review certain premarket applications and notifications. Participation in this third-party review program by accredited persons is entirely voluntary. A third party wishing to participate will submit a request for accreditation to FDA. Accredited third-party reviewers have the ability to review a manufacturer's 510(k) submission for selected devices. After reviewing a submission, the reviewer will forward a copy of the 510(k) submission, along with the reviewer's documented review and recommendation to FDA. Third-party reviews should maintain records of their 510(k) reviews and a copy of the 510(k) for a reasonable period of time, usually a period of 3 years. This information collection will allow FDA to continue to implement the accredited person review program established by FDAMA and improve the efficiency of 510(k) review for low to moderate risk devices.

Respondents to this information collection are businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Requests for accreditation	15	1	15	24	360
510(k) reviews conducted by accredited 3d parties	15	14	210	40	8,400
Totals					8,760

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Recordkeeper	Total Hours
510(k) reviews	15	14	210	10	2,100
Totals					2,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burdens are explained as follows:

I. Reporting

A. Requests for Accreditation

Under the agency's third-party review pilot program, the agency received 37 applications for recognition as third-party reviewers, of which the agency recognized 7. In the past 3 years, the agency has averaged receipt of 15 applications for recognition of third-party review accredited persons. The agency has accredited 15 of the applicants to conduct third-party reviews.

B. 510(k) Reviews Conducted by Accredited Third Parties

In the 18 months under the Third-Party Review Pilot Program, FDA received 22 submissions of 510(k)s that requested and were eligible for review by third parties. The agency has experienced that the number of 510(k)s submitted annually for third-party review since the last OMB approval in 2001 is approximately 210 annually, which is 14 annual reviews per each of the estimated 15 accredited reviewers.

II. Recordkeeping

Third-party reviewers are required to keep records of their review of each submission. The agency anticipates approximately 140 annual submissions of 510(k)s for third-party review.

Dated: July 30, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–18167 Filed 8–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 10, 2004, from 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Dornette Spell-LeSane, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *spelllesaned@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512533. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–686 proposed trade name EXANTA (ximelagatran) 24-milligram (mg) and

36-mg tablets, AstraZeneca, for the proposed indication of the prevention of venous thromboembolism (VTE) in patients undergoing knee replacement surgery, the prevention of stroke, and other thromboembolic complications associated with atrial fibrillation and the long term secondary prevention of VTE after standard treatment of an episode of acute VTE.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 2, 2004. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 2, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Dornette Spell-LeSane at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 1, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–18166 Filed 8–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Open: September 14, 2004, 8 a.m. to 4:45 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: September 14, 2004, 4:45 p.m. to Recess.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: September 15, 2004, 8:30 a.m. to Adjournment.

Agenda: Program reports and presentations; Business of the Board.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's Home page: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–18280 Filed 8–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: September 9, 2004.

Open: 8:30 a.m. to 2:45 p.m.

Agenda: Report of Center Director and other issues.

Place: National Institutes of Health, 31 Center Drive, Bldg. 31, Conf. Rm. 10, Bethesda, MD 20892.

Closed: 2:45 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 31 Center Drive, Bldg. 31, Conf. Rm. 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for

Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, (301) 496–6023.

Any interested person may file written comments with the committee by forwarding the statement of the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.ncrr.nih.gov/newspub/minutes.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: August 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–18276 Filed 8–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; California National Primate Research Center (CNPRC).

Date: September 28–30, 2004.

Time: September 28, 2004, 7 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hilton Sacramento Arden West, 2200 Harvard Street, Sacramento, CA 95815.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Institutes of Health, NCRR, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892, (301) 435–0814, *lambert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: August 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–18277 Filed 8–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, RFA DA 04–016 Consequences of marijuana use on the developing brain.

Date: August 13, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Mark R. Green, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1431.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–18272 Filed 8–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, IP–RISP II.

Date: August 20, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–18273 Filed 8–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: September 13–14, 2004.

Open: September 13, 2004, 8:30 a.m. to 5:30 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: September 14, 2004, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P. Sassaman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–7723.

Any interested person may file written comments with the committee by forwarding the statement to the Contract Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page *http://www.niehs.nih.gov/dert/c-agenda.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–18275 Filed 8–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, National Research Service Award.

Date: August 17, 2004.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Blvd., Room 710, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–18278 Filed 8–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 8–9, 2004.

Closed: September 8, 2004, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: September 9, 2004, 9 a.m. to 2:30 p.m.

Agenda: Program reports and presentations; Business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 6C6, Bethesda, MD 20892.

Contact Person: Karen P Peterson, PhD, Executive Secretary, National Institute of

Alcohol Abuse, and Alcoholism, National Institutes of Health, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: silk.nih.gov/silk/niaaa1/about/roster.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–18279 Filed 8–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nanotechnology and Thermal Therapy Review Panel.

Date: August 9, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships.

Date: August 11, 2004.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892, (301) 451–8754, *bellmar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Population Control.

Date: August 19, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation Grants: Microscopes.

Date: September 2–3, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 451–3848, *ainsztea@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–18274 Filed 8–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Emphasis Panel, Immune Regulation and Immunosuppression.

Date: August 4, 2004.

Time: 10:30 a.m. to 11:25 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Origins of Innate Immunity.

Date: August 4, 2004.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Azurin-p53 Interaction.

Date: August 10, 2004.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, 301–435–1147, *henryt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Congenital Heart Block.

Date: August 17, 2004.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, 301–435–1850, *dowellr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–18281 Filed 8–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CDG01–04–108]

Draft Environmental Impact Statement; Goethals Bridge Modernization Program

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent.

SUMMARY: The U.S. Coast Guard, as the Federal lead agency, and in cooperation with the Port Authority of New York and New Jersey (PANY&NJ), intends to prepare and circulate a Draft Environmental Impact Statement (DEIS) for a proposed new bridge to replace the existing Goethals Bridge which crosses the Arthur Kill between Staten Island, New York and Elizabeth, New Jersey and is part of the Goethals Bridge Modernization Program. This Notice of Intent is a necessary part of the Environmental Impact Statement process as required by the National Environmental Policy Act (NEPA). The Coast Guard issues this Notice of Intent to provide notice of the prospective project and to seek comments to ensure that all significant issues are identified and the full range of alternatives and impacts of the proposed project are addressed.

DATES: Comments must be received on or before September 9, 2004.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Battery Park Building, One South Street, New York, New York, 10004.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Bridge Program Manager, at the address above or by telephone at (212) 668–7165.

SUPPLEMENTARY INFORMATION: This notice of intent is published as required by regulations of the Council on Environmental Quality at 40 CFR 1501.7.

The proposed project constitutes the PANY&NJ's Goethals Bridge Modernization Program (the ''Program''). The Program proposes to replace the existing Goethals Bridge, which has substandard geometrics and is experiencing escalating deterioration, thereby causing safety and reliability concerns.

The design of a proposed new facility would reflect current traffic design standards, modern structural and seismic codes, national-security safeguards and technology enhancements. It would also add the operational flexibility to facilitate future transit-service opportunities.

A Coast Guard bridge permit authorizing the location and plans for the bridge project, which crosses navigable waters of the United States, is required before construction may begin. Based on available information, the Coast Guard has determined that an EIS would be the appropriate level of environmental documentation for assessing the potential impacts of the proposed project under Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended.

In addition to the no-build alternative (no-action), the selection of alternatives to be evaluated in the DEIS may include: alternative alignments within the existing bridge corridor; alternative bridge designs; provision of high-occupancy vehicle or express bus lanes; intelligent vehicular highway system options; congestion pricing options; consideration of transit alternatives such as potential light rail, commuter rail, bus and/or ferry routes and services; as well as all other reasonable alternatives identified by the public.

Potentially significant issues to be evaluated include: displacement of residential, commercial and industrial properties; disruption of contaminated properties located within the proposed project right-of-way; existing and future land use and traffic patterns; threatened and endangered species, and critical habitat; historic and archeological resources, including the existing historic Goethals Bridge; wetlands; water quality; noise; air quality; navigation; construction impacts; and cumulative impacts.

A formal interagency scoping meeting with federal, state, and local agencies with environmental expertise is planned for early September 2004. In addition, public scoping meetings in both Staten Island and Elizabeth are planned for October 2004. The dates for the public scoping meetings will be announced locally as well as in the **Federal Register**.

All interested parties are invited to submit written comments to ensure that all significant issues are identified and the full range of alternatives and impacts of the proposed projects are addressed.

Dated: July 30, 2004.

John L. Greiner,

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

[FR Doc. 04–18205 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1530–DR]

New Jersey; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–1530–DR), dated July 16, 2004, and related determinations.

EFFECTIVE DATE: August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 16, 2004:

Camden County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–18241 Filed 8–9–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1532–DR]

Northern Mariana Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–1532–DR), dated July 29, 2004, and related determinations.

EFFECTIVE DATE: July 29, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 29, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of the Northern Mariana Islands, resulting from flooding, high surf, high winds, and wind-driven rain associated with Typhoon Tingting on June 27–29, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of the Northern Mariana Islands.

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 and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Assistance Other Needs is later under Section 408 of the Stafford Act warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. You are authorized to make adjustments as warranted to the non-Federal cost shares as provided under the Insular Areas Act, 48 U.S.C. 1469a(d).

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of the Northern Mariana Islands to have been affected adversely by this declared major disaster:

The islands of Rota, Saipan, and Tinian for Public Assistance.

The islands of Rota, Saipan, and Tinian in the Commonwealth of the Northern Mariana Islands 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: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–18242 Filed 8–9–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1533–DR]

Guam; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of Guam (FEMA–1533–DR), dated July 29, 2004, and related determinations.

EFFECTIVE DATE: July 29, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington,DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 29, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Territory of Guam, resulting from high winds, flooding, and mudslides as a result of Tropical Storm Tingting on June 26–29, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Territory of Guam.

In order to provide Federal assistance, you are 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 Territory of Guam, 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 and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. You were authorized to make adjustments as warranted to the non-Federal cost shares as provided under the Insular Areas Act, 48 U.S.C. 1469a(d).

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the Territory of Guam to have been affected adversely by this declared major disaster:

The Territory of Guam for Public Assistance.

The Territory of Guam is 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: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–18243 Filed 8–9–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID090–04–1050–HF]

Emergency Closure Order in Ada County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: All persons are hereby prohibited entry into Higby Cave at all times, except by Bureau of Land Management (BLM) special permit, because of recent changes in the structural integrity of the cave and the related potential hazardous conditions that exist. In addition, all public lands within 1000 feet of the cave, being within the S½NW¼NW¼ and N½SW¼NW¼ of section 32, T. 1 S., R. 3 E., Boise Meridian, Ada County, Idaho, containing approximately 72 acres, are hereby closed from sunset to sunrise each day. This emergency closure is intended to provide for public safety and to protect valuable resource assets from further degradation.

BLM employees, authorized permittees, and other Federal, State, and County employees while on official business of their respective agencies, including associated vehicle use for administrative and emergency purposes are exempt from this order.

EFFECTIVE DATE: This Emergency Closure Order is effective immediately upon signing, and extends through May 1, 2007.

ADDRESSES: Bureau of Land Management, Four Rivers Field Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Larry Ridenhour, BLM Outdoor Recreation Planner, (208) 384–3334.

SUPPLEMENTARY INFORMATION: This emergency closure is effective immediately upon signing, and will expire on May 1, 2007. During this period, BLM will evaluate whether a permanent closure is in the public interest. In the interim, the BLM authorized officer may issue a special permit allowing access into the cave under special circumstances and for specific purposes.

Definitions: (a) ''Public lands'' means any lands or interests in lands owned by the United States and administered by the Secretary of the Interior through the BLM; (b) ''Authorized officer'' means any employee of the BLM who has been delegated the authority to perform the duties described herein; (c) ''Administrative purposes'' means any use by an employee or designated representative of the Federal government, or one of its agents or contractors in the course of their employment or representation; (d) ''Emergency purposes'' means actions related to fire, rescue, or law enforcement activities.

This emergency closure is established and administered by the BLM under the authority of 43 CFR 8360.0–3, and complies with 43 CFR 8364.1 (Closure and Restriction Orders). In accordance with 43 CFR 8360.0–7, violation of this order is punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months. Violations may also be subject to the enhanced fines provided for in 18 U.S.C. 3571.

Dated: August 4, 2004.

Deborah L. Epps,

Acting Four Rivers Field Manager.

[FR Doc. 04–18220 Filed 8–9–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–5870–HN; 4–08807]

Request for Nomination of Inholding Properties for Potential Purchase by the Federal Government in the State of Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In keeping with the Federal Land Transaction Facilitation Act of 2000 (43 U.S.C. 2303) (FLTFA) this notice seeks the nomination of property for possible acquisition by the Federal government. The Notice also provides information on the procedures for (1) identification, by State, of inholding and other non-Federal properties as to which the landowners have indicated a

desire to sell the land or interest therein to the United States; and (2) establishing a priority system for the acquisition of such properties.

DATES: Nominations under the FLTFA in Nevada are being considered in conjunction with nominations under Section 5 of the Southern Nevada Public Land Management Act of 1998 (43 U.S.C. 6901) (SNPLMA). Nominations that were submitted on or before January 9, 2004, under SNPLMA Round 5 will also be considered as nominations under the FLTFA, to the extent consistent with FLTFA requirements. Future nominations will be accepted on an annual basis, with the next call for nominations under SNPLMA/FLTFA Round 6 being tentatively scheduled for September 2004.

ADDRESSES: Nominations should be mailed to BLM Las Vegas Field Office, Attn: Division of Land Sales & Acquisitions, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130 (telephone: 702–515–5114).

FOR FURTHER INFORMATION CONTACT: Rex Wells, Program Manager-FLTFA, BLM Nevada State Office (telephone: 775–861–6474; e-mail: *Rex_Wells@nv.blm.gov*, or Internet: *http://www.nv.blm.gov/fltfa*).

SUPPLEMENTARY INFORMATION: In accordance with the FLTFA, the Bureau of Land Management (BLM), the Forest Service (FS), the National Park Service (NPS) and the Fish and Wildlife Service (FWS) (collectively, the ''Agencies'') are offering to the public at large this opportunity to nominate lands in the State of Nevada, meeting FLTFA eligibility requirements, for possible Federal acquisition. Any individual, group or government body may make a nomination of such lands. The BLM has assumed the lead agency role for the public notice process regarding the nomination of eligible properties. The following lands are eligible for nomination: (1) Inholdings within a Federally Designated Area; or (2) Other non-federal lands having a common boundary with a Federally Designated Area that contain Exceptional Resource Values.

An Inholding is any right, title, or interest held by a non-Federal entity, in or to a tract of land that lies within the boundary of a Federally Designated Area.

A Federally Designated Area is an area, in existence on July 25, 2000, set aside for special management, as for example, a national park, a national wildlife refuge, a BLM research natural area, a wilderness area established under the Wilderness Act, or a unit of the Wild and Scenic Rivers System. If you are not sure of whether a particular area meets the statutory definition in FLTFA, of a Federally Designated Area, you should consult the statute or contact the BLM as provided above.

An Exceptional Resource is a resource of scientific, natural, historic, cultural or recreational value that has been documented by a Federal, State or local government authority, and for which there is a compelling need for conservation and protection under the jurisdiction of a Federal agency in order to maintain the resource for the benefit of the public.

The Agencies will only consider an eligible nomination if:

(1) There is a willing seller (written confirmation from a landowner of his/her desire to sell);

(2) A Federal land use plan calls for its acquisition;

(3) The land does not contain a hazardous substance or is not otherwise contaminated, and would not be difficult or uneconomic to manage as Federal land; and,

(4) Acceptable title can be conveyed in accordance with Federal title standards.

The Agencies will assess the nominations for public benefits and rank the nominations in accordance with a jointly prepared State level interagency Implementation Agreement for the SNPLMA and FLTFA, dated June 2004 (Implementation Agreement). The identification of an inholding creates neither an obligation on the part of the landowner to convey the inholding nor any obligation on the part of the United States to acquire the inholding. Land acquisitions by the United States must be at fair market value consistent with applicable provisions of the Uniform Appraisal Standards for Federal Land Acquisitions.

In addition to the state-wide Implementation Agreement for the State of Nevada, the Agencies have signed a national Interagency Memorandum of Understanding (MOU) to carry out their responsibilities under FLTFA. You may obtain detailed information on the MOU, Implementation Agreement, nomination package requirements, and acquisition process by contacting Rex Wells, as provided above.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 04–18257 Filed 8–9–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–37124]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes, Las Vegas, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Bureau of Land Management (BLM) has determined that land located in Clark County, Nevada is suitable for classification for lease/conveyance to the City of Las Vegas.

DATES: Interested parties may submit comments regarding the proposed lease/conveyance for classification until September 24, 2004.

ADDRESSES: Please mail your comments to the Las Vegas Field Manager, Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

FOR FURTHER INFORMATION CONTACT: Anna Wharton, Supervisory Realty Specialist, (702) 515–5095.

SUPPLEMENTARY INFORMATION: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

N–37124—The City of Las Vegas proposes to use the land for a public park. Mount Diablo Meridian, T. 19S., R. 60E., Sec. 18, Government Lots, 15 and 16. Consist of 9.87 acres.

The land is not required for any federal purpose. Lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/ conveyance, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. All valid and existing rights.

2. Those rights for public utility purposes which have been granted to

the Las Vegas Valley Water District by permit No. N–75502 under Title V of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

3. Those rights for public utility purposes which have been granted to the Las Vegas Valley Water District by permit No. N–77494 under Title V of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

4. Those right for roadway, sewer and drainage purposes which have been granted to the City of Las Vegas by permit No. N–76812, under Title V of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office at the address listed above. On August 10, 2004, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park facility. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective on October 12, 2004. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: June 18, 2004.

Sharon DiPinto,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 04–18255 Filed 8–9–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0149).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the rulemaking for 30 CFR 250, Subparts J, H, and I ''Fixed and Floating Platforms and Structures.''

DATES: Submit written comments by October 12, 2004.

ADDRESSES: The ability to submit comments is now available through MMS's Public Connect on-line commenting system and is the preferred method for commenting. Interested parties may submit comments on-line at *https://ocsconnect.mms.gov.* From the Public Connect ''Welcome'' screen, you will be able to either search for Information Collection 1010–0149 or select it from the ''Projects Open For Comment'' menu.

Alternatively, interested parties may mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team (RPT). Please reference ''Information Collection 1010–0149'' in your comments and include your name and return address. **Note:** We are no longer accepting comments sent via e-mail.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team at (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subparts J, H, and I ''Fixed and Floating Platforms and Structures.''

OMB Control Number: 1010–0149.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 43 U.S.C. 1356 requires the issuance of ''* * * regulations which require that any vessel, rig, platform, or other vehicle or structure * * * (2) which is used for activities pursuant to this subchapter, comply * * * with such minimum standards of design, construction, alteration, and repair as the Secretary * * * establishes. * * *'' Section 43 U.S.C. 1332(6) also states, ''operations in the [O]uter Continental Shelf should be conducted in a safe manner * * * to prevent or minimize the likelihood of * * * physical obstruction to other users of the water or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.'' These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS) to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases.

On December 27, 2001, a Notice of Proposed Rulemaking (NPR) (66 FR 66851), provided the initial 60-day review and comment process. This notice is a renewal of the information requirements for the rulemaking and for what we expect to be in our final rulemaking.

The industry standards incorporated into our regulations through this rulemaking:

- Result in a complete rewrite and re-titling of our current regulations at 30 CFR 250, Subpart I, Platforms and Structures. The currently approved information collection for this Subpart (1010–0058) will be superseded by this collection when final regulations take effect.

• Revise regulations at 30 CFR 250, Subpart H, Oil and Gas Production Safety Systems (1010–0059); and Subpart J, Pipelines and Pipeline Rights-of-Way (1010–0050). When final regulations take effect, we will add the new requirements and hour burdens to the respective information collections currently approved for these subparts.

• Make changes to definitions, documents incorporated by reference, and other minor revisions to regulations at 30 CFR 250, Subpart A, General (1010–0114); and Subpart B, Exploration and Development and Production Plans (1010–0049). However, the proposed changes do not add any new information collection requirements, nor affect those currently approved.

MMS will use the information collected and records maintained under Subpart I to determine the structural integrity of all offshore platforms and floating production facilities and to ensure that such integrity will be maintained throughout the useful life of these structures. The information is necessary to determine that fixed and floating platforms and structures are sound and safe for their intended purpose and for the safety of personnel and pollution prevention. MMS will use the information collected under Subparts H and J to ensure proper construction of production safety systems and pipelines.

Although the revised regulations would specifically cover floating production facilities as well as platforms, this is not a new category of information collection. MMS has always permitted these facilities on a case-by-case basis. Incorporating the new documents provides industry with specific standards by which we will hold them accountable in the design, fabrication, and installation of platforms and floating production facilities offshore. Making mandatory these now voluntary standards would dictate that respondents comply with the requirements in the incorporated documents. This includes certified verification agent (CVA) review for some areas that current regulations do not require, but the voluntary standards recommend. The revised regulations will increase the number of CVA nominations and reports associated with the facilities and require hazards analysis documentation for new floating production facilities.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2) and under regulations at 30 CFR 250.196 (Data and information to be made available to the public). No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, annual; and varies by section.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 37,194 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Proposed rule section(s)	Reporting or recordkeeping requirement	Hour burden per response/record
New Subpart H Requirements		
800(b)	Submit CVA documentation under API RP 2RD	50 hours.
803(b)(2)(iii)	Submit CVA documentation API RP 17J	50 hours.
Subpart I		
900(a); 901(b); 902; 903; 905; 906; 907.	Submit application to install new platform or floating production facility or significant changes to approved applications, including use of alternative codes, rules, or standards; and Platform Verification Program plan for design, fabrication and installation of new, fixed, bottom-founded, pile-supported, or concrete-gravity platforms and new floating platforms. Consult as required with MMS and/or USCG. Re/Submit application for major modification(s) to any platform.	24 hours.
900(a)(4)	Notify MMS within 24 hours of damage and emergency repairs and request approval of repairs.	16 hours.
900(a)(5)	Submit application for conversion of the use of an existing mobile offshore drilling unit.	24 hours.
901(a)(6), (a)(7), (a)(8)	Submit CVA documentation under API RP 2RD, API RP 2SK, and API RP 2SM.	100 hours.
901(a)(10)	Submit hazards analysis documentation under API RP 14J	500 hours.
904(c); 908	Submit nomination and qualification statement for CVA	16 hours.
910(c), (d)	Submit interim and final CVA reports and recommendations on design phase.	200 hours.
911(d), (e), (f)	Submit interim and final CVA reports and recommendations on fabrication phase, including notice of fabrication procedure changes or design specification modifications.	60 hours.
912(d), (e)	Submit interim and final CVA reports and recommendations on installation phase.	60 hours.
914; 918	Record original and relevant material test results of all primary structural materials; retain records during all stages of construction. Compile, retain, and make available to MMS for the functional life of platform, the as-built drawings, design assumptions/analyses, summary of nondestructive examination records, and inspection results.	50 hours.
916	Develop in-service inspection hours plan and submit annual (November 1 of each year) report on inspection of platforms or floating production facilities, including summary of testing results.	45 hours.

Proposed rule section(s)	Reporting or recordkeeping requirement	Hour burden per response/record
900 thru 918	General departure and alternative compliance requests not specifically covered elsewhere in Subpart I regulations.	8 hours.
New Subpart J Requirements		
1002(b)(4); 1007(a)(4)	Submit CVA documentation under API RP 17J	100 hours.
1002(b)(5)	Submit CVA documentation under API RP 2RD	50 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: MMS's practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: August 4, 2004.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 04–18238 Filed 8–9–04; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–130 (Second Review)]

Chloropicrin From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on March 1, 2004 (69 FR 9638) and determined on June 4, 2004 that it would conduct an expedited review (69 FR 34402, June 21, 2004).

The Commission transmitted its determination in this review to the Secretary of Commerce on August 3, 2004. The views of the Commission are contained in USITC Publication 3712 (August 2004), entitled Chloropicrin From China: Investigation No. 731–TA–130 (Second Review).

By order of the Commission.

Issued: August 5, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–18249 Filed 8–9–04; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Customer satisfaction surveys.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 105, page 30961 on

June 1, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 9, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies' 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.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Customer Satisfaction Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: none. Abstract: The Arson and Explosives Programs Division (AEPD) of the Bureau of Alcohol, Tobacco, Firearms and Explosives had program-specific customer satisfaction surveys developed to more effectively capture customer perception/satisfaction of services. AEPD's strategy is based on a commitment to provide the kind of customer service that will better accomplish ATF's mission.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete a 15-minute survey.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 125 total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 4, 2004.

Brenda E. Dyer,

Clearance Officer, United States Department of Justice.

[FR Doc. 04–18191 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(I), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on March 4, 2004, Applied Science Labs, Inc., A Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Heroin (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import these controlled substances for the manufacture of reference standards.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections or requests for hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than September 9, 2004.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: July 28, 2004.

Joseph T. Rannazzisi,

Deputy Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18177 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), this is notice that on June 16, 2004, Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I

Drug	Schedule
Tetrahydrocannabinols (7370)	I

The company plans to manufacture small quantities of marihuana derivatives for research purposes.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections maybe addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than October 12, 2004.

Dated: July 21, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18180 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), this is notice that on May 18, 2004, Dade Behring Inc., Route 896 Corporate Boulevard, Building 100, Attention: RA/QA, Post Office Box 6101, Newark, Delaware 19714, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed:

Drug	Schedule
Tetrahydrocannabinols (7370) ..	I
Ecognine (9180)	II
Morphine (9300)	II

The company plans to produce bulk products used for the manufacture of reagents and drug calibrator/controls, DEA exempt products.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than October 12, 2004.

Dated: July 21, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18175 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(I), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on May 8, 2004, Hospira, Inc., 1776 North Centennial Drive, McPherson, Kansas 67460-1247, made application to the Drug Enforcement Administration (DEA) for registration as an importer of Remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The company plans to import the basic class of controlled substance for use in dosage unit manufacturing.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objection or requests for hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than September 9, 2004.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: July 28, 2004.

Joseph T. Rannazzisi,

Deputy Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18176 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on June 8, 2004, JFC Technologies, LLC, 100 West Main Street, P.O. Box 669, Bound Brook, New Jersey 08805, made application by letter to the Drug Enforcement Administration (DEA) for registration as an importer of Meperidine-Intermediate-B (9233), a basic class of controlled substance listed in Schedule II. The company plans to import the basic class of controlled substance for the production of other controlled substances for distribution to its customers.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections or requests for hearing may be addressed, in quintuplicate, to the Deputy Assistant

Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than September 9, 2004.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), (f) are satisfied.

Dated: July 23, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18178 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), this is notice that on June 29, 2004, JFC Technologies, LLC, 100 West Main Street, Bound Brook, New Jersey 08805, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Diphenozylate (9170), a basic class of controlled substance listed in Schedule II.

The company plans to manufacture the controlled substance for the manufacture of other controlled substances for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than October 12, 2004.

Dated: July 23, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18179 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 5, 2004, and published in the **Federal Register** on March 15, 2004, (69 FR 12178), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Methamphetamine (1105), and Hydromorphone (9150), the basic classes of controlled substances listed in Schedule II. The firm had inadvertently dropped the two basic classes from its renewal application submitted on August 25, 2003, and published in the **Federal Register** on February 18, 2004 (69 FR 7656).

The company plans to manufacture the listed controlled substances in bulk to supply to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 28, 2004.

Joseph T. Rannazzisi,

Deputy Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18174 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration

By notice dated March 5, 2004, and published in the **Federal Register** on March 15, 2004 (69 FR 12179), Lin Zhi International, Inc., 687 North Pastoria Avenue, Sunnyvale, California 94085, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of eleven basic classes of controlled substances in Schedule I and II. On April 13, 2004, the firm submitted a latter to DEA which stated that only six of the basic classes of controlled substances were intended for bulk manufacture. The corrected list of drug codes is as follows:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (7405).	I
Cocaine (9041)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II

The company plans to manufacture small quantities of controlled substances to make drug testing reagents and controls.

No comments or objection have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lin Zhi International, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Lin Zhi International, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 28, 2004.

Joseph T. Rannazzisi,

Deputy Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18173 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated February 4, 2004 and published in the **Federal Register** on February 18, 2004, (69 FR 7656), Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Gamma-Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3, 4, 5-Trimethoxyamphetamine (7390).	I
4-Bromo-2-5-dimethoxyamphetamine (7391).	I
4-Methyl-2, 5-dimethoxyamphetamine (7395).	I
2, 5-Dimethoxyamphetamine (7396).	I
2, 5-Dimethoxy-4-ethylamphetamine (7399).	I
3, 4-Methylenedioxyamphetamine (7400).	I
3, 4-Methylenedioxy-N-ethylamophetamine (7404).	I
3, 4-Methylenedioxymethamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

The firm plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for sale to its customers for drug testing and pharmaceutical research and development.

No comments or objections have been received. DEA has considered the factors contained in Title 21, United States Code, Section 823(a) and determined that the registration of Lipomed, Inc. to import the listed controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Lipomed, Inc. to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the compnay's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 28, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18169 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated February 4, 2004, and published in the **Federal Register** on February 18, 2004, (69 FR 7657), Norac Corporation, 405 S. Motor Avenue P.O. Box 577, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of THC Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture the controlled substances for formulation into pharmaceutical products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Norac Corporation to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Norac Corporation to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Title 21 United States Code 823 and Title 28 Code of Federal Regulations 0.100 and 0.104, the above firm is granted registration as a bulk manufacturer of the basic class(es) of controlled substance(s) listed.

Dated: June 28, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18170 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated March 5, 2004, and published in the **Federal Register** on March 15, 2004, (69 FR 12180), Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methlphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Thebaine (9333)	II
Thebaine (9333)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

The company plans to produce bulk products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Rhodes Technologies to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Rhodes Technologies to ensure that the company's registration is consistent with the public interest. The investigation had included inspection

and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 28, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18171 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 5, 2004, and published in the **Federal Register** on March 15, 2004, (69 FR 12182), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The company plans to manufacture bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Stepan Company to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Stepan Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 28, 2004.

Joseph T. Rannazzisi,

Deputy Director, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 04–18172 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), this is notice that on April 29, 2004, Syva Company, Dade Behring Inc., Regulatory Affairs Dept #1–310, 20400 Mariani Avenue, Cupertino, California 95014, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below, and by letter dated July 6, 2004, to modify its name to Dade Behring, Inc.

Drug	Schedule
Tetrahydrocannabionols (7370)	I
Ecgonine (9180)	II
Morphine (9300)	II

The company plans to produce bulk products used for the manufacture of reagents and drug calibrator/controls, DEA exempt products.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than October 12, 2004.

Dated: July 21, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–18181 Filed 8–9–04; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,311]

Butler Manufacturing Company/ Bluescope Steel, Galesburg, Illinois; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 23, 2004 in response to a worker petition filed by the United Steelworks of America, Local 2629 on behalf of workers of Butler Manufacturing Company/Bluescope Steel, Galesburg, Illinois.

The petitioning group of workers is covered by an earlier petition filed on July 22, 2004 (TA–W–55,290) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 27th day of July 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–18228 Filed 8–9–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,172]

Cardinal Health Medical Products & Services Division, El Paso, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 30, 2004, in response to a worker petition filed by a company official on behalf of workers at Cardinal Health, Medical Products & Services Division, El Paso, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of July, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–18230 Filed 8–9–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,209]

Computer Sciences Corporation, Finanial Services Group, East Hartford, Connecticut; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Computer Sciences Corporation* v. *Elaine Chao, U.S. Secretary of Labor*, No. 04–00149.

The Department's initial negative determination for the workers of Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut (hereafter ''CSC'') was issued on October 24, 2003 and published in the **Federal Register** on November 28, 2003 (68 FR 66878). The Department's determination was based on the finding that workers did not produce an article within the meaning of Section 222 of the Trade Act of 1974. It was determined that the subject worker group were not engaged in the production of an article, but provided business and information consulting, specialized application software, and technology outsourcing support to customers in the financial services industry.

By letter of November 24, 2003, the petitioner requested administrative reconsideration of the Department's negative determination. The Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration on January 5, 2004. The determination Notice was published in the **Federal Register** on January 23, 2004 (69 FR 3391).

The Department's Notice of Negative Determination on Reconsideration was issued on February 3, 2004 and published in the **Federal Register** on February 24, 2004 (69 FR 8488). On reconsideration, the Department determined that the workers produced widely marketed software components on CD Rom and tapes but were not eligible to apply for Trade Adjustment Assistance (TAA) because the subject company did not import completed software on physical media that is like or directly competitive with that which was produced at the subject facility and did not shift abroad functions performed at the subject facility.

In his letter to the Court, the petitioner infers that packaging functions (storing completed software on physical media and making a tape copy of the completed software on physical media) had shifted to India. The Department requested, and was granted, a voluntary remand. On June 2, 2004, the Court ordered that the Department further investigate the matter and determine whether the subject worker group is eligible for certification for worker adjustment assistance benefits.

As part of the remand investigation, the Department reviewed previously submitted information and contacted the subject company officials to determine the process in which software code is fixed onto tangible media, identify which functions were shifted to India, and determine whether the subject worker group meets the statutory criteria for TAA certification.

In response to the Department's inquiries regarding CSC's software delivery processes, the company official stated that the software is copied from a central computer system onto physical media. When the software is ordered by a customer, a copy is made at the subject facility and delivered to the customer. Delivery of the software could be a CSC employee physically bringing the physical media and instruction materials to the customer from the subject facility, a customer physically picking up the physical media and instruction materials from the subject facility, or sending an electronic message to the customer with the software and instruction materials attached.

During the remand investigation, the Department found that no ''packaging'' functions were shifted to India, as asserted by the petitioner. The investigation revealed that the storing of the completed software onto physical media, the copying of the completed software onto physical media, and the delivery of the software continue to take place at the subject facility.

To determine the workers' TAA eligibility, the Department inquired into CSC's production, sales, and import levels during the relevant time period, determined whether there was a shift of production abroad, and investigated whether increased imports of completed software like or directly competitive with those produced at the subject facility contributed importantly to the workers' separations.

In response to the Department's inquiries, CSC submitted sales and production figures for the software produced at the subject facility during the relevant period (2002 and 2003). An examination of the submission shows increased sales in three lines of software and declines in a fourth line of software. To clarify this matter, the Department sought an explanation from the subject company. The Department was repeatedly informed that during the period of sales decline, CSC was enhancing that particular line of software and decided not to market it while it was being enhanced; and that while the existing version was available for purchase, most customers decided to wait until the new version was released because any enhancements would have to be separately purchased later to make it perform as well as the newly released version.

As previously discussed, the Department determined that there was no shift of production abroad by the subject company during the relevant period.

According to the company official, CSC does not import any completed software which is like or directly competitive with those produced at the subject facility which experienced sales declines during the relevant time period.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut.

Signed at Washington, DC this 29th day of July 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–18237 Filed 8–9–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,768]

Crystal Springs Apparel, LLC, Crystal Springs, MS; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 7, 2004, the company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The determination was signed on June 21, 2004 and will soon be published in the **Federal Register**.

The Department has reviewed the request for reconsideration and will

conduct further investigation to determine whether the subject worker group meets the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 27th day of July, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–18233 Filed 8–9–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,104]

Geschmay Corporation, a Division of Albany International, Greenville, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 12, 2004, applicable to workers of Geschmay Corporation, a division of Albany International, Greenville, South Carolina. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of press fabrics which are used in the production of paper and are separately identifiable by product line.

New findings show that there was a previous certification, TA–W–40,951, issued on July 23, 2002, for workers of Albany International Corporation, Geschmay Plant, Greenville, South Carolina who were engaged in employment related to the production of press fabrics. That certification expired July 23, 2004. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from June 8, 2003 to July 24, 2004, for workers of the subject firm.

The amended notice applicable to TA–W–55,104 is hereby issued as follows:

All workers of Geschmay Corporation, a division of Albany International, Greenville, South Carolina, engaged in employment related to the production of press fabrics, who became totally or partially separated from employment on or after July 24, 2004, through July 12, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade act of 1974.

Signed at Washington, DC, this 30th day of July 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–18232 Filed 8–9–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,648]

International Business Machines Corporation, Tulsa, Oklahoma; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of International Business Machines Corporation* v. *Elaine Chao, U.S. Secretary of Labor,* No. 04–00079.

The Department's initial negative determination regarding International Business Machines Corporation (hereafter ''IBM'') was issued on December 2, 2003 and published in the **Federal Register** on January 16, 2004 (69 FR 2622). The determination was based on the finding that the workers did not produce an article within the meaning of Section 222 of the Trade Act of 1974. The workers provided accounting and application services.

By letter of February 6, 2004, the petitioner requested administrative reconsideration for Trade Adjustment Assistance (TAA). The negative reconsideration determination was issued on March 31, 2004. The notice of determination was published in the **Federal Register** on April 16, 2003 (67 FR 20644). The determination was based on the findings that the workers did not produce an article within the meaning of Section 222 of the Trade Act and that the workers did not provide services in direct support of a TAA certified firm.

In their submissions to the Department, Plaintiffs made the following assertions: (1) Workers of IBM, Tulsa, Oklahoma are under the control of British Petroleum (BP) and should be treated as BP employees; (2) Workers of IBM, Tulsa, Oklahoma are engaged in production of a trade impacted article (crude oil and natural gas), based on a previous certification issued in February 1999 by the Department for workers of AMOCO Exploration and Production in the State of Oklahoma; and (3) IBM workers in Tulsa, Oklahoma are BP-controlled workers engaged in production and because BP could be certified for TAA, the workers of IBM, Tulsa, Oklahoma should be eligible for TAA benefits.

On remand, the Department conducted a careful investigation in response to the plaintiff's allegations and will address each assertion in turn.

Workers of IBM, Tulsa, Oklahoma Are Under the Control of BP

In order to determine the scope of control by BP over the workers of IBM, Tulsa, Oklahoma, the Department requested additional information from IBM regarding the business relationship of IBM and BP, the functions of the subject worker group and the operations of IBM.

The information obtained during the remand investigation revealed that the relationship between IBM and BP is based on a contractual agreement documenting the commercial terms of service between two independent companies and that BP had no legal control over IBM employees. According to an IBM official, IBM is an independent company with its headquarters in Armonk, New York and there is no affiliation between IBM and BP. The IBM employees in Tulsa, Oklahoma provide finance, accounting and information technology services to multiple clients, including BP. These employees were subject to IBM's terms and conditions of employment, reported to IBM managers and were located at an IBM facility in Tulsa, Oklahoma. IBM provides services to numerous BP facilities located in the United States. These functions include general accounting, capital asset accounting, oil and gas revenue accounting, and accounts payable and receivable. Further, according to the IBM official, workers of IBM were not employed at any BP facility during the relevant time period. Therefore, the Department determines that IBM workers were not under the control of BP during the relevant time period.

Workers of IBM, Tulsa, Oklahoma Are Engaged in Production

Plaintiffs allege that members of the subject worker group are engaged in

production (crude oil and natural gas). To address this allegation, the Department contacted the subject company and requested that IBM verify this information. On further investigation, it was revealed that no oil or gas is being produced within the IBM Corporation and workers of the subject firm are not in support of the production for any IBM affiliated facilities.

The plaintiffs base their assertion on a previous TAA certification (TA–W–35,309N) for another worker group (AMOCO Exploration and Production). For the reasons described below, Department has determined that the plaintiffs' reliance on this certification is without basis.

Case TA–W–35,309N refers to workers at AMOCO Exploration and Production, and AMOCO Shared Services, operating in the state of Oklahoma, including accountants then working for AMOCO at the Tulsa facility, who were certified eligible to apply for adjustment assistance on February 19, 1999. That certification was amended on March 14, 1999 to reflect new ownership and a name change to BP/AMOCO, AMOCO Exploration and Production, AMOCO Shared Services, A/K/A AMOCO Production Company, Inc., operating in the state of Oklahoma. Workers certified in that instance were determined to be ''engaged in activities related to exploration and production of crude oil and natural gas.'' That certification expired February 19, 2001, well beyond the relevant time period. The relevant period for this investigation stretches back one year from the date of the petition, or February 10, 2003. The Department considers facts related to the relevant period of the current investigation; therefore the previous certification has no bearing on the determination of eligibility at this time.

In order for workers to be considered eligible for TAA, the worker group seeking certification must work for a ''firm'' or subdivision that produces an article domestically, and production must have occurred within the relevant period of the investigation. As stated in the reconsideration determination, the workers in the immediate case can be distinguished from the workers covered by TA–W–35,309N in that, unlike the workers in the immediate case, the workers covered by TA–W–35,309N were employed by the subject company and were in direct support of an affiliated facility that was, at the time, currently certified for TAA. Because the workers of IBM, Tulsa, Oklahoma are neither employed by BP nor in direct support of an IBM facility whose workers are currently TAA-certified or could be certified for TAA, the members of the subject worker group are not workers engaged in the production of an article, in this case, oil and gas.

IBM workers in Tulsa, Oklahoma Should Be Eligible for TAA

Plaintiffs allege that because IBM workers in Tulsa, Oklahoma are BP-controlled workers, the IBM workers are engaged in production, and BP could be certified for TAA, the workers of IBM, Tulsa, Oklahoma should be eligible for TAA benefits.

As previously discussed, the subject worker group is not controlled by BP and cannot, therefore, be treated as BP workers and is not engaged in production of crude oil and natural gas.

Even assuming that the IBM workers were considered leased workers of BP, the IBM workers would not be eligible for TAA. Historically, the Department included only leased production workers in TAA certifications. However, on January 23, 2004 a new policy was instituted which allowed a certification of all leased workers, including service workers who are working at the same location as workers who have been previously certified eligible for TAA. According to this policy, in order to be eligible, leased workers must perform their duties onsite at the affected location on an established contractual basis. As discussed above, the IBM contract with BP does not subject the IBM workers to the kind of control by BP that makes them leased workers. Further, it was determined that workers of IBM, Tulsa, Oklahoma are not co-located with BP workers at a BP facility that produces an article.

Section 222 of the Trade Act establishes that the Department shall not certify a group unless increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production. Under this requirement, the Department cannot issue a certification of eligibility to a worker group unless the workers' firm or an appropriate subdivision of the workers' firm produces an import-impacted article. The Tulsa, Oklahoma facility is an IBM-owned facility and BP did not have any operation at that location during the relevant time period.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of International Business Machines Corporation, Tulsa, Oklahoma.

Signed at Washington, DC, this 2nd day of August 2004.

Elliott S. Kushner,

Certifying Officer, Division of of Trade Adjustment Assistance

[FR Doc. 04–18236 Filed 8–9–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,403]

Missota Paper Company, LLC, Brainerd, MN; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 23, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 7, 2004, and published in the **Federal Register** on May 24, 2004 (69 FR 29575).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Missota Paper Company LLC, Brainerd, Minnesota was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed no increase of imports of uncoated free sheet paper during the relevant period. The subject firm did not import uncoated free sheet paper in the relevant period nor did it shift production to a foreign country.

The petitioner refers to the subject firm's competitor, SAAPI–Cloquet, which also filed a petition for TAA and was certified on February 25, 2004. The petitioner states that SAAPI–Cloquet recently shifted production from coated

paper to uncoated paper, thus workers of the subject firm and workers of SAAPI–Cloquet share the same global market for paper. The petitioner further alleges that because workers of SAAPI–Cloquet were certified eligible for TAA, workers of the subject firm should also be eligible.

A review of competitors is not relevant to an investigation concerning import impact on workers applying for trade adjustment assistance. The review of both cases revealed that workers of Missota Paper Company LLC, Brainerd, Minnesota and SAAPI–Cloquet LLC are engaged in the production of paper; however, they do not share the same customer base and have no affiliation with each other. Moreover, the certification of SAAPI–Cloquet LLC, Cloquet, Minnesota refers to the production of fine paper and pulp, while workers of the subject firm are engaged in the production of uncoated paper. As noted above, the ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm to examine the direct impact on a specific firm. While customers of SAAPI–Cloquet LLC, Cloquet, Minnesota reported an increase in imports of fine paper and pulp during the relevant period, no imports were evidenced during the survey of subject firm's customers.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of July, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–18234 Filed 8–9–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of July 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–55,142; Riddle Fabrics, Inc., Kings Mountain, NC

TA–W–55,202; Wellstone Mills, LLC, Lakeside I and II Plants, Eufaula, AL

TA–W–55,246; Fresenius Medical Care, Delran, NJ

TA–W–55,088; United Steel Enterprises, Inc., d/b/a United Steel Products, Inc., East Stroudsburg, PA

TA–W–55,064; Annin & Co., Inc., Roseland, NJ

TA–W–55,063; Milliken & Company, Gillespie Plant, Textile Manufacturing Division, Union, SC

TA–W–55,096; Elizabeth City Cotton Mills, Div. of Robinson Manufacturing Co., Elizabeth City, NC

TA–W–55,059; Technical Machining Services, Inc., Rogers, AR

TA–W–55,082A; Chieftain Technologies, Inc., including leased workers of Westaff, Inc., Owosso, MI

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–55,179; MCI, Inc., MCI Customer Service, Springfield, MO
TA–W–55,121; Shell Information Technology International Site Services, Houston, TX
TA–W–55,175; Levi Strauss and Company, Knoxville Area Office, Knoxville, TN
TA–W–55,177; Angus Consulting Management, Inc., on site Workers at Lucent Technologies, formerly known as Celestica Corporation, Oklahoma City, OK
TA–W–55,214; Lufthansa German Airlines, Finance Administration, East Meadow, NY
TA–W–55,195; Aegis Communications Group, In., St. Joseph, MO
TA–W–55,075 & A,B,C; Quitman Manufacturing Co., Showroom, New York, NY, Production, Woodsburgh, NY, Design, Putnam Valley, NY and Sales, Sharon, MA
TA–W–55,231; MCI, Wichita, KS
TA–W–55,236; VF Playwear, Inc., Distribution Center, Trenton, SC
TA–W–55,157; Creditek LLC, Shared Services Div., Wilkes Barre, PA
TA–W–55,141; Vardi Stonehouse, Inc., Long Island City, NY

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–55,166; E–Z–Go Textron, Augusta, GA

The investigation revealed that criterion (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (has shifted production to a country not under the free trade agreement with U.S.) have not been met.

TA–W–55,209; Gerity-Schultz Corp., Toledo, OH
TA–W–55,132; Grede Foundries, Inc., Iron Mountain Div., Kingsford, MI

The investigation revealed that criteria (a)(2)(A)(I.A) (no employment decline) has not been met and (a)(2)(B)(II.B) (has shifted production to a foreign country not under the free trade agreement with U.S.) have not been met.

TA–W–55,123; Tyco International, Inc., Healthcare-Retail Group Div., including on-site leased workers from Manpower, Inc., Waco, TX

The investigation revealed that criteria (a)(2)(A)(I.C) (Increased imports) and (II.C) (Has shifted production to a foreign country) have not been met.

TA–W–55,204; Portola Packaging, Inc., Equipment Div., New Castle, PA
TA–W–55,213B; Kimberly-Clark Corp., Pepco Product Line, including leased workers of SOS Temporary Services, Draper, UT

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies

TA–W–55,112; SCP Global Technologies, Boise, ID
TA–W–55,288; Center Manufacturing, Inc., Plant 5, Williamsport, PA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–55,032; Henagar Hosiery, Inc., Henagar, AL: May 21, 2003.
TA–W–55,103; C and S Sewing, Inc., San Francisco, CA: June 10, 2003.
TA–W–55,134; Sara Lee Underwear, Cutting Division, including leased workers of Express Personnel, Asheboro, NC: June 22, 2003.
TA–W–55,129; Fashion Elite, Inc., San Francisco, CA: June 16, 2003.
TA–W–55,150; T.L. Care, Inc., San Francisco, CA: June 24, 2003.
TA–W–55,170; Solvay Fluorides, Inc. LLC, Dry Salts Plant, Alorton, IL: June 23, 2003.
TA–W–55,226; Valley Industries, Inc., Cincinnati, OH: July 8, 2003.
TA–W–55,010; Rochelle Furniture, Montgomery, PA: June 1, 2003.
TA–W–54,836; Birds Eye Foods, Inc., Fond du Lac, WI: April 30, 2003.
TA–W–55,174; Melling Forging Co., a subsidiary of Avis Industrial Corp., Lansing, MI: June 29, 2003.
TA–W–55,176; Tooling Unlimited, Inc., Lino Lakes, MN: June 28, 2003.
TA–W–55,118 & A,B,C,D; Frick Gallagher Manufacturing Co., Wellston, OH, Lancaster, OH, San Leandro, CA, San Antonio, TX and Addison, IL: June 18, 2003.
TA–W–55,040; Corning Asahi Video Products Company, State College, PA: March 7, 2004.
TA–W–55,127; Frybrant, Inc., Frederick, OK: June 14, 2003.
TA–W–55,130; Lee Middleton Original Dolls, Inc., Belpre, OH: June 22, 2003.
TA–W–55,131; Vaughan Furniture Co., Inc., Stuart, VA: June 18, 2003.
TA–W–55,143; Oxford Industries, Inc., Next Day Apparel, Walhalla, SC: June 14, 2003.
TA–W–55,086; Mayfield Cap Co., Mayfield, KY: June 9, 2003.
TA–W–55,119; Allegheny Cast Metals, Inc., Titusville, PA: June 11, 2003.
TA–W–55,211; Bryan China Company, New Castle, PA: June 30, 2003.
TA–W–55,223; Indalex, Inc., Berlin, CT: July 8, 2003.
TA–W–55,187; Quality Metal Finishing Co., including leased workers of Job Smart and S&H Spherion, Byron, IL: June 30, 2003.
TA–W–55,160; A.H. Schreiber Co., Inc., Bristol, TN: June 29, 2003.
TA–W–55,101; Ideal Frame Co., Inc., Taylorsville, NC: June 15, 2003.
TA–W–55,137; Ames Screw Machine Products, Inc., Addison, IL: June 23, 2003.
TA–W–55,163; Shure, Inc., El Paso, TX: June 10, 2003.
TA–W–55,200; Ozark Irons Works, LLC, a/k/a Calico Rock Ironworks, Inc., a subsidiary of Sommer Metalcraft, Calico Rock, AR: July 6, 2003.
TA–W–55,217; Rexam Cosmetic Packaging, Inc., Torrington, CT: July 8, 2003.
TA–W–55,082; Chieftain Products, Inc., Owosso, MI: June 14, 2003.
TA–W–54,104; Woodstuff Manufacturing, d/b/a Samuel Lawrence Furniture Co., Phoenix, AZ: January 15, 2003.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–55,173; Facemate Corporation, Greenwood, SC: June 29, 2003.
TA–W–55,228; TAB Products Company, LLC, Pocket Folder Division, Mayville, WI: July 1, 2003.
TA–W–54,909; Atlantic Salmon of Maine LLC, a div. of Horton's of Maine, Inc., a subsidiary of Cooke Aquaculture, including leased workers of Combines Management, Inc., Machiasport, ME: May 4, 2003.
TA–W–55,201; Royal Home Fashions, a subsidiary of Croscill, Inc., Plant 3, Durham, NC: July 1, 2003.
TA–W–55,081; National Distribution Center, a subsidiary of National Freight Industries, Lexington, KY: May 18, 2003.
TA–W–55,165; Creo Americas, Inc., Creo Seattle Div. a subsidiary of Creo, Inc., Lynwood, WA: June 28, 2003.
TA–W–55,128; The Hoover Company, a Manufacturing Div., a subsidiary of Maytag Corp., El Paso, TX: June 7, 2003.
TA–W–55,122; Von Weise Gear Company, St. Claire, MO: June 21, 2003.
TA–W–54,997 & A; G & K Services, Teamwear Div., Richton, MS and Laurel, MS: May 21, 2003.
TA–W–55,242; Schrader-Bridgeport, including leased workers of

Staffmark, Inc., Monroe, NC: July 13, 2003.

TA–W–55,104; Geschmay Corp., a div. of Albany International, Greenville, SC: June 8, 2003.

TA–W–55,120; AGFA Corp., a subsidiary of AGFA–Gevaert, Wilmington, MA: June 11, 2003.

TA–W–55,191; TI Group Automotive Systems, LLC, Greeneville Plant, Greeneville, TN: June 25, 2003.

TA–W–55,206; American Lock Co., Crete, IL: July 6, 2003.

TA–W–55,251; DeRoyal Industries, Inc., DeRoyal Surgical Div., Rose Hill, VA: July 7, 2003.

TA–W–55,258; Marion County Shirt Co., a div. of Capital Mercury Apparel, Yellville, AR: July 14, 2003.

TA–W–55,164; Titmus Optical, Inc., Petersburg, VA: June 24, 2003.

TA–W–55,218; Brandy Worldwide, Inc., Good Hope Road Plant, including on-site leased workers from Manpower, Inc., Milwaukee, WI: July 7, 2003.

TA–W–55,091; Honeywell, Inc., Aerospace-Hydromechanical Fuel Controls Div., Machining and Operations Group, Rocky Mount, NC: June 14, 2003.

TA–W–55,069; Eaton Aeroquip, Inc., Global Hose Div., Hohenwald, TN: June 9, 2003.

TA–W–55,079; OSRAM Sylvania, General Lighting Div., Winchester, KY: June 14, 2003.

TA–W–55,190; Anchor Group, Sacramento, CA: June 15, 2003.

TA–W–55,248; Marley Cooling Technologies, Concordia, MO: July 9, 2003.

TA–W–55,225; Model Die Casting, Inc., Carson City, NE: June 18, 2003.

TA–W–55,213 & A,C,D; Kimberly-Clark Corp., Trach Care Product Line, including leased workers of SOS Temporary Services, Draper, UT, Multi Vac Product Line, including leased workers of SOS Temporary Services, Draper, UT, Cleaning Brushes Product Line, including leased workers of SOS Temporary Services, Pocatello, ID and Extension Sets Product Line, including leased workers of SOS Temporary Services, Pocatello, ID: June 29, 2003.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–55,241; Larimer and Norton, Inc., a subsidiary of Hillerich and Bradsby Co., Inc., Hancock, NY: July, 13, 2003.

TA–W–55,181; Thomasville Veneer Co., Thomasville, NC: June 28, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–54,909; Atlantic Salmon of Maine LLC, a div. of Horton's of Maine, Inc., a subsidiary of Cooke Aquaculture, including leased workers of Combines Management, Inc., Machiasport, ME.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–55,201; Royal Home Fashions, a subsidiary of Croscill, Inc., Plant 3, Durham, NC.

TA–W–55,226; Valley Industries, Inc., Cincinnati, OH.

TA–W–55,010; Rochelle Furniture, Montgomery, PA.

TA–W–54,836; Birds Eye Foods, Inc., Fond du Lac, WI.

TA–W–55,081; National Distribution Center, a subsidiary of National Freight Industries, Lexington, KY.

TA–W–55,174; Melling Forging Company, a subsidiary of Avis Industrial Corp., Lansing, MI.

TA–W–55,165; Creo Americas, Inc., Creo Seattle Div., a subsidiary of Creo, Inc., Lynwood, WA.

TA–W–55,118 A,B,C,D; Frick Gallagher Manufacturing Company, Lancaster, OH, San Leandro, CA, San Antonio, TX and Addison, IL.

TA–W–55,213 & A,C,D; Kimberly-Clark Corp., Trach Care Product Line, including leased workers of SOS Temporary Services, Draper, UT, Multi Vac Product Line, including leased workers of SOS Temporary Services, Draper, UT, Cleaning Brushes Product Line, including leased workers of SOS Temporary Services, Pocatello, ID and Extension Sets Product Line, including leased workers of SOS Temporary Services, Pocatello, ID.

The Department has determined that criterion (3) of Section 246 has not been met. The competitive conditions within the workers' industry is adverse.

TA–W–55,117; Bausch and Lomb, St. Louis, MO.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–55,141; Vardi Stonehouse, Inc., Long Island City, NY.

TA–W–55,157; Creditek LLC, Shared Services Division, Wilkes Barre, PA.

TA–W–54,236; VF Playwear, Inc., Distribution Center, Trenton, SC.

TA–W–55,096; Elizabeth City Cotton Mills, Division of Robinson Manufacturing Co., Elizabeth City, NC.

TA–W–55,132; Grede Foundries, Inc., Iron Mountain Div., Kingsford, MI.

TA–W–55,204; Portola Packaging, Inc., Equipment Div., New Castle, PA.

TA–W–55,231; MCI, Wichita, KS.

TA–W–55,075 & A,B, C; Quitman Manufacturing Co., Showroom, New York, NY, Production, Woodburgh, NY, Design, Putnam Valley, NY and Sales, Sharon, MA.

TA–W–55,059; Technical Machining Services, Inc., Rogers, AR.

TA–W–55,195; Aegis Communications Group, Inc., St. Joseph, MO.

TA–W–55,112; SCP Global Technologies, Boise, ID.

TA–W–55,209; Gerity-Schultz Corp., Toledo, OH.

TA–W–55,214; Lufthansa German Airlines, Finance Administration, East Meadow, NY.

TA–W–55,288; Center Manufacturing, Inc., Plant 5, Williamsport, PA.

TA–W–55,177; Angus Consulting Management, Inc., on site workers at Lucent Technologies, formerly known as Celestica Corp., Oklahoma City, OK.

TA–W–55,175; Levi Strauss and Company, Knoxville, TN.

TA–W–55,166; E-Z-Go Textron, Augusta, GA.

TA–W–55,123; Tyco International, Inc., Healthcare-Retail Group Div., including on-site leased workers from Manpower, Inc., Waco, TX.

TA–W–55,213B; Kimberly-Clark Corp., Pepco Product Line, including leased workers of SOS Temporary Services, Draper, UT.

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company

name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–54,997 & A; G & K Services, Teamwear Div., Richton, MS and Laurel, MS: May 21, 2003.

TA–W–55,118; Frick Gallagher Manufacturing Co., Wellston, OH: June 18, 2003.

TA–W–55,176; Tooling Unlimited, Inc., Lino Lakes, MN: June 28, 2003.

TA–W–55,242; Schrader-Bridgeport, including leased workers of Staffmark, Inc., Monroe, NC: July 13, 2003.

TA–W–55,040; Corning Asahi Video Products Co., State College, PA: May 7, 2994.

TA–W–55,104; Geschmay Corporation, a div. of Albany International, Greenville, SC: June 8, 2003.

TA–W–55,120; Agfa Corporation, a subsidiary of Agfa-Gevaert, Wilmington, MA: June 11, 2003.

TA–W–55,127; Frybrant, Inc., Frederick, OK: June 14, 2003.

TA–W–55,130; Lee Middleton Original Dolls, Inc., Belpre, OH: June 22, 2003.

TA–W–55,131; Vaughan Furniture Company, Inc., Stuart, VA: June 18, 2003.

TA–W–54,143; Oxford Industries, Inc., Next Day Apparel, Walhalla, SC: June 14, 2003.

TA–W–55,191; TI Group Automotive Systems, LLC, Greeneville Plant, Greeneville, TN: June 25, 2003.

TA–W–55,206; American Lock Co., Crete, IL: July 6, 2003.

TA–W–55,086; Mayfield Cap Co., Mayfield, KY: June 9, 2003.

TA–W–54,119; Allegheny Cast Metals, Inc., Titusville, PA: June 11, 2003

TA–W–55,181; Thomasville Veneer Co., Thomasville, NC: June 28, 2003.

TA–W–55,211; Bryan China Company, New Castle, PA: June 30, 2003.

TA–W–55,223; Indalex, Inc., Berlin, CT: July 8, 2003.

TA–W–55,241; Larimer and Norton, Inc., a subsidiary of Hillerich & Bradsby Co., Inc., Hancock, NY: July 13, 2003.

TA–W–55,251; Deroyal Industries, Inc., DeRoyal Surgical Div., Rose Hill, VA: July 7, 2003.

TA–W–55,258; Marion County Shirt Co., a div. of Capital Mercury Apparel, Yellville, AR: July 14, 2003.

TA–W–55,164; Titmus Optical, Inc., Petersburg, VA: June 24, 2003.

TA–W–55,218; Brady Worldwide, Inc., Good Hope Road Plant, including on-site leased workers from Manpower, Inc., Milwaukee, WI: July 7, 2003.

TA–W–55,187; Quality Metal Finishing Co., including leased workers of Job Smart and S & H Spherion, Byron, IL: June 30, 2003.

TA–W–55,160; A.H. Schreiber Co., Inc., Bristol, TN: June 29, 2003.

TA–W–55,091; Honeywell, Inc., Aerospace-Hydromechanical Fuel Controls Div., Machining and Operations Group, Rocky Mount, NC: June 14, 2003.

TA–W–55,069; Eaton Aeroquip, Inc., Global Hose Div., Hohnenwald, TN: June 9, 2003.

TA–W–55,079; OSRAM Sylvania, General Lighting Div., Winchester, KY: June 14, 2003.

TA–W–55,101; Ideal Frame Co., Inc., Taylorsville, NC: June 15, 2003.

TA–W–55,163; Shure, Inc., El Paso, TX: June 10, 2003.

TA–W–55,190; Anchor Group, Sacramento, CA: June 15, 2003.

TA–W–55,200; Ozark Irons Works, LLC, a/k/a Calico Rock Ironworks, Inc., a subsidiary of Sommer Metalcraft, Calico Rock, AR: July 6, 2003.

TA–W–55,225; Model Die Casting, Inc., Carson City, NE: July 9, 2003.

TA–W–55,217; Rexam Cosmetic Packaging, Inc., Torrington, CT: July 8, 2003.

I hereby certify that the aforementioned determinations were issued during the months of July 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 3, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–18231 Filed 8–9–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,212]

SOS Staffing Services Employed at Ballard Medical Products, Draper, UT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 9, 2004, in response to a worker petition filed by a State representative, on behalf of employees of SOS Staffing Services, Draper, Utah.

The petitioning group of workers is covered by a petition instituted on July 9, 2004 (TA–W–55,213) that is the subject of an ongoing investigation. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 23rd day of July 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–18299 Filed 8–9–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,854 and TA–W–53,854B]

Warnaco Group, Inc., Milford, Connecticut; Including an Employee of Warnaco Group, Inc., Milford, Connecticut Located in the State of Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on February 3, 2004, applicable to workers of Warnaco Group, Inc., Milford, Connecticut and Stratford, Connecticut. The notice was published in the **Federal Register** on March 12, 2004 (69 FR 11889).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in administration support activities for the subject firm's production facility located in Thomasville, Georgia.

New information shows that a worker separation occurred involving an employee of the Milford, Connecticut

facility of Warnaco Group located in the state of Florida. This employee provided administrative support function services for the production of women's intimate apparel at the Thomasville, Georgia location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Milford, Connecticut facility of Warnaco Group, Inc. located in the state of Florida.

The intent of the Department's certification is to include all workers of Warnaco Group, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–53,854 is hereby issued as follows:

''All workers of Warnaco Group, Milford, Connecticut (TA–W–53,854), including an employee located in the state of Florida (TA–W–53,854B), who became totally or partially separated from employment on or after December 18, 2002, through February 3, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 30th day of July 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–18235 Filed 8–9–04; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation, Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Wolf Creek Nuclear Operating Corporation (the licensee) to withdraw its application dated August 16, 2002, for a proposed amendment to Facility Operating License No. NPF–42 for the Wolf Creek Generating Station, Unit No. 1, located in Coffey County, Kansas.

The proposed amendment would have revised Technical Specification 3.6.3, ''Containment Isolation Valves,'' by (1) deleting the Note and adding the abbreviation ''(CIV)'' for containment isolation valve in Condition A of the Actions for the Limiting Condition for Operation, (2) revising the completion time for Required Condition A.1 from 4 hours to as much as 7 days depending on the category of the CIVs, (3) deleting Condition C, and (4) renumbering the later Conditions D and E. The proposed amendment is based on Topical Report WCAP–15791–P, ''Risk-Informed Evaluation of Extensions to Containment Isolation Valve Completion Times.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 1, 2002 (67 FR 61686). However, by letter dated June 4, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 16, 2002, and the licensee's letter dated June 4, 2004, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 30th day of July 2004.

For the Nuclear Regulatory Commission.

Jack Donohew,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–18215 Filed 8–9–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

DATES: Weeks of August 9, 16, 23, 30, September 6, 13, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of August 9, 2004

There are no meetings scheduled for the Week of August 9, 2004.

Week of August 16, 2004—Tentative

Tuesday, August 17, 2004

9:25 a.m. Affirmation Session (Public Meeting)

a. Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI

b. Final Rule: Medical Use of Byproduct Material—Minor Amendments: Extending Expiration Date for Subpart J of Part 35

c. Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1, Sequoyah Nuclear Plant, Units 1 & 2, Browns Ferry Nuclear Plant, Units 1, 2, & 3), Docket Nos. 50–390–CivP; 50–327–CivP; 50–328–CivP; 50–259–CivP; 50–260–CivP; 50–296–CivP; LBP–03–10 (6/26/03) (Tentative)

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308)

This meeting will be webcase live at the Web address—*http://www.nrc.gov*

1 p.m. Discussion of Security Issues (Closed—Ex. 1)

Wednesday, August 18, 2004

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

Week of August 23, 2004—Tentative

There are no meetings scheduled for the Week of August 23, 2004.

Week of August 30, 2004—Tentative

There are no meetings scheduled for the Week of August 30, 2004.

Week of September 6, 2004—Tentative

Wednesday, September 8, 2004

9:30 a.m. Discussion of Office of Investigations (OI) Programs and Investigations (Closed—Ex. 7)

2 p.m. Discussion of Intragovernmental Issues (Closed—Ex. 1–9)

Week of September 13, 2004—Tentative

Tuesday, September 14, 2004

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.htm.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determiantions on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 5, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–18311 Filed 8–6–04; 9:28 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation 12B, OMB Control No. 3235–0062, SEC File No. 270–70;

Form 15, OMB Control No. 3235–0167, SEC File No. 270–170.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Regulation 12B (OMB Control No. 3235–0062; SEC File No. 270–70) includes rules governing all registration statements pursuant to Sections 12(b) and 12(g) of the Securities Exchange Act of 1934 (''Exchange Act''), including all amendments to such statements and reports. The purpose of the regulation is to set forth guidelines for the uniform preparation of Exchange Act documents. All information is provided to the public for review. The information required is filed on occasion and is mandatory. Regulation 12B is assigned one burden hour for administrative convenience because the regulation simply prescribes the disclosure that must appear in other filings under the federal securities laws.

Form 15 (OMB Control No. 3235–0167; SEC File No. 270–170) is a certification of termination of a class of security under Section 12(g) or notice of suspension of duty to file reports pursuant to Sections 13 and 15(d) of the Exchange Act. All information is provided to the public for review. Approximately 2,000 issuers file Form 15 annually and it takes approximately a total of 1.5 hours per response for a total of 3,000 annual burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or submit an e-mail to: *David_Rostker@omb.eop.gov,* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 3, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–18187 Filed 8–9–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–26524]

First Western SBLC, Inc. [811–3782]; Western Financial Capital Corporation [811–3781]; PMC Investment Corporation [811–5036]; Notice of Application

August 3, 2004.

AGENCY: Securities and Exchange Commission (''Commission'').

Summary of Application: Each Applicant requests an order declaring that it has ceased to be an investment company.

Applicants: First Western SBLC, Inc., Western Financial Capital Corporation, and PMC Investment Corporation.

Filing Dates: The applications were filed on March 2, 2004, March 2, 2004, and March 3, 2004, respectively, and amended on August 2, 2004.

Hearing or Notification of Hearing: An order granting each application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 27, 2004 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 17950 Preston Rd., Suite 600, Dallas, Texas 75252.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the applications. The complete applications may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations: 1. First Western SBLC, Inc. (''FW'') is a Florida corporation that is licensed as a small business lending company under the Small Business Investment Act of 1958 (the ''SBIA''). FW originates variable-rate loans that are partially guaranteed by the Small Business Administration (the ''SBA'') and which are generally secured with first liens on real and/or personal property of the borrower. Western Financial Capital Corporation (''WFCC'') is a Florida corporation that is licensed as a small business investment company under the SBIA. WFCC principally originates fixed rate secured loans to small businesses and funds its lending operations by issuing fixed rate, long-term debentures, which are guaranteed and sold by the SBA. PMC Investment Corporation (''PMCIC'') is a Florida corporation that is licensed

as a specialized small business investment company under the SBIA. PMCIC uses long-term funds provided by the SBA through the issuance of debentures, together with its own capital, to provide long-term collateralized loans to eligible small businesses owned by disadvantaged persons. PMCIC funds its lending operations by issuing fixed-rate, long-term subordinated debentures, which are guaranteed and sold by the SBA. PMCIC also funds its operations by selling nonvoting preferred stock to the SBA. FW and WFCC filed Forms N–8A notifying the Commission of their registration under section 8(a) of the Act on June 24, 1983. PMCIC filed Form N–8A notifying the Commission of its registration under section 8(a) of the Act on February 23, 1987. FW, WFCC, and PMCIC are each registered under the Act as a closed-end management investment company.

2. Prior to February 29, 2004, FW, WFCC and PMCIC were subsidiaries of PMC Capital, Inc. (''PMC Capital''). PMC Capital, a Florida corporation, was a closed-end management investment company that elected to operate as a business development company under the Act. On February 29, 2004, PMC Capital merged with and into PMC Commercial Trust (''PMC Commercial''), a Texas real estate investment trust, with PMC Commercial continuing as the surviving entity.[1] FW, WFCC and PMCIC are now subsidiaries of PMC Commercial, which commenced operating the businesses of PMC Capital and its subsidiaries as of the date of the merger.

Applicants' Legal Analysis: 1. Section 8(f) of the Act provides that whenever the Commission, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the Commission shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(c)(1) of the Act provides that any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons, and which is not making and does not presently propose to make a public offering of its securities, is not an investment company within the meaning of the Act.

3. Applicants state that, under section 3(c)(1) of the Act, FW, WFCC, and PMCIC are not investment companies because PMC Commercial owns all of the outstanding securities of FW, and PMC Commercial and the SBA own all of the outstanding securities of WFCC and PMCIC, and the applicants do not presently propose to make a public offering of their securities.

4. Each applicant states that it is not a party to any litigation or administrative proceedings.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–18186 Filed 8–9–04; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* PMC Capital, Inc., Investment Company Act Release Nos. 26344 (Jan. 30, 2004) (notice) and 26358 (Feb. 25, 2004) (order).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50140; File No. SR–NASD–2004–097]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Multiple Market Participant Identifiers for Exchange Listed Securities

August 3, 2004.

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 June 25, 2004, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. Nasdaq has filed this proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. On July 29, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 28, 2004. Amendment No. 1 makes technical amendments to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to provide market participants who execute transactions in exchange-listed securities[6] through its systems the ability to display trading interest using up to ten individual MPIDs. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.[7]

* * * * *

4613. Character of Quotations

(a) Quotation Requirements and Obligations

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation (''Principal Quote''), which is attributed to the market maker by a special maker participant identifier (''[MMID] *MPID*'') and is displayed in the Nasdaq Quotation Montage at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) No Change.

(B) No Change.

(2) The first [MMID] *MPID* issued to a member pursuant to subparagraph (1) of this rule, or Rule 4623, shall be referred to as the member's ''Primary [MMID] *MPID*.'' For a six-month pilot period beginning March 1, 2004, market makers and ECNs may request the use of additional [MMIDs] *MPIDs* that shall be referred to as ''Supplemental [MMIDs] *MPIDs*.'' Market makers and ECNs may be issued up to nine Supplemental [MMIDs] *MPIDs*. A market maker may request the use of Supplemental [MMIDs] *MPIDs* for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of Supplemental [MMIDs] *MPIDs* for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. A market maker or ECN that ceases to meet the obligations appurtenant to its

[6] Exchange-listed securities include all CQS eligible securities and all securities eligible for trading via the Intermarket Trading System (''ITS'') and those included in NASD Rule 5210(c) and NASD Rule 6410(d). *See* NASD Rule 4701(s).

[7] The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at *www.nasdr.com*.

Primary [MMID] *MPID* in any security shall not be permitted to use a Supplemental [MMID] *MPID* for any purpose in that security.

(3) [Members] *Market makers and ECNs* that are permitted the use of Supplemental [MMIDs] *MPIDs* for displaying Attributable Quotes/Orders pursuant to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two exceptions: (a) the continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above, as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to market makers' Supplemental [MMIDs] *MPIDs*; and (b) Supplemental [MMIDs] *MPIDs* may not be used by market makers to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619.

(b)–(e) No Change.

* * * * *

IM–4613–1—Procedures For Allocation of Second Displayable MPIDs

Nasdaq has a technological limitation on the number of displayed, attributable quotations in an individual security, although it has not reached that maximum to date in any security. Therefore, Nasdaq must consider the issuance and display of Supplemental [MMIDs] *MPIDs* to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying Supplemental [MMIDs] *MPIDs* with attributable display privileges (''display privileges'') in an orderly, predictable, and fair manner on a stock-by-stock basis.

As described in Rule 4613, Nasdaq will automatically designate a market maker's first [MMID] *MPID* as a ''Primary [MMID] *MPID*'' and any additional [MMIDs] *MPIDs* as ''Supplemental [MMIDs] *MPIDs*.'' Market makers are required to use their Primary [MMID] *MPID* in accordance with the requirements of NASD Rule 4613(a)(1) above, as well as all existing requirements for the use of [MMIDs] *MPIDs* in Nasdaq systems. Market makers' use of Supplemental [MMIDs] *MPIDs* are subject to the requirements set forth in NASD Rule 4613(a)(2) and (a)(3) above, including the prohibition on passive market making. However, the two-sided quote requirement, and the excused withdrawal procedures under NASD Rule 4619, and 4710(b)(2)(B) and (b)(5) will not apply to Supplemental [MMIDs] *MPIDs*. Nasdaq will automatically designate each ECN's [MMIDs] *MPIDs* as Primary and Supplemental. Each ECN [MMID] *MPID* will be subject to the requirements of NASD Rule 4623 and the existing ECN requirements of the NASD Rule 4700 Series. Members may also use Supplemental [MMIDs] *MPIDs* to enter non-attributable orders into SIZE.

Nasdaq, in conjunction with the NASD, has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to members' use of both Primary and Supplemental [MMIDs] *MPIDs* to display quotations in Nasdaq systems. If it is determined that one or more Supplemental [MMIDs] *MPIDs* are being used improperly, Nasdaq will withdraw its grant of the Supplemental [MMIDs] *MPID(s)* for all purposes for all securities. In addition, if a market maker or ECN no longer fulfills the conditions appurtenant to its Primary [MMID] *MPID* (*e.g.*, by being placed into an unexcused withdrawal), it may not use a Supplemental [MMID] *MPID* for any purpose in that security.

The first priority of Nasdaq's method for allocating the privilege of displaying Supplemental [MMID] *MPID* is that each market maker or ECN should be permitted to register to display a single quotation in a security under a Primary [MMID] *MPID* before any is permitted to register to display additional quotations under Supplemental [MMIDs] *MPIDs.* If all requests for Primary MPIDs have been satisfied, Nasdaq will then register Supplemental [MMIDs] *MPIDs* to display Attributed Quotes/Orders in that security on a first-come-first-served basis, consistent with the procedures listed below. If Nasdaq comes within ten [MMIDs] *MPIDs* with display privileges of its maximum in a particular security, Nasdaq will temporarily cease registering Supplemental [MMIDs] *MPIDs* with display privileges in that security and reserve those ten remaining display privileges for members that may register their Primary [MMID] *MPID* in that stock in the future. If Nasdaq allocates those reserved display privileges to members requesting Primary [MMIDs] *MPIDs* and then receives additional requests for Primary [MMIDs] *MPIDs,* it will use the procedure described below to re-allocate display privileges to members requesting Primary [MMIDs] *MPIDs.*

For any stock in which Nasdaq has reached the maximum number of members registered to display quotations, once each month, Nasdaq will rank each of the market participants that has more than one Supplemental [MMID] *MPID* with display privileges in the stock according to their monthly volume of trading, based on the volume of that participant's least used Supplemental [MMID] *MPID* with display privileges. Nasdaq will withdraw the display privilege associated with the lowest volume Supplemental [MMID] *MPID* of the participant in that ranking and assign that privilege to the first member that requested a Primary [MMID] *MPID* or Supplemental [MMID] *MPID,* with Primary [MMIDs] *MPIDs* always taking precedence. Nasdaq will repeat this process as many times as needed to accommodate all pending requests for Primary and Supplemental [MMIDs] *MPIDs.* If after following this process (or at the outset of the allocation process) no member has more than one Supplemental [MMID] *MPID* with display privileges, members will be ranked based upon the volume associated with their Supplemental [MMID] *MPID,* and Nasdaq will withdraw the display privilege from the member with the lowest volume Supplemental [MMID] *MPID.*

Members that lose the display privilege associated with a Supplemental [MMID] *MPID* will still be permitted to use the Supplemental [MMID] *MPID* to enter non-attributable orders into SIZE for that security or any other, and to display additional quotes in any stocks in which they are properly registered to do so, subject to the conditions described in the rule and this interpretive material.

The objective of the procedure is to re-allocate the display privileges from the least used Supplemental [MMIDs] *MPIDs* to those members requesting Primary or Supplemental [MMIDs] *MPIDs.* For example, assume with respect to security WXYZ member A has nine Supplemental [MMIDs] *MPIDs* with display privileges (which is the maximum − 1 Primary [MMID] *MPID* + 9 Supplemental [MMIDs] *MPIDs* = 10 [MMIDs] *MPIDs* with display privileges), member B has three Supplemental [MMIDs] *MPIDs* with display privileges, and member C has three Supplemental [MMIDs] *MPIDs* with display privileges and is requesting a fourth. After conducting the monthly ranking, one of B's Supplemental [MMIDs] *MPIDs* is the least used in WXYZ, C has the next lowest volume Supplemental [MMID] *MPID* with display privileges in the security, and A has the next lowest in the security after C (*i.e.*, the order for forfeiting their display privilege is: B, C, then A). Based on this ranking, Nasdaq would re-allocate one of B's display privileges to C. As a result, A keeps its privileges for all nine of its Supplemental [MMIDs] *MPIDs* in WXYZ, C adds a Supplemental [MMID] *MPID* with display privileges in the security, and B

loses a display privilege in WXYZ − B does not lose use of the Supplemental [MMID] *MPID* for submitting non-attributable orders in WXYZ to SIZE, and it does not lose display privileges in any other security in which it is authorized to use the Supplemental [MMID] *MPID.*

* * * * *

5266. Market Participant Identifiers

(a) ITS/CAES market makers obligated to maintain a continuous two-sided quotation pursuant Rule 5220(e) shall have that quote displayed and attributed to them by a special market participant identifier (''MPID''). The first MPID issued to an ITS/CAES market maker shall be referred to as the ITS/CAES market maker's ''Primary MPID.''

(b) For pilot period commencing June 24, 2004 and terminating September 31, 2004, ITS/CAES market makers may request the use of additional MPIDs that shall be referred to as ''Supplemental MPIDs.'' ITS/CAES market makers may be issued up to nine Supplemental MPIDs. An ITS/CAES market maker may request the use of Supplemental MPIDs for displaying two-sided Attributable Quotes/Orders in Nasdaq for any security in which it is registered and meets the obligations set forth in Rule 5220; an ITS/CAES market maker may not use a Supplemental MPID for displaying one-sided Attributable Quotes/Orders. An ITS/CAES market maker that fails to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

(c) ITS/CAES market makers that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (b) of this rule are subject to the same rules applicable to the ITS/CAES market maker's first quotation, with two exceptions: (1) the continuous two-sided quote requirement and the need to obtain an excused withdrawal, or functional excused withdrawal, as described in Rule 5220(e), as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to ITS/CAES market makers' Supplemental MPIDs; and (2) Supplemental MPIDs may not be used by ITS/CAES market makers to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619.

* * * * *

IM–5266–1—Procedures For Allocation of Second Displayable MPIDs

Nasdaq has a technological limitation on the number of displayed, attributable quotations in an individual security. Therefore, Nasdaq must consider the issuance and display of Supplemental MPIDs to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying Supplemental MPIDs with attributable display privileges (''display privileges'') in an orderly, predictable, and fair manner on a stock-by-stock basis.

As described in Rule 5266, Nasdaq will automatically designate an ITS/CAES market maker's first MPID as a ''Primary MPID'' and any additional MPIDs as ''Supplemental MPIDs.'' ITS/CAES market makers are required to use their Primary MPID in accordance with the requirements of a Primary MPID for listed securities. Regardless of the number of MPIDs used, NASD members will trade exchange-listed securities using Nasdaq systems in compliance with all pre-existing NASD and SEC rules governing the trading of these securities—including the Intermarket System Plan and the Rule 5200 and 6300 Series. The multiple MPID for exchange-listed securities program creates no exceptions to these obligations. ITS/CAES market makers may also use Supplemental MPIDs to enter non-attributable orders into SIZE.

Nasdaq, in conjunction with the NASD, has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to ITS/CAES market makers' use of both Primary and Supplemental MPIDs to display quotations in Nasdaq systems. If it is determined that one or more Supplemental MPIDs are being used improperly, Nasdaq will withdraw its grant of the Supplemental MPID(s) for all purposes for all securities. In addition, if an ITS/CAES market maker no longer fulfills the conditions appurtenant to its Primary MPID (e.g., by being placed into an unexcused withdrawal), it may not use a Supplemental MPID for any purpose in that security.

The first priority of Nasdaq's method for allocating the privilege of displaying Supplemental MPID is that each ITS/CAES market maker should be permitted to register to display a single quotation in a security under a Primary MPID before any is permitted to register to display additional quotations under Supplemental MPIDs. If all requests for Primary MPIDs have been satisfied, Nasdaq will then register Supplemental MPIDs to display Attributed Quotes/Orders in that security on a first-come-first-served basis, consistent with the procedures listed below. If Nasdaq comes within ten MPIDs with display privileges of its maximum in a particular security, Nasdaq will temporarily cease registering Supplemental MPIDs with display privileges in that security and reserve those ten remaining display privileges for ITS/CAES market makers that may register their Primary MPID in that stock in the future. If Nasdaq allocates those reserved display privileges to ITS/CAES market makers requesting Primary MPIDs and then receives additional requests for Primary MPIDs, it will use the procedure described below to re-allocate display privileges to ITS/CAES market makers requesting Primary MPIDs.

For any stock in which Nasdaq has reached the maximum number of ITS/CAES market makers registered to display quotations, once each month, Nasdaq will rank each of the ITS/CAES market makers that has more than one Supplemental MPID with display privileges in the stock according to their monthly volume of trading, based on the volume of that ITS/CAES market maker's least used Supplemental MPID with display privileges. Nasdaq will withdraw the display privilege associated with the lowest volume Supplemental [MMID] MPID of the ITS/CAES market maker in that ranking and assign that privilege to the first ITS/CAES market maker that requested a Primary MPID or Supplemental MPID, with Primary MPIDs always taking precedence. Nasdaq will repeat this process as many times as needed to accommodate all pending requests for Primary and Supplemental MPIDs. If after following this process (or at the outset of the allocation process) no ITS/CAES market maker has more than one Supplemental MPID with display privileges, ITS/CAES market makers will be ranked based upon the volume associated with their Supplemental MPID, and Nasdaq will withdraw the display privilege from the ITS/CAES market maker with the lowest volume Supplemental MPID.

ITS/CAES market makers that lose the display privilege associated with a Supplemental MPID will still be permitted to use the Supplemental MPID to enter non-attributable orders into SIZE for that security or any other, and to display additional quotes in stocks in which they are properly registered to do so, subject to the conditions described in the rule and this interpretive material.

The objective of the procedure is to re-allocate the display privileges from the least used Supplemental MPIDs to those ITS/CAES market makers requesting Primary or Supplemental MPIDs. For example, assume with respect to security WXYZ ITS/CAES market maker A has nine Supplemental MPIDs with display privileges (which is the maximum − 1 Primary MPID + 9 Supplemental MPIDs = 10 MPIDs with display privileges), ITS/CAES market maker B has three Supplemental MPIDs with display privileges, and ITS/CAES market maker C has three Supplemental MPIDs with display privileges and is requesting a fourth. After conducting the monthly ranking, one of B's Supplemental MPIDs is the least used in WXYZ, C has the next lowest volume Supplemental MPID with display privileges in the security, and A has the next lowest in the security after C (i.e., the order for forfeiting their display privilege is: B, C, then A). Based on this ranking, Nasdaq would re-allocate one of B's display privileges to C. As a result, A keeps its privileges for all nine of its Supplemental MPIDs in WXYZ, C adds a Supplemental MPID with display privileges in the security, and B loses a display privilege in WXYZ − B does not lose use of the Supplemental MPID for submitting non-attributable orders in WXYZ to SIZE, and it does not lose display privileges in any other security in which it is authorized to use the Supplemental MPID.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 1, 2004, Nasdaq submitted to the Commission SR–NASD–2004–037, establishing the ability of ECNs and market makers in Nasdaq securities to use up to ten individual Market Participant Identifiers (''MPIDs'') to display attributable quotes and orders in the Nasdaq Quotation Montage.[8] In this filing, Nasdaq proposes to create this same capability for ECNs and market makers using Nasdaq systems to quote and trade exchange-listed securities. MPIDs for exchange-listed securities will be allocated and re-allocated using the same procedures used for allocating MPIDs for Nasdaq securities when reaching technological limits for displayed, attributable MPIDs.[9] Similar to the multiple MPID program for Nasdaq securities, any additional MPID for listed trading will be known as a ''Supplemental MPID'' with a market maker's or ECN's first MPID being known as the ''Primary MPID.''

Nasdaq believes that the purpose of providing additional MPIDs for firms trading exchange-listed securities in Nasdaq systems is to provide quoting market participants a better ability to organize and manage diverse order flows from their customers and to route orders and quotes to Nasdaq's listed trading facilities from different units/desks. According to Nasdaq, to the extent that this flexibility provides increased incentives to provide liquidity to Nasdaq systems, all market participants can be expected to benefit.[10]

The restrictions on the use of any Supplemental MPID are the same as those applicable to a Primary MPID for exchange-listed securities. Regardless of the number of MPIDs used, NASD members will trade exchange-listed securities using Nasdaq systems in compliance with all pre-existing NASD and Commission rules governing the trading of these securities—including the Intermarket Trading System (''ITS'') Plan and NASD Rule 5200 and 6300 Series. Nasdaq believes that the multiple MPID for exchange-listed securities programs creates no exceptions to these obligations. In particular, ITS/CAES market makers may not use Supplemental MPIDs to trade-through the quotes of other ITS Plan participants, and Supplemental MPIDs are subject to the provisions of NASD Rule 5263 governing locked and crossed markets. Similarly, the rights attaching to quotations displayed by registered ITS/CAES market makers using a Supplemental MPID are the same as those of the primary quotations of such market makers—including protection from trade-throughs by other ITS Plan participants.

The granting of Supplemental MPIDs for exchange-listed securities is secondary to the integrity of the Nasdaq system trading those issues. As such, ECNs and market makers may not use a Supplemental MPID(s) to accomplish indirectly what they would be prohibited from doing directly through a single MPID. According to Nasdaq, to the extent that the allocation of Supplemental MPIDs creates regulatory confusion or ambiguity, every inference will be drawn against the use of Supplemental MPIDs in a manner that would diminish the quality or rigor of the regulation of the Nasdaq market. Accordingly, if Nasdaq determines that a Supplemental exchange-listed MPID is being used improperly, it will withdraw its grant of the Supplemental exchange-listed MPID for all purposes for all securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[11] in general and with Section 15A(b)(6) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that the use of multiple MPIDs in listed securities can be expected to provide greater flexibility in the processing of diverse orders flows, thereby improving overall system liquidity for the benefit of all market participants.[13]

[8] *See* Securities Exchange Act Release No. 49471 (March 25, 2004), 69 FR 17006 (March 31, 2004). In that filing, Nasdaq referred to these identifiers as ''MMIDs.'' In order to ensure consistency across all its rules, Nasdaq is amending the rules to refer to them by the acronym ''MPID.''

[9] Under those procedures, rankings are based only on the volume associated with a member's Supplemental MPID—Primary MPIDs will be excluded from the calculation. The member with lowest volume using a Supplemental MPID will continue to be the first to lose the display privilege, but only with respect to the Supplemental MPID that caused them to have the lowest ranking; the member will not lose its authority to use the Supplemental MPID in that security to submit quotes and orders to SIZE or the display privileges associated with that Supplemental MPID with respect to other securities in which it is permitted to use the identifier. When re-allocating the display privileges, requests for Primary MPIDs will continue to receive precedence over requests for Supplemental MPIDs.

[10] Nasdaq will assess no fees for the issuance or use of a Supplemental MPIDs for listed securities other than the Commission-approved transaction fees set forth in NASD Rule 7010.

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] The NASD has represented to the Commission that the use of multiple MPIDs by member firms in connection with the trading of exchange-listed securities will not have a negative effect on NASD's ability to oversee the activity of its members trading exchange-listed securities. Telephone conversation among Stephen Luparello, Executive Vice

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

Nasdaq has requested that the Commission waive the 30-day operative period and allow Nasdaq to institute this proposal immediately. Nasdaq believes that such waiver of the 30-day period will enable the pilot to run for a reasonable time before expiring on September 31, 2004, the termination date for Nasdaq's MPID pilot for attributable quotes and orders in the Nasdaq Quotation Montage. The Commission has determined that good cause exists to waive the 30-day period. Allowing Nasdaq to institute the pilot immediately should permit Nasdaq sufficient time to evaluate the efficacy of the pilot prior to its scheduled termination on September 31, 2004.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed 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.

President, Kathleen O'Mara, Associate General Counsel, NASD and Katherine England, Assistant Director, Ira Brandriss, Assistant Director, and Ian Patel, Attorney, Division, Commission on July 16, 2004.

[14] 15 U.S.C 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–097. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–097 and should be submitted on or before August 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–18188 Filed 8–9–04; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(A)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50142; File No. SR–NYSE–2004–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to the Trading Pursuant to Unlisted Trading Privileges of iShares MSCI Index Funds and the S&P Europe 350 Index Fund

August 3, 2004.

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 June 15, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 23, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.[3] On August 3, 2004, the NYSE filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange, Inc. (the ''Exchange'' or the ''NYSE'') proposes to trade pursuant to unlisted trading privileges the following iShares Index Funds,[5] which are Investment Company Units (''ICUs'') under Section 703.16 of the Exchange Listed Company Manual: shares issued by iShares Trust:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 21, 2004 (''Amendment No. 1''). In Amendment No. 1, the NYSE, among other things, corrected the name of the iShares MSCI Emerging Markets Fund and also corrected the name of the underlying index for the iShares Pacific ex-Japan Fund.

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 3, 2004 (''Amendment No. 2''). In Amendment No. 2, the NYSE withdrew its request to trade pursuant to unlisted trading privileges the iShares MSCI Emerging Markets Fund and made representations regarding the compliance of the funds with the listing standards.

[5] iShares is a registered trademark of Barclays Global Investors, N.A.

iShares MSCI[SM] EAFE and iShares S&P Europe 350; and shares issued by iShares Inc.: iShares MSCI Taiwan; iShares MSCI Pacific ex-Japan; iShares MSCI Brazil; iShares MSCI United Kingdom; iShares MSCI South Korea; iShares MSCI Singapore; iShares MSCI Germany; iShares MSCI Australia; iShares MSCI Mexico; iShares MSCI Hong Kong; iShares MSCI South Africa; and iShares MSCI Malaysia.[6]

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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted listing standards applicable to ICUs, which are consistent with the listing criteria currently used by the American Stock Exchange, Inc. (''Amex'') and other exchanges, and trading standards pursuant to which the Exchange may trade ICUs on the Exchange on an unlisted trading privileges (''UTP'') basis.[7] The Exchange now proposes to trade pursuant to UTP and on the basis more fully set forth herein the following iShares Index Funds (''Funds''), which are ICUs under Section 703.16 of the Exchange Listed Company Manual: shares issued by iShares Trust: iShares MSCI[SM] EAFE and iShares S&P Europe 350; and shares issued by iShares, Inc: iShares MSCI Taiwan; iShares MSCI Pacific ex-Japan; iShares MSCI Brazil; iShares MSCI United Kingdom; iShares MSCI South Korea; iShares MSCI Singapore; iShares MSCI Germany; iShares MSCI Australia; iShares MSCI Mexico; iShares MSCI Hong Kong; iShares MSCI South Africa; and iShares MSCI Malaysia.

a. Description of the Funds

The Funds are currently listed and traded on the Amex[8] and trade on other securities exchanges[9] and in the over-the-counter market. NYSE currently trades the iShares MSCI Japan Index Fund pursuant to UTP.[10] The information below is intended to provide a description of how the Funds were created and are traded.[11]

The shares of the Funds are issued by iShares, Inc., except for iShares MSCI[SM] EAFE and S&P Europe 350, which are issued by iShares Trust. iShares, Inc. and iShares Trust are open-ended management investment companies. Each Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the applicable underlying index. The Funds utilize representative sampling to invest in a representative sample of securities in the applicable underlying index. Barclays Global Fund Advisors (''BGFA''), a subsidiary of Barclays Global Investors, N.A. (''BGI''), is the investment advisor for each Fund. BGI is a wholly owned indirect subsidiary of Barclays Bank PLC of the United Kingdom. BGFA and its affiliates are not affiliated with the index providers (MSCI and Standard & Poor's). Investors Bank and Trust Company serves as administrator, custodian and transfer agent for the Funds, and SEI Investments Distribution Co. is distributor for the Funds. The distributor is not affiliated with the NYSE or BGFA.

iShares, Inc. and iShares Trust, as applicable, will issue and redeem the shares of the Funds only in aggregations of substantial size, which varies for the various Funds but is at least 50,000 shares (each aggregation a ''Creation Unit'').[12] The size of the applicable Creation Unit Aggregation is set forth in the Fund's prospectus and ranges from approximately $450,000 to approximately $7 million. The Funds issue and sell shares of the Index Funds through SEI Investments Distribution Co., the Distributor and principal underwriter, on a continuous basis at the net asset value per share next determined after an order to purchase iShares in Creation Unit size aggregations is received in proper form. Creation Unit Aggregations may be purchased only by or through a participant that has entered into a participant agreement with the Distributor (''Authorized Participant''). Each Participant must be a Depository Trust Company (''DTC'') participant. iShares are traded on the Exchange like other equity securities by professionals, as well as retail and institutional investors.

Creation Unit Aggregations generally will be issued in exchange for an in-kind deposit of securities and cash. An Index Fund also may sell Creation Unit Aggregations on a ''cash only'' basis in limited circumstances.[13] An investor wishing to make an in-kind purchase of a Creation Unit Aggregation from an Index Fund will have to transfer to the Fund a ''Portfolio Deposit'' consisting of (a) a portfolio of securities that has been selected by Barclays Global Fund Advisors (''Advisor'') to correspond generally to the price and yield performance of the relevant underlying

[6] MSCI and MSCI Indices are registered service marks of Morgan Stanley & Co., Incorporated.

[7] In 1996, the Commission approved Section 703.16 of the Listed Company Manual (''Manual''), which sets forth the rules related to the listing of ICUs. *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR–NYSE–95–23). In 2000, the Commission also approved the Exchange's generic listing standards for the listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Manual and Exchange Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR–NYSE–00–46).

[8] The Funds (with the exception of the MSCI[SM] EAFE and S&P Europe 350 Funds) were formerly known as World Equity Benchmark Shares or WEBS, and an initial series of WEBS, including the iShares MSCI United Kingdom, iShares MSCI Singapore (Free), iShares MSCI Germany, iShares MSCI Australia, iShares MSCI Mexico, iShares MSCI Hong Kong and iShares MSCI Malaysia Funds were initially approved for listing and trading on the Amex in 1996. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR–Amex–95–43) (''Amex WEBS Approval Order''). Additional WEBS series were approved for listing and trading in 2000, including iShares MSCI Brazil, iShares MSCI Taiwan, iShares MSCI South Africa and iShares MSCI South Korea. *See* Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (SR–Amex–98–49). iShares S&P Europe 350 and iShares MSCI[SM] EAFE, issued by iShares Trust, were approved for Amex listing and trading in 2000 and 2001, respectively. *See* Securities Exchange Act Release Nos. 42786 (May 15, 2000), 65 FR 33586 (May 24, 2000) (SR–Amex–99–49) and 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (SR–Amex–2001–34). The iShares MSCI Pacific ex-Japan, issued by iShares Trust, were approved for Amex listing and trading in 2001. *See* Securities Exchange Act Release No. 44900 (October 25, 2001), 66 FR 55712 (November 2, 2001) (Amex 2001–45) (collectively ''Listing Approval Orders'').

[9] *See, e.g.*, Securities Exchange Act Release No. 39117 (September 22, 1997), 62 FR 50973 (September 29, 1997) (SR–CHX–96–14) (approving the UTP trading of WEBS).

[10] *See* Securities Exchange Act Release No. 46298 (August 1, 2002), 67 FR 51614 (August 8, 2002) (SR–NYSE–2002–27).

[11] Much of the information in this filing was taken from the Prospectuses and Statements of Additional Information of iShares, Inc. dated as of July 1, 2004, the Prospectus of iShares Trust MSCI[SM] EAFA, dated as of April 14, 2004, the Prospectus of iShares S&P Europe 350, dated as of August 1, 2004, and from the Websites of the Amex (*http://www.amex.com*) and iShares (*http://www.iShares.com*). Fund information relating to net asset value (''NAV''), returns, dividends, component stock holdings and the like is updated on a daily basis on the websites. Telephone Conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Elizabeth MacDonald, Attorney, Division, July 30, 2004.

[12] *See supra* note 11.

[13] *See* ''Information Circular'' Section, below.

index (''Deposit Securities''), (b) a cash payment equal per Creation Unit Aggregation to the dividends accrued on the Portfolio Securities of the Index Fund since the last dividend payment on the Portfolio Securities, net of expenses and liabilities (the ''Dividend Equivalent Payment''), and (c) an amount equal to the difference between (i) the ''NAV'' per Creation Unit Aggregation of the Index Fund and (ii) the sum of (I) the Dividend Equivalent Payment and (II) the total aggregate market value per Creation Unit Aggregation of the Deposit Securities (the ''Balancing Amount,'' and, together with the Dividend Equivalent Payment, the ''Cash Component''). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and the value of the Deposit Amount. The Deposit Amount is the sum of (a) the Dividend Equivalent Payment and (b) the market value per Creation Unit Aggregation of the Deposit Securities. If the Balancing Amount is a positive number (*i.e.,* the NAV per Creation Unit Aggregation of the Index Fund exceeds that of the Deposit Amount), the Balancing Amount will be paid to the Fund by the Creator. If the Balancing Amount is a negative number (*i.e.,* the NAV per Creation Unit Aggregation of the Index Fund is less than that of the Deposit Amount) the creator will receive cash in an amount equal to the differential.

Each Index Fund reserves the right to permit or require the substitution of an amount of cash or the substitution of any security to replace any Deposit Security that may be unavailable or unavailable in sufficient quantity for delivery to iShares, Inc., or which may be ineligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

It is anticipated that the deposit of Deposit Securities and the Cash Component in exchange for iShares will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Creation Units are separable upon issuance into identical shares that are listed and traded on the American Stock Exchange. iShares will be traded on the Exchange by professionals as well as institutional and retail investors.

Individual iShares will not be redeemable. iShares will only be redeemable in Creation Unit Aggregations through each Index Fund. To redeem, an investor will have to accumulate enough iShares to constitute a Creation Unit Aggregation. An investor redeeming a Creation Unit Aggregation generally will receive (a) a portfolio of Portfolio Securities in effect on the date the request for redemption is made (''Redemption Securities''), which may not be identical to the Deposit Securities applicable to the purchase of Creation Unit Aggregations, and (b) a ''Cash Redemption Payment,'' consisting of an amount calculated in the same manner as the Cash Component, although the actual amounts may differ if the Redemption Securities are not identical to the Deposit Securities. To the extent that the Redemption Securities have a value greater than the NAV of the iShares being redeemed, the redeeming beneficial owner must make compensating cash payment to the Fund equal to the differential between the value of the Redemption Securities and the NAV of the iShares being redeemed. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as where a redeeming entity is restrained by regulation or policy from transacting in the Redemption Security. An Index Fund may redeem Creation Unit Aggregations in cash in limited circumstances, such as when it is impossible to effect deliveries of Redemption Securities in the applicable jurisdiction.[14]

The Funds may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the Fund during the applicable period, net of expenses and liabilities for such period. The final dividend amount for each Fund is the amount of dividends to be paid by a Fund for the appropriate period (usually annually). The final dividend amount is also disseminated by the Funds to Bloomberg and other sources. The Funds will not make the DTC book-entry Dividend Reinvestment Service (the ''Service'') available for use by beneficial owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients.

b. MSCI and S&P Indexes

The MSCI Indexes are calculated by MSCI for each trading day in the applicable foreign exchange markets based on official closing prices in such exchange markets. For each trading day, MSCI publicly disseminates the MSCI Index values for the previous day's close. The S&P Europe 350 Index is calculated by Standard & Poor's (''S&P''), and is publicly disseminated by S&P for the previous day's close. The Indexes are reported periodically in major financial publications, and the intra-day values of the Indexes, disseminated every 15 seconds throughout the trading day, are available through vendors of financial information as further described in the Listing Approval Orders.

The underlying indexes for the Funds are market capitalization weighted. As stated in the iShares, Inc. prospectus, effective May 31, 2002, all single-country MSCI indices are free-float weighted, *i.e.,* companies are included in the indices at the value of their free public float (free float multiplied by price). MSCI defines ''free float'' as total shares excluding shares held by strategic investors such as governments, corporations, controlling shareholders and management, and shares subject to foreign ownership restrictions.

With respect to the S&P Europe 350 Index, S&P announced on March 1, 2004 that it intends to shift its major indexes to ''float-adjusted'' market capitalization weights. That is, the value of the Index will be calculated by, for each component, multiplying the number of shares in the public float of the component by the price per share of the component. The result is then divided by the divisor. Thus, the ''float adjusted'' market capitalization methodology will exclude blocks of stocks that do not trade from the weighting determination for a stock in the index.

c. Funds' Assets and Industry Concentration

Barclays Global Investors (''BGI'') has made certain representations to the Exchange regarding the percentage of fund assets that certain Funds will invest in component securities in the underlying indexes for such Funds and the maximum percentage of fund assets that such Funds may invest in American Depositary Receipts (''ADRs'').[15]

BGI has represented that each of the following Funds will invest at all times at least ninety percent (90%) of their total assets in component securities that are represented in the underlying index for such Fund: iShares MSCISM EAFE Index Fund; iShares S&P Europe 350 Index Fund; iShares MSCI Pacific ex-Japan Index Fund; iShares MSCI United Kingdom Index Fund; iShares MSCI Germany Index Fund; iShares MSCI Australia Index Fund; iShares MSCI

[14] *See* ''Information Circular'' Section, below.

[15] *See* letter from W. John McGuire, Morgan, Lewis & Bockius, to Michael Cavalier, Assistant General Counsel, NYSE, dated August 2, 2004, attached as Exhibit A. to Amendment No. 2.

Mexico Index Fund; iShares MSCI Hong Kong Index Fund; iShares MSCI Singapore Index Fund; and iShares MSCI Malaysia Index Fund. Each of these Funds will invest not more than ten percent (10%) of fund assets in ADRs that are not included in the component securities of their underlying index.

Barclays Global Investors has further represented that each of the following Funds will invest at all times at least eighty percent (80%) of their total assets in component securities that are represented in the underlying index for such Fund and at least half of the remaining twenty percent (20%) of their assets in such stocks or in stocks included in the relevant market but not in the index: iShares MSCI Brazil Index Fund; iShares MSCI South Korea Index Fund; iShares MSCI Taiwan Index Fund; and iShares MSCI South Africa Index Fund. Each of these Funds will invest not more than twenty percent (20%) of fund assets in ADRs that are not included in the component securities of their underlying index.

Finally, Barclays Global Investors has represented that each of the ADRs in which these Funds will invest shall be listed on a national securities exchange or quoted on the Nasdaq National Market''. Currently, the underlying indexes do not contain ADRs. To the extent the Funds invest in ADRs, these ADRs will be subject to the 10% and 20% levels described above.[16]

As of August 2, 2004, the market capitalization of the securities included in the various Funds ranged from a high of $203,594 million to a low of $118 million. As of August 2, 2004, the average daily trading volume for these same securities for the last 30 days ranged from a high of 3,131,225,000 (for one component that constituted 3.65% of the net assets of the Fund) to a low of 100,000 (for one component that constituted 0.12% of the net assets of the Fund). As of June 30, 2004, the ten most heavily weighted component securities of the various Funds ranged from 23.46% (Samsung Electronics Co. Ltd. (''Samsung'') in South Korea Fund) to 1.80%.[17]

iShares, Inc. and iShares Trust will cause to be made available daily the names and required number of shares of each of the securities to be deposited in connection with the issuance of the Funds' shares in Creation Unit size aggregations for the Funds, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends for the Funds. This information will be made available to the Funds' Advisor and to any National Securities Clearing Corporation (''NSCC'') participant requesting such information. In addition, other investors can request such information directly from the Funds' distributor. The NAV for the Funds will be calculated directly by the Funds' administrator. The NAV will also be available to the public on *http://www.iShares.com,* from the Fund distributor by means of a toll-free number, and to NSCC participants through data made available from the NSCC.

As disclosed in the Funds' prospectus, each of the iShares MSCI Mexico Index, iShares MSCI Singapore Index and iShares MSCI South Korea Index Funds has the following concentration policy: With respect to the two most heavily weighted industries or groups of industries in its underlying index, the Fund will invest in securities (consistent with its investment objective and other investment policies) so that the weighting of each such industry or group of industries in the Fund does not diverge by more than 10% from the respective weighting of such industry or group of industries in its underlying index. An exception to this policy is that if investment in the stock of a single issuer would account for more than 25% of the Fund, the Fund will invest less than 25% of its net assets in such stock and will reallocate the excess to stock(s) in the same industry or group of industries, and/or to stock(s) in another industry or group of industries, in its underlying index. Each Fund will evaluate these industry weightings at least weekly, and at the time of evaluation will adjust its portfolio composition to the extent necessary to maintain compliance with the above policy.

Each of the iShares MSCI Australia Index, iShares MSCI Brazil Index, iShares MSCI Hong Kong Index, iShares MSCI Malaysia Index, iShares MSCI Pacific ex-Japan Index, iShares MSCI South Africa Index, iShares MSCI Taiwan Index and iShares MSCI United Kingdom Index Funds will not concentrate its investments (*i.e.,* hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except that, to the extent practicable, the Fund will concentrate to approximately the same extent that its underlying index concentrates in the stocks of such particular industry or group of industries.

For the iShares MSCI EAFE Index Fund and iShares S&P Europe 350 Index Fund, a Fund will not concentrate its investments (*i.e.,* hold 25% or more of its total assets) in a particular industry or group of industries, except that a Fund will concentrate its investments to approximately the same extent that its underlying index is so concentrated. For purposes of this limitation, securities of the U.S. Government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. Government securities, and securities of state or municipal governments and their political subdivisions are not considered to be issued by members of any industry.

Each Fund will maintain regulated investment company compliance, which requires, among other things, that, at the close of each quarter of the Fund's taxable year, not more than 25% of its total assets may be invested in the securities of any one issuer. In order for a Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Internal Revenue Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (a) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (b) not more than 25% of the value of its total assets may be invested in the securities of any one issuer.

The Exchange believes that these requirements and policies prevent any Index Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in an Index Fund could become a surrogate for trading in unregistered securities.

d. Tracking Error

According to the Funds' prospectus, Barclays Global Fund Advisors expect that over time, the correlation between each Fund's performance and that of its underlying index, before fees and expenses, will be 95% or better. A figure of 100% would indicate perfect correlation. Any correlation of less than 100% is called ''tracking error.'' A Fund using a representative sampling strategy (which all of the Funds utilize) can be expected to have a greater tracking error than a Fund using a replication strategy.

[16] Telephone Conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, August 3, 2004.

[17] *Id.*

Replication is a strategy in which a Fund invests in substantially all of the securities in its underlying index in approximately the same proportions as in the underlying index.

The Funds have chosen to pursue a representative sampling strategy that, by its very nature, entails some risk of tracking error. (It should also be noted that Fund expenses, the timing of cash flows, and other factors all contribute to tracking error.) The Web site for the Funds, *http://www.iShares.com*, contains detailed information on the performance and the tracking error for each Fund.

e. Availability of Information Regarding Funds

As indicated in the Listing Approval Orders, the Web site for the Funds, *http://www.iShares.com*, will contain the prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against NAV; and data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV.[18]

As stated above and in the Listing Approval Orders, the value of each underlying index will be updated intra-day on a real time basis as individual component securities of that index change in price. The intra-day values of the indexes will be disseminated every 15 seconds throughout the trading day by organizations authorized by the index providers and are available through major financial information vendors.

To provide current Fund pricing information, Amex disseminates through the facilities of the Consolidated Tape Association an ''indicative optimized portfolio value'' (the ''Value'') for the Funds as calculated by Bloomberg, L.P. The Value will be disseminated every fifteen seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. New York time. The Value likely will not reflect the value of all securities included in the applicable indexes. In addition, the Value will not necessarily reflect the precise composition of the current portfolio of securities held by the Funds at a particular moment. The Value disseminated during Amex trading hours should not be viewed as a real-time update of the NAV of the Funds, which is calculated only once a day. It is expected, however, that during the trading day the Value will closely approximate the value per share of the portfolio of securities for the Funds except under unusual circumstances.

For iShares MSCI South Korea, Singapore, Malaysia, Taiwan, Hong Kong, Australia and Pacific ex-Japan Funds, there is no overlap in trading hours between the foreign and U.S. markets. Therefore, for each of these Funds, the Value calculator will utilize closing prices (denominated in the applicable foreign currency) in the principal foreign market for securities in the applicable Fund's portfolio and convert the price to U.S. dollars. This Value will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The Value will also include the estimated cash component for each Fund.

For iShares MSCI℠ EAFE, S&P Europe 350, Brazil, United Kingdom, Germany, Mexico and South Africa Funds, there is an overlap in trading hours between the foreign and U.S. markets. Therefore, the Value calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets and convert such prices into U.S. dollars based on the currency exchange rate. When the foreign market or markets are closed but U.S. markets are open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market closes. The Value will also include the applicable cash component for each Fund.

f. Information Circular

In connection with the trading of the Funds, the Exchange will inform Exchange members and member organizations in an Information Circular of certain characteristics of certain Funds, as discussed below. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other things, will discuss what the Funds are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus or Product Description to investors purchasing shares of the Fund prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules (including NYSE Rule 405).[19] The circular will also discuss exemptive, no-action and interpretive relief granted by the Commission from Section 11(d)(1) and certain rules under the Act, including Rule 10a–1, Rule 10b–10, Rule 14e–5, Rule 10b–17, Rule 11d1–2, Rules 15c1–5 and 15c1–6, and Rules 101 and 102 of Regulation M under the Act.

Local restrictions on transfers of securities to and between certain types of investors exist in South Korea, Malaysia, Taiwan and Brazil. These restrictions currently preclude ''in kind'' creations and redemptions of creation units of iShares MSCI South Korea, Malaysia, Taiwan and Brazil Index Funds. Creations and redemptions of creation units of the iShares MSCI South Korea, Malaysia, Taiwan and Brazil Index Funds therefore involve ''for cash'' transfers. In such cases, a Fund will charge creation and redemption fees intended to offset the transfer and other transaction costs incurred by the Fund, including market impact expenses (primarily associated with creation units for cash), related to investing in or disposing of the basket of securities held by the Fund.

For Funds that effect creations and/or redemptions only for cash (*i.e.*, iShares MSCI South Korea, Malaysia, Taiwan and Brazil), it is possible that portfolio securities transactions by iShares, Inc. in the relevant local markets for those Funds could affect the prices of those portfolio securities at the times those Funds' NAVs are calculated.

The NAV for the iShares MSCI Malaysia, South Korea and Taiwan Index Funds will be calculated every day that the American Stock Exchange is open for trading, normally as of 11 a.m. (Eastern Time). This is in contrast to the other Funds, for which the NAV is normally calculated at 4 p.m. (Eastern Time).

g. Other Issues

i. Surveillance Procedures

The Exchange intends to utilize its existing surveillance procedures applicable to Investment Company Units to monitor trading in the Funds. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Funds.[20]

[18] Telephone Conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, August 3, 2004.

[19] The Commission has issued an order (''Order'') granting the Funds an exemption from Section 24(d) of the Investment Company Act of 1940. *See, e.g.*, Investment Company Act Release No. 25623 (June 25, 2002). Any Product Description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the Application for the Order.

[20] Telephone Conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, August 3, 2004.

ii. NYSE Rule 460.10

NYSE Rule 460.10 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. Exceptions in the Rule permit specialists in ETF shares to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor, and only at the NAV of the ETF shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the ETF shares, provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit or securities that can be subdivided or converted into such unit, from the investment company, as appropriate, to facilitate the maintenance of a fair and orderly market in the subject security.

iii. Trading Hours

The trading hours for the Funds on the Exchange will be 9:30 a.m. to 4 p.m., except for iShares MSCI℠ EAFE and iShares S&P Europe 350, which will trade until 4:15 p.m.

iv. Due Diligence

The Exchange represents that the Information Circular to members will note, for example, Exchange responsibilities including that before an Exchange member, member organization, or employee thereof recommends a transaction in the Funds, a determination must be made that the recommendation is in compliance with all applicable Exchange and federal rules and regulations, including due diligence obligations under Exchange Rule 405.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act [21] in general and furthers the objectives of Section 6(b)(5)[22] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-NYSE–2004–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 the filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–27 and should be submitted on or before August 31, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[23] The Commission believes that the Exchange's proposal to trade the Funds pursuant to UTP will provide investors with a convenient way of participating in foreign securities markets and can produce added benefits to investors through the increased competition between other markets trading the product. Specifically, the Commission believes that NYSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell at negotiated prices throughout the trading day securities that replicate the performance of several portfolios of stock,[24] and by increasing the availability of the Fund as an investment tool. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[25]

As the Commission noted in greater detail in the order approving iShares (formally ''World Equity Benchmark Securities'' or ''WEBS'') for listing and trading on Amex,[26] the estimated cost of an individual iShares, such as the

[23] 15 U.S.C. 78f(b)(5).

[24] The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in the Funds can redeem them in creation unit size aggregations only.

[25] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] *See* Amex WEBS Approval Order, *supra* note 8. The Commission hereby incorporates by reference the discussion and rationale for approving WEBS provided in the Amex WEBS Approval Order.

Funds, should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of foreign stocks. The Commission also notes that the Funds should provide investors with several advantages over standard open-end investment companies; in particular, investors can trade the Funds continuously throughout the day in secondary markets at negotiated prices.[27] In contrast, Investment Company Act of 1940 (''Investment Company Act'') Rule 22c–1 [28] limits holders and prospectus holders of open-end management investment company shares to purchasing or redeeming securities of the fund based on the NAV of the securities held by the fund as designated by the board of directors. Thus, the Funds should allow investors to respond quickly to market changes through intra-day trading opportunities, expand the opportunity for retail investors to engage in hedging strategies, and reduce transaction costs for trading a portfolio of stocks. The Commission notes that, under the proposed rule change, the benefits of the Fund will now be available to investors trading on NYSE, and believes that the addition of their trading on NYSE pursuant to UTP could produce added benefits to investors through the increased competition.

The Commission notes that, although the value of the Funds is based on the value of the securities and cash held in the Funds, the shares of the Funds are not leveraged instruments. The shares of the Funds are essentially equity securities that represent an interest in a portfolio of stocks designed to reflect substantially the applicable MSCI Indexes. Accordingly, it is appropriate to regulate the Funds in a manner similar to other equity securities. Nonetheless, the Commission believes that the unique nature of the Funds raise certain disclosure, trading, and other issues that need to be addressed. The remainder of this section addresses these issues, although they are discussed in greater detail in the Amex Listing Approval Orders, where the Commission approved WEBS, later known as iShares, for trading as a new product.

A. Trading of the Fund on NYSE Pursuant to UTP

The Commission notes that, pursuant to Rule 12f–5 under the Act,[29] prior to trading a particular class or type of security pursuant to UTP, NYSE must have listing standards and trading rules comparable to those of the primary market on which the security is listed. The Commission finds that adequate rules and procedures exist to govern the trading of the Fund on NYSE, pursuant to UTP. Fund shares will be deemed equity securities subject to NYSE's rules governing the trading of equity securities. Accordingly, the Exchange's existing general rules that currently apply to the trading of equity securities will also apply to the Fund. In addition, Section 703.16 of the NYSE's Manual and Exchange Rule 1100 [30] which contain listing and delisting criteria to accommodate the trading of Units, will apply to the trading of the Fund.[31] Moreover, the market capitalization and liquidity of the Fund components is such that an adequate level of liquidity exists in each iShares series to allow for the maintenance of fair and orderly markets. Also, the Fund components will not be highly concentrated such that the Funds become surrogates for trading unregistered foreign securities.[32] The delisting criteria allow the Exchange to consider the suspension of trading and the delisting of a series of Units, including suspending trading in the Fund traded on the Exchange pursuant to UTP, if an event were to occur that made further dealings in such securities inadvisable. This will give the Exchange flexibility to suspend trading in the Fund if circumstances warrant such action. Accordingly, the Commission believes that NYSE's equity rules in general, and Section 703.16 of the Manual and Exchange Rule 1100 in particular, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.[33]

B. Disclosure

The Commission believes that NYSE's proposal should provide for adequate disclosure to investors relating to the terms, characteristics, and risks of trading the Fund. All investors in the Fund, including those purchasing the Fund on NYSE pursuant to UTP, will receive a prospectus or a Product Description [34] regarding the product. The prospectus or Product Description will address the special characteristics of the Fund, including a statement regarding their redeemability and method of creation, and that Fund shares are not individually redeemable.

The Commission notes that the Exchange has represented that it will also distribute an information circular to all NYSE members prior to the commencement of trading of the Fund explaining the unique characteristics and risks of the Fund. The circular will note, for example, Exchange responsibilities including that before an Exchange member, member organization, or employee recommends a transaction in the Funds, a determination must be made that the recommendation is in compliance with all applicable Exchange and federal rules and regulations, including due diligence obligations under Exchange Rule 405.[35] The circular will also address members' responsibility to deliver a prospectus or product description to all investors purchasing the Fund, as well as highlight the characteristics of the Fund, including that Fund shares are only redeemable in Creation Unit size aggregation and that local restrictions may cause certain Funds to effect creations and redemptions for cash.[36]

[27] The Commission believes that the Funds will not trade at a material discount or premium in relation to their NAV, because of potential arbitrage opportunities. *See* Amex WEBS Approval Order, *supra* note 8. The mere potential for arbitrage should keep the market price of shares of the Funds comparable to their NAVs; therefore, arbitrage activity likely will not be significant.

[28] 17 CFR 270.22c–1. Investment Company Act Rule 22c–1 generally provides that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security may sell, redeem, or repurchase the security only at a price based on the NAV next computed after receipt of an investor's request to purchase, redeem, or resell. The NAV of an open-end management investment company generally is computed once daily Monday to Friday as designated by the investment company's board of directors. The Commission granted WEBS an exemption from this provision to allow them to trade in the secondary market at negotiated prices. *See* Amex WEBS Approval Order, *supra* note 8.

[29] 17 CFR 240.12f–5.

[30] The Commission approved generic rules for the listing and trading of ICUs on NYSE in 2000. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000).

[31] The Commission notes the listing and delisting criteria is similar to those adopted by Amex to trade WEBS/iShares.

[32] The Commission notes that Samsung, a component in the South Korea Fund, constitutes 23.46% of the Fund. Should this weighting increase to above 25%, or other material deviations occur from the characteristics described herein and in the Listing Approval Orders, the Funds would not be in compliance with the listing and trading standards approved by the Commission. The Commission also notes, however, that Samsung is a foreign private issuer that submits to the Commission, on a current basis, the material required by Rule 12g3–2(b). 17 CFR 240.12g3–2(b).

[33] The Commission also believes that the proposed rule change should help protect investors and the public interest, and help perfect the mechanisms of a national market system, in that it will allow for the trading of the Fund on NYSE pursuant to UTP, making the Fund more broadly available to the investing public.

[34] *See* Investment Company Act Release No. 25623 (June 25, 2002).

[35] *See* Amendment No. 2.

[36] The Commission notes that the information circular should also discuss exemptive relief granted by the Commission from certain rules under the Act. The applicable rules are: Rule 10a–1; Rule

Continued

C. Dissemination of the Fund Portfolio and Underlying Index Information

The Commission believes that since Amex is disseminating the Values for the various WEBS/iShares series, investors will be provided with timely and useful information concerning the value of iShares, on a per iShares basis. The Commission notes that the information is disseminated through facilities of the CTA and reflects the currently available information concerning the value of the assets comprising the deposit securities. The information is disseminated every fifteen seconds during the hours of 9:30 a.m. to 4 p.m. Eastern Standard Time and will be available to all investors, irrespective of where the transaction is executed. In addition, because the value is expected to closely track the applicable iShares series, the Commission believes the Values will provide investors with adequate information to determine the intra-day value of a given iShares series, such as the Funds.[37] In the Amex WEBS Approval Order, the Commission noted that it expected Amex to monitor the disseminated Value, and if Amex determines that the Value does not closely track applicable WEBS/iShares series, it will arrange to disseminate an adequate alternative. Information about the Funds' performance, including tracking error and NAV, is publicly available at *http://www.iShares.com.* The Commission also notes that the intra-day index values are disseminated every 15 seconds by various sources; however, there may be no overlap in trading hours between the foreign and U.S. markets for certain Funds.

D. Surveillance

The Commission notes that NYSE has represents that its surveillance procedures are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with specialists purchasing and redeeming Creation Units. The Exchange has represented that its surveillance procedures should allow it to identify situations where specialists purchase or redeem Creation Units to ensure compliance with NYSE Rule 460.10, which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security.[38]

E. Specialists

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such security and facilitate a specialist's market making responsibilities. In addition, because the specialist only will be able to purchase and redeem Fund shares on the same terms and conditions as any other investor (and only at the NAV), and Creation transactions must occur through the distributor and not directly with the issuer, the Commission believes that concerns regarding potential abuse are minimized. As noted above, the Exchange's surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.[39]

F. Accelerated Approval

After careful review, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act.[40] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Exchange. Accordingly, the Commission finds that the listing and trading of the Fund on a UTP basis is consistent with the Act, and promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protects investors and the public interest.[41] The Commission further finds that accelerated approval will enable the Exchange to begin listing and trading the Fund on the Exchange on a UTP basis immediately. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[42] to approve the proposal and Amendment Nos. 1 and 2 thereto on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[43] that the proposed rule change (SR–NYSE–2004–27) and Amendments No. 1 and 2 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–18283 Filed 8–9–04; 8:45 am]

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10b–10; Rule 14e–5; Rule 10b–17; Rule 11d1–2; Rules 15c1–5 and 15c1–6; and Rules 101 and 102 of Regulation M under the Act.

[37] In addition, the Amex WEBS Approval Order states that the statement of additional information (''SAI'') to the preliminary prospectus states that each series will calculate its NAV per share at the close of the regular trading session for the Amex on each day that the Amex is open for business. NAV generally will be based on the last quoted sales price on the exchange where the security primarily is traded. *See* Amex WEBS Approval Order, *supra* note 8.

[38] The Commission notes that, in the Amex WEBS Approval Order, it discussed the concerns raised when a broker-dealer is involved in the development, maintenance, and calculation of a stock index upon which a product such as WEBS is based. Adequate procedures to prevent the misuse of material, non-public information regarding changes to component stocks in an MSCI Index have been adopted and should help to address concerns raised by Morgan Stanley's involvement in the management of the Indices. *See* also the ''firewall'' requirements under Section 703.16 of the NYSE's Manual.

[39] The Commission notes that with respect to iShares, broker-dealers and other persons are cautioned in the prospectus and/or the Fund's SAI that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provision of the Securities Act of 1933.

[40] 15 U.S.C. 78s(b)(2).

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78s(b)(2).

[43] 15 U.S.C. 78s(b)(2).

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50141; File No. SR–OCC–2004–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Segregation of Long Leg After Close Out of Short Leg of a Spread

August 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 25, 2004, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 amend Article VI (Margins), Rule 611 (Segregation of Long Positions) of OCC's Rules by adding Interpretation & Policy .01 to Rule 611. The Interpretation would make clear when clearing members must instruct OCC to segregate the long leg of a spread following the close out of the short leg.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Rule 611 in order to better align its provisions with those of Commission Rule 15c3–3 by clarifying when a clearing member must instruct OCC to segregate the long leg of a spread after the short leg has been closed out.[3]

Background

Each OCC clearing member conducting a public securities business is required under Article VI (Clearance of Exchange Transactions), Section 3 (Maintenance of Accounts) paragraph (e) of OCC's By-Laws to maintain customer positions in a separate customers' account. As positions are carried in this account on an omnibus basis (*i.e.*, identified by clearing member rather than by customer) and may include long options that are fully paid securities subject to the possession or control requirement of Commission Rule 15c3–3, OCC normally maintains all long positions in customers' accounts as segregated. Segregated long positions are free of any lien in favor of OCC, and their value does not reduce the margin requirement on short positions in the account.[4]

In recognition of exchange rules allowing a clearing member to give its customers margin relief on short options positions ''spread'' against qualified long option positions, OCC Rule 611(c) affords a clearing member the opportunity to release such long positions from segregation. The effect of this release is to subject the long position to OCC's lien and to provide corresponding margin relief to the clearing member. Rule 611(c) further provides that a clearing member shall not permit a long position to remain unsegregated after the spread is broken, but it does not specify how quickly the clearing member must resegregate the long position.

Segregation Instructions Under Rule 611

Clearing members may instruct OCC to release long customer positions from segregation or to resegregate positions that were previously released from segregation either by submitting a machine-readable data file or by making appropriate entries on an online screen. In either case, OCC's window for accepting such instructions runs from the start of trading through 7:00 p.m. Central Time each day. Prior to submitting these instructions, however, many clearing members first reconcile their activity and end of day position records with OCC's records through files generated by OCC's data service. In addition, certain clearing members use these machine readable data service files to generate their segregation instructions. As data service is typically not available until 10:00 p.m. Central Time, three hours after the closing of the window for accepting instructions, files containing segregation instructions based upon the current day's closing position inventory are typically not processed until the following business day. Same day processing of instructions for clearing members not relying upon OCC's data service for balancing or generating segregation instructions is likewise impractical given the narrow processing timeframe between the close of trading and 7:00 p.m. Central Time.

The resulting one-day lag is likely to cause either a temporary under-or over-segregation of customer long option positions. The effect of an over-segregated situation is an overstatement of the clearing member's margin requirement, as long contracts eligible for margin credit at OCC would not be recognized. There is, however, no violation of either OCC Rule 611(c) or Commission Rule 15c3–3.

The effect of an under-segregated situation is an understatement of the clearing member's margin requirement, as long contracts no longer eligible for margin credit at OCC are nevertheless given credit for one more day in OCC's margin calculations. This situation occurs when a customer closes out the short leg of a spread. The long leg remains subject to OCC's lien until the clearing member's re-segregation instructions are processed the following day.

OCC Rule 611(c) and Commission Rule 15c3–3

Rule 611(c) provides that no clearing member shall ''instruct the Corporation to release from segregation, or permit to remain unsegregated, any long position in option contracts carried in a customers' account or firm non-lien account for any customer or non-customer unless the clearing member is simultaneously carrying in such account for such customer or non-customer a short position in option contracts and the margin required to be deposited by such customer or non-customer with respect to such short position has been reduced as a result of the carrying of such long position.'' As the purpose of Rule 611(c) has always been to facilitate compliance with Commission Rule 15c3–3 and not to establish any addition or more stringent requirements, Rule 15c3–3 is the appropriate point of reference for determining how quickly a clearing member is obligated to regain possession or control of the long leg of a spread once the short leg has been closed out.

Rule15c3–3(b)(2) provides that a broker will not be deemed to be in violation of the rule if ''solely as a result of normal business operations, temporary lags occur between the time when a security is required to be in the possession or control of the broker or dealer and the time that it is placed in his physical possession or under his control, provided that the broker or dealer takes timely steps in good faith to establish prompt physical possession or control.'' Rule 15c3–3(d) provides further guidance as to when the broker must initially determine that control is required.

Not later than the next business day, a broker or dealer, as of the preceding business day, shall determine from his books or records the quantity of fully-paid securities and excess margin securities in his possession or control and the quantity of fully-paid securities and excess margin securities not in his possession or control.

[2] The Commission has modified parts of these statements.

[3] 17 CFR 240.15c3–3.

[4] Article I, Section S.(6) of OCC's By-Laws; OCC Rules 602(d)(1) and 611(d)(1).

Rule 15c3–3(d) goes on to provide that ''If such books and records indicate, as of such close of the business day, that such broker or dealer has not obtained physical possession or control of all fully-paid and excess margin securities as required by this rule'' certain specified maximum time limits for issuing instructions and/or obtaining possession or control will apply. Those time limits vary depending on the situation. In the case of securities subject to a lien securing moneys borrowed or in the case of securities loaned, the broker-dealer must issue instructions for the release or the return of the securities no later than the business day following the determination that control must be obtained and must actually obtain possession or control within two business days after that in the case of securities securing a loan or within five days in the case of loaned securities. Time frames of up to 45 days apply in other circumstances. These time frames appear to reflect an assessment of reasonableness given the nature of the situation and of industry practices.

While there are no provisions of Rule 15c3–3 establishing such specific time lines in the context of long options, OCC believes a reasonable interpretation of the more general provisions of Rule 15c3–3 is that they do not require the segregation of long leg of a spread more promptly than the second business day following the day on which the short leg is closed if, as seems to be the case, a lag of that duration occurs ''as a result of normal business operations.'' Accordingly, OCC believes it is appropriate to clarify Rule 611(c) to provide more certainty regarding when segregation should occur. Therefore, OCC is adopting an interpretation of Rule 611(c) providing that when the short leg of a spread is closed out, a clearing member must issue resegregation instructions with respect to the long leg as soon thereafter as is reasonably practicable and in any event at or prior to the time OCC requires so that OCC can implement the instruction not later than the opening of business on the second business day following the day on which the short leg was closed.

OCC believes that the proposed changes to its rules are consistent with the purpose and requirements of Section 17A of the Act because it provides greater clarity as to when clearing members need to issue segregation instructions to OCC under Rule 611 to further the protection of investors.

(A) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(B) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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)(i) of the Act [5] and Rule 19b–4(f)(1) [6] thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, enforcement or administration of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2004–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2004–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *www.optionsclearing.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2004–14 and should be submitted on or before August 31, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–18282 Filed 8–9–04; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 4799]

Notice of Information Collection Under Emergency Review: Form DS–4071, Export Declaration of Defense Technical Data or Services; OMB Control Number 1405–XXXX

ACTION: Notice of OMB submission and request for public comments.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. This notice is published to obtain comments from the public and affected agencies on the proposed collection of information.

- *Title of Information Collection:* Export Declaration of Defense Technical Data or Services.
- *OMB Control Number:* None.

• *Type of Request:* Emergency Review.
• *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls (PM/DDTC).
• *Form Number:* DS–4071.
• *Respondents:* Business organizations.
• *Estimated Number of Respondents:* 2,000.
• *Estimated Number of Responses:* 10,000.
• *Average Hours Per Response:* 15 minutes.
• *Total Estimated Burden:* 2,500 hours.
• *Frequency:* On occasion.
• *Obligation to Respond:* Mandatory.

DATES: The Department has requested emergency review and approval of this collection from OMB by September 30, 2004. If granted, the emergency approval is only valid for 180 days. The Department will accept comments from the public up to 60 days from August 10, 2004. In order to have most impact on the design and approval of this collection of information, you should submit your comments by September 17, 2004.

ADDRESSES: Comments and questions should be directed to Katherine Astrich, the State Department Desk Officer in Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached on 202–395–7316. You may submit comments by any of the following methods:
• *E-mail: kastrich@omb.eop.gov.* You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
• *Hand Delivery or Courier:* OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
• *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Michael T. Dixon, Director Office of Defense Trade Controls Management, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, SA–1, Room 12th Floor, H1200, Washington, DC 20522–0112 (202) 663–7000. E-mail: *dixonMT@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Actual exports of defense technical data and defense services will be electronically reported directly to the Directorate of Defense Trade Controls (DDTC). DDTC administers the International Traffic in Arms Regulations and section 38 of the Arms Export Act (AECA). The actual exports must be in accordance with requirements of the ITAR and section 38 of the AECA. DDTC will monitor the information to ensure there is proper control of the transfer of sensitive U.S. technology.

Methodology: The exporter will electronically report directly to DDTC the actual export of defense technical data and defense services using DS–4071. DS–4071 will be available on DDTC's Web site *http://www.pmdtc.org.*

Dated: July 7, 2004.

Gregory M. Suchan,

Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 04–18268 Filed 8–9–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4798]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Cezanne in the Studio: Still Life in Watercolors''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, ''Cezanne in the Studio: Still Life in Watercolors,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about October 12, 2004, to on or about January 2, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information or a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: August 3, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–18267 Filed 8–9–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation; Waiver of License Requirement for Scaled Composites' Pre-flight Preparatory Activities Conducted at a U.S. Launch Site

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of waiver.

SUMMARY: The FAA has determined to waive the requirement for Scaled Composites, LLC, to obtain a launch license for its pre-flight ground operations conducted at Mojave Airport. Scaled Composites is authorized to conduct Reusable Launch Vehicle (RLV) missions under License No. LRLS 04–067, issued by the FAA on April 1, 2004. The East Kern Airport District (EKAD) is authorized to operate a launch site at the Mojave Airport under License No. LSO 04–009, issued by the FAA on June 17, 2004. The FAA finds that waiving the requirement for Scaled Composites to obtain a launch license for its pre-flight ground operations conducted in preparation for flight is in the public interest and will not jeopardize public health and safety, safety of property, and national security and foreign policy interests of the United States.

FOR FURTHER INFORMATION CONTACT: Ms. Carole Flores, Manager, Licensing and

Safety Division, Office of the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington, DC 20591, (202) 385–4701.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration (FAA) licenses the launch of a launch vehicle, reentry of a reentry vehicle, and the operation of a launch or reentry site under authority granted to the Secretary of Transportation in the Commercial Space Launch Act of 1984, as amended (CSLA), codified in 49 U.S.C. Subtitle IX, chapter 701, and delegated to the FAA Administrator. Licensing authority under the CSLA is carried out by the Associate Administrator for Commercial Space Transportation.

On April 1, 2004, AST issued a mission-specific reusable launch vehicle (RLV) mission license to Scaled Composites, LLC (Scaled Composites). The license, LRLS 04–067, was issued in accordance with licensing requirements under 14 CFR part 431. The license authorizes Scaled Composites to conduct up to six manned suborbital RLV missions from and within controlled airspace near Mojave, California. It is valid for up to one year or until the authorized missions are completed, whichever occurs first. As of the date of this notice, Scaled Composites has conducted three RLV missions under the license using its SpaceShipOne launch vehicle.

SpaceShipOne is an air-launched, winged, hybrid rocket-powered, horizontal landing suborbital rocket. It is carried aloft using a carrier aircraft, known as the White Knight. The White Knight is operated solely under an Experimental Airworthiness Certificate (EAC). SpaceShipOne is operated under both a launch license and an EAC simultaneously.

SpaceShipOne and the White Knight are housed and prepared for flight at Mojave Airport. During a nominal mission, the White Knight takes off from a runway at Mojave Airport with SpaceShipOne under captive carriage. The White Knight flies to an altitude of about 50,000 feet, releases the SpaceShipOne launch vehicle, and then returns to the Mojave Airport. Upon release, SpaceShipOne glides for several seconds before its pilot ignites its rocket motor. SpaceShipOne flies to an altitude as high as 100 kilometers on a suborbital trajectory. Upon completion of its suborbital flight, SpaceShipOne lands back at Mojave Airport.

Under Scaled Composites' license, the launch begins upon rocket motor ignition of SpaceShipOne. By beginning the launch, and thus the license, at rocket motor ignition, captive carry operations and SpaceShipOne free flight prior to rocket motor ignition are not covered by the license.

AST's licensing authority derives from the CSLA, which states that a license is required ''to launch a launch vehicle.'' 49 U.S.C. 70104(a). Accordingly, the definition of ''launch'' controls the scope of a launch license. By statute, for a suborbital RLV, ''launch'' means to place or try to place a launch vehicle in a suborbital trajectory, and includes activities involved in the preparation of a launch vehicle or payload for launch, when those activities take place at a launch site in the United States. 49 U.S.C. 70102(3). By regulation, licensed pre-flight activities begin with the arrival of a launch vehicle or payload at a U.S. launch site. 14 CFR 401.5.

On June 17, 2004, the FAA granted the East Kern Airport District (EKAD) a launch site operator license, LSO 04–009, authorizing EKAD to operate a launch site at the Mojave Airport. Because the Mojave Airport is now a licensed launch site, the statutory and regulatory definition of launch requires Scaled Composites' pre-flight ground operations to be authorized by a launch license, unless waived by the FAA.

Waiver Criteria

The CSLA allows the FAA to waive the requirement to obtain a license for an individual license applicant if the Administrator decides that the waiver is in the public interest and will not jeopardize public health and safety, safety of property, and national security and foreign policy interests of the United States. 49 U.S.C. 70105(b)(3).

For reasons described below, the FAA has waived the requirement for Scaled Composites to obtain a launch license for its pre-flight preparatory ground operations at the Mojave Airport.

In deciding whether or not to waive the requirement to obtain a license for pre-flight ground operations, the FAA must analyze whether the waiver: (1) Is in the public interest; (2) will not jeopardize public health and safety or safety of property; and (3) will not jeopardize national security and foreign policy interests of the United States.

For the first two items, the FAA utilizes a four-prong test, discussed below. For the last item, the FAA looks at any aspects of the proposal that may have national security or foreign policy implications.

Four-Prong Test

The four-prong test used by the FAA was originally espoused by the House Science Committee in 1995, as guidance to the FAA to assist it in defining a ''launch'' for purposes of exercising licensing jurisdiction under the CSLA. H.R. Rep. No. 233, 104th Cong., 1st Sess., at 60 (1995). The guidance acknowledged that there are pre-flight activities that may properly be regulated as part of a ''launch,'' because they:

1. Are closely proximate in time to ignition or lift-off,
2. Entail critical steps preparatory to initiating flight,
3. Are unique to space launch, and
4. Are inherently so hazardous as to warrant AST's regulatory oversight under 49 U.S.C. chapter 701.

This test, as modified by the House Science Committee in 1997, was used as the basis for a statutory change in the definition of the term ''launch'' in the Commercial Space Act of 1998. Public Law 105–303, 112 Stat. 2843 (1998), 49 U.S.C. 70102(3). In that Act, Congress revised the definition of launch to include activities ''involved in the preparation of a launch vehicle or payload for launch, when those activities take place at a launch site in the United States.''

Although the four-prong test is not a statutory or regulatory requirement, the FAA believes that it provides a rational approach to determining whether licensing of pre-flight activity may be waived, consistent with the CSLA, as it provided the rationale for including preparatory activities in the ''launch'' definition enacted by Congress in 1998.

The test is particularly useful for suborbital RLVs. As noted above, under the Commercial Space Transportation regulations, the term launch includes pre-flight ground operations beginning with the arrival of a launch vehicle or payload at a U.S. launch site for purposes of preparing for flight. The 1999 final rule that first promulgated that definition explained that in drawing a bright line, that is, beginning with the arrival of a launch vehicle or payload at a U.S. launch site for purposes of preparing for flight, the FAA reviewed common launch practices for the range of vehicles then subject to licensing (all expendable launch vehicles) and noted that the vehicles studied share similar pre-flight processing operations with a similar likelihood of mishap. As a general rule, those hazardous operations begin shortly after arrival of the launch vehicle at a U.S. launch site. 64 FR 19592. The RLV mission licensing regulations issued in 2000, utilized a

comparable bright line for determining when a license is required; however, in doing so, the agency noted that it was doing so for consistency and in the belief that processing hazards for RLVs would be comparable to those associated with expendable launch vehicle processing activities. 65 FR at 56679. However, since that rulemaking, a number of new vehicles have been proposed for licensing that do not use conventional expendable launch vehicle technology, such as hybrid RLVs.

Applying the four prong test, if pre-flight operations do not qualify for licensing under the four-prong test, a waiver may be in the public interest because the CSLA advises the agency to streamline licensing and regulate only to the extent necessary to safeguard U.S. interests, including public safety, a key outcome of the four-prong test. There should not be any public safety or safety of property concerns if licensing authority is waived because hazards are addressed in applying the four-prong test.

The Four-Prong Test Applied To SpaceShipOne Pre-flight Ground Operations

Certain SpaceShipOne pre-flight preparatory activities conducted at Mojave Airport meet the first three prongs of the four-prong test. That is, certain pre-flight ground operations are closely proximate in time to ignition or lift-off, entail critical steps preparatory to initiating flight, and are unique to space launch. For example, the preparation of the rocket motor and reaction control systems for flight would meet these criteria.

However, no pre-flight ground operations conducted by Scaled Composites in preparing SpaceShipOne for flight meet the fourth prong of the four-prong test. That is, no pre-flight ground operation is inherently so hazardous as to warrant AST's regulatory oversight under 49 U.S.C. Chapter 701.

SpaceShipOne pre-flight ground operations pose negligible risk to the public due to the vehicle's small size and selected propellants. The SpaceShipOne main propulsion system is a hybrid rocket motor that uses non-toxic, storable propellants—nitrous oxide (N_2O) as the oxidizer and Hydroxyl Terminated Polybutadiene (HTPB) as the fuel. The motor is not explosive and is extremely difficult to ignite accidentally. SpaceShipOne's other propulsion system, its reaction control system, uses only dry air.

SpaceShipOne presents no solid rocket motor handling or processing risks such as fire, explosion, debris, or unintended motor stage flight. Nor does it present any liquid propellant hazards such as toxicity or vapor cloud explosions. Although high-pressure gas and other industrial hazards may exist, those hazards have limited reach, and should not extend to the public at Mojave Airport.

National Security and Foreign Policy Implications of SpaceShipOne Pre-flight Ground Operations

The FAA evaluation conducted in support of Scaled Composites' license (LRLS 04–067) concluded that there are no issues relating to U.S. national security or foreign policy interests that would require the FAA to prevent launches of SpaceShipOne. Pre-flight ground operations conducted at the Mojave Airport have no effects outside of the airport facilities that are used by Scaled Composites. Thus, there are no national security or foreign policy issues associated with pre-flight preparatory ground operations.

Summary and Conclusion

A waiver is in the public interest because it accomplishes the goals of the CSLA and avoids unnecessary regulation. The waiver will not jeopardize public health and safety or safety of property because pre-flight preparatory activities for SpaceShipOne conducted at the Mojave Airport are benign to the public. A waiver will not jeopardize national security and foreign policy interests of the United States.

For the foregoing reasons, the FAA has waived the requirement for Scaled Composites to obtain a launch license covering SpaceShipOne pre-flight preparatory activities conducted at the Mojave Airport.

Issued in Washington, DC, on August 2, 2004.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 04–18200 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–63]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice 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 dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, 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 August 3, 2004.

Anthony F. Fazio

Director, Office of Rulemaking.

Dispositions of Petitions

Docket No.: FAA–2002–11933.

Petitioner: ExpressJet Airlines d.b.a. Continental Express Airlines.

Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/Disposition: To permit ExpressJet Airlines, d.b.a. Continental Express Airlines to substitute a qualified and authorized check airman for a Federal Aviation Administration inspector to observe a qualifying pilot in command (PIC) perform prescribed duties during at least one flight leg that includes a takeoff and a landing when that PIC is completing initial or upgrade training as specified in § 121.424.

Grant, 7/27/2004, Exemption No. 6798B.

Docket No.: FAA–2004–18649.

Petitioner: Tower Aviation Services, LLC.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit Tower Aviation Services, LLC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 7/23/2004, Exemption No. 8364.

Docket No.: FAA–2000–8462.

Petitioner: National Warplane Museum, d.b.a. Wings of Eagles.

Section of 14 CFR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).

Description of Relief Sought/Disposition: To permit the National Warplane Museum, d.b.a. Wings of Eagles (Wings) to carry passengers on local flights for compensation or hire in its limited category Boeing B–17 aircraft, Serial No. 4483563, in support

of the Wings' fundraising efforts, subject to certain conditions and limitations.

Grant, 7/23/2004, Exemption No. 8363.

Docket No.: FAA–2003–15115.

Petitioner: Martinaire, Inc.

Section of 14 CFR Affected: 14 CFR 135.105(c)(1).

Description of Relief Sought/ Disposition: To permit Martinaire, Inc., to carry passengers, specifically certified airmen employed by other airlines, on board their aircraft with a 2-axis autopilot installed and operating.

Denial, 7/22/2004, Exemption No. 8362.

Docket No.: FAA–2003–16836.

Petitioner: John R. Deakin.

Section of 14 CFR Affected: 14 CFR 91.109(a).

Description of Relief Sought/ Disposition: To permit Mr. John R. Deakin to conduct flight instruction to meet the flight review and recent experience requirements in Bonanza, Debonair, Baron, and Travel Air aircraft equipped with a single functioning throwover control wheel in place of fixed dual controls, subject to certain conditions and limitations.

Grant, 7/22/2004, Exemption No. 8361.

Docket No.: FAA–2003–15795.

Petitioner: Mr. Terry Lee Claussen.

Section of 14 CFR Affected: 14 CFR 67.113(a).

Description of Relief Sought/ Disposition: To permit Mr. Terry Lee Claussen to obtain a first-class airman medical certificate while he requires insulin treatment for the control of diabetes mellitus.

Denial, 7/22/2004, Exemption No. 8360.

Docket No.: FAA–2003–16714.

Petitioner: Ward Air, Inc.

Section of 14 CFR Affected: 14 CFR 135.203(a)(1).

Description of Relief Sought/ Disposition: To permit Ward Air, Inc., an amendment to Exemption No. 8295 that would change the airspace defined by latitude and longitude listed in condition and limitation No. 1.

Grant, 7/14/2004, Exemption No. 8295A.

Docket No.: FAA–2000–8425.

Petitioner: Aero Sports Connection, Inc.

Section of 14 CFR Affected: 14 CFR 103.1(a) and (e).

Description of Relief Sought/ Disposition: To permit individuals authorized by Aero Sports Connection, Inc., to give instruction in two-place powered ultralight vehicles that have a maximum empty weight of 496 pounds, have a maximum fuel capacity of 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed.

Grant, 7/27/2004, Exemption No. 6080G.

Docket No.: FAA–2001–9976.

Petitioner: United States Ultralight Association, Inc.

Section of 14 CFR Affected: 14 CFR 103.1(a) and (e).

Description of Relief Sought/ Disposition: To permit individuals authorized by the United States Ultralight Association, Inc., to give instruction in two-place powered ultralight vehicles that have a maximum empty weight of no more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed, subject to specific conditions and limitations.

Grant, 7/27/2004, Exemption No. 4274L.

Docket No.: FAA–2001–8939.

Petitioner: Experimental Aircraft Association, Inc.

Section of 14 CFR Affected: 14 CFR 103.1(a) and (e).

Description of Relief Sought/ Disposition: To permit individuals authorized by the Experimental Aviation Association, Inc., to give instruction in powered ultralights that have a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed.

Grant, 7/27/2004, Exemption No. 3784M.

Docket No.: FAA–2004–18599.

Petitioner: Hawk Eye Aerial.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Hawk Eye Aerial to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 7/23/2004, Exemption No. 8365.

[FR Doc. 04–18210 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 2004, there were 13 applications approved. This notice also includes information on three applications, approved in May 2004, inadvertently left off the May 2004 notice. Additionally, eight approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Burbank-Glendale-Pasadena Airport Authority, Burbank, California.

Application Number: 04–06–C–BUR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $4,417,000.

Earliest Charge Effective Date: March 1, 2010.

Estimated Charge Expiration Date: July 1, 2010.

Class of Air Carriers not Required to Collect PFC's: Nonscheduled/demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bob Hope Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Aircraft rescue and firefighting truck.

Engineered material arresting system.

Runway protection zone land acquisition.

Luther Burbank Middle School acoustical treatment.

Hangar 3 obstruction removal.

Runway/service road rehabilitation.

Airfield lighting rehabilitation.

Brief Description of Projects Approved for Collection and Use at a #$3.00 PFC Level:

Friction measuring device.
Terminal road paving.
Brief Description of Disapproved Project: Noise map geographic information system database.
Determination: As a stand-alone project, this geographic information system does not meet the requirements of § 158.15(a) and /or § 158.17(b).
Decision Date: May 27, 2004.
Fro Further Information Contact: Ruben Cabalbag, Western Pacific Region Airports Division, (310) 725–3621.

Public Agency: City of Fort Collins and City of Loveland, Colorado.
Application Number: 04–03–C–00–FNL.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $75,778.
Earliest Charge Effective Date: August 1, 2004.
Estimated Charge Expiration Date: October 1, 2005.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
South ramp rehabilitation.
Snow removal equipment building design.
Master plan.
Decision Date: May 28, 2004.
For Further Information Contact: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Jackson County Airport Authority, Medford, Oregon.
Application Number: 04–09–C–00–MFR.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $27,542,553.
Earliest Charge Effective Date: September 1, 2004.
Estimated Charge Expiration Date: August 1, 2025.
Class of Air Carriers Not Required to Collect PFC's:
Operations by air taxi/commercial operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25-mile radius of the airport.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Rogue Valley International—Medford Airport.
Brief Description of Projects Approved for Collection and Use:
Terminal building and area.
Taxiways B, B2 and B3 rehabilitation.
Decision Date: May 28, 2004.
For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: City of La Crosse, Wisconsin.
Application Number: 04–07–C–00–LSE.
Application type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $1,513,997.
Earliest Charge Effective Date: May 1, 2005.
Estimated Charge Expiration Date: December 1, 2008.
Classes of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Reconstruct taxiway B and east apron.
Airfield electrical improvements.
Aircraft rescue and firefighting truck.
Acquire snow removal equipment.
Taxiways G, H, and F reconstruction.
PFC administration.
Decision Date: June 1, 2004.
For Further Information Contact: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: City of Des Moines, Iowa.
Application Number: 03–06–C–00–DSM.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $8,543,039.
Earliest Charge Effective Date: March 1, 2005.
Estimated Charge Expiration Date: April 1, 2008.
Classes of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Des Moines International Airport.
Brief Description of Projects Approved for Collection and Use:
Glycol tank storage area.
Passenger loading bridges.
Passenger terminal fire suppression system.
Passenger terminal stern expansion.
Passenger terminal paging system.
Decision Date: June 10, 2004.
For Further Information Contact: Nicoletta S. Oliver, Central Region Airports Division, (816) 329–2642.

Public Agency: City of Presque Isle, Maine.
Application Number: 04–01–C–00–PQI.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $245,893.
Earliest Charge Effective Date: September 1, 2004.
Estimated Charge Expiration Date: September 1, 2007.
Class of Air Carriers Not Required to Collect PFC'S: Non-scheduled/on-demand air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Northern Maine Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Airport master plan.
PFC application.
Design only for rehabilitation of taxiway C.
Design only for rehabilitation of a portion of taxiway N.
Design only for rehabilitation and expansion of main terminal apron.
Design only for rehabilitation of taxiways A and B intersection.
Preparation of Mained Department of Environmental Protection site location permit application.
Design only for rehabilitation of runway 1/19.
Design only for improvements to runway safety areas.
Design only for replacement of high intensity runway lights.
Rehabilitation of taxiway C.
Rehabilitation of a portion of taxiway N.
Rehabilitation and expansion of main terminal apron.
Rehabilitation of taxiways A and B intersection.
Acquire snow removal equipment.
Acquire aircraft rescue and firefighting vehicle.
Acquisition of snow removal equipment to include one wheeled loader and one 10-wheel dump truck with dump body.
Installation of airfield signs.
Installation of communications equipment.
Acquire property interest in approach to runway 19 and remove obstructions.
Construct terminal ramp improvements.
Construct ramp equipment storage building.
Construct aircraft rescue and firefighting and snow removal equipment building.

Airport sign and guidance system plan.

Decision Date: June 10, 2004.

For Further Information Contact: Priscillar Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Hualapai Indian Tribe, Peach Springs, Arizona.

Application Number: 04–01–C–00–1G4.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $308,210.

Earliest Charge Effective Date: September 1, 2004.

Estimated Charge Expiration Date: September 1, 2006.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Design and reconstruct the primary runway.

Design and construct parallel taxiway and associated connector taxiways.

Design and construct aircraft parking apron.

Design and construct access road.

Design new terminal building including utilities.

Decision Date: June 14, 2004.

For Further Information Contact: Mickael Agaibi, Wester Pacific Region Airports Division, (310) 725–3611.

Public Agency: Gunnison County, Gunnison, Colorado.

Application Number: 04–04–C–00–GUC.

Apllication Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,278,137.

Earliest Charge Effective Date: September 1, 2004.

Estimated Charge Expiration Date: June 1, 2014.

Classes of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Runway rehabilitation and shift.

Gold Basin Road relocation.

Taxiway rehabilitation.

Construct aircraft resue and firefighting/snow removal equipment building.

Acquire snow removal equipment.

Terminal area study/terminal design.

Security enhancement.

Decision Date: June 17, 2004.

For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: State of Hawaii.

Applications Number: 04–01–C–00–HNL; 04–01–C–00–OGG; 04–01–C–KOA; and 04–01–C–00–LIH.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $42,632,466 ($32,296,466 at Honolulu International Airport (HNL); $8,950,000 at Kahalui Airport (OGG); $1,065,000 at Kona International at Keahole Airport (KOA); and $321,000 at Lihue Airport (LIH)).

Earliest Charge Effective Date at Each Airport: October 1, 2004.

Estimated Charge Expiration Date at Each Airport: February 1, 2007.

Classes of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection at HNL, OGG, KOA, and LIH and Use at HNL:

Flight information display and public address system improvements.

Air conditioning system improvements.

Environmental compliance measures (south ramp)

Brief Description of Projects Approved for Collection at HNL, OGG, KOA, and LIH and Use at OGG:

Runway safety area improvements.

Perimeter road improvements and fencing.

Brief Description of Project Approved for Collection at HNL, OGG, KOA, and LIH and Use at KOA: Perimeter road improvements, fencing, and general aviation apron lighting.

Brief Description of Projects Approved for Collection at HNL, OGG, KOA, and LIH and Use at LIH: Perimeter road improvements and fencing.

Decision Date: June 17, 2004.

For Further Information Contact: Steven Y. Wong, Honolulu airports District Office, (808) 541–1225.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 04–16–C–00–ORD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $37,000,000.

Earliest Charge Effective Date: April 1, 2018

Estimated Charge Expiration Date: September 1, 2018.

Classes of Air Carriers Not Required to Collect PFC'S: Air taxi.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport.

Brief Description of Projects Approved for Collection and Use:

2004 residential insulation.

2004 school insulation.

Decision Date: June 17, 2004.

For Further Information Contact: Thomas E. Salaman, Chicago Airports District Office, (847) 294–7436.

Public Agency: City of Rhinelander and Qneida County, Rhinelander, Wisconsin.

Application Number: 04–08–C–00–RHI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $200,936.

Earliest Charge Effective Date: January 1, 2005.

Estimated Charge Expiration Date: April 1, 2006.

Classes of Air Carriers Not Required to Collect PFC'S: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Rhinelander-Qneida County Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire snow removal equipment.

Replace aircraft rescue and firefighting building overhead door.

Painting/marking runway 9/27.

Wildlife fencing, habitat modification, and bird hazard reduction equipment.

Environmental assessment of parallel taxiway for runway 15/33.

Land acquisition.

Master planning updates.

Replace airport beacon.

Design reconstruction of runway 15/33.

Reconstruction of runway 15/33.

Replace runway end identifier lights on runway 15.

Design and reconstruction/construction of general aviation apron and taxiway.

PFC administration.

Decision Date: June 18, 2004.

For Further Information Contact: Daniel J. Millenacker, Minneapolis Airports District Office, (612) 713–4350.

Public Agency: Central West Virginia Regional Airport Authority, Charleston, West Virginia.

Application Number: 04–10–U–00–CRW.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $912,500.

Charge Effective Date: August 1, 2002.

Estimated Charge Expiration Date: April 1, 2003.

Class of Air Carriers Not Required to Collect PFC'S: No change from previous decision.

Brief Description of Projects Approved for Use: Runway safety area enhancement—taxiway A relocation.

Decision Date: June 21, 2004.

For Further Information Contact: Larry F. Clark, Beckley Airports District Office, (304) 252–6216.

Public Agency: Lawton Metropolitan Area Airport Authority, Lawton, Oklahoma.

Application Number: 04–04–C–00–LAW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $253,021.

Earliest Charge Effective Date: September 1, 2004.

Estimated Charge Expiration Date: September 1, 2007.

Classes of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Lawton-Fort Sill Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate taxiways A, D, E, and F.

Construct engine run-up apron.

Rehabilitate taxiway lighting.

Install runway end identifier lights on runway 35.

Rehabilitate taxiway F.

Rehabilitate aprons.

Construct building.

Decision Date: June 22, 2004.

For Further Information Contact: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Raleigh-Durham Airport Authority, Raleigh, North Carolina.

Application Number: 04–02–C–00–RDU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $595,223,253.

Earliest Charge Effective Date: September 1, 2008.

Estimated Charge Expiration Date: July 1, 2032.

Classes of Air Carriers Not Required to Collect PFC's: Non-scheduled/on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Raleigh-Durham International Airport.

Brief Description of Project Approved for Collection and Use at a $4.50 Level: Terminal C renovation and expansion.

Brief Description of Project Approved for Collection and Use at a $3.00 Level: PFC application development.

Decision Date: June 25, 2004.

For Further Information Contact: Tracie D. Kleine, Atlanta Airports District Office, (404) 305–7148.

Public Agency: Chautauqua County, Jamestown, New York.

Application Number: 04–04–C–00–JHW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $200,112.

Earliest Charge Effective Date: September 1, 2004.

Estimated Charge Expiration Date: July 1, 2009.

Classes of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chautauqua County/Jamestown Airport.

Brief Description of Projects Approved for Collection and Use:

Runway 7/25 lighting rehabilitation.

Rehabilitate general aviation apron.

Security improvements.

Runway 13/31 partial parallel taxiway.

Preparation of PFC application.

Decision Date: June 30, 2004

For Further Information Contact: Philip Brito, New York Airports District Office, (516) 227–3800.

Public Agency: Monroe County, Rochester, New York.

Application Number: 04–03–C–00–ROC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $40,310,360.

Earliest Charge Effective Date: September 1, 2004.

Estimated Charge Expiration Date: September 1, 2013.

Classes of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Terminal modifications for baggage screening.

Aircraft rescue and firefighting equipment.

Snow removal equipment.

Taxiway A construction.

Terminal improvements.

Decision Date: June 30, 2004.

For Further Information Contact: Philip Brito, New York Airports District Office, (516) 227-3800.

Amendments to PFC Approvals

Amendment No./city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
03–07–C–01–RNO, Reno, NV	05/27/04	$16,866,097	$9,526,597	11/01/05	12/01/04
*92–01–I–03–MAF, Midland, TX	06/03/04	35,873,495	35,873,495	07/01/16	05/01/16
94–02–U–02–MAF, Midland, TX	06/03/04	NA	NA	07/01/16	05/01/16
01–03–C–03–LFT, Lafayette, LA	06/04/04	2,668,000	2,973,702	07/01/04	01/01/05
97–03–C–04–DTW, Detroit, MI	06/07/04	54,967,000	54,967,000	10/01/29	02/01/27
00–04–C–01–DTW, Detroit, MI	06/07/04	203,207,000	213,340,000	10/01/31	09/01/29
93–01–C–07–IAD, Chantilly, VA	06/23/04	225,967,400	221,916,682	01/01/04	04/01/04
98–02–C–01–ROC, Rochester, NY	06/30/04	10,778,889	11,078,889	08/01/04	09/01/04

Note: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Midland, TX, this change is effective on September 1, 2004.

Issued in Washington, DC, on August 3, 2004.

JoAnn Horne,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 04–18201 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2004–18604]

Agency Information Collection Activities; Request for Comments; Clearance of a New Information Collection; Freight Planning Noteworthy Practices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to conduct a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 12, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2004–XXXXX by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–000.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Public Comments Invited: You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

SUPPLEMENTARY INFORMATION:

Title: Freight Planning Noteworthy Practices.

Background: The FHWA plans to update its Freight Planning Web site by adding a new feature that will collect information and photographs about freight planning activities from the FHWA public sector partners. This information will be reviewed by the FHWA on a monthly basis to determine which project will be posted on the Web site as an informational and educational tool for the FHWA's public sector audiences, which are engaged in freight planning activities and/or are just beginning to develop freight planning activities. Freight planning agencies will provide a description of case studies on Freight Planning and Implementation, which can include plans or project, or both.

Respondents: 60 State Transportation Departments, including Metropolitan Planning Organizations, and local governments.

Frequency: On-going basis.

Estimated Total Annual Burden: 60 hours. It is estimated that each freight-planning agency spends one hour to prepare and provide this information to the FHWA.

FOR FURTHER INFORMATION CONTACT: Ms. Eloise Freeman-Powell, (202) 366–2068, Office of Planning, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 29, 2004.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 04–18192 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2004–18479]

Nationwide Waiver of Buy America Requirements for Green Wire/Rod

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FHWA is soliciting comments on a proposed nationwide waiver of the Buy America requirements for Green Wire/Rod. Specifically, based on comments received from the National Steel Bridge Alliance (NSBA) and Lincoln Electric Company, the FHWA has reason to believe that the supply from domestic sources of hot drawn mild steel randomly rolled into coils (commonly referred to as ''green wire/rod'') that can be used in the manufacturing of filler metal wire/electrode (filler metal) is not adequate to permit full compliance with the Buy America requirements.

DATE: Comments must be received on or before October 12, 2004.

ADDRESSES: 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, or submit electronically at *http://dms.dot.gov/submit,* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Balis, (202) 493–7302, Office of Program Administration, HIPA, or Mr. Michael Harkins, Office of the Chief Counsel, HCC–30, (202) 366–4928. 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 and Filing: You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

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

Background

The ''Buy America'' requirements outlined in section 165 of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97–424; 96 Stat. 2097, 2136–2137, as amended, and the regulations implementing this section require that any iron or steel product that is permanently incorporated into a federally-aided highway construction project must be domestically manufactured. See 23 CFR 635.

Section 165(b)(2) of the STAA allows the Secretary of Transportation to grant a waiver of this requirement if such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The Secretary has delegated this authority to the Federal Highway Administrator (49 CFR 1.48(c)(19)).

The manufacturing process for an iron or steel product includes any process that modifies a product's chemical content, physical size or shape. Under the current regulations, welding is considered a manufacturing process and therefore must be done domestically. In addition, the manufacture of the filler metals themselves are subject to Buy America, since they consist of ferrous materials that will, as a result of the welding process, become an integral part of the structural element to be permanently incorporated into the project. The filler metals can consist of a variety of raw materials, such as green wire/rod, strip, minerals, various alloys, and other chemicals. Although the FHWA has exempted raw materials from Buy America coverage (48 FR 53099), materials that undergo a process that alters their chemical content or physical size and shape are subject to Buy America's application.[1] Since green wire/rod must undergo such a process before shipment to a welding manufacturer for further processing into filler metal, green wire/rod is subject to Buy America.

Recently, the NSBA and Lincoln Electric Company notified the FHWA that green wire/rod with the specific chemistry suitable for use in filler metal is no longer being produced domestically. Also, according to the NSBA, filler metal generally only comprises 0.3 percent to 0.5 percent of typical steel fabrication costs, and 0.04 percent to 0.06 percent of typical total project costs. Thus, considered alone, the cost of green wire/rod in filler metal would typically fall well below the minimal use percentage, which is $2500 or one-tenth of one percent of the total contract cost, whichever is greater (23 CFR 635.410(b)).

However, whenever the filler metal's cost is viewed in conjunction with the costs of other incidental items, such as nuts and bolts, a contractor might risk exceeding the minimal use percentage allowance. Therefore, the FHWA is considering a nationwide waiver of the Buy America requirements for green wire/rod used on Federal-aid highway construction projects. This notice solicits comments on the potential impact of such a waiver.

[1] The FHWA discussed its decision to exempt raw materials from the Buy America requirements in the preamble of the final rule amending 23 CFR 635.410, published in the **Federal Register** on November 25, 1983, at 48 FR 53099. In addition, due to insufficient domestic supply, FHWA issued a nationwide waiver for pig iron and processed, palletized and reduced iron ores through the **Federal Register** at 60 FR 15478.

Description of Proposed Action

The basis for this proposed nationwide waiver is that green wire/rod with the specific chemistry suitable for use in filler metal is not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality (*see* section 165(b)(2) of the STAA). Therefore, imposing Buy America requirements on these materials is not in the public interest. The FHWA is requesting comments on this proposed nationwide waiver and the availability of a domestic supply of the materials included in the proposed waiver.

Authority: Sec. 165 of Public Law 97–424, 96 Stat. 2097, 2136–2137, as amended by Public Law 98–229; 98 Stat. 55, and 105 Stat. 1914, 1933; 49 CFR 1.48(c)(19); 23 CFR 635.410.

Issued on: August 3, 2004.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 04–18207 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: In the Vicinity of Holy Cross and Crooked Creek, Alaska

AGENCY: Federal Highway Administration (FHWA), Alaska Department of Transportation and Public Facilities (ADOT&PF), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed Yukon-Kuskokwim (Y–K) Road Project in the vicinity of Holy Cross and Crooked Creek, Alaska.

FOR FURTHER INFORMATION CONTACT: Tim Haugh, Environment/Right-of-Way Programs Manager, Federal Highway Administration, P.O. Box 21648, Juneau, Alaska 99802, (907) 586–7430 or Patricia D. Miller, P.E., Project Manager, Alaska Department of Transportation and Public Facilities, Preconstruction Section, 2310 Peger Road, Fairbanks, Alaska 99709–5399, (907) 455–2275.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF) will prepare an EIS on a proposal to build a road connecting the Yukon River in the vicinity of the community of Holy Cross, Alaska, with the Kuskokwim

River in the vicinity of the community of Crooked Creed, Alaska, a distance of about 90 miles.

The proposed project would develop a road connecting a dock on the Yukon River in the vicinity of the community of Holy Cross with a dock on the Kuskokwim River in the vicinity of the community of Crooked Creek. This proposed corridor would provide road access to inland areas between these two rivers, connect waterway routes, and enhance the movement of freight and fuel. Road Access connecting the neighboring communities along the rivers will also provide access to adjacent resource development in the area.

Alternatives have yet to be developed for the project. The No-build alternative will remain a viable alternative throughout the EIS process. The proposed Y–K Road Project is considered necessary to: meet the intent of the Northwest Alaska Transportation Plan; to provide access to resource development between the Yukon and Kuskokwim Rivers; and to provide road access to areas north of the Kuskokowim River and east of the Yukon River.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of agency and public meetings will be held in Holy Cross, Crooked Creek and other nearby communities throughout the EIS study process. In addition, public hearings will be held after approval of the draft EIS. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment prior to the public hearings. A formal agency scoping meeting is planned for Anchorage, Alaska, on August 27, 2004, and public scoping meetings are planned for Crooked Creek and Holy Cross, Alaska on August 25 and August 26, 2004, respectively.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or ADOT&PF at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Dated: Issued on: August 4, 2004.

David C. Miller,

Division Administration Juneau, Alaska.

[FR Doc. 04–18240 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Union Pacific Railroad

[Docket Number FRA–2004–18746]

The Union Pacific Railroad seeks a waiver of compliance from the requirements of Title 49 Code of Federal Regulations (CFR) § 232.205 Class I Brake Test—Initial terminal inspection, 232.409—Inspection and testing of end-of-train devices, 215.13 Pre-departure Inspection, and 229.21 Locomotive daily inspection. This waiver is necessary to allow tests and inspections conducted in Mexico by the Transportacion Ferroviaria Mexicana (TFM) to be considered valid for run-through trains interchanged with the Union Pacific at the Laredo, Texas Gateway. These trains are assembled in Mexico and receive a Class I airbrake and pre-departure inspections in Mexico at the TFM yard at Nuevo Laredo. Under current conditions, these trains operate only a few miles before receiving another Class I Brake Test and mechanical inspection in the United States. By granting this wavier, approximately five hours would be saved per run-through train and would greatly reduce congestion at the Laredo Gateway.

The parties to this waiver request are the Union Pacific Railroad, Transportacion Ferroviaria Mexicana (TFM) and the Texas Mexican Railway (Tex Mex). TFM would perform the Initial Terminal Tests and Inspections to the standards prescribed by Title 49 CFR Parts 215, 232, and 229. The Union Pacific would then operate the trains into the interior of the United States. Tex Mex would maintain all records required by applicable regulations for ready access on the U.S. side of the border. In addition, TFM has provided written consent to inspection of their facilities and to their personnel involved with performing the tests and inspections.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2004–18746) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room Pl–401 (Plaza Level), 400 Seventh Street SW., Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on August 2, 2004.

Michael Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 04–18197 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Wallowa Union Railroad (WURR)

[Waiver Petition Docket Number FRA–2004–18494]

Wallowa Union Railroad seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR Part 223, which requires certified glazing in all windows. The railroad operates an excursion train that consists of trips ranging from five miles to sixty miles and mainly runs through pastures or river canyons. Speeds are approximately 10 mph; however, there is a relatively straight section of track between MP 57 and MP 83 that is operated at 15 mph. The largest town that the railroad runs through has a population of 2,020 with the county having a population of just over 7,000. Two of the total sixty-three miles of track are located within the largest town. The most frequently used public grade crossing has an ADT of 3,250.

This request is for one locomotive, specifically locomotive number WURR 1120, which was originally purchased from the Idaho Northern and Pacific Railroad in May, 2003. The engine was built by Pullman, standard in 1947 and has no glazing material in the side facing windows. The company claims that the railroad is located in rural Northeastern Oregon with very limited access to the line outside of the railroad itself.

The railroad also requests that two locomotives, the above mentioned WURR 1120 as well as WURR 2636, both built in 1947, be classified as antiquated equipment that is used only for excursion purposes per 49 CFR 223.3 (b)3.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2004–18494) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on August 2, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–18198 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2004–18644

Applicant: New Jersey Transit, Mr. William B. Duggan, Vice President and General Manager, Rail Operations, One Penn Plaza East, Newark, New Jersey 07105–2246.

New Jersey Transit (NJT) seeks temporary relief from the requirements of Part 236, Section 236.566, of the Rules, Standard and Instructions, to the extent that NJT be permitted to operate non-equipped, New York Susquehanna and Western (NYS&W) steam locomotive Number 142, in automatic train control territory on NJT's Raritan Valley Line, between milepost 18.2, near Cranford, New Jersey and milepost 52.2, at High Bridge, New Jersey. The relief is requested for Saturday and Sunday, September 18 and 19, 2004, in celebration of the ''Dunellen Railroad Days'' event for the City of Dunellen, New Jersey, and for Saturday and Sunday, October 2 and 3, 2004, in celebration an event for the City of Westfield, New Jersey.

Applicant's justification for relief: The three NJT lines are equipped with automatic block signals and operate under NORAC Rules 251 and 261, and the steam excursion train movements for each event would be limited to no more than four trips daily, would not exceed 50 mph, and would establish an absolute block ahead of each movement.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001.

Communications received within 30 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all

comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on August 2, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–18196 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

St. Lawrence & Atlantic Railroad, Quebec, Inc.

[Docket Number FRA–2001–11068]

The St. Lawrence & Atlantic Railroad, Quebec, Inc. has petitioned for a permanent waiver of compliance from the requirements of the Control of Alcohol and Drug Use, 49 CFR part 219, final rule effective June 11, 2004, on the expanded application of FRA alcohol and drug rules to its 6 to 8 foreign-railroad foreign-based employees who perform train service duties in the United States. Part 219 is FRA's alcohol and drug regulation that governs prohibitions, post-accident testing, testing for cause, identification of troubled employees, pre-employment testing, and random testing. The petitioner states that the United States operations of the railroad are only five miles longer than the ten-mile limit specified in the amended part 219 and that there are no affordable means of conducting random alcohol and drug testings in Island Pond, Vermont. The railroad, a Genesee & Wyoming Company is headquartered in Auburn, Maine. Train crews based in Richmond, Quebec cross the United States border at Norton, Vermont and proceed 15 miles into the United States to Island Pond, Vermont.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2001–11068) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

Issued in Washington, DC, on August 3, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–18194 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory 2004–02

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory.

SUMMARY: The Federal Railroad Administration (FRA) is issuing Safety Advisory 2004–02 to address the importance of having clear safety and response procedures for use in the event of reports of railroad signal system problems.

FOR FURTHER INFORMATION CONTACT: Mark Jones, Signal and Train Control Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, SW., Washington, DC 20590 (telephone 202–493–6232; e-mail: *mark.jones@fra.dot.gov*) or Cynthia Walters, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6064; e-mail: *cynthia.walters@fra.dot.gov*).

SUPPLEMENTARY INFORMATION:

Background: The National Transportation Safety Board (NTSB) and FRA conducted an investigation following a major train derailment. The conclusions of this investigation and the report issued by the NTSB, RAR–03/05, provide the underlying basis for the recommendations issued in this Safety Advisory. The derailment occurred on September 15, 2002, at Farragut, Tennessee, when a westbound Norfolk Southern train consisting of 3 locomotives, and 142 cars, traversed a defective switch and derailed two locomotives and the first 25 cars. This derailment caused a tank car containing sulfuric acid to puncture. The resultant spill produced a cloud of toxic fumes, prompting the evacuation of approximately 2,600 residents, from a 4.4 square mile area around the derailment site. While there were no fatalities, a number of the local residents required treatment for minor respiratory difficulties. Damages were estimated to be in excess of $1 million.

The post-accident investigation revealed that an eastbound freight train traversing the territory approximately two hours prior to the derailment received an approach and then a restricting signal indication at the west end of a siding in approach to a spring switch. In accordance with railroad operating instructions, the train speed was reduced from the normal track speed of 50 m.p.h. to 30 m.p.h. and the train crew was prepared to stop at the next signal, which was indicating

''Restricting''. The train dispatcher was notified of the signal aspects that were displayed. Upon reaching the spring switch the train stopped and the train's conductor checked the switch. The normally closed point of the switch was found to be gapped approximately ¼-inch. The conductor manually operated the switch back and forth several times between the normal to reverse position, attempting to properly seat the point snugly against the stock rail. However, the point remained gapped approximately ⅛-inch from the normal closed position. The train crew then notified the dispatcher that the point was not properly seated. The dispatcher informed the train crew that signal personnel would be notified and permitted the train to continue its eastbound trailing movement over the switch.

A signal maintainer was called to the site. Upon his arrival at the switch, he conducted a visual inspection from the leading edge of the switch points to the heel blocks, noting that the point rail was snugly seated against the stock rail. He also noted that the westward governing signal over the switch (facing direction) was displaying a clear indication. The signal maintainer then called to inform the dispatcher that the switch point appeared to be properly aligned and requested a track warrant to occupy the track so that tests could be made on the spring switch and switch circuit controller to determine why the point had gapped. The dispatcher informed the signal maintainer that two westbound trains were en-route toward the switch. The signal maintainer replied that he would wait until the two trains passed over the switch before continuing his inspection.

While waiting to receive a track warrant to occupy the track, the signal maintainer overheard the crew of the first train, as they were approaching the leading edge of the switch points, call out a clear signal over his radio. As the freight train traversed the switch point at 38 m.p.h., the train derailed.

Post-accident investigations conducted by the NTSB and the FRA indicated that the probable cause of the derailment could be attributed to the point of a spring switch being obstructed by a clip bolt. The clip bolt had apparently broken from the fourth switch-rod located approximately 80 inches from the leading edge of the switch point and lodged between the base of the stock rail and point rail. Inspection and operational tests of the spring switch immediately after the derailment revealed that the switch and the switch circuit controller were adjusted within specification and functioned as intended. However, there was a groove worn into the base of the stock rail along with a flare imprinted onto the base of the point rail, indicating that the points had been obstructed by the broken switch rod bolt, preventing the point rail from seating snugly against the stock rail. It was determined that when the first train traversed the switch, the tip of the point rail was shoved over into a snug position against the stock rail and was in this position when the maintainer observed it. However, when the ensuing train movement was made in the facing direction, the tip of the point rail was forced slightly open (gapped) because of a ''fulcrum'' effect introduced by the broken switch clip bolt lodged between the stock rail and the point rail in the mid-portion of the switch. This condition resulted in the switch point being split by a wheel flange and caused the ensuing derailment.

In assessing the chain of events leading up to this derailment, the NTSB concluded that the root causes of this derailment were: ''(1) The decision by the train dispatcher and the signal maintainer to allow the train to proceed in a facing point direction over the spring switch at maximum authorized speed before the switch had been adequately inspected or clamped closed; and (2) the lack of company procedures requiring that train dispatchers, after receiving a report of a problem involving a main track switch, to immediately stop trains or implement an appropriate speed restriction in the affected area.'' The FRA fully agrees with the NTSB's assessment of the probable cause of the derailment. Federal regulations addressing this issue are found in 49 CFR 236.11 which states:

> When any component of a signal system, the proper functioning of which is essential to the safety of train operation, fails to perform its intended signaling function or is not in correspondence with known operating conditions, the cause shall be determined and the faulty component adjusted, repaired, or replaced without undue delay.

This rule requires a railroad to take action to determine the cause of each unexpected ''stop'' or ''stop and proceed'' signal indication and to determine if there is any failed or defective component in the system. This requirement is used to ascertain any effect on train movement safety and when necessary requires adjustment, repair, or replacement of the defective component. Both aspects of the requirement must occur without undue delay.

Signal systems are required to be installed and maintained on the ''fail-safe'' principle and to detect a number of specific conditions that affect the safety of train operations. Many factors can be involved in situations where the signal aspect is not in correspondence with known operating conditions or a component is not functioning as intended. FRA believes that adherence to the requirements of section 236.11, along with the protective measures provided by crew adherence to the corresponding operating rules, provide the needed measure of safety, until a qualified person can determine a cause of the problem and its effect on train operations. The rule requires that this determination and repairs be made ''without undue delay'' *i.e.,* they should be made in as timely a manner as possible. In those cases, railroads may need to institute temporary safety measures, until the problem can be resolved. However, FRA expects railroads to determine the cause and restore signal systems to proper functioning without undue delay, taking into consideration factors such as rail traffic, whether highway/rail grade-crossings are involved, and other related factors.

Furthermore, additional factors are involved in instances of intermittent signal problems (*e.g.,* signal aspects not in correspondence with known operating conditions, track occupancy lights (TOLs), or points of a switch not closed in proper position), which subsequently ''clear up'' on their own. There are nearly an infinite number of conditions that could cause intermittent signal problems, many of which could remain a safety concern, even when seemingly resolving themselves (*e.g.,* a broken rail or pull-apart where the track circuit is intermittently affected, or a switch problem similar to that of the described accident). Signal systems are not capable of indicating differences between the most obvious safety concerns, such as track occupancy by a train or an improperly positioned switch and relatively minor nuisance-type occurrences such as a momentary external short on a track circuit, or a broken wire. In these instances, prudent safety precautions should be followed.

FRA recognizes the circumstances under which the events unfolded causing the subject accident, since conditions appeared to be safe and proper to the signal maintainer upon his arrival. The decision to immediately conduct proper inspection and testing of the switch (in this instance) or other signal component should not be left up to the individuals involved. That decision should instead be clearly addressed in railroad prescribed

procedures which should provide priority for such inspection and testing.

FRA has reviewed the procedures used by major railroads to determine if they adequately address signal issues or conditions (*i.e.,* switch problems, track occupancy lights, track defects, *etc.*) that may interfere with the safe passage of a train or locomotive. In reviewing these procedures, FRA has determined that although each of the railroads have procedures in place, there are specific actions that can be taken to improve these procedures. Therefore, FRA is recommending that when responding to a trouble call, a railroad signal maintainer, technician, or maintenance of way employee should receive priority in occupying track so that inspections and operational tests can be conducted to ensure that no unsafe conditions exist. For example, consider the events of the aforementioned derailment. Although the conductor reported the gapped points to the dispatcher, as required by railroad instructions, the signal maintainer was not given priority for track occupancy so that sufficient inspection and operational tests could be conducted on the switch to determine the cause. Had the maintainer tested the switch prior to the train's arrival, the derailment may have been prevented.

It is important to note that 49 CFR 213.135(b) of the Track Safety Standards states in part ''Each switch point shall fit its stock rail properly, with the switch stand in either of its closed positions to allow wheels to pass the switch point. Lateral and vertical movement of a stock rail in the switch plates or of a switch plate on a tie shall not adversely affect the fit of the switch point to the stock rail.'' Railroads are encouraged to have both signal and track employees trained to comprehensively understand the interface between the point and stock rails (tip to heel) and associated hardware.

Recommendations

Based on the above, FRA strongly recommends that:

1. Any railroad employee encountering a condition that could interfere with the safe passage of a train should promptly report the condition or defect to the train dispatcher. Train dispatchers, upon receiving reports of potentially hazardous conditions involving a signal system or component, including any track segment or switch should immediately issue instructions to stop train movements or immediately implement an appropriate speed restriction, not to exceed 20 mph, for the affected area. These restrictions should remain in effect until the component or trackage in the affected area is properly inspected and/or tested by a qualified employee to determine the cause and make any necessary repairs, replacements or adjustments.

2. Each railroad should ensure that it has procedures for responding to trouble calls that include providing priority in occupying track to a signal maintainer, technician or maintenance of way employee investigating a report of a signal system or component failure so that proper and sufficient inspections and tests may be conducted to determine the cause of the failure.

3. Each railroad should ensure that it has inspection and test procedures that will assure sufficient and proper inspection and testing to determine the cause of signal system or component failures. For example, in the event of a found or reported switch problem, switch inspection and tests sufficient to determine the cause of the problem and detect any unsafe condition should be conducted. In this case, a minimum inspection and test would include the elements of inspecting not only the switch point rails (point to heel), but also all of the switch rods, operation of the switch through its full range of motion and testing the switch circuit controller or point detector for proper adjustment.

4. Each railroad should ensure that when a signal problem is suspected, detected, or reported, applicable signal personnel should be notified of the occurrence and provided with any applicable information about the circumstances. This will aid the signal department in attempting to determine the cause of recurring signal trouble.

Issued in Washington, DC, on August 3, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–18193 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2004–18749]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before October 12, 2004.

ADDRESSES: Comments must refer to the docket number cited at the beginning of this notice and be submitted to Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Control Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Debbie Parker, NHTSA, NVS–220, Washington, DC 20590, phone 202–366–1768.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 49 CFR 556, Petitions for Inconsequentiality.

OMB Control Number: 2127–0045.

Affected Public: Business or other for profit.

Abstract: The National Highway Traffic Safety Administration's statue at 49 U.S.C. 30118 generally requires manufacturers of motor vehicles and items of replacement equipment to conduct a notification and remedy campaign (recall) when their products are determined to contain a safety-related defect or a noncompliance with a Federal motor vehicle safety standard (FMVSS). Pursuant to 49 U.S.C. 30118(d) and 30120(h), a manufacturer may seek an exemption from these notification and remedy requirements on the basis that the defect or noncompliance is inconsequential as it relates to motor vehicle safety. 49 CFR part 566, Exemption for Inconsequential Defect or Noncompliance, establishes the procedures for manufacturers to submit exemption petitions to the agency and the procedures the agency will use in evaluating those petitions. Part 556 allows the agency to ensure that inconsequentiality petitions are both properly substantiated and efficiently processed.

Estimated Annual Burden: 200 hours (based on an average of 5 hours preparation time per petition for 40).

Number of Respondents: 40.

Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: August 4, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–18208 Filed 8–9–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Offices; FY 2004 Performance/Bonus Review Board

August 1, 2004.

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Offices Performance/Bonus Review Board.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental Offices Performance/Bonus Review Board. The purpose of this Board is to review and make recommendations concerning proposed Performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions.

Composition of Deputyartmental Board: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Boards members are attached.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Cathy Hickson-Smith, Department of the Treasury, Office of Human Resources, HR Management Specialist, 15th and Pennsylvania Ave., NW., Washington, DC 20220, Telephone: 202–622–1690.

This notice does not meet the Department's criteria for significant Regulations.

Dated: August 1, 2004.

Barbara McWhirter,

Director, Office of Human Resources.

FY 2004 PERFORMANCE/BONUS REVIEW BOARD

[For listing in FEDERAL REGISTER]

Name	Offical title
Angus, Barbara M	Internal Tax Counsel
Bitsberger, Timothy S	DAS (Federal Finance)
Carfine, Kenneth Edward	DAS for Fiscal Operations and Policy
Carleton, Norman K	Policy Director, Office of Financial M
Carroll, Robert J	DAS (Tax Analysis)
Contreras, Rebecca A	Deputy Asst Sec & Chief Human Capital
Dawson, Michael A	Dep Asst Sec for Critical Infrastructu
Delgado Jenkins, Jesus H	DAS (Management and Budget)
Dobins, Paul S	Director for Economic Modeling & Compu
Dohner, Robert S	Senior Advisor to DAS (Int'l Monetary)
Emling, John G	Deputy Asst Sec for Legislative Affair
Fall III, James H	DAS (Technical Assistance Policy)
Farrell, Paula F	Dir., Office of Government Financing
Fratto, Salvatore Antonio	Dep Asst Sec (Public Affairs)
Fuller, Reese H	ACD Program Director
Garcia, Arthur A	Director, CDFI Fund
Geduldig, Courtney Clelan	DAS for Legis Affrs (Banking & Fnan)
Gerardi, Geraldine A	Dir for Business Taxation
Hammond, Donald V	Fiscal Assistant Secretary
Hudson, Barry K	Deputy Chief Financial Officer
Jaskowiak, Mark M	Director, Office of Specialized Develo
Jenner, Gregory F	Deputy Asst Sec (Tax Policy)
Jones, Owen M	Dep Dir for Mgmt & Chief Fin Ofc
Kiefer, Donald W	Director, Office of Tax Analysis
Kodat, Roger E	DAS (Government Financial Policy)
Kupfer, Jeffrey F	Deputy Chief of Staff
Lee, Nancy	Das (Eurasia & Middle East)
Lingebach, James R	Dir., Accnting & Internal Control
Lingrell, David A	DIR., Treas Bldg & Annex Reno & Rebldg Prog

FY 2004 PERFORMANCE/BONUS REVIEW BOARD—Continued

[For listing in FEDERAL REGISTER]

Name	Offical title
Loevinger, David G	Director, Office of East Asian Nations
Lowery, Clay	Deputy, Assistant Secretary (Debt & Dev P)
Mathiasen, Karen V	Dir, Ofc of Central & Eastn Europ Nats
McFadden, William J	Senior Policy Advisor
Merkel, David A	DAS for Legislative Affairs (Internat
Monroe, David J	Director, Office of Cash and Debt Mana
Murden, William C	Dir, Ofc of Int'l Bankg & Sec Markets
Newcomb, Robert R	Diretor, Office of Foreign Assets
Nickles, Kim E	White House Liaison
Nunns, James R	Dir for Individual Taxation
Olechowski, Mark J	Dir, Do Modern. Project
Parker, Orland M	Acting Chief Information Officer
Paulson, Sara L	Supvy Director, Office of Development
Pitman Jr, Bobby J	DAS Mulilateral Dev Banks (IA)
Platt, Joel D	Dir For Revenue Estimating
Pointer, Patricia J	Dep. To The Daswm & Dir., Ofc. of Workfo
Randolph, William C	Director for International Taxation
Reid, Robert N	DAS for Accounting Operations
Relic, Rebecca L	DAS (Pub Lia, Str Pl, Bus Dev)
Schott, Charles G	Deputy Asst Sec (Trade&Invest Policy)
Schuerch, William E	Dep Asst Sec (Int Dev, Debt & Envir Pol)
Shaw, Mary Beth	Dir., Office of D.C. Pensions
Sills, Gay H	Dir, Ofc of International Investment
Skud, Timothy E	DAS Tax, Trade and Tariff Policy
Smith III, George E	Director, Ofc. of Technical Assistance
Smith, Christopher A	Chief of Staff
Sobel, Mark D	Deputy Ast Sec (Int'l Mon & Fin Pol)
Solomon, Eric	DAS (Regulatory Affairs)
Stedman, Louellen	DIR Ofc Intnatl Mon Aff
Stein, Robert S	AS (Macroeconomic Analysis)
Sweetnam Jr, William F	Benefits Tax Counsel
Toloui, Ramin	Dir Ofc Latn Amer & Carib Ntns
Tvardek, Steven F	Director, Office of Trade Finance
Warthin, Thomas W	Dir., Ofc of Finan. Svcs Negotiations
Weatherford, Timothy L	Senior Advisor to the Assistant Secret
Wolfe, George B	Senior Advisor
Wright Jr, Willie E	Deputy Asst Sec (Workforce Management)
Zarate, Juan C	DAS, Executive Ofc of Terr Fin & Fin C
Zerzan, Gregory P	Dep. Ast Sec for (Fin Inst & GSE Pol)

[FR Doc. 04–18223 Filed 8–9–04; 8:45 am]

BILLING CODE 4811–20–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service Performance Review Board; Senior Executive Service

AGENCY: Financial Management Service; Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members to the Financial Management Service (FMS) Performance Review Board (PRB).

DATES: This notice is effective on August 10, 2004.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, 401 14th Street, SW., Washington, DC, 20227; telephone: (202) 874–7000.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. § 4314(c)(4), this notice is given of the appointment of individuals to serve as members of the FMS PRB. This Board reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Four voting members constitute a quorum. The names and titles of the FMS PRB members are set forth herein:

Primary Members: Kenneth R. Papaj, Deputy Commissioner; Nancy C. Fleetwood, Assistant Commissioner, Information Resources; Gary Grippo, Assistant Commissioner, Federal Finance; J. Martin Mills, Assistant Commissioner, Debt Management Services; Judy R. Tillman, Assistant Commissioner, Regional Operations.

Alternate Members: Scott H. Johnson, Assistant Commissioner, Management (Chief Financial Officer); Kerry Lanham, Assistant Commissioner, Agency Services; Wanda J. Rogers, Assistant Commissioner, Financial Operations; D. James Sturgill, Assistant Commissioner, Governmentwide Accounting.

Dated: August 4, 2004.

Kenneth R. Papaj,

Deputy Commissioner.

[FR Doc. 04–18247 Filed 8–9–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0619]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0619.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0619'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Inquiry Routing and Information System (IRIS).

OMB Control Number: 2900–0619.

Type of Review: Extension of a currently approved collection.

Abstract: The World Wide Web is a powerful media for the delivery of information and services to veterans, dependents, and active duty personnel worldwide. IRIS allows a customer to submit questions, complaints, compliments, and suggestions directly to the appropriate office at any time and receive an answer more quickly than through standard mail. IRIS does not provide applications to veterans or serve as a conduit for patient data, etc.

Affected Public: Individuals or households.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 17, 2004, at pages 27971–27972.

Estimated Annual Burden: 5,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: August 2, 2004.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. 04–18285 Filed 8–9–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0624]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether adjustments in rates of benefit payments are necessary.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 12, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0624'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Obligation to Report Factors Affecting Entitlement (38 CFR 3.204(a)(1), 38 CFR 3.256(a) and 38 CFR 3.277(b)).

OMB Control Number: 2900–0624.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and their dependents who applied for or receives compensation, pension or dependency and indemnity compensation benefits must report changes in their entitlement factors. Individual factors such as income, marital status, the beneficiary's number of dependents, may affect the amount of the benefit that he or she receives or they may affect his or her right to receive the benefits. Beneficiaries must report changes in these factors to VA in a timely manner. The information is needed to determine whether adjustment in rates of benefit payments are necessary.

Affected Public: Individuals or households.

Estimated Annual Burden: 31,017 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 372,209.

Dated: August 2, 2004.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. 04–18286 Filed 8–9–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0500]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's continued entitlement to benefits based on the number of dependents.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 12, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0500'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Status of Dependents Questionnaire, VA Form 21–0538.

OMB Control Number: 2900–0500.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans receiving compensation for service-connected disability which includes an additional amount for their spouse and/or child(ren) must report any changes in the number of dependents. VA Form 21–0538 is used to request certification of the status of dependents for whom additional compensation is being paid. Without the information, continued entitlement to the benefits for dependents could not be determined.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,083 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One in eight years.

Estimated Number of Respondents: 84,500.

Dated: August 2, 2004.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. 04–18287 Filed 8–9–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0252]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to authorize nonsupervised lenders to close loans on an automatic basis.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 12, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0252'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, VA Form 26–8736.

OMB Control Number: 2900–0252.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8736 is used by nonsupervised lenders requesting approval to close loans on an automatic basis. Automatic lending privileges eliminate the requirement for submission of loans to VA for prior approval. Lending institutions with automatic loan privileges may process and disburse such loans and subsequently report the loan to VA for issuance of guaranty. The form requests information considered crucial for VA to make acceptability determinations as to lenders who shall be approved for this privilege.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 50 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120.

Dated: August 2, 2004.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. 04–18288 Filed 8–9–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
August 10, 2004

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Tiger Salamander, Central Population; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF68

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Tiger Salamander, Central Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the California tiger salamander (*Ambystoma californiense*) (referred to hereafter as the CTS) pursuant to the Endangered Species Act of 1973, as amended (Act). This rule contains the proposal for the Central California population of the CTS (hereafter referred to as the Central population). Approximately 382,666 acres (ac) (154,860 hectares (ha)) occur within the boundaries of the proposal for the Central population.

DATES: We will accept comments from all interested parties until October 12, 2004. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by September 24, 2004.

ADDRESSES: 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, Sacramento Fish and Wildlife Office (SFWO), 2800 Cottage Way, W–2605, Sacramento, CA 95825.

2. You may hand-deliver written comments to our SFWO, at the address given above.

3. You may send comments by electronic mail (e-mail) to *fw1Central_cts_pch@fws.gov.* In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above. Please submit Internet comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: California tiger salamander'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our SFWO at phone number 916/414–6600. Please note that the Internet address will be closed out at the termination of the public comment period.

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 SFWO, at the address given above. In the event that our Internet connection is not functional, please contact the Service (see **ADDRESSES** section) for alternative methods in obtaining referenced materials *e.g.*, economic analysis.

FOR FURTHER INFORMATION CONTACT: For general information, and for information about Alameda, Amador, Calaveras, Contra Costa, Fresno, Kern, Kings, Madera, Mariposa, Merced, Sacramento, San Joaquin, Santa Clara, Solano, Stanislaus, Tulare, and Yolo Counties, contact Wayne White, Field Supervisor, SFWO, at the address given above (telephone 916/414–6600; facsimile 916/414–6712).

For information about Monterey, San Benito, and San Luis Obispo Counties, contact Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2394 Portola Road, Suite B, Ventura, CA 93003 (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Executive Summary

The proposed critical habitat is in the following 20 counties in central California: Alameda, Amador, Calaveras, Contra Costa, Fresno, Kern, Kings, Madera, Mariposa, Merced, Monterey, Sacramento, San Benito, San Joaquin, San Luis Obispo, Santa Clara, Solano, Stanislaus, Tulare, and Yolo. This proposed designation does not include critical habitat for the Santa Barbara County or Sonoma County areas. A proposed rule to designate critical habitat for the Santa Barbara County population was published on January 22, 2004 (69 FR 3064). We are not proposing to designate critical habitat for the Sonoma County geographic area of the California tiger salamander at this time. We are currently in the process of developing a management strategy for the Sonoma County area for the California tiger salamander and other listed and sensitive species. The planning efforts include various local, State and Federal agencies including ourselves, the U.S. Army Corps of Engineers, the California Department of Fish and Game, the County of Sonoma, the cities of Santa Rosa, Rohnert Park, and Cotati, and local and regional environmental organizations. The group is developing a management and restoration plan as well as identifying areas for conservation of the vernal pool and other California tiger salamander habitat within the area.

We expect the plan, when complete, to provide a better means of identifying essential habitat than our critical habitat designation process can provide at the present time. By bringing together all local, State, and Federal species experts and local planning officials we are better able to identify areas which are essential for the conservation of the California tiger salamander in Sonoma County. The management planning process is a collaborative effort involving cooperation and input from numerous stakeholders such as landowners, public land managers, and the general public. This allows the best information and local knowledge to be brought to the table, and may encourage a sense of commitment to the California tiger salamander's continued well being in the area. Due to time constraints we are unable to match this level of public participation in the critical habitat designation process. We believe that currently designating proposed critical habitat would cause more harm to the species by causing delays to and confusing the current ongoing process. The enhancement and management of California tiger salamander habitat will benefit greatly from coordination between the various land owners and managers in the area. The ongoing planning process can provide for that coordination, whereas the critical habitat designation process may not. Once the planning efforts have identified areas essential for the California tiger salamander, we will consider proposing critical habitat at that time. Should these planning efforts fail to identify essential areas for the California tiger salamander we will issue a notice to propose additional critical habitat for the species.

Critical habitat identifies specific areas, both occupied and unoccupied by a listed species, which are essential to the conservation of the species and that may require special management considerations or protection. The primary constituent elements for the California tiger salamander are aquatic and upland areas, including vernal pool complexes, where suitable breeding and nonbreeding habitats are interspersed throughout the landscape, and are interconnected by continuous dispersal habitat. All areas proposed for designation as critical habitat for the Central population contain one or more of the primary constituent elements.

Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of designation. We may revise this proposal to incorporate or address new information received during the comment period.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of California tiger salamander habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(6) Specific information from present landowners regarding the current extent and quality of extant occurrences and breeding habitats found within the proposed designated geographic areas and units;

(7) Whether or not private landowners are willing to enter into partnerships or conservation agreements with us for the benefit of the California tiger salamander and its habitats;

(8) Whether or not we should enter into conservation agreements or partnerships with private landowners for the conservation of the California tiger salamander and its habitats and, upon successful implementation of these agreements, if we should remove these areas from critical habitat; and

(9) Appropriateness of excluding any proposed areas, such as portions of the former Fort Ord for which an HCP is currently being developed.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, 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. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

Designation of Critical Habitat Provides Little Additional Protection to the Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 445 species or 36 percent of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result of this consequence, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost little ability to provide for adequate public

participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This situation in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the costs of preparation and publication of the designation, the analysis of the economic effects and the costs of requesting and responding to public comments, and, in some cases, the costs of compliance with National Environmental Policy Act, represent the costs of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and theses associated costs directly reduce the scarce funds available for direct and tangible conservation actions.

Background

A physical description of the CTS, and other information about its taxonomy, distribution, life history, and biology is included in the Background section of the final rule to list California tiger salamander as a threatened species, published in the **Federal Register** earlier. Additional relevant information may be found in the final rules to list the Santa Barbara County DPS (65 FR 57242, September 21, 2000) and the Sonoma County DPS CTS (68 FR 13498, March 13, 2003), and the January 22, 2004, proposal to designate critical habitat for the Santa Barbara population (69 FR 3064).

Habitat Requirements and Characteristics

The CTS inhabits, in Central California, low-elevation (typically below 1,500 feet (ft) (460 m)), vernal pools, vernal pool complexes, and seasonal ponds in associated annual grasslands, oak savannah, and coastal scrub plant communities of the Bay Area (Santa Clara Valley), Central Coast, Central Valley, and Southern San Joaquin Valley (Shaffer *et al.* 1993; Service 2000; Service 2003).

CTS are found in seasonal ponds, natural vernal pools, vernal pool complexes, and small artificial water bodies such as stockponds for breeding during their aquatic phase (Stebbins 1985; Zeiner *et al.* 1988; Shaffer *et al.* 1993). However, stockponds often are not optimum aquatic breeding habitat for California tiger salamanders because stockponds may not hold water long enough for completion of part of their life cycle. Hydroperiods may be so short that larvae cannot metamorphose (*e.g.*, early drawdown of irrigation ponds), or so long that predatory fish and bullfrogs (*Rana catesbeiana*) can colonize the pond (Shaffer *et al.* 1993; Seymour and Westphal 1994). Permanent wetlands can support breeding California tiger salamanders if fish are not present, but extirpation of the salamander occurrence is likely if fish are introduced (Shaffer *et al.* 1993; Seymour and Westphal 1994). Artificial ponds also require ongoing maintenance and are often temporary structures. Periodic maintenance to remove silt from stockponds or to reinforce or strengthen berms may also cause a temporary loss of functioning aquatic habitat. Regardless of vernal pool, pond, or seasonal wetland type, successful breeding ponds for California tiger salamanders need to be inundated (hold water) for a minimum of 12 weeks to allow for successful metamorphosis.

The aquatic component of the Central population habitat consists of temporary ponded freshwater habitats. Historically, the vernal pools and vernal pool complexes constituted the majority of California tiger salamander breeding habitat. Vernal pools typically form in topographic depressions underlain by an impervious layer (such as claypan, hardpan, or volcanic layer) that prevents downward percolation of water, and they occur as groups of pools referred to as vernal pool complexes. Vernal pool hydrology is characterized by ponding of water during the late fall, winter, and spring, followed by complete desiccation (drying out) during the summer dry season (Holland and Jain 1998).

California tiger salamanders spend the majority of their lives in upland habitats. The upland component of Central population habitat typically consists of vernal pool grassland or grassland savannah with scattered oak trees. However, some occupied California tiger salamander breeding ponds exist within mixed grassland and woodland habitats, in woodlands, scrub, or chaparral habitats.

Within these upland habitats, adult California tiger salamanders spend part of their lives in the underground burrows of small mammals, especially the burrows of California ground squirrels (*Spermophilus beecheyi*) and valley pocket gophers (*Thomomys bottae*) (Barry and Shaffer 1994), at depths ranging from 20 cm (8.0 in) to 1 m (3.3 ft) beneath the ground surface (Trenham 2001). These burrows provide food for California tiger salamanders, as well as protection from the sun and wind associated with the dry California climate that can cause desiccation of amphibian skin. Although California tiger salamanders are members of a family of burrowing salamanders, California tiger salamanders are not known to create their own burrows in the wild and require small mammal burrows for survival. Because they live underground in the burrows of mammals, they are rarely encountered even where abundant.

Dispersal and Migration

Movements made by California tiger salamanders can be grouped into two main categories: (1) Breeding migration, and (2) interpond dispersal. Breeding migration is the movement of salamanders to and from a pond from the surrounding upland habitat. After metamorphosis, juveniles move away from breeding ponds into the surrounding uplands, where they live continuously for several years (on average, 4 years). Upon reaching sexual maturity, most individuals return to their natal (birth) pond to breed, while 20 percent disperse to other ponds (Trenham *et al.* 2001). Following breeding, adult California tiger salamanders return to upland habitats, where they may live for one or more years before breeding again (Trenham *et al.* 2000).

Data suggest that juvenile California tiger salamanders disperse further into upland habitats than adult California tiger salamanders. A trapping study conducted in Solano County during winter 2002–03 found that juveniles used upland habitats further from breeding ponds than adults (Trenham and Shaffer, in review). More juvenile salamanders were captured at distances of 300, 600, and 1,300 ft (100, 200, and 400 m), respectively, from a breeding pond than at 160 ft (50 m). Large numbers (approximately 20 percent of total captures) were found 1,300 ft (400 m) from a breeding pond. Fitting a distribution curve to the data revealed that 95 percent of juvenile salamanders could be found within 2,000 ft (640 m) of the pond, with the remaining 5 percent being found at even greater distances.

Post-breeding movements away from breeding ponds by adults appear to be much smaller. During post-breeding emigration, radio-equipped adult California tiger salamanders were tracked to burrows 62 to 813 ft (19 to 248 m) from their breeding ponds

(Trenham 2001). These reduced movements may be due to adult California tiger salamanders having depleted physical reserves post-breeding, or also due to the drier weather conditions that are typical of the period when adults leave the ponds.

The spatial distribution of California tiger salamanders in the uplands surrounding aquatic habitats or breeding ponds is a key issue for protection of upland and breeding habitat and essential conservation planning. Although it might be supposed that California tiger salamanders will move only short distances if abundant burrows are found near their ponds, this is not the case. In the aforementioned study in Solano County, while abundant burrows are available near the pond, a nearly equal number of California tiger salamanders were captured at 300, 600, and 1,300 ft (100, 200 and 400 m), respectively, from the breeding pond (Trenham and Shaffer, in review). Similarly, Trenham (2001) tracked salamanders to burrows up to 800 ft (248 m) from a breeding pond, although burrows were abundant at distances nearer to the pond. In addition, rather than staying in a single burrow, most individuals used several successive burrows at increasing distances from the pond.

Documented dispersers had moved up to 2,200 ft (670 m), and, based on a projected exponential relationship between dispersal probability and distance, less than 1 percent of dispersers are likely to move between ponds separated by 0.70 mile (mi) (1,160 m) (Trenham *et al.* 2001). The frequency of dispersal among known extant occurrences or subpopulations will ultimately depend on the distance between the ponds or complexes and also on the intervening habitat (*e.g.,* salamanders may move more quickly through grassland than through more densely vegetated scrublands).

Although the studies discussed above provide an approximation of the distances that California tiger salamanders regularly move from their breeding ponds, upland habitat features influence movements in a particular landscape. Unlike other ambystomatid salamanders, California tiger salamanders and other tiger salamanders are grassland animals and do not favor forested areas as corridors for movement or long-term residence. Trenham (2001) found that radio-tracked adults favored grasslands with scattered large oaks over more densely wooded areas. Based on radio-tracked adults, there is no indication that California tiger salamanders favor certain habitat types as corridors for terrestrial movements (Trenham 2001).

Previous Federal Actions

For a discussion of previous Federal actions regarding the Central population, please see the final rule to list the Central California Distinct Population Segment of the California tiger salamander as threatened across its range. Federal actions on the CTS prior to May 2004 are summarized in that final rule, published in a recent **Federal Register**, and are incorporated by reference.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' 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.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. 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 requires consultation on Federal actions that may adversely affect critical habitat, and conferences on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a 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 nonfederal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

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 physical and biological features (*i.e.,* areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)) and which may require special management considerations or protections, or be specific areas outside of the geographic areas occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us. Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best scientific and commercial data demonstrate that unoccupied areas are essential for the conservation needs of the species.

Within the geographic areas 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 is essential to the conservation of a species, then the area should not be included in the critical habitat designation. We will not designate areas

that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b). We have excluded from this proposal some areas where CTS are currently found, areas of suitable habitat where they might potentially occur, some localities where they historically occurred, and areas that do not have one or more of the primary constituent elements. Only areas considered essential to the conservation of the species are included in this proposal.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, including impacts to National security, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. Our policy 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 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, biological assessments, unpublished materials, and expert opinion or personal knowledge.

We recognize that the proposed designation of critical habitat does not include all of the occupied habitat areas that may eventually be determined to be essential for the conservation of the species. For these reasons, everyone should understand that critical habitat designations do not signal that habitats outside the designation are unimportant to California tiger salamanders. 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.

Methods

In determining areas that are essential to conserve the Central population, we used the best scientific and commercial data available. We have reviewed the overall approach to the conservation of the California tiger salamander undertaken by local, State, and Federal agencies operating within the species' range since its proposed listing in 2003 (68 FR 28648). We have also reviewed available information that pertains to the upland and aquatic habitat requirements of this species. In our designation, we included only areas within which the best available information indicates the species currently occurs. We identified proposed critical habitat units that we thought had the highest likelihood to be self-sustaining on the basis of density of CTS occurrences, and kind, amount, and quality of habitat associated with those occurrences. The proposed units represent the range of environmental, ecological, and genetic variation of the CTS and contain the primary constituent elements we have determined are essential to the conservation of the species.

The extant occurrences within proposed units total approximately 68 percent of extant occurrences within the range of the species. These extant occurrences include observations from CNDDB (2003), data in reports submitted during section 7 consultations, data from biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports, and regional Geographic Information System (GIS) coverages.

The proposed critical habitat units were delineated by creating approximate areas for the units by screen digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program. The polygons were created by overlaying extant California tiger salamander location points with 0.7 mile buffers (CNDDB 2003) (see Criteria section below), and mapped vernal pool grassland habitats (Holland 1998a, 2003), or other vernal pool or grassland location information, onto SPOT imagery (satellite aerial photography).

We evaluated the resulting shape files (delineating historic geographic range and potential suitable habitat), refined elevation and hydrologic ranges, and identified areas of non-essential habitat (*i.e.,* not containing the primary constituent elements) (see Primary Constituent Elements section). We excluded areas that do not contain one or more of the primary constituent elements or were not found to be essential for the conservation of the species because: (1) The area is highly degraded and may not be restorable; (2) the area is small, highly fragmented, or isolated and may provide little or no long-term conservation value; and (3) other areas within the geographic region were determined to be sufficient to meet the conservation needs of the species.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to; space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

All areas proposed as critical habitat for the Central population are within the species' historic range and contain one or more of the physical or biological features (primary constituent elements) identified as essential for the conservation of the species. Critical habitat for Central population includes essential aquatic habitat, essential upland nonbreeding habitat with underground refugia, dispersal habitat connecting occupied California tiger salamander locations to each other, and vernal pool complexes where integrated function of uplands and wetlands provide physical and biological features

essential to the conservation of the species. In addition, the critical habitat we have proposed is designed to conserve the distinct genetic structure of the Central population and allow for an increase in the size of salamander populations, both of which are essential to the conservation of the species. Special management, such as habitat rehabilitation efforts (*e.g.,* removal of nonnative predators, control of introduced tiger salamanders, and erosion and sediment control measures), may be necessary throughout the areas being proposed.

Based on our current knowledge of the life history, biology, and ecology of the species and the relationship of its essential life history functions to its habitat, as summarized above (see Background section), we have determined that the CTS requires the following primary constituent elements:

(1) Standing bodies of fresh water, including natural and man-made (*e.g.*, stock) ponds, vernal pools, and other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a sufficient length of time necessary for the species to complete the aquatic portion of its life cycle.

(2) Barrier-free upland habitats adjacent to breeding ponds that contain small mammal burrows, including but not limited to burrows created by the California ground squirrel and valley pocket gopher. Small mammals are essential in creating the underground habitat that adult California tiger salamanders depend upon for food, shelter, and protection from the elements and predation.

(3) Upland areas between occupied locations (PCE 1) and areas with small mammal burrows (PCE 2) that allow for dispersal among such sites.

(4) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands, which together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, maintain suitable periods of pool inundation for larval salamanders and their food sources, and provide breeding, feeding, and sheltering habitat for juvenile and adult salamanders and small mammals that create burrow systems essential for CTS estivation.

We describe the relationship between each of these PCEs and the conservation of the salamander in more detail below.

The essential aquatic habitat described as the first PCE is essential for Central population breeding and for providing space, food, and cover necessary to sustain early life history stages of larval and juvenile CTS. Breeding habitat consists of fresh water bodies, including natural and man-made ponds (*e.g.,* stockponds), and vernal pools. To be considered essential, aquatic and breeding habitats must have the capability to hold water for a minimum of 12 weeks in the winter or spring in a year of average rainfall because this is the amount of time needed for larvae to grow into metamorphosed juveniles so they can become capable of surviving in upland habitats. During periods of drought or less-than-average rainfall, these sites may not hold water long enough for individuals to complete metamorphosis, however, these sites would still be considered essential because they constitute breeding habitat in years of average rainfall. Without its essential aquatic and breeding habitats, the Central population would not survive, reproduce, develop juveniles, and grow into adult individual salamanders that can complete their life cycles.

Essential upland habitats containing underground refugia described as the second PCE are essential for the survival of adult and juvenile salamanders that have recently undergone metamorphosis. Adult and juvenile California tiger salamanders are primarily terrestrial. Adult California tiger salamanders enter aquatic habitats only for relatively short periods of time to breed. For the majority of their life cycle, California tiger salamanders depend for survival on upland habitats containing underground refugia in the form of small mammal burrows. California tiger salamanders cannot persist without upland underground refugia. These underground refugia provide protection from the hot, dry weather typical of California in the nonbreeding season. California tiger salamanders also find food in small mammal burrows and rely on the burrows for protection from predators. The presence of small burrowing mammal populations is essential for constructing and maintaining burrows. Without the continuing presence of small mammal burrows in upland habitats, California tiger salamanders would not be able to survive.

Essential dispersal habitats generally consist of upland areas adjacent to essential aquatic habitats which are not isolated from essential aquatic habitats by barriers that California tiger salamanders cannot cross. Essential dispersal habitats provide connectivity among CTS suitable aquatic and upland habitats. While CTS can bypass many obstacles, and do not require a particular type of habitat for dispersal, the habitats connecting essential aquatic and upland habitats need to be free of barriers (*e.g.,* a physical or biological feature that prevents salamanders from dispersing beyond the feature) to function effectively. Examples of barriers are areas of steep topography devoid of soil or vegetation. Agricultural lands such as row crops, orchards, vineyards, and pastures do not constitute barriers to the dispersal of California tiger salamanders. In general, we propose critical habitat that allows for dispersal between extant occurrences within 0.7 mi (1.13 km) of each other. To provide for conservation of the species, we choose 0.7 mi because that distance provides for 99 percent of the chances that individual salamanders can move and breed between extant occurrences, and, thereby, provides for genetic exchange between individuals within each region.

The dispersal habitats described as the third PCE are essential for the conservation of the CTS. Protecting the ability of California tiger salamanders to move freely across the landscape in search of suitable aquatic and upland habitats is essential in maintaining gene flow and for recolonization of sites that may become temporarily extirpated. Lifetime reproductive success for the CTS and other tiger salamanders is naturally low. Trenham *et al.* (2000) found the average female bred 1.4 times and produced 8.5 young that survived to metamorphosis per reproductive effort. This reproduction resulted in roughly 11 metamorphic offspring over the lifetime of a female. In part, this low reproductive success is due to the extended time it takes for California tiger salamanders to reach sexual maturity; most do not breed until 4 or 5 years of age. While individuals may survive for more than 10 years, many breed only once. Combined with low survivorship of metamorphosed individuals (in some populations, fewer than 5 percent of marked juveniles survive to become breeding adults (Trenham *et al.* 2000)), reproductive output in most years is not sufficient to maintain populations. This trend suggests that the species requires occasional large breeding events to prevent extirpation (temporary or permanent loss of the species from a particular habitat) or extinction (Trenham *et al.* 2000). With such low recruitment, isolated populations are susceptible to unusual, randomly occurring natural events as well as from

human-caused factors that reduce breeding success and individual survival. Factors that repeatedly lower breeding success in isolated vernal pools or ponds can quickly extirpate an occurrence of the species. Therefore, an essential element for successful conservation is the presence and maintenance of sets of interconnected sites that are within the ''rescue'' distance of other ponds (Trenham *et al.* 2001).

Dispersal habitats described as the third PCE are also essential in preserving the population structure of the CTS. The life history and ecology of the California tiger salamander make it likely that this species has a metapopulation structure (Hanski and Gilpin 1991). A metapopulation is a set of breeding sites within an area, where typical migration from one local occurrence or breeding site to other areas containing suitable habitat is possible, but not routine. Movement between areas containing suitable upland and aquatic habitats (*i.e.,* dispersal) is restricted due to inhospitable conditions around and between areas of suitable habitats. Because many of the areas of suitable habitats may be small and support small numbers of salamanders, local extinction of these small units may be common. The persistence of a metapopulation depends on the combined dynamics of these local extinctions and the subsequent recolonization of these areas through dispersal (Hanski and Gilpin 1991; Hanski 1994).

Vernal pool complexes addressed in the fourth PCE provide a significant amount of the habitat for Central population remaining in the southern San Joaquin and Central Valley regions, but less so in the Bay Area and Coast Range regions because so much vernal pool habitat has been converted to other land uses. Vernal pools and other natural seasonal ponds are the primary historic breeding sites used by California tiger salamanders (Storer 1925; Feaver 1971; Zeiner *et al.* 1988; Trenham *et al.* 2000). Historically, the species occurs in 10 of the 17 California vernal pool regions defined by Keeler-Wolf *et al.* (1998), including northeastern Sacramento Valley, southeastern Sacramento Valley, Santa Rosa, Solano-Colusa, Livermore, Central Coast, Carrizo, southern Sierra Foothills, Santa Barbara, and San Joaquin Valley. Only in historic times have man-made stock ponds joined or, in some areas, replaced vernal pools as breeding habitat. We have included vernal pool complexes as a PCE because they represent a landscape within which the integrated function of the wetland and upland components together may provide one or more of the first three PCEs plus other physical and biological features essential for the conservation of the Central population, including features that provide for the hydrologic function of essential breeding habitat (PCE 4), and habitat for small mammals that create essential refugia (PCE 4). Upland and wetland functions are highly integrated and interdependent in vernal pool complexes and, rather than trying to partition these functions among discrete PCEs, we included vernal pool complexes as their own PCE.

A landscape that supports a vernal pool complex is typically grassland with areas of obstructed drainage that form the pools. The pools may be fed or connected by low drainage pathways called ''swales.'' Swales are often themselves seasonal wetlands that remain saturated for much of the wet season, but may not be inundated long enough to develop strong vernal pool characteristics. Swales, due to their connection to adjacent pools, are considered part of the vernal pool complex. Some pools have a substantial watershed that contributes to their water inputs; others may fill almost entirely from rain falling directly into the pool (Hanes and Stromberg 1998). Although exceptions are not uncommon, the watershed generally contributes more to the filling of larger or deeper pools, especially playa pools. Even in pools filled primarily by direct precipitation, Hanes and Stromberg (1998) report that subsurface inflows from surrounding soils can help dampen water level fluctuations during late winter and early spring. This function is important for maintaining inundation in breeding pools long enough for CTS larvae to complete their aquatic life stage and metamorphose into adults.

Upland areas associated with vernal pools are also an important source of nutrients to vernal pool organisms (Wetzel 1975). Vernal pool habitats derive most of their nutrients from detritus (decaying matter) washed into pools from adjacent uplands, and these nutrients provide the foundation for a vernal pool aquatic community's food chain. The plants, invertebrate and vertebrate animals of vernal pools, and vernal pool landscapes in general are important providers of food and habitat for waterfowl, shorebirds, wading birds, toads, frogs, and salamanders (Proctor *et al.* 1967; Krapu 1974; Swanson 1974; Morin 1987; Simovich *et al.* 1991; Silveira 1996). The uplands of vernal pool complexes may also provide breeding, feeding, and sheltering habitat for small mammals that adult CTS depend upon for food, shelter, and protection from the elements and predation.

In summary, the primary constituent elements consist of four components. At a minimum, these elements will include suitable breeding locations and associated uplands or vernal pool complexes associated with breeding locations that are connected by barrier-free dispersal habitats.

Criteria Used To Identify Critical Habitat

In our determination of critical habitat for the Central population, we selected areas that possess the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. We avoided designating single occurrences unless such areas were considered unique. We also avoided areas surrounded by development or intensive agriculture. Agricultural lands may have been included if they were directly adjacent to the locations we selected to include as essential, thereby substantially reducing upland refugia for California tiger salamanders occupying that area, or were essential for connectivity between known occurrences. We do not have access to data on the most current agricultural uses in many areas of the proposed critical habitat and therefore are uncertain if California tiger salamander upland habitat may or may not remain in some locations.

Throughout this designation, when selecting areas of critical habitat, we made an effort to avoid developed areas, such as housing developments, that are unlikely to contribute to the conservation of the Central population. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements and thus do not constitute critical habitat. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

After identifying the primary constituent elements, we used the constituent elements in combination with information on CTS locations, geographic distribution, genetics,

vegetation, topography, geology, soils, distribution of CTS occurrences within and between vernal pool types, watersheds, current land uses, scientific information on the biology and ecology of the CTS, and conservation principles to identify essential habitat. As a result of this process, each of the proposed critical habitat units possesses a unique combination of occupied aquatic and upland habitat types, landscape features, surrounding land uses, vernal pool types, ponds, topography, and representation of geographical range, environmental variability, and genetic composition.

We determined that conserving the CTS over the long-term requires a five-pronged approach: (1) Maintaining the current genetic structure across the species range; (2) maintaining the current geographic, elevational, and ecological distribution; (3) protecting the hydrology and water quality of breeding pools and ponds; (4) retaining or providing for connectivity between breeding locations for genetic exchange and recolonization; and (5) protecting sufficient barrier-free upland habitat around each breeding location to allow for sufficient survival and recruitment to maintain a breeding population over the long term.

To identify areas which are essential to the conservation of the Central population in accordance with these criteria, we first identified areas within the range where we had documented records (*e.g.,* museum voucher specimens, reports filed by biologists) indicating California tiger salamander presence (CNDDB 2003). We determined that essential habitat should represent the current genetic structure of the CTS. Genetic variation is important to fitness and adaptive change (Meffe and Carroll 1997). These authors state that losses of diversity can result in reduced evolutionary flexibility and declines in fitness, and that changes in the distribution of genetic diversity can destroy local adaptations and break up co-adapted gene complexes. Accordingly, we divided the current range of the Central population into four regions: (1) Central Valley, (2) Southern San Joaquin Valley, (3) East Bay, and (4) Central Coast. We further determined that essential habitat should represent the current geographic and elevational range of the species, as well as the range of habitat and environmental variability or other unique situations within each of the four regions. Conservation of the range of habitat types in which a species occurs helps maintain local adaptations that are important for the long-term viability of a species (Fugate 1992, King 1996, Fugate 1998). A fundamental concept in conservation biology is that species that are protected across their ranges have lower chances of extinction (Soule and Simberloff 1986, Noss *et al.* 2002). To represent this environmental variation, we selected areas with the highest density of Central population locations, the highest proximity to other Central population occurrences, known association of the occurrence with aquatic breeding habitat such as vernal pools or stockponds, and the least amount of habitat disturbance within each of the four regions.

Finally, we also determined that essential habitat should be of sufficient size to provide enough suitable habitat to maintain ecological functions in both aquatic and terrestrial habitat and to allow for movement within and between breeding locations within each unit when possible. This would enable Central population from other locations to ''rescue'' sites which may have low numbers as a result of natural or human factors. To determine a general guideline for the amount of upland habitat necessary to support a population of adult CTS, we reviewed the primary literature regarding California tiger salamander upland habitat use, including Trenham (2000), Trenham *et al.* (2000 and 2001), and Trenham and Shaffer (in review).

Data indicate that California tiger salamanders do not remain primarily in burrows close to aquatic habitats and breeding ponds, but instead move some distance out into the surrounding upland landscapes. As described in the Background section, California tiger salamanders have been found up to 1.2 mi (2 km) from occupied occurrences. Two studies conducted in Monterey and Solano counties provide the best available data on upland movement distances. First, the mark-recapture study of Trenham *et al.* (2001) showed that California tiger salamanders commonly moved between ponds separated by 2,200 ft (670 m), suggesting that movements of this magnitude are not rare. Second, the ongoing study at Olcott Lake (Solano County) has directly documented the presence of high densities of juvenile and adult California tiger salamanders at upland locations at least 1,300 ft (400 m) from this high-quality breeding pond.

Recent trapping efforts captured large numbers (representing 16 percent of total captures) of juvenile salamanders at 2,300 ft (700 m). Trenham and Shaffer (in review) determined that conserving upland habitats within 2,200 ft (670 m) of breeding ponds would protect 95 percent of California tiger salamanders at their study location in Solano County. Protecting the needed upland habitat area with a radius of 2,200 ft (670 m) around a single pond that has a 13 ft (10 m) radius may yield a minimum area of 350 ac (140 ha). However, the size of any occurrence or breeding pond may increase the total amount of necessary aquatic and upland habitat space for survival of any known occurrence.

We used 0.7 mi (1.13 km) as a guide for mapping the amount of upland habitat around locations where Central population is present. However, although the studies discussed above provide an approximation of the distances that California tiger salamanders can move from their aquatic habitats, breeding ponds, and known occupied aquatic habitats in search of suitable upland refugia, we recognize that upland habitat features will influence California tiger salamander movements in a particular landscape. As a result, we made adjustments to the upland areas to include additional areas up to the watershed boundaries or to include habitat containing the PCEs. In some cases we reduced the areas to exclude non-habitat areas (those not exhibiting the PCEs) from the designation.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. In the case of the CTS, only the San Joaquin County Multi-Species HCP is a legally operating HCP that has identified the California tiger salamander as a covered species.

We are aware of five HCPs under various stages of development; however, we are not proposing these draft HCPs for exclusion because we have not yet made an initial determination that they meet our issuance criteria, provide adequate conservation for the species, and are ready for public notice and comment.

In summary, we propose critical habitat throughout the current range of the CTS because we believe protection of the areas is essential to the conservation of the species, and these areas may require special management.

We then mapped as critical habitat sufficient habitat to ensure the conservation of the CTS in accordance with the five elements of the conservation strategy described above.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. Areas in need of management include not only the immediate locations where the species may be present, but additional areas adjacent to these that can provide for normal population fluctuations that may occur in response to natural and unpredictable events. The Central population may depend upon habitat components beyond the immediate areas where individuals of the species occur, if these areas support the presence of small mammals or are essential in maintaining ecological processes such as hydrology, expansion of distribution, recolonization, and maintenance of natural predator-prey relationships. We believe that the areas proposed for critical habitat may require special management considerations or protections due to the threats outlined below:

(1) Activities that introduce or promote the occurrence of bullfrogs and fish can be significant threats to Central population breeding ponds.

(2) Activities that could disturb aquatic breeding habitats during the breeding season.

(3) Activities that impair the water quality of aquatic breeding habitat.

(4) Activities that would reduce small mammal populations to the point that there is insufficient underground Central population refugia used for foraging, protection from predators, and shelter from the elements.

(5) Activities that create barriers impassable for salamanders or road crossings that increase mortality in upland habitat between extant occurrences in breeding habitat.

(6) Activities on adjacent uplands that disrupt vernal pool complexes' ability to support CTS breeding function.

(7) Activities that introduce non-native tiger salamanders in areas where CTS is threatened by hybridization.

Proposed Critical Habitat Designation

We are proposing critical habitat for the Central population throughout four geographic regions. The proposed critical habitat units described below constitute our best assessment at this time of the areas essential for the conservation of the Central population. The regions are: (1) Central Valley Region, (2) Southern San Joaquin Valley Region, (3) the East Bay Region, and (4) the Central Coast Region. The maps in this proposed rule present a pictorial representation of the four regions and are not accurate with regard to the dividing line between the Central Coast and Central Valley regions in Alameda County. The maps in the rule portion of this document begin with Map 7 and run consecutively because they follow Maps 1–6 in the proposed critical habitat rule for the Santa Barbara population of the California tiger salamander already published in the **Federal Register** (69 FR 3064, January 22, 2004). We will continue to refine these maps as we acquire more refined or smaller scale mapping information.

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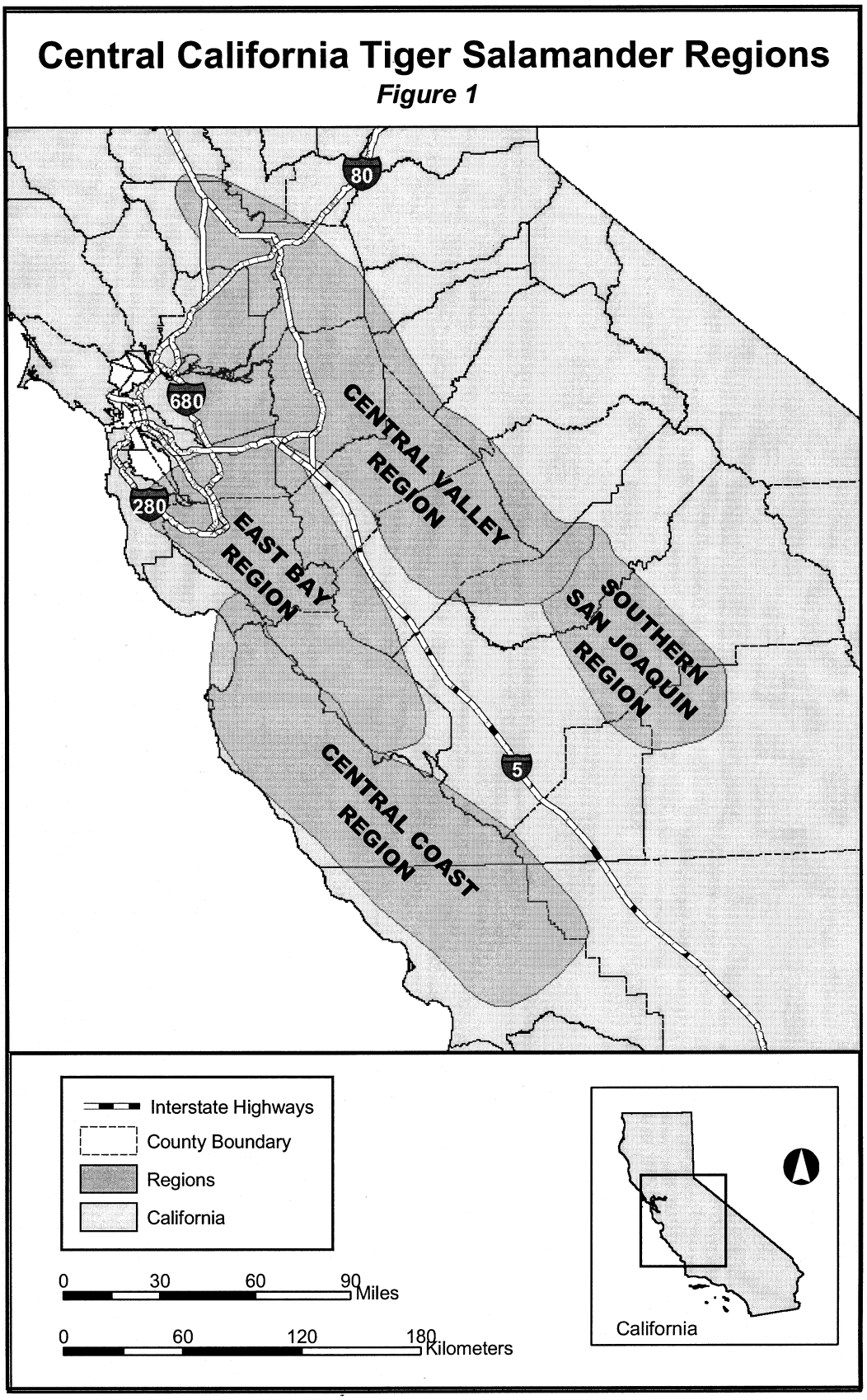

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We are proposing 47 units as critical habitat for the Central population. Federal lands within the San Francisco Bay National Wildlife Refuge, the San Luis National Wildlife Refuge Complex, and Fort Hunter Liggett are included in proposed critical habitat units. Additionally, we have proposed critical habitat on lands within East Bay Regional County Park. Although some Federal, State, or local government lands occur within the boundaries of proposed critical habitat, the majority of the areas proposed for critical habitat designation occur on privately owned land. The approximate area encompassed within each proposed critical habitat unit and associated land ownership are shown in Table 1.

TABLE 1.—APPROXIMATE SIZES AND LAND OWNERSHIP OF PROPOSED CRITICAL HABITAT UNITS BY GEOGRAPHIC REGION

Geographic region/proposed unit	Federal lands		State lands		Other lands		Total	
	ac	ha	ac	ha	ac	ha	ac	ha
Central Valley								
Unit 1	0	.....	0	.....	3,789	1,533	3,789	1,533
Unit 2	0	.....	7	3	5,937	2,403	5,944	2,406
Unit 3	0	.....	0	.....	10,191	4,124	10,191	4.124
Unit 4	0	.....	0	.....	9,603	3,886	9,603	3,886
Unit 5	0	.....	0	.....	3,128	1,266	3,128	1,266
Unit 6	0	.....	0	.....	32,443	13,129	32,443	13,129
Unit 7	0	.....	0	.....	1,010	409	1,010	409
Unit 8	17	7	0	.....	6,053	2,450	6,070	2,457
Unit 9	0	.....	0	.....	17,799	7,203	17,799	7,203
Unit 10	0	.....	0	.....	10,585	4,283	10,585	4,283
Unit 11	0	.....	0	.....	8,291	3,355	8,291	3,355
Unit 12	9,330	3,776	1,564	633	130	52	11,024	4,461
Unit 13	3,406	1,378	0	.....	2,356	953	5,762	2,332
Unit 14	1,540	623	0	.....	4,355	1,762	5,895	2,386
Unit 15	0	.....	0	.....	7,353	2,976	7,353	2,976
Unit 16	0	.....	21	8	13,481	5,455	13,502	5,464
Unit 17	0	.....	824	333	27,108	10,970	27,932	11,304
Unit 18	415	168	0	.....	8,400	3,400	8,815	3,568
Area Total	14,708	5,952	2,416	978	172,013	69,611	189,137	76,541
Southern San Joaquin Valley Region								
Unit 1	0	.....	0	.....	9,122	3,692	9,122	3,692
Unit 2	0	.....	0	.....	10,193	4,125	10,193	4,125
Unit 3	0	.....	0	.....	7,924	3,207	7,924	3,207
Unit 4	0	.....	415	168	0	.....	415	168
Unit 5A	0	.....	4,342	1,757	0	.....	4,342	1,757
Unit 5B	0	.....	629	255	0	.....	629	255
Area Total	0	.....	5,386	2,180	27,239	11,023	32,625	13,203
East Bay Region								
Unit 1	0	.....	0	.....	5,267	2,132	5,267	2,132
Unit 2	0	.....	0	.....	2,600	1,052	2,600	1,052
Unit 3	0	.....	0	.....	39,778	16,098	39,778	16,098
Unit 4	691	280	0	.....	382	155	1,073	434
Unit 5	0	.....	0	.....	2,814	1,139	2,814	1,139
Unit 6	0	.....	2,767	1,120	5,209	2,108	7,976	3,228
Unit 7	0	.....	0	.....	9,080	3,675	9,080	3,675
Unit 8	0	.....	0	.....	4,016	1,625	4,016	1,625
Unit 9	0	.....	0	.....	2,934	1,187	2,934	1,187
Unit 10	0	.....	0	.....	1,851	749	1,851	749
Unit 11	0	.....	6,583	2,664	408	165	6,991	2,829
Unit 12	0	.....	0	.....	6,754	2,733	6,754	2,733
Unit 13	0	.....	0	.....	2,409	975	2,409	975
Unit 14	0	.....	0	.....	2,212	895	2,212	895
Unit 15	0	.....	0	.....	3,165	1,281	3,165	1,281
Unit 16	0	.....	0	.....	16,952	6,860	16,952	6,860
Area Total	691	280	9,350	3,784	105,831	42,828	115,872	42,892
Central Coast Region								
Unit 1	0	.....	0	.....	4,341	1,757	4,341	1,757
Unit 2	8,200	3,318	0	.....	0	.....	8,200	3,318
Unit 3	18	7	110	45	3,537	1,431	3,665	1,483
Unit 4	20	8	0	.....	3,881	1,571	3,901	1,579
Unit 5A	9,942	4,024	0	.....	0	.....	9,942	4,024

TABLE 1.—APPROXIMATE SIZES AND LAND OWNERSHIP OF PROPOSED CRITICAL HABITAT UNITS BY GEOGRAPHIC REGION—Continued

Geographic region/proposed unit	Federal lands		State lands		Other lands		Total	
	ac	ha	ac	ha	ac	ha	ac	ha
Unit 5B	5,453	2,207	0		297	120	5,750	2,327
Unit 6	0		0		9,233	3,736	9,233	3,736
Area total	23,633	9,564	110	45	21,288	8,615	45,032	18,224
Grand totals	39,032	15,796	17,262	6,986	326,371	132,078	382,666	154,860

The critical habitat we are proposing for the Central population represents occupied aquatic and upland habitats throughout the species' range. Brief descriptions of the proposed critical habitat units are presented below. To the best of our knowledge, each unit contains essential aquatic, upland, and dispersal habitats.

We believe the critical habitat units proposed below are essential to the conservation of the CTS because each represents a unique combination of aspects of geographic and ecological distribution and genetic diversity that meet the criteria described above for identifying essential habitat. Each of the proposed critical habitat units contains one or more of the PCEs and may require one or more of the special management considerations or protections described above.

Central Valley Region

The Central Valley region generally includes an area from northern Yolo County south and southeast to the northern half of Madera County, and includes eastern Solano and Contra Costa counties. Within this region, we are proposing 18 critical habitat units that total approximately 189,137 ac (76,541 ha). The 18 proposed critical habitat units contain approximately 192 extant occurrences of the CTS. The 18 proposed units occur in 4 of 17 vernal pool regions within California: the Solano-Colusa, Southeastern Sacramento Valley, Southern Sierra Foothills, and San Joaquin Valley. The units are distributed across the geographic extent of the region and represent the varying habitats and environmental conditions available for CTS in the Central Valley region. By including units across the geographic range of the species within this region we are conserving the diversity of the species and its habitat across its range. The approximately 192 extant occurrences of CTS within the Central Valley region represent some of the highest density and best remaining habitat for the species. Table 2 illustrates the acreage proposed as critical habitat within the Central Valley region by county.

TABLE 2.—AREA OF PROPOSED CRITICAL HABITAT WITHIN THE CENTRAL VALLEY REGION BY COUNTY

County	Acres	Hectares	Unit number
Yolo	3,789	1,533	1
Solano	5,944	2,406	2
Sacramento	10,191	4,124	3
San Joaquin	21,120	8,547	4,6
Amador	1,506	610	4
Calaveras	4,944	2,001	5,6
Stanislaus	24,406	9,877	6–8
Merced	45,127	18,262	8–10,12–13
Madera	8,291	3,355	11
Mariposa	321	130	10
Contra Costa	43,232	17,496	14–18
Alameda	20,266	8,201	17–18
Total	189,137	76,541	

Unit 1, Dunnigan Creek Unit, Yolo County (3,789 ac (1,533 ha))

This proposed unit is the only unit in Yolo County and represents the northern part of the geographic distribution of CTS in the Central Valley region. This proposed unit contains a cluster of four CTS occurrences located in a vernal pool complex in the northern end of the Solano-Colusa vernal pool region. It is roughly bordered by Interstate 5 on the east, Bird Creek on the south, Buckeye Creek on the north and west. Land ownership is private.

Unit 2, Jepson Prairie Unit, Solano County (5,944 ac (2,406 ha))

This proposed unit represents the northwest distribution of the CTS within the Central Valley region within the southern end of Solano-Colusa vernal pool region in Solano County. This proposed unit contains four extant occurrences of the CTS. It is generally located south of Dixon, west of State Route 113, north of Creed Road, and east of Travis Air Force Base. This unit is mostly privately owned, but contains a small amount of California Department of Fish and Game lands.

Unit 3, Southeastern Sacramento Unit, Sacramento County (10,191 ac (4,124 ha))

This proposed unit is only one of three proposed units representing the Southeastern Sacramento Valley vernal pool region and is found at the southern end of that region. It contains eight occurrences of CTS. This proposed unit is generally bordered on the south by the Sacramento and San Joaquin County line, Laguna Creek on the north, the

Sacramento and Amador County line on the east, and Alta Mesa Road on the west. Land ownership is private.

Unit 4, Northeastern San Joaquin Unit, San Joaquin and Amador Counties (9,603 ac (3,886 ha))

This proposed unit is the only one in San Joaquin and Amador counties. It contains five extant occurrences of the CTS within a vernal pool complex in the Southeastern Sacramento Valley vernal pool region. This proposed unit is roughly located south of the San Joaquin and Sacramento County line, east of Day Creek Road, north of Liberty Road, and west of Comanche and Jackson Valley Roads. Land ownership is private.

Unit 5, Indian Creek Unit, Calaveras County (3,128 ac (1,266 ha))

This proposed unit represents the northeastern range of the species in the Central Valley region within the Southeastern Sacramento Valley vernal pool region. It contains four occurrences of CTS. This unit is roughly bordered by State Route 26 on the south and east, Warren Road on the west, and State Route 12 on the north. Land ownership is private.

Unit 6, Rock Creek Unit, Calaveras, San Joaquin, and Stanislaus Counties (32,443 ac (13,129 ha))

This proposed unit represents an essential part of the San Joaquin Valley's eastern distribution of the species. This proposed unit contains five extant occurrences of the CTS in a vernal pool complex representing the northern end of the Southern Sierra Foothills vernal pool region. It is located approximately west of San Joaquin County Road J6, north of Sonora Road, east of Stanislaus County Road J12, and south of the Calaveras River. Land ownership is private.

Unit 7, Rodden Lake Unit, Stanislaus County (1,010 ac (409 ha))

This proposed unit contains three occurrences of CTS in vernal pool complexes in the center portion of the species range within the Central Valley region. This proposed unit is located at the northern end of the Southern Sierra Foothill vernal pool region and is the only proposed unit near the Stanislaus River. It is roughly bounded by Horseshoe Road on the east, Frankhenheimer Road on the north, Twenty Eight Mile Road on the west, and the Stanislaus River on the south. Land ownership is private.

Unit 8, La Grange Ridge Unit, Stanislaus and Merced Counties (6,070 ac (2,457 ha))

This proposed unit is representative of the vernal pool complexes that occur within the center of the Central Valley region. It contains five extant occurrences of the CTS within the northeastern Southern Sierra Foothills vernal pool region. This proposed unit is roughly located east of Cardoza Ridge, west of Los Cerritos Road, south of State Route 132, and north of Fields Road. Land ownership is private.

Unit 9, Fahrens Creek Unit, Merced County (17,799 ac (7,203 ha))

This proposed unit represents the center of the range of the species within the Central Valley region and contains 20 extant occurrences of the CTS. This proposed unit is one of two representing the South Sierra Foothills vernal pool region in Merced County. This area is located generally northeast from Merced, east of the Merced and Mariposa county dividing line, north of Bear Creek and south of the Merced River. Land ownership is private.

Unit 10, Miles Creek Unit, Merced County (10,585 ac (4,283 ha))

This proposed unit represents the southern end of the Central Valley region and contains nine extant occurrences of the CTS. This proposed unit is the only other unit that occurs on the Southern Sierra Foothill vernal pool region in Merced County. It occurs mostly in Merced County and has a small portion in adjacent Mariposa County. This proposed unit is located generally east of Owens Lake in Mariposa County, west of Cunningham Road in Merced County, south of South Bear Creek Road in Merced County, and north of Childs Avenue. Land ownership is private.

Unit 11, Rabbit Hill Unit, Madera County (8,291 ac (3,355 ha))

This proposed unit represents the southern extent of the CTS in the Central Valley region in the Sierra Foothills vernal pool region in Madera County. It contains six extant occurrences of the CTS. This proposed unit is generally located west of Hensley Lake, south of Knowles Junction, west of the Daulton Mine, and north of the Fresno River. Land ownership is private.

Unit 12, San Luis Island Unit, Merced County (11,024 ac (4,461 ha))

This proposed unit represents the southwestern edge of the valley floor of the Central Valley region and contains six extant occurrences of the CTS. This proposed unit is one of two proposed units representing the San Joaquin Valley vernal pool region. It is located west of State Route 165, south of State Route 140, east of Santa Fe Grade Road, and north of Buttonwillow Lakes. This proposed unit occurs primarily on Federal lands of the San Luis National Wildlife Refuge Complex, but also includes some State and private lands.

Unit 13, Sandy Mush Unit, Merced County (5,762 ac (2,332 ha))

This proposed unit represents the very southwestern distribution of the species within the Central Valley region and contains five extant occurrences of the CTS. This is only one of two proposed units in the San Joaquin Valley vernal pool region. This proposed unit generally is located west of State Route 59, north of Chamberlain Road, east of the San Joaquin River, and south of Ventura Road. Land ownership is Federal (San Luis National Wildlife Refuge Complex) and private.

Unit 14, Mulligan Hill Unit, Contra Costa County (5,895 ac (2,386 ha))

This proposed unit represents the western portion of the Central Valley region and the Livermore vernal pool region in Contra Costa County. This proposed unit is bordered on the north by State Route 4, Concord on the west, Kirker Pass Road to the south, the City of Pittsburg to the east. The Department of Defense, Concord Naval Weapons Station, owns part of this proposed unit, and the other part is privately owned.

Unit 15, Deer Valley Unit, Contra Costa County (7,353 ac (2,976 ha))

This proposed unit contains ten extant occurrences of the CTS and represents the southwestern part of Central Valley region and the Livermore vernal pool region in Contra Costa County. It is roughly bounded by Mount Diablo to the west, Antioch to the north, Deer Valley to the south, and Lone Tree Valley to the east. Land ownership is Contra Costa County parks and private.

Unit 16, Marsh Creek Unit, Contra Costa County (13,502 ac (5,464 ha))

This proposed unit contains 25 extant occurrences of the CTS and represents the southwestern portion of the Central Valley region in the Livermore vernal pool region within Contra Costa County. This proposed unit is roughly bounded by Curry Canyon on the west, Deer Valley on the north, Round Valley on the south, and Marsh Creek Reservoir on the east. Land ownership is mostly private but includes a small amount of State land.

Unit 17, Benthany Reservoir Unit, Alameda and Contra Costa Counties (27,932 ac (11,304 ha))

This proposed unit contains 50 extant occurrences of the CTS and represents the southwestern portion of the Central Valley region in the Livermore vernal pool region within Contra Costa County. It contains the highest density of CTS extant occurrences among all proposed units and represents a significant portion of the species' habitat and range. This unit is generally bounded by Interstate Freeway 580 on the south, Clifton Court Forebay on the east, the City of Bryon on the north, and Brushy Peak on the west. Land ownership is mostly private, with some State lands as well.

Unit 18, Doolan Canyon Unit, Alameda and Contra Costa Counties (8,815 ac (3,568 ha))

This proposed unit contains 12 extant occurrences of the CTS and represents the very southwestern portion of the Central Valley region within the Livermore vernal pool region. This proposed unit is generally bounded by Tassajara on the north, Collier Canyon Road on the east and the south, and the City of Dublin on the west. Land ownership is mostly private, but it also includes some Federal lands.

Southern San Joaquin Valley Region

The Southern San Joaquin Valley region includes the southern half of Madera County south to northeastern Kings County and northwestern Tulare County. Within this region, we propose six critical habitat units for the California tiger salamander that total approximately 32,625 ac (13,203 ha). The six proposed critical habitat units encompass approximately 33 extant occurrences of the CTS and represent the San Joaquin Valley and Southern Sierra Foothills vernal pool regions. The units are distributed across the geographic extent of the region and represent the varying habitats and environmental conditions available for CTS in the Southern San Joaquin Valley region. By including units across the geographic range of the species within this region, we are conserving the diversity of the species and its habitat across its range. Table 3 illustrates the acreage proposed as critical habitat within the Southern San Joaquin Valley region by County.

TABLE 3.—AREA OF PROPOSED CRITICAL HABITAT UNITS WITHIN THE SOUTHERN SAN JOAQUIN VALLEY REGION BY COUNTY

County	Acres	Hectares	Unit number
Madera	9,122	3,692	1
Fresno	16,375	6,627	2,3
Kings	885	358	5
Tulare	6,243	2,526	3–5
Total	32,625	13,203	

Unit 1, Millerton Unit, Madera County (9,122 ac (3,692 ha))

This proposed unit represents the only extant occurrences of the California tiger salamander on the northern end of the Southern San Joaquin Valley region and contains 11 extant occurrences of the CTS. This proposed unit occurs within the Southern Sierra Foothills vernal pool region, one of two vernal pool regions in the Southern San Joaquin Valley region. This proposed unit is located west of State Highway 41 and generally north of the San Joaquin River. The eastern boundary is approximately the western side of Millerton Lake and the northern boundary is approximately that are near Indian Springs and Millers Corner. Land ownership is private.

Unit 2, Northeast Fresno, Fresno County (10,193 ac (4,125 ha))

This unit represents the distribution of CTS in the northern end of the Southern San Joaquin Valley region and the Southern Sierra Foothills vernal pool region. It contains ten extant occurrences of the CTS. This proposed unit is located northeast of Fresno, southwest of Millerton Lake, east of Friant Road and generally west of Academy. Land ownership is private.

Unit 3, Hills Valley Unit, Fresno and Tulare counties (7,924 ac (3,207 ha))

This proposed unit represents the southern portion of the distribution of CTS within the Southern San Joaquin Valley region and the Southern Sierra Foothills vernal pool region. It contains five extant occurrences of the CTS. This proposed unit is located in Fresno County and extends just into the northwest corner of Tulare County, south of State Highway 180, generally west of George Smith and San Creek Roads, north of Curtis Mountain, and east of Cove Road. This proposed unit is the northernmost one of its kind in Tulare County and is the only one located in the foothills of Tulare County. Land ownership is private.

Unit 4, Seville Unit, Tulare County (415 ac (168 ha))

This proposed unit represents an extant occurrence of CTS in a vernal pool complex, a rarity in the lower elevations in the San Joaquin Valley where the majority of historic vernal pool habitat has been converted to intensive agricultural uses. Although small in size, it represents an essential part of the southern extent of the genetic and geographical range of the species. This proposed unit occurs within the Southern Sierra Foothills vernal pool region. It is located just west of Seville on either side of State Route 201, east of State Route 63, south of Stokes Mountain, and north of Ivanhoe. Land ownership is private.

Unit 5A and 5B, Cottonwood Creek Unit, Tulare and Kings counties (4,971 ac (2,011 ha))

Unit 5A represents a significant area at the very southern extension of the range of the CTS. This proposed unit contains four extant occurrences and is located in a low-elevation vernal pool complex within the San Joaquin Valley vernal pool region. It is roughly bordered by County Road J36 on the north, Dinuba Road on the east, Avenue 352 on the south, and County Road 112 on the west. Land ownership is State. Unit 5A is 4,342 ac (1,757 ha) in size.

Unit 5B represents an important low-elevation component of the southernmost range extension of the species in the Southern San Joaquin Valley region. This proposed unit contains two extant occurrences of the CTS in the area of Cottonwood Creek in vernal pool complexes of the San Joaquin Valley vernal pool region. It is located north of Goshen, south of Traver, west of Calgro, and east of

Hamlin. Land ownership is State. Unit 5B is 629 ac (254 ha) in size.

East Bay Region

The East Bay region generally includes the area from Alameda County south to Santa Benito and Santa Clara counties, and western Merced County. The East Bay region has approximately 115,872 ac (46,892 ha) of proposed critical habitat. Within this geographical area, we have identified 16 proposed critical habitat units for the CTS that contain approximately 132 extant occurrences. The East Bay region contains the Livermore, Central Coast, and San Joaquin Valley vernal pool regions. The units are distributed across the geographic extent of the region and represent the varying habitats and environmental conditions available for CTS in the East Bay region. By including units across the geographic range of the species within this region, we are conserving the diversity of the species and its habitat across its range. Table 4 illustrates the acreage proposed as critical habitat within the East Bay region by county.

TABLE 4.—AREA OF PROPOSED CRITICAL HABITAT WITHIN THE EAST BAY REGION BY COUNTY

County	Acres	Hectares	Unit number
Alameda	47,333	19,155	1–4
Santa Clara	42,751	17,301	3
San Benito	21,167	8,566	12,15–16
Merced	4,621	1,870	13–14
Total	115,872	46,892	

Unit 1, Patterson Unit, Alameda County (5,267 ac (2,132 ha)

This proposed unit represents the northernmost CTS occurrences in the Bay Area region and the northern end of the Livermore vernal pool region. It contains seven extant occurrences of the CTS and is one of four proposed units within Alameda County. This proposed unit lies south of Interstate 580, east of the City of Midway, north of Patterson Pass Road, and west of Flynn Road. Land ownership is private.

Unit 2, Mendenhall Unit, Alameda County (2,600 ac (1,052 ha))

This proposed unit represents a portion of the northeastern range of the CTS within the Bay Area region and the northern end of the Livermore vernal pool region. It contains seven extant occurrences in northern Alameda County. This proposed unit is generally located south of Tesla Road, east of Crane Ridge, and north and west of Lake Del Valle. Land ownership is private.

Unit 3, Alameda Creek Unit, Alameda and Santa Clara Counties (39,778 ac (16,098 ha))

This proposed unit represents the north central part of the Bay Area region and the northwestern Livermore vernal pool region. It contains 47 extant occurrences of the CTS. This proposed unit is generally located north of Calaveras Reservoir, east of Sugar Butte, west of Fremont, and south of Livermore. Land ownership is a mixture of county parks and private lands.

Unit 4, San Francisco Bay Unit, Alameda County (1,073 ac (434 ha))

This proposed unit represents the only CTS occurrences in the northwest portion of the Bay Area region and contains four extant occurrences in the Livermore vernal pool region. This proposed unit is generally located north of Coyote Creek, west of Interstate 880, south of Newark, and east of San Francisco Bay. Most of this proposed unit is on Federal lands of the San Francisco Bay National Wildlife Refuge, but also includes some private land.

Unit 5, Poverty Ridge Unit, Santa Clara County (2,814 ac (1,139 ha))

This proposed unit represents the north central portion of the Bay Area region in the southern end Livermore vernal pool region and contains six extant occurrences of the CTS. It is generally located west of Alum Rock, south of Alameda and Contra Costa county line, west of Kincaid Road, and north of Master Hill. Land ownership is private.

Unit 6, Smith Creek Unit, Santa Clara County (7,976 ac (3,228 ha))

This proposed unit represents the north central part of the range of CTS within the Bay Area region and the northern Central Coast vernal pool region. It contains four extant occurrences of the CTS. This proposed unit is generally located west of Sugarloaf Mountain, south of Packard Ridge, east of Masters Hill, and north of Panochita Hill. This proposed unit contains University of California, county, and private lands.

Unit 7, San Felipe Creek Unit, Santa Clara County (9,080 ac (3,675 ha))

This proposed unit represents the central portion of the distribution of CTS within the Bay Area region and the north central portion of the Central Coast vernal pool region. It contains four extant occurrences of the species. This proposed unit is generally located west of Silver Creek, south of Panochita Hill, east of Bollinger Mountain, and north of Morgan Hill. Land ownership is private.

Unit 8, Laurel Hill Unit, Santa Clara County (4,016 ac (1,625 ha))

This proposed unit represents the northwestern portion of the distribution of CTS in the Bay Area region and the northwestern portion of the Central Coast vernal pool region. It contains 10 extant occurrences of the species and is one of two proposed units on the western side of the Santa Clara Valley. This proposed unit is generally located east of Morgan Hill, south of San Jose, west of the Santa Cruz Mountains, and north of Croy Ridge. Land ownership is private.

Unit 9, Cebata Flat Unit, Santa Clara County (2,934 ac (1,187 ha))

This proposed unit represents CTS in the central portions of the Bay Area region and the Central Coast vernal pool region. It contains three extant occurrences of the CTS. This proposed unit is generally located west of Gilroy, south of Henry Coe State Park, east of Lake Mountain, and north of Canada Road. Land ownership is private.

Unit 10, Lions Peak Unit, Santa Clara County (1,851 ac (749 ha))

This proposed unit represents only the second proposed unit on the west side of the Santa Clara Valley within the central portions of the Bay Area region and the Central Coast vernal pool region. It contains six extant occurrences of the CTS. This proposed unit is generally found east of State Highway 101, south of Morgan Hill, north of Hecker Pass Highway, and west of Uvas Reservoir. Land ownership is private.

Unit 11, Braen Canyon Unit, Santa Clara County (6,991 ac (2,829 ha))

This proposed unit represents the distribution of CTS within the eastern central portion of the Bay Area region and the central portion of the Central Coast vernal pool region. It contains five extant occurrences of the CTS in southern Santa Clara County. This proposed unit is generally found west of Gilroy, south of Kelly Lake, east of Pacheco Lake, and north of Jamison Road. Land ownership is State and private.

Unit 12, San Felipe Unit, Santa Clara and San Benito Counties (6,754 ac (2,733 ha))

This proposed unit represents the distribution of CTS within the central portions of the Bay Area region and Central Coast vernal pool region. It contains 10 extant occurrences of the CTS in southern Santa Clara County and northern San Benito County. This proposed unit is generally found east of Carnadero Creek, south of Kickham Peak, west of San Joaquin Peak, and north of Dunneville. Land ownership is private.

Unit 13, Los Banos Unit, Merced County (2,409 (975 ha))

This proposed unit represents a portion of the southeastern distribution of CTS within the Bay Area region and the San Joaquin Valley vernal pool region. It contains three extant occurrences of the CTS in Merced County. This proposed unit is generally located east of Los Banos Reservoir, north of Bullard Mountain, west of Cathedral Peak, and south of San Luis Reservoir State Recreation Area. Land ownership is private.

Unit 14, Landgon Unit, Merced County (2,212 ac (895 ha))

This proposed unit represents the eastern distribution of the CTS within the Bay Area region within the San Joaquin Valley vernal pool region. It contains three extant occurrences of the CTS in Merced County. This proposed unit is generally found west of Sweeney Hill, south of Gasten Bide Road, west of Interstate 5, and north of Ortigalita Peak. Land ownership is private.

Unit 15, Ana Creek Unit, San Benito County (3,165 ac (1,281 ha))

This proposed unit represents the distribution of CTS in the southwestern portion of the Bay Area region within the Central Coast vernal pool region. It contains nine extant occurrences of the CTS. This proposed unit is generally located east of Hollister, north of Tres Pinos, west of Cibo Peak, and south of Coyote Peak. Land ownership is private.

Unit 16, Bitterwater Unit, San Benito County (16,952 ac (6,860 ha))

This proposed unit represents the southern distribution of CTS within the Bay Area region within the southern portion of the Central Coast vernal pool region. It contains nine extant occurrences of the species. This proposed unit is generally found south of Pinnacles, west of Hernandez Reservoir, north of Lonoak, and east of Murphy Flat. Land ownership is private.

Central Coast Region

The Central Coast includes the area from Monterey County to northeastern San Luis Obispo County and northwestern Tulare County. The Central Coast region contains seven proposed critical habitat units that total approximately 45,034 ac (18,225 ha). These proposed critical habitat units contain approximately 50 extant occurrences of California tiger salamander within the Central Coast, Livermore, and Carrizo vernal pool regions. The units are distributed across the geographic extent of the region and represent the varying habitats and environmental conditions available for CTS in the Central Coast region. By including units across the geographic range of the species within this region, we are conserving the diversity of the species and its habitat across its range. Table 5 illustrates the acreage proposed as critical habitat within the Central Coast region by County.

TABLE 5.—ACREAGE OF PROPOSED CRITICAL HABITAT WITHIN THE CENTRAL COAST REGION BY COUNTY

County	Acres	Hectares	Unit Number
Monterey	32,392	13,109	1–5
San Benito	3,408	1,379	4
San Luis Obispo	7,736	3,131	6
Kern	1,496	605	6
Total	45,032	18,224	

Unit 1, Crazy Horse Canyon Unit, Monterey County (4,341 ac (1,757 ha))

This proposed unit represents the distribution of CTS within the northern portion of the Central Coast region and the northwestern portion of the Central Coast vernal pool region. It contains five extant occurrences of the CTS. This proposed unit is generally located north of Salinas, west of Castroville, south of Echo Valley Road, and east of Hollister. Land ownership is private.

Unit 2, Elliott Hill Unit, Monterey County (8,200 ac (3,318 ha))

This proposed unit represents the distribution of the CTS in the northwestern portions of the Central Coast region and the Central Coast vernal pool region. It contains 16 extant occurrences of the CTS. This proposed unit is generally located south of Salinas, east of Seaside, and northwest of State Route 68. All of this unit is on the former Department of Defense Fort Ord Military Reservation, now partially managed by the Bureau of Land Management. Land ownership is Federal.

Unit 3, Haystack Hill Unit, Monterey County (3,665 ac) (1,483 ha))

This proposed unit represents the center portion of the Central Coast region within the northwestern portion of the Central Coast vernal pool region. It contains ten extant occurrences of the Central population. This proposed unit is generally located along Carmel Valley Road, west of Paloma Ridge, east of Jamesberg, and south of Carmel Valley. Land ownership within this proposed unit is a mixture of Federal (BLM), State (Hastings Natural History State Reserve), and private.

Unit 4, Gloria Valley Unit, Monterey and San Benito Counties (3,901 ac) (1,579 ha))

This proposed unit represents the distribution of CTS within the northeastern portion of the Central Coast region within the western portion of the Central Coast vernal pool region.

It contains 10 extant occurrences of the Central population. This proposed unit is generally located north of Soledad, west of the Pinnacles National Monument, south of Tres Pinos, and east of Gonzales. Land ownership of this proposed unit is mostly private but includes a small amount of federal (BLM) land.

Units 5A and 5B, Fort Hunter Liggett Unit, Monterey County (15,692 ac) (6,351 ha))

Units 5A and 5B represent the distribution of CTS in the southwestern portion of the Central Coast region within the southern portion of the Central Coast vernal pool region. They contain 15 extant occurrences of the CTS. Units 5A and 5B are generally located on the west and east sides of the San Antonio River Valley, north of Bryson, and south of King City. Land ownership is Federal (Department of Defense, Fort Hunter Liggett Military Reservation) and private. Unit 5A is 9,942 ac (4,024 ha) in size, and Unit 5B is 5,750 ac (2,327 ha) in size.

Unit 6, Choice Valley, Kern and San Luis Obispo Counties (9,233 ac) (3,736 ha)

This proposed unit represents the southernmost extension of CTS within the Central Coast region and is the only unit within the Carrizo vernal pool region. The unit contains four extant occurrences of the CTS. This proposed unit is generally located north of the Carrisa Highway, east of Antelope Valley, south of Cottonwood, and west of Shandon. Land ownership is private.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a 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.'' However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species. Individuals, organizations, States, local governments, and other nonfederal 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, including the Service, 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 proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act 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 activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (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 or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports assist the agency in eliminating conflicts that may be caused by the proposed action, and may include recommendations on actions to eliminate conflicts with, or adverse modifications to, proposed critical habitat. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the California tiger salamander or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Army Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on nonfederal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy

or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of the California tiger salamander. Within critical habitat, this pertains only to those areas containing primary constituent elements. We note that such activities may also jeopardize the continued existence of the 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 destroy or adversely modify 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. Designation of critical habitat in areas occupied by the California tiger salamander is not likely to result in a regulatory burden above that already in place due to the presence of the listed species.

Federal agencies already consult with us on activities in areas currently occupied by the CTS 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) Regulation of water flows, damming, diversion, and channelization by any Federal agency;

(3) Road construction and maintenance, right-of-way designation, and regulation funded or permitted by the Federal Highway Administration;

(4) Voluntary conservation measures by private landowners funded by the Natural Resources Conservation Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Licensing of construction of communication sites by the Federal Communications Commission;

(7) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency; and

(8) Land management and land use actions funded, carried out, or permitted by the Bureau of Land Management.

All lands proposed for designation as critical habitat are within the geographic area occupied by the species, and are likely to be used by the CTS, whether for foraging, breeding, growth of larvae and juveniles, dispersal, migration, genetic exchange, or sheltering. Thus, we consider all critical habitat units to be occupied by the species. 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. Therefore, we believe that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat. Nevertheless, at any given time, some portions of a unit may not be occupied by California tiger salamanders, due to climatic fluctuations, changes in population numbers, flood events, or other causes. Additional consultations could arise if a project is proposed within an unoccupied portion of a critical habitat unit and the primary constituent elements may be adversely affected by the project.

Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act

We use both the definitions in section 3(5)(A) and the provisions of section 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat as well as for those areas that are subsequently finalized (*i.e.*, designated as critical habitat). On that basis, it has been our policy not to include in proposed critical habitat, or exclude from designated critical habitat, those areas: (1) Not biologically essential to the conservation of a species; (2) covered by an individual (project-specific) or regional Habitat Conservation Plan (HCP) that covers the subject species; (3) covered by a complete and approved Integrated Natural Resource Management Plan (INRMP) for specific DOD installations; and (4) covered by an adequate management plan or agreement that protects the primary constituent elements of the habitat.

We have not excluded any lands from this proposal pursuant to sections 3(5)(A) and 4(b)(2) of the Act. Potential areas which we are considering to exclude based on section 4(b)(2) of the Act include: areas on Fort Hunter Liggett and the Concord Naval Weapons Station and lands within any other DOD facilities; lands within Fish and Wildlife National Wildlife Refuges that have completed CCPs or have concluded intra-Service section 7 consultation for the species; lands within State Wildlife Areas or Ecological Reserves that have developed and implemented management plans for the species; and lands covered under any legally operating NCCP/HCP where the California tiger salamander is a covered species. The San Luis National Wildlife Refuge Complex (SLNWR) (units 12 and 13 in the Central Valley Region) and the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR) (Unit 4 in the East Bay Region) have areas that are included in the proposed designation. The SLNWR is scheduled to start development of a CCP in 2005, and the SFBNWR is scheduled to start the CCP process in 2008.

In addition, we are also considering exclusion of private lands being managed for the long-term conservation of the California tiger salamander through agreements or other mechanisms; municipal water district lands or other local government lands that develop management plans for the long-term conservation of the species; other State or private easement lands that develop management plans which ensure the conservation of the California tiger salamander.

This proposed rule includes two proposed critical habitat units at Fort Hunter Liggett. Fort Hunter Liggett does not have a signed INRMP that affords effective conservation for the CTS and has no approved management plan for the species. During the proposal period, we hope to work with private landowners on developing conservation agreements that would protect the extant occurrences of the species. We are aware of the landowner concerns that this proposal has on the ranching community and look forward to receiving more current information from ranchers and other landowners to improve and refine our proposed critical habitat units. If we can complete conservation agreements with ranch landowners and other interested landowners, we may exclude lands covered by conservation agreements from the final critical habitat designation for the CTS.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information 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 part of critical habitat. We cannot exclude such areas from critical habitat if such exclusion would result in the extinction of the species.

An analysis of the economic impacts of proposing critical habitat for the CTS

is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. We will reopen the comment period and accept comments from the public about the economic impacts from the proposed critical habitat and any other comments from landowners and the public. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://sacramento.fws.gov,* or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES** section)

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

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 jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule 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: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. Office of Management and Budget makes the final determination of significance under Executive Order 12866. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat.

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 under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agency;

(3) Road construction and maintenance, right-of-way designation, and regulation funded or permitted by the Federal Highway Administration;

(4) Voluntary conservation measures by private landowners funded by the Natural Resources Conservation Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Licensing of construction of communication sites by the Federal Communications Commission;

(7) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency; and

(8) Land management and land use actions funded, carried out, or permitted by the Bureau of Land Management.

The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

To determine if the rule would affect a substantial number of small entities, we consider the number of small

entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). We considered each industry individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation.

If this critical habitat designation is finalized, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Since the Central population was proposed as a threatened species on May 23, 2003 (68 FR 28648), we have conferenced with Federal agencies and applicants, or are in the process of conferencing, on 25 projects within the range of the Central population. Seventeen of these conferences are being conducted in accordance with the procedures for formal consultation in accordance with 50 CFR 402.10. The remaining eight have been informal. These conferences have concerned activities such as by developers, municipalities, businesses, and others. Formal and informal conferences regarding the Central population usually result in recommendations to avoid or minimize incidental take and offset permanent loss of habitat. In reviewing these conferences and the activities involved in light of proposed critical habitat, we do not believe the outcomes would have been different in areas designated as critical habitat. However, as a result of not having the economic analysis completed on the proposed designation of critical habitat for the CTS, we will not make a determination or certify that the action will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required until the completion of a draft economic analysis.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the CTS is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, or permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. Given the distribution of this species, small governments will not be uniquely affected by this proposed rule. Small governments will not be affected at all unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action is not likely to adversely modify or destroy designated critical habitat. However, as discussed above, Federal agencies are currently required to ensure that any such activity is not likely to jeopardize the species, and no further regulatory impacts from the designation of critical habitat are anticipated. Because we believe this rule will not significantly or uniquely affect small governments, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings

implication assessment is not required. 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 the CTS. Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the proposed critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have opportunity to use their property in ways consistent with the survival of the CTS.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the CTS imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified.

While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed 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 California tiger salamander.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination 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), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of the Central California population of the California tiger salamander. Therefore, proposed designation of critical habitat for the Central California population of the California tiger salamander has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, SFWO (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Sacramento Fish and Wildlife Office staff.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping 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. The entry for ''Salamander, California tiger'' in the table in § 17.11(h), which was proposed to be revised on May 23, 2003, at 68 FR 28647, and again on January 22, 2004, at 69 FR 3064, is proposed to be further revised as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Amphibians							
*	*	*	*	*	*		*
Salamander, California tiger.	*Ambystoma californiense*.	U.S.A. (CA)	U.S.A. (CA)	T	677E, 702, 744	17.95(d)	17.43(c)

3. Critical habitat for the California tiger salamander (*Ambystoma californiense*) in § 17.95(d), which was proposed to be revised on January 22, 2004, at 69 FR 3064, is proposed to be further amended by revising the heading and adding paragraphs (11) through (62) as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

California Tiger Salamander (*Ambystoma californiense*)

Santa Barbara County Population of the California Tiger Salamander (*Ambystoma californiense*)

* * * * *

Central Population of the California Tiger Salamander (*Ambystoma californiense*)

(11) Critical habitat units are depicted for the Central California population, California, on the maps below.

(12) The primary constituent elements (PCEs) of critical habitat for the Central population of the California tiger salamander (CTS) are the habitat components that provide:

(i) Standing bodies of fresh water, including natural and man-made (*e.g.*, stock) ponds, vernal pools, vernal pool complexes, and other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a sufficient length of time (*i.e.*, 12 weeks) necessary for the species to complete the aquatic portion of its life cycle.

(ii) Barrier-free uplands adjacent to extant occurrence locations that contain small mammal burrows, including but not limited to burrows created by the California ground squirrel (*Spermophilus beecheyi*) and Botta's pocket gopher (*Thomomys bottae*). Small mammals are essential in creating the underground habitat that adult California tiger salamanders depend upon for food, shelter, and protection from the elements and predation.

(iii) Upland areas between extant occurrence locations (paragraphs 1 and 12(i) for this proposed designation) and areas with small mammal burrows (paragraphs 2 and 12(ii) for this proposed designation) that allow for dispersal among such sites.

(iv) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, maintain suitable periods of pool inundation for larval salamanders and their food sources, and providing breeding, feeding, and sheltering habitat for juvenile and adult salamanders and small mammals that create burrow systems essential for CTS estivation.

(13) Critical habitat does not include existing features and structures, such as buildings, aqueducts, airports, roads, and other developed areas not containing one or more of the primary constituent elements.

(14) Critical Habitat Map Units. Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(15) **Note:** Map 7 (Index map) follows:

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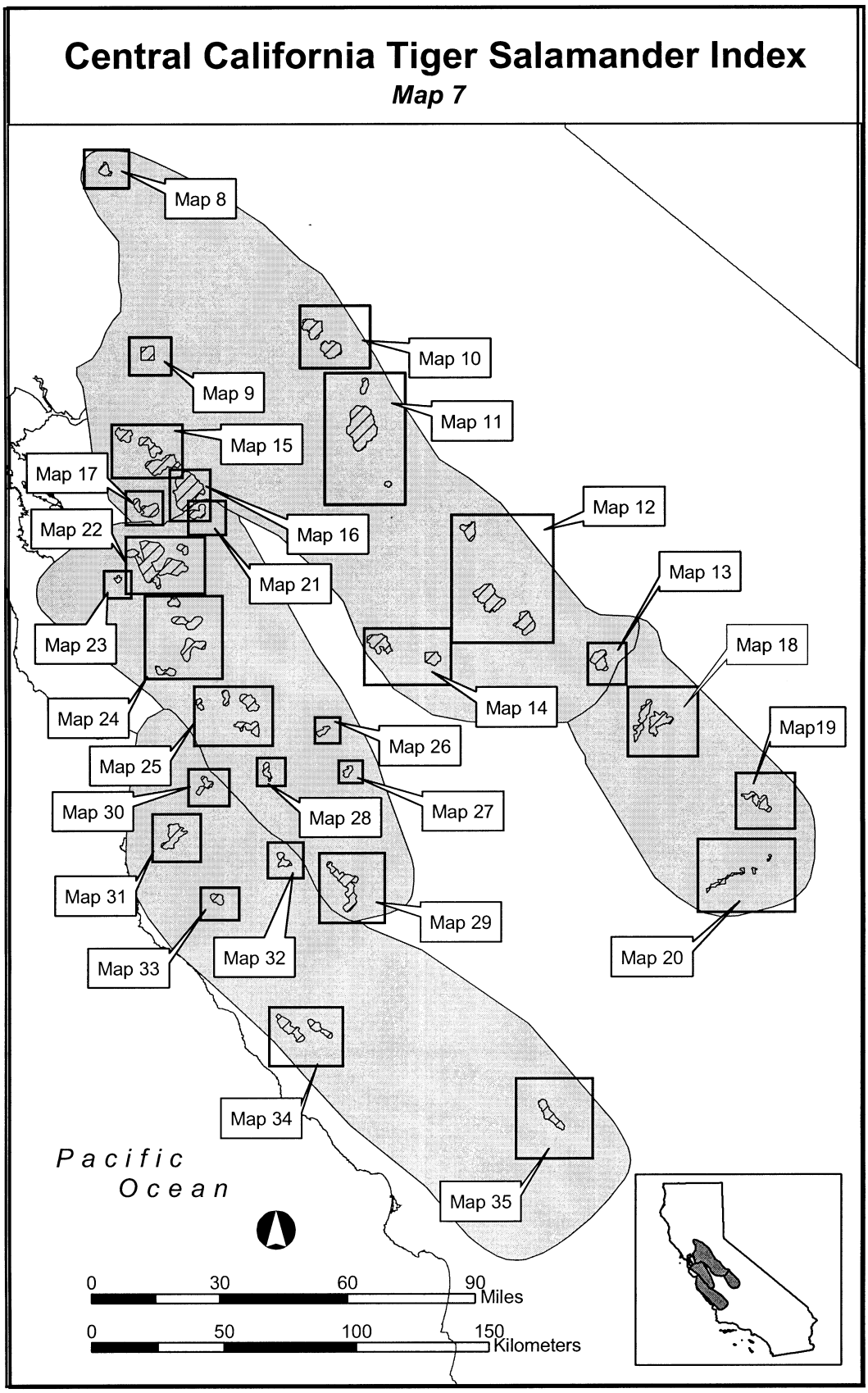
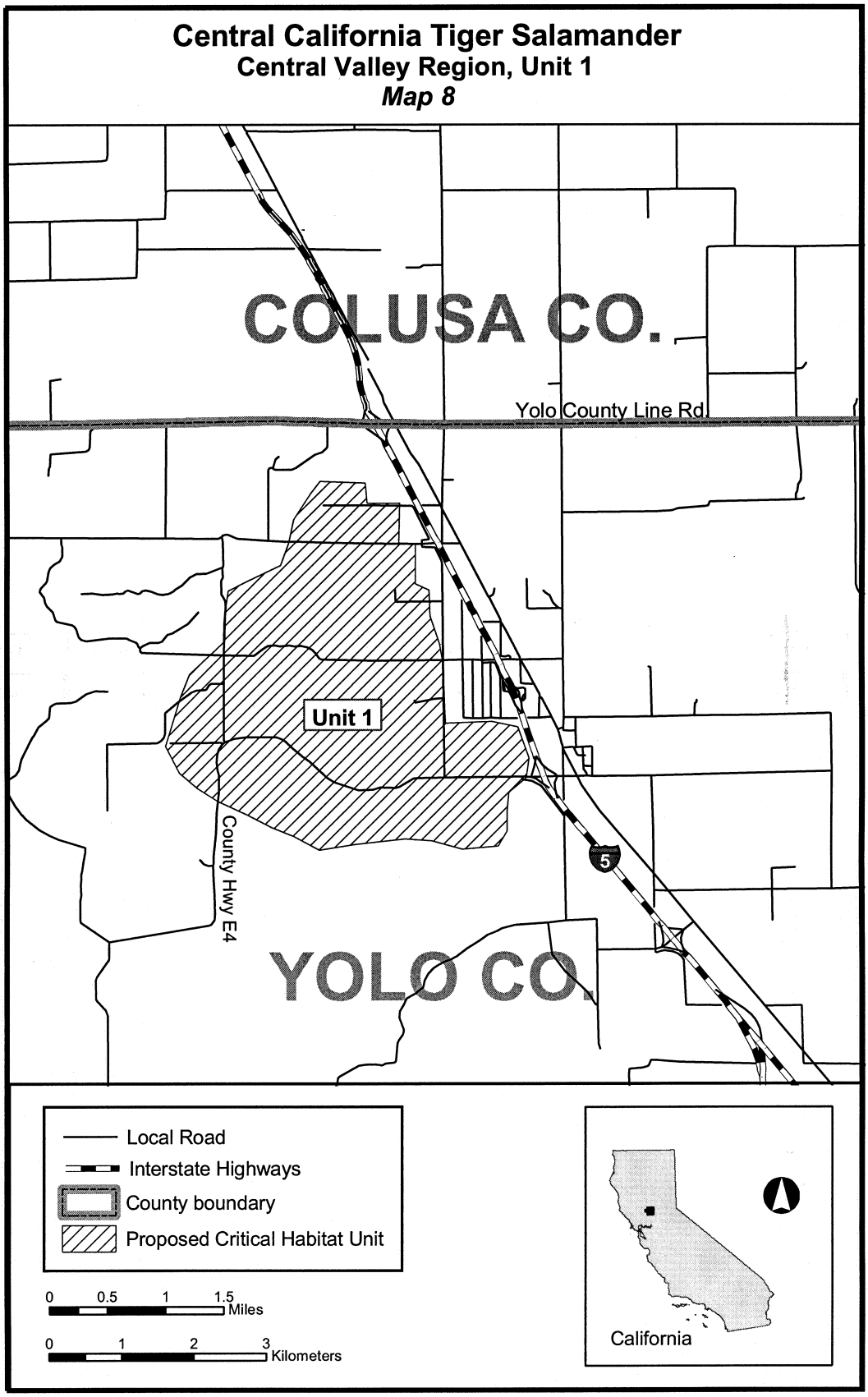

Central California Tiger Salamander Index
Map 7
Map 8
Map 9
Map 10
Map 11
Map 12
Map 13
Map 14
Map 15
Map 16
Map 17
Map 18
Map19
Map 20
Map 21
Map 22
Map 23
Map 24
Map 25
Map 26
Map 27
Map 28
Map 29
Map 30
Map 31
Map 32
Map 33
Map 34
Map 35
Pacific Ocean
0 30 60 90 Miles
0 50 100 150 Kilometers

(16) Central Valley Region: Unit 1 Dunnigan Creek, Yolo County, California.

(i) From USGS 1:24,000 quadrangle maps Wildwood School, Dunnigan, Bird Valley, and Zamora, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 586003, 4302921; 585645, 4303113; 585350, 4303228; 585005, 4303407; 584595, 4303599; 584326, 4303766; 584070, 4303983; 583878, 4304355; 584083, 4305033; 584211, 4305341; 584416, 4305533; 584698, 4305801; 584710, 4306249; 584749, 4306493; 585018, 4306634; 585184, 4306710; 585466, 4306851; 585581, 4307158; 585645, 4307479; 585875, 4307837; 586016, 4308016; 586631, 4307991; 586656, 4307709; 586708, 4307709; 587104, 4307709; 587092, 4307158; 587322, 4307146; 587322, 4306595; 587514, 4306506; 587527, 4306147; 587655, 4305763; 587706, 4305494; 587706, 4305367; 587719, 4305161; 587732, 4304816; 587745, 4304675; 588385, 4304700; 588743, 4304624; 588897, 4304188; 588858, 4303920; 588615, 4303715; 588590, 4303459; 588590, 4303177; 588474, 4302972; 587975, 4302934; 587553, 4303049; 587181, 4303074; 586503, 4302998; returning to 586003, 4302921.

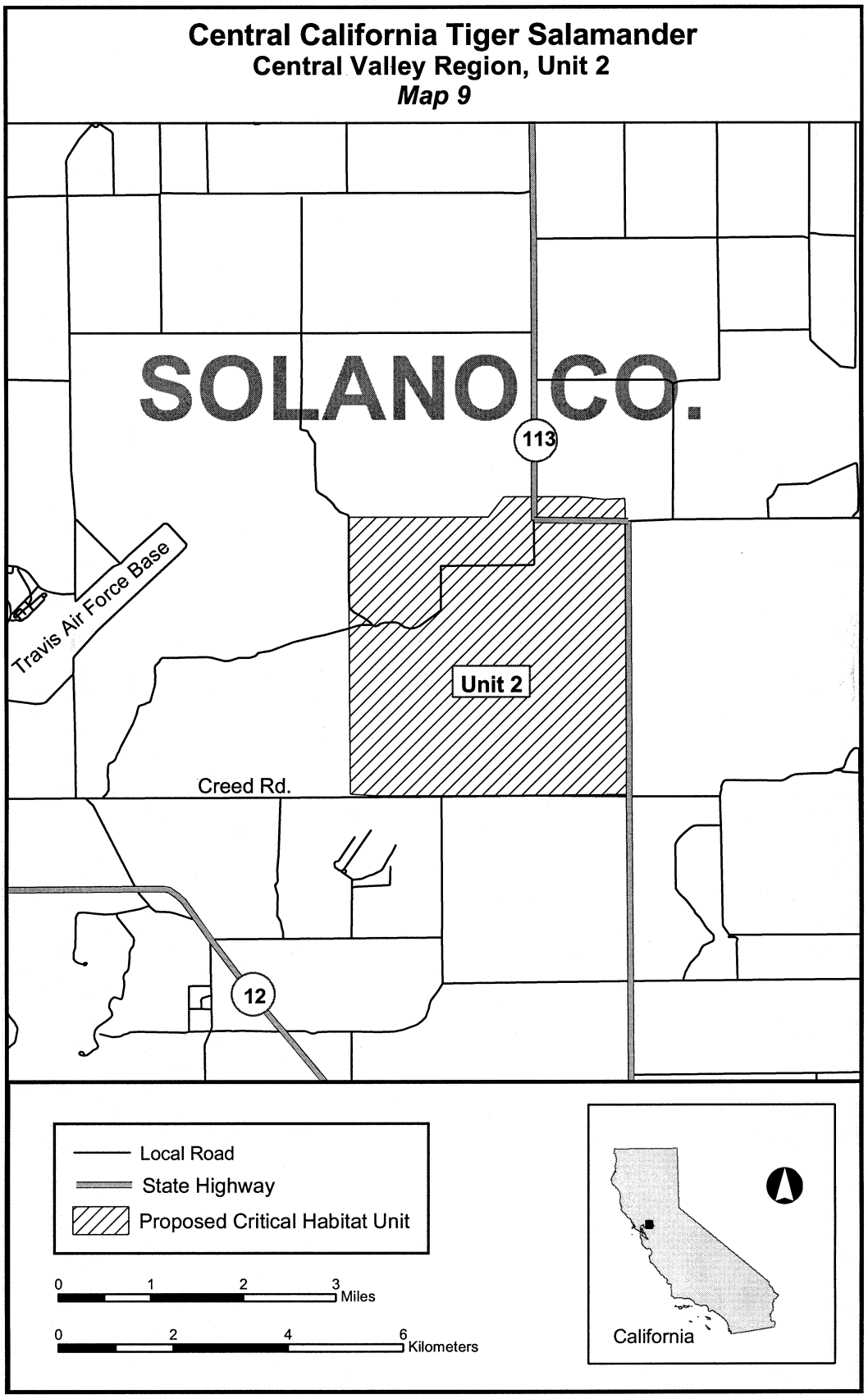
(ii) **Note:** Unit 1 (Map 8) follows:


Central California Tiger Salamander
Central Valley Region, Unit 1
Map 8
COLUSA CO.
Yolo County Line Rd
Unit 1
County Hwy E4
5
YOLO CO.
Local Road
Interstate Highways
County boundary
Proposed Critical Habitat Unit
0 0.5 1 1.5 Miles
0 1 2 3 Kilometers
California

(17) Central Valley Region: Unit 2 Jepson Prairie, Solano County, California.

(i) From USGS 1:24,000 quadrangle maps Dozier, and Birds Landing, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 601770, 4233158; 600257, 4233158; 599795, 4233190; 599763, 4238001; 602200, 4238001; 602471, 4238352; 602917, 4238352; 603762, 4238352; 604208, 4238304; 604558, 4238320; 604606, 4236854; 604590, 4233174; returning to 601770, 4233158.

(ii) **Note:** Unit 2 (Map 9) follows:


Central California Tiger Salamander
Central Valley Region, Unit 2
Map 9
SOLANO CO.
113
Travis Air Force Base
Unit 2
Creed Rd.
12
Local Road
State Highway
Proposed Critical Habitat Unit
0 1 2 3 Miles
0 2 4 6 Kilometers
California

(18) Central Valley Region: Unit 3 Southeastern Sacramento, Sacramento County, California.

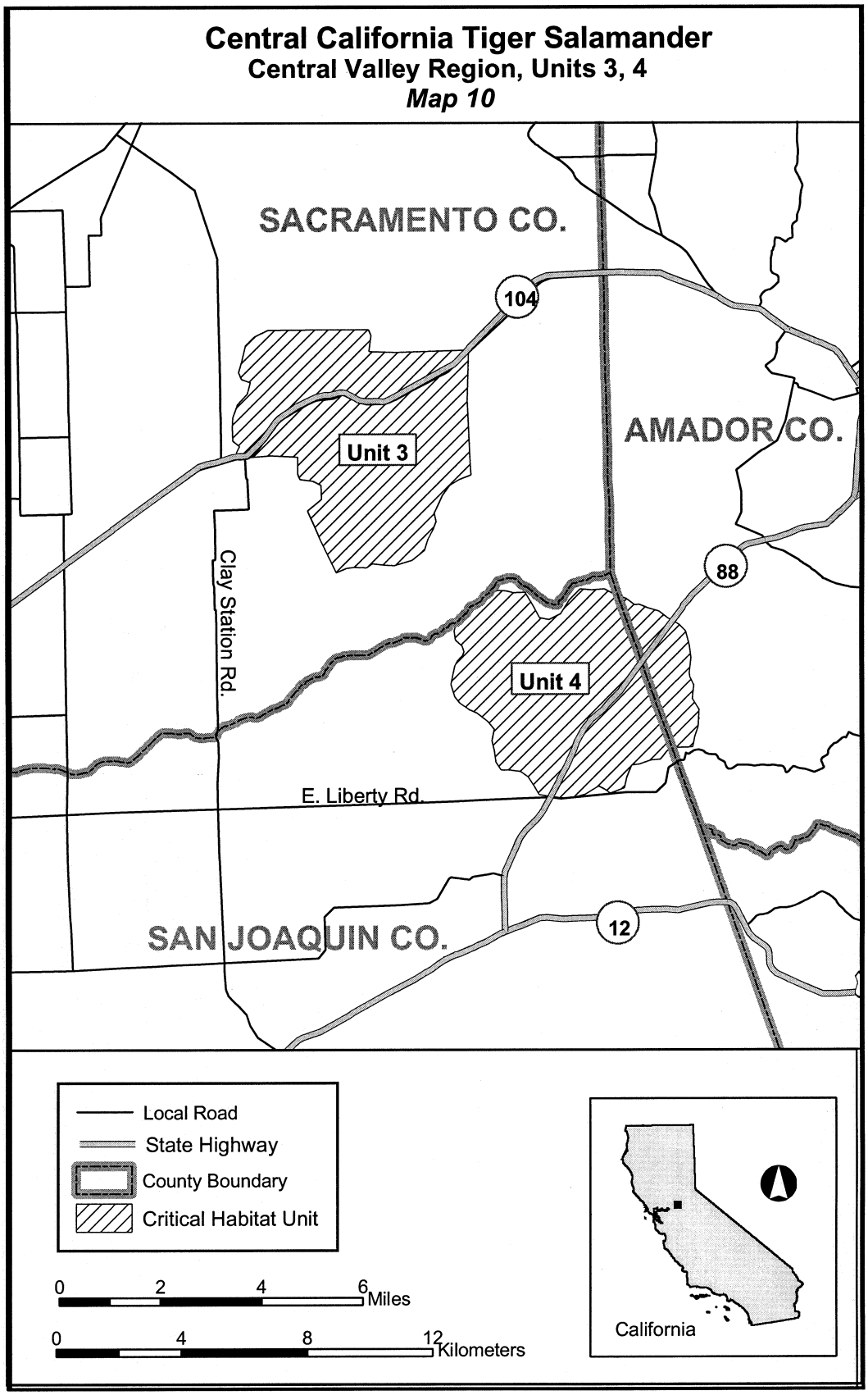
(i) From USGS 1:24,000 quadrangle maps Clay, and Goose Creek, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 663886, 4240775; 663342, 4241904; 663245, 4242127; 662980, 4242741; 663412, 4243117; 663398, 4243563; 663147, 4243702; 662729, 4243758; 662659, 4243925; 662659, 4244469; 662464, 4244483; 661809, 4244511; 660721, 4244427; 660721, 4244609; 660819, 4244818; 660610, 4244985; 660596, 4245417; 660610, 4245724; 660749, 4246142; 661056, 4246477; 661167, 4246853; 660875, 4246951; 660791, 4247174; 660889, 4247536; 661000, 4248024; 661307, 4248331; 661725, 4248526; 664917, 4248540; 665001, 4248359; 664931, 4247843; 665768, 4247815; 668124, 4247885; 668068, 4246281; 668110, 4245347; 668166, 4244330; 668193, 4243898; 667831, 4243758; 667538, 4243563; 667273, 4243228; 667022, 4242671; 667078, 4242392; 666981, 4242127; 666813, 4241820; 666702, 4241472; 666312, 4241165; 665740, 4240998; 665433, 4241012; 665043, 4241054; 664862, 4240928; 664457, 4240942; 664220, 4240914; returning to 663886, 4240775.

(ii) **Note:** Unit 3 is depicted on Map 10—Units 3 and 4—see paragraph (19)(ii).

(19) Central Valley Region: Unit 4 Northeastern San Joaquin, San Joaquin and Amador Counties, California.

(i) From USGS 1:24,000 quadrangle maps Goose Creek, Ione, Clements, and Wallace, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 671353, 4233578; 671001, 4233601; 670683, 4233635; 670342, 4233703; 670194, 4233964; 670001, 4234259; 669751, 4234441; 669388, 4234487; 669150, 4234487; 668979, 4234736; 668911, 4235100; 668843, 4235406; 668911, 4235781; 668718, 4236031; 668377, 4236304; 668116, 4236417; 667832, 4236610; 667662, 4236826; 667548, 4237212; 667662, 4237780; 667753, 4237939; 667912, 4238132; 667957, 4238246; 667900, 4238428; 667684, 4238632; 667650, 4238916; 667718, 4239143; 668105, 4239404; 668298, 4239631; 668593, 4239938; 669036, 4240199; 669297, 4240177; 669536, 4240131; 669899, 4240142; 670160, 4239711; 670365, 4239325; 670660, 4239268; 671023, 4239461; 671307, 4239904; 671659, 4240233; 672011, 4240211; 672409, 4240233; 672750, 4240074; 673113, 4239938; 673386, 4239745; 673533, 4239756; 673795, 4239643; 674158, 4239541; 674476, 4239302; 674794, 4239109; 675021, 4238893; 675135, 4238450; 675180, 4238053; 675135, 4237576; 675146, 4237462; 675271, 4237201; 675226, 4236758; 675441, 4236417; 675419, 4235849; 675294, 4235543; 675248, 4235213; 674749, 4235202; 674442, 4235100; 674215, 4234827; 673908, 4234793; 673545, 4234668; 673284, 4234646; 673136, 4234259; 673056, 4233919; 672602, 4233748; 672409, 4233873; 672250, 4233964; 671818, 4233714; returning to 671353, 4233578.

(ii) **Note:** Unit 4 is depicted on Map 10—Units 3 and 4—which follows:


Central California Tiger Salamander
Central Valley Region, Units 3, 4
Map 10
SACRAMENTO CO.
104
AMADOR CO.
Unit 3
88
Clay Station Rd.
Unit 4
E. Liberty Rd.
SAN JOAQUIN CO.
12
Local Road
State Highway
County Boundary
Critical Habitat Unit
0 2 4 6 Miles
0 4 8 12 Kilometers
California

(20) Central Valley Region: Unit 5 Indian Creek, Calaveras County, California.

(i) From USGS 1:24,000 quadrangle maps Wallace, and Valley Springs SW, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 683054, 4220003; 682668, 4220324; 682556, 4220468; 682412, 4220918; 682412, 4221303; 682444, 4221576; 682604, 4221929; 682684, 4222299; 683070, 4222780; 683439, 4223149; 683375, 4223567; 683471, 4223872; 683439, 4224305; 683278, 4224594; 683182, 4225156; 683311, 4225461; 683551, 4225798; 683728, 4225975; 684049, 4226087; 684210, 4226216; 684563, 4226216; 684900, 4226071; 685253, 4225830; 685430, 4225301; 685446, 4224787; 685430, 4224353; 685606, 4223920; 685590, 4223487; 685478, 4223101; 685269, 4222780; 685125, 4222523; 684948, 4222010; 684868, 4221705; 684739, 4221287; 684627, 4220789; 684402, 4220468; 684017, 4220195; 683664, 4220067; returning to 683054, 4220003.

(ii) **Note:** Unit 5 is depicted on Map 11—Units 5, 6, and 7—see paragraph (22)(ii).

(21) Central Valley Region: Unit 6 Rock Creek, San Joaquin and Stanislaus Counties, California.

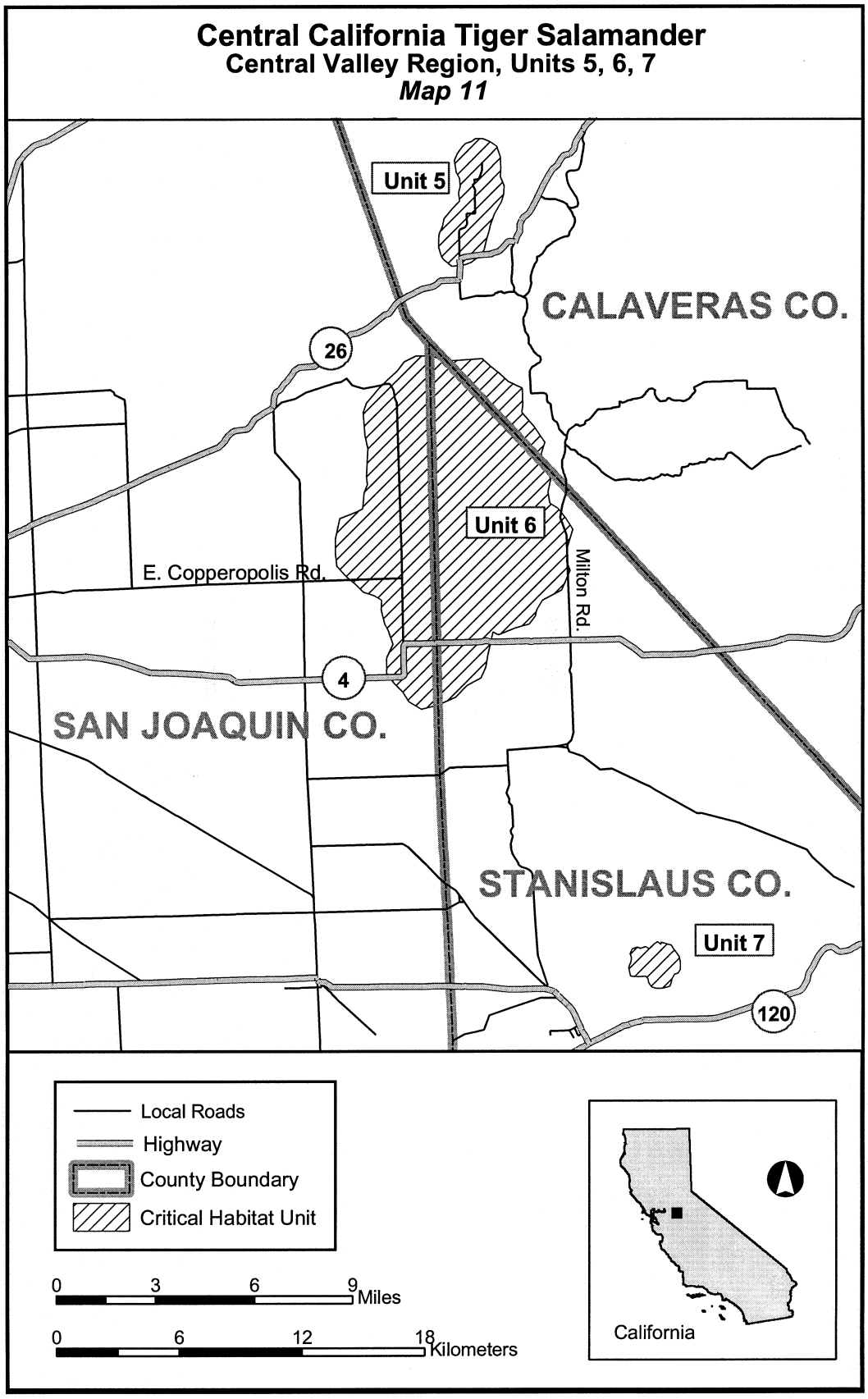
(i) From USGS 1:24,000 quadrangle maps Valley Springs SW, Jenny Lind, Farmington, and Bachelor Valley, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 681566, 4198308; 680965, 4198663; 680692, 4199127; 680228, 4199591; 679873, 4200083; 679873, 4200820; 680173, 4201476; 679928, 4202186; 679764, 4202514; 679600, 4203142; 679627, 4203634; 679245, 4203852; 678726, 4204016; 678316, 4204453; 677907, 4204781; 677442, 4205300; 677360, 4205873; 677360, 4206638; 677579, 4207621; 678425, 4207949; 678699, 4208113; 678780, 4208905; 678917, 4209287; 678890, 4209670; 678944, 4211062; 678808, 4211663; 678726, 4212810; 678890, 4213275; 679463, 4213958; 679846, 4214340; 680392, 4214859; 680747, 4215323; 681320, 4215596; 682031, 4215596; 682795, 4215378; 683205, 4215378; 684516, 4215460; 684953, 4215105; 685335, 4214777; 685800, 4214340; 686482, 4214012; 686510, 4213193; 686455, 4212838; 687083, 4212100; 687575, 4211363; 687411, 4210762; 687875, 4209560; 687739, 4208932; 687821, 4208386; 688230, 4208113; 688640, 4207594; 688940, 4207102; 688667, 4206228; 688640, 4205518; 688804, 4205081; 688394, 4204125; 687466, 4203634; 687193, 4203142; 687111, 4202842; 686837, 4202459; 686127, 4202268; 685308, 4201940; 685062, 4202077; 684789, 4200902; 684707, 4200356; 684461, 4199837; 683806, 4199482; 683260, 4198909; 682659, 4198636; 682222, 4198472; returning to 681566, 4198308.

(ii) **Note:** Unit 6 is depicted on Map 11—Units 5, 6, and 7—see paragraph (22)(ii).

(22) Central Valley Region: Unit 7 Rodden Lake, Stanislaus County, California.

(i) From USGS 1:24,000 quadrangle map Oakdale, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 693312, 4184635; 692994, 4184635; 692787, 4184709; 692631, 4184909; 692602, 4185101; 692498, 4185235; 692180, 4185212; 691751, 4185227; 691662, 4185649; 691736, 4185812; 691773, 4185960; 691788, 4186137; 691736, 4186330; 691847, 4186566; 692084, 4186648; 692246, 4186596; 692498, 4186685; 692646, 4186574; 692809, 4186707; 692942, 4186825; 693075, 4186914; 693245, 4186781; 693238, 4186892; 693489, 4186833; 693756, 4186744; 693889, 4186544; 694118, 4186211; 694185, 4185900; 694200, 4185560; 694089, 4185383; 693904, 4185309; 693778, 4185094; 693734, 4184872; 693652, 4184731; returning to 693312, 4184635.

(ii) **Note:** Unit 7 is depicted on Map 11—Units 5, 6, and 7—which follows:


Central California Tiger Salamander
Central Valley Region, Units 5, 6, 7
Map 11
Unit 5
CALAVERAS CO.
26
Unit 6
E. Copperopolis Rd.
Milton Rd.
4
SAN JOAQUIN CO.
STANISLAUS CO.
Unit 7
120
Local Roads
Highway
County Boundary
Critical Habitat Unit
0 3 6 9 Miles
0 6 12 18 Kilometers
California

(23) Central Valley Region: Unit 8 La Grange Ridge, Stanislaus and Merced Counties, California.

(i) From USGS 1:24,000 quadrangle maps Cooperstown, La Grange, and Snelling, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 724228, 4164088; 723854, 4164088; 723334, 4164436; 722666, 4165570; 722346, 4166171; 721865, 4167305; 721612, 4167719; 721612, 4168080; 721171, 4168120; 720584, 4168346; 720277, 4168694; 720130, 4169121; 720183, 4169534; 720317, 4170002; 720664, 4170282; 721131, 4170389; 721598, 4170269; 722359, 4169788; 722599, 4169855; 722800, 4170082; 723120, 4170122; 723614, 4170335; 723988, 4170402; 724295, 4170869; 724388, 4171043; 724361, 4171417; 724642, 4171363; 724922, 4171243; 725336, 4171363; 725589, 4171417; 725696, 4170629; 725469, 4170122; 725656, 4169508; 725469, 4168654; 725683, 4168293; 725883, 4167199; 725296, 4165276; 725189, 4164743; 724562, 4164142; returning to 724228, 4164088.

(ii) **Note:** Unit 8 is depicted on Map 12—Units 8, 9, and 10—see paragraph (25)(ii).

(24) Central Valley Region: Unit 9 Fahrens Creek, Merced County, California.

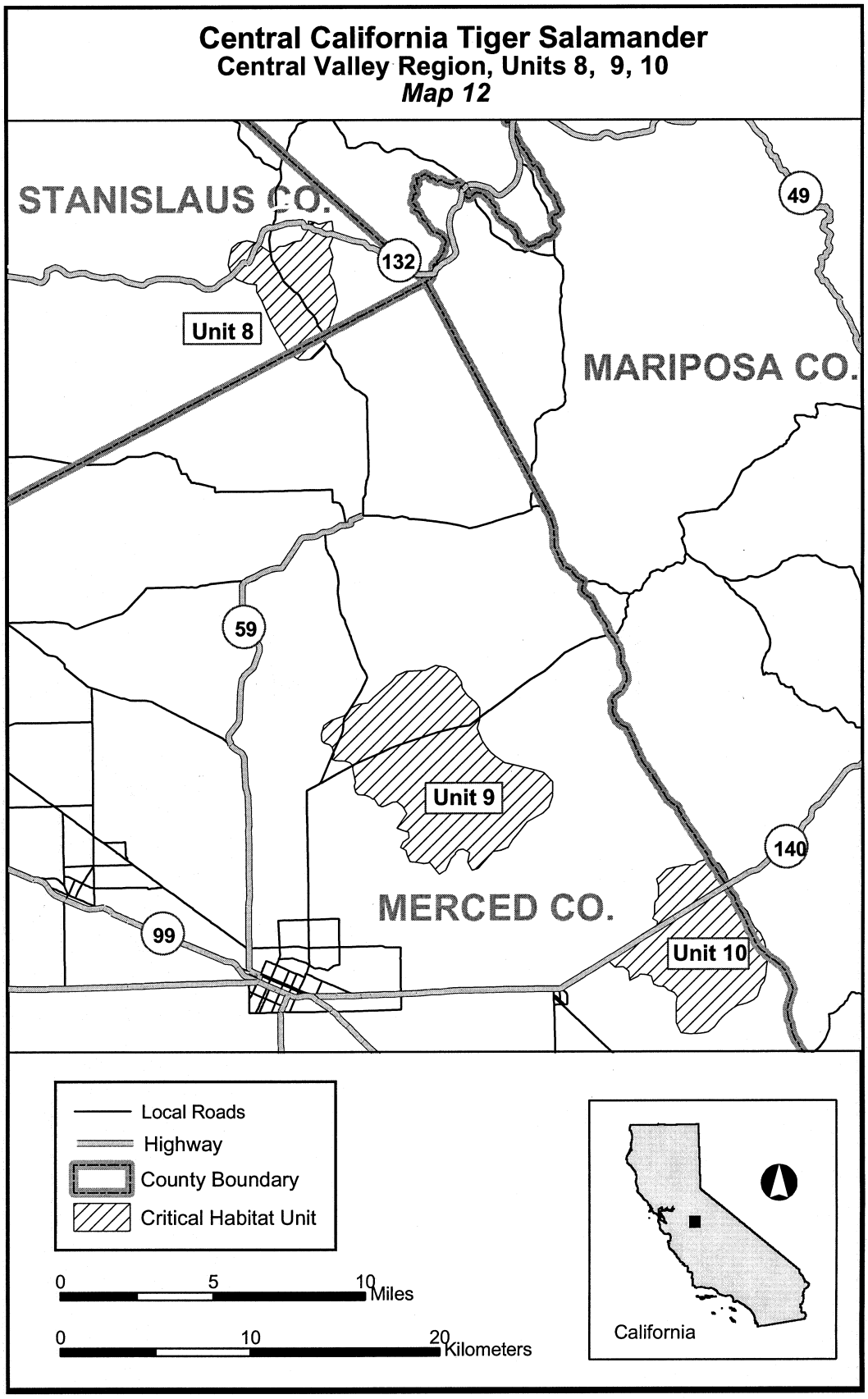
(i) From USGS 1:24,000 quadrangle maps Yosemite lake, Haystack Mtn, Merced, and Planada, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 731225, 4136887; 731000, 4137153; 730733, 4137502; 730406, 4137461; 729996, 4137522; 729689, 4137563; 729504, 4137932; 729463, 4138137; 729177, 4138321; 729320, 4138587; 729627, 4138813; 729607, 4139120; 729299, 4139222; 728992, 4139325; 729525, 4140083; 729320, 4140472; 728992, 4140738; 728787, 4140697; 728378, 4140513; 728214, 4140472; 728009, 4140533; 727825, 4140881; 727702, 4140881; 727538, 4140984; 727333, 4141086; 726944, 4141107; 726821, 4141250; 726739, 4141557; 726821, 4141742; 726657, 4142459; 726657, 4142643; 726534, 4142786; 726268, 4142889; 725756, 4142909; 725571, 4142991; 725694, 4143217; 725571, 4143626; 725428, 4143770; 725182, 4143831; 725039, 4143954; 724998, 4144282; 725162, 4144753; 725551, 4145040; 726063, 4145203; 726288, 4145326; 726575, 4145695; 727026, 4145900; 727476, 4145941; 727825, 4146289; 728275, 4146678; 728726, 4147068; 728992, 4147395; 729484, 4147600; 729996, 4147621; 730488, 4147662; 731041, 4147907; 731573, 4147825; 732106, 4147518; 732393, 4147088; 732434, 4146719; 732720, 4146330; 733130, 4145961; 733355, 4145695; 733355, 4145081; 733212, 4144589; 733458, 4144015; 733703, 4143606; 733949, 4143319; 734216, 4143094; 734646, 4142786; 735465, 4142602; 736284, 4142397; 736715, 4142274; 737206, 4141783; 737206, 4141025; 736981, 4140410; 736674, 4140124; 735875, 4139673; 735506, 4139222; 735096, 4138690; 734851, 4138321; 734441, 4138157; 734072, 4138096; 733294, 4137194; 732946, 4137112; 732720, 4137543; 732802, 4138034; 732454, 4138219; 732229, 4138178; 732085, 4138034; 732065, 4137932; 731839, 4137727; 731553, 4137112; returning to 731225, 4136887.

(ii) **Note:** Unit 9 is depicted on Map 12—Units 8, 9, and 10—see paragraph (25)(ii).

(25) Central Valley Region: Unit 10 Miles Creek, Merced County, California.

(i) From USGS 1:24,000 quadrangle maps Planada, Owens Reservoir, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 744463, 4128437; 743951, 4128470; 743704, 4129014; 743704, 4129377; 743704, 4130037; 743737, 4130384; 743588, 4130598; 743275, 4130747; 743110, 4130912; 742780, 4130928; 742499, 4131060; 742384, 4131489; 742120, 4131555; 741823, 4131588; 741724, 4131489; 741245, 4131258; 741212, 4131737; 740915, 4131984; 740502, 4131968; 740156, 4132248; 740453, 4132562; 740684, 4132727; 741014, 4132958; 741344, 4133156; 741509, 4133222; 741922, 4133486; 742252, 4133733; 742681, 4134113; 742714, 4134360; 742466, 4134525; 742532, 4134657; 742565, 4134872; 742549, 4135136; 742582, 4135400; 742714, 4135532; 742763, 4135664; 742780, 4136060; 742763, 4136241; 742681, 4136605; 742879, 4136786; 742978, 4136902; 743242, 4137149; 743555, 4137215; 743836, 4137265; 744199, 4137364; 744545, 4137347; 744727, 4137397; 744958, 4137562; 745172, 4137595; 745519, 4137562; 745981, 4137430; 746245, 4137001; 746360, 4136786; 746542, 4136175; 746542, 4136109; 746624, 4135845; 746641, 4135400; 746740, 4135169; 746855, 4135119; 747235, 4135103; 747433, 4134872; 747614, 4134459; 747845, 4134030; 748126, 4133750; 748324, 4133337; 748406, 4132974; 748456, 4132545; 748489, 4132430; 748489, 4132199; 748439, 4131852; 748423, 4131555; 748307, 4131176; 748159, 4130928; 747961, 4130384; 747779, 4130219; 747383, 4130037; 746921, 4129922; 746657, 4129757; 746195, 4129394; 745915, 4129080; 745700, 4128783; 745387, 4128519; 744958, 4128453; returning to 744463, 4128437.

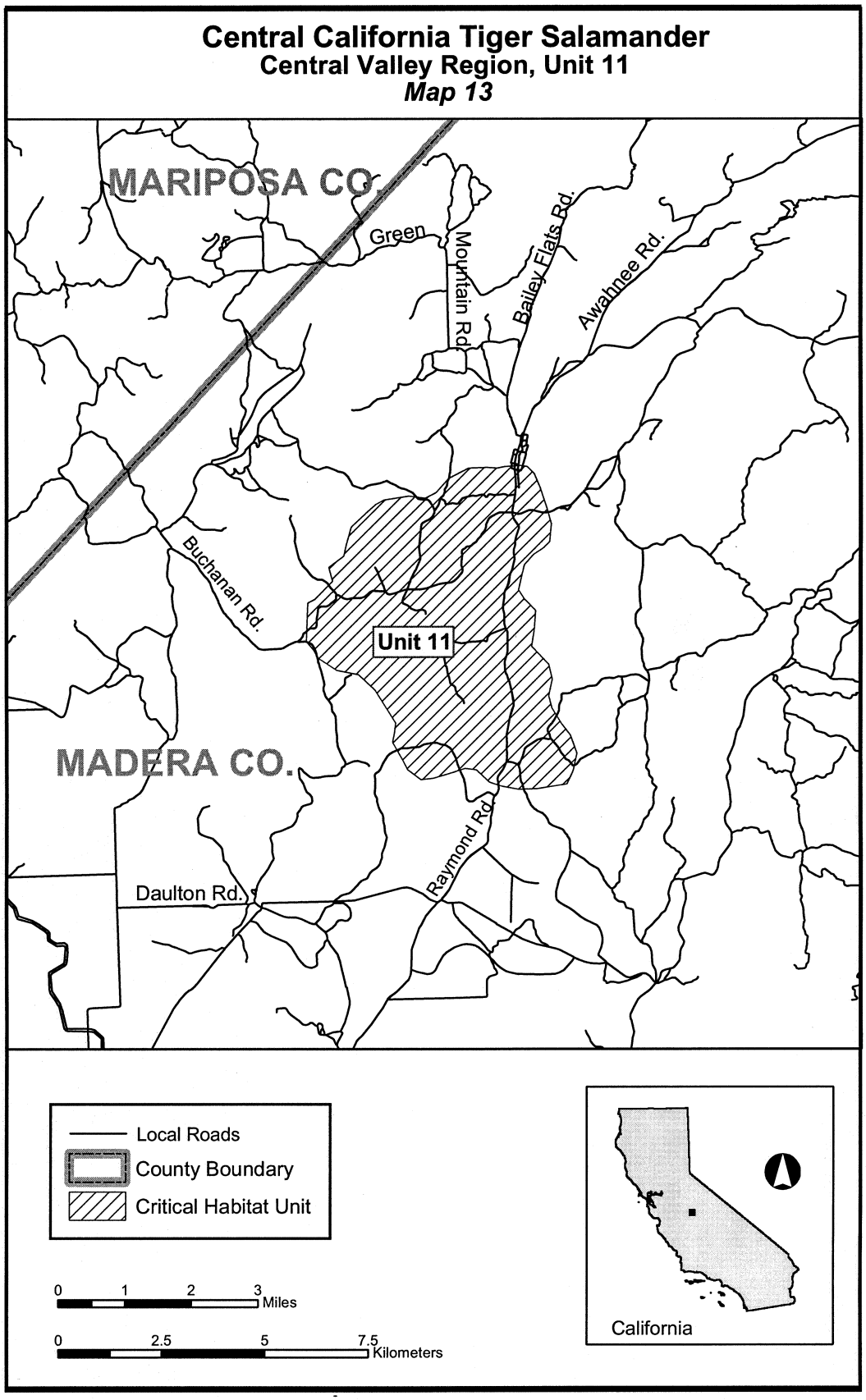
(ii) **Note:** Unit 10 is depicted on Map 12—Units 8, 9, and 10—which follows:


Central California Tiger Salamander
Central Valley Region, Units 8, 9, 10
Map 12
STANISLAUS CO.
MARIPOSA CO.
MERCED CO.
Unit 8
Unit 9
Unit 10
132
49
59
99
140
Local Roads
Highway
County Boundary
Critical Habitat Unit
0
5
10 Miles
0
10
20 Kilometers
California

(26) Central Valley Region: Unit 11 Rabbit Hill, Madera County, California.

(i) From USGS 1:24,000 quadrangle map Raymond, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 242061, 4114418; 241613, 4114432; 241216, 4114532; 240924, 4114655; 240630, 4114972; 240363, 4115019; 240014, 4114937; 239574, 4114830; 239274, 4114819; 238975, 4115077; 238858, 4115339; 238646, 4115772; 238705, 4115993; 238749, 4116230; 238455, 4116786; 238308, 4117050; 237928, 4117449; 237399, 4117587; 236984, 4117898; 236878, 4118114; 236728, 4118333; 236817, 4119255; 237001, 4119333; 237445, 4119739; 237377, 4120088; 237753, 4120333; 237830, 4120612; 237976, 4121022; 238386, 4121356; 238607, 4121536; 238808, 4121629; 239410, 4121695; 239808, 4121609; 240086, 4121742; 240421, 4122064; 240898, 4122273; 241346, 4122260; 241584, 4122230; 241795, 4122262; 242170, 4122253; 242317, 4122228; 242485, 4122038; 242598, 4121702; 242730, 4121184; 242810, 4120806; 242738, 4120361; 242579, 4120222; 242346, 4120087; 242106, 4119847; 242013, 4119570; 241919, 4119246; 242054, 4119028; 242305, 4118728; 242245, 4118268; 242145, 4117870; 242536, 4117412; 242602, 4117048; 242487, 4116651; 242543, 4116363; 242771, 4115945; 242949, 4115679; 243085, 4115222; 242969, 4114810; 242799, 4114491; returning to 242061, 4114418.

(ii) **Note:** Unit 11 (Map 13) follows:


Central California Tiger Salamander
Central Valley Region, Unit 11
Map 13
MARIPOSA CO.
Green
Mountain Rd.
Bailey Flats Rd.
Awahnee Rd.
Buchanan Rd.
Unit 11
MADERA CO.
Raymond Rd.
Daulton Rd.
Local Roads
County Boundary
Critical Habitat Unit
0 1 2 3 Miles
0 2.5 5 7.5 Kilometers
California

(27) Central Valley Region: Unit 12 San Luis Island, Merced County, California.

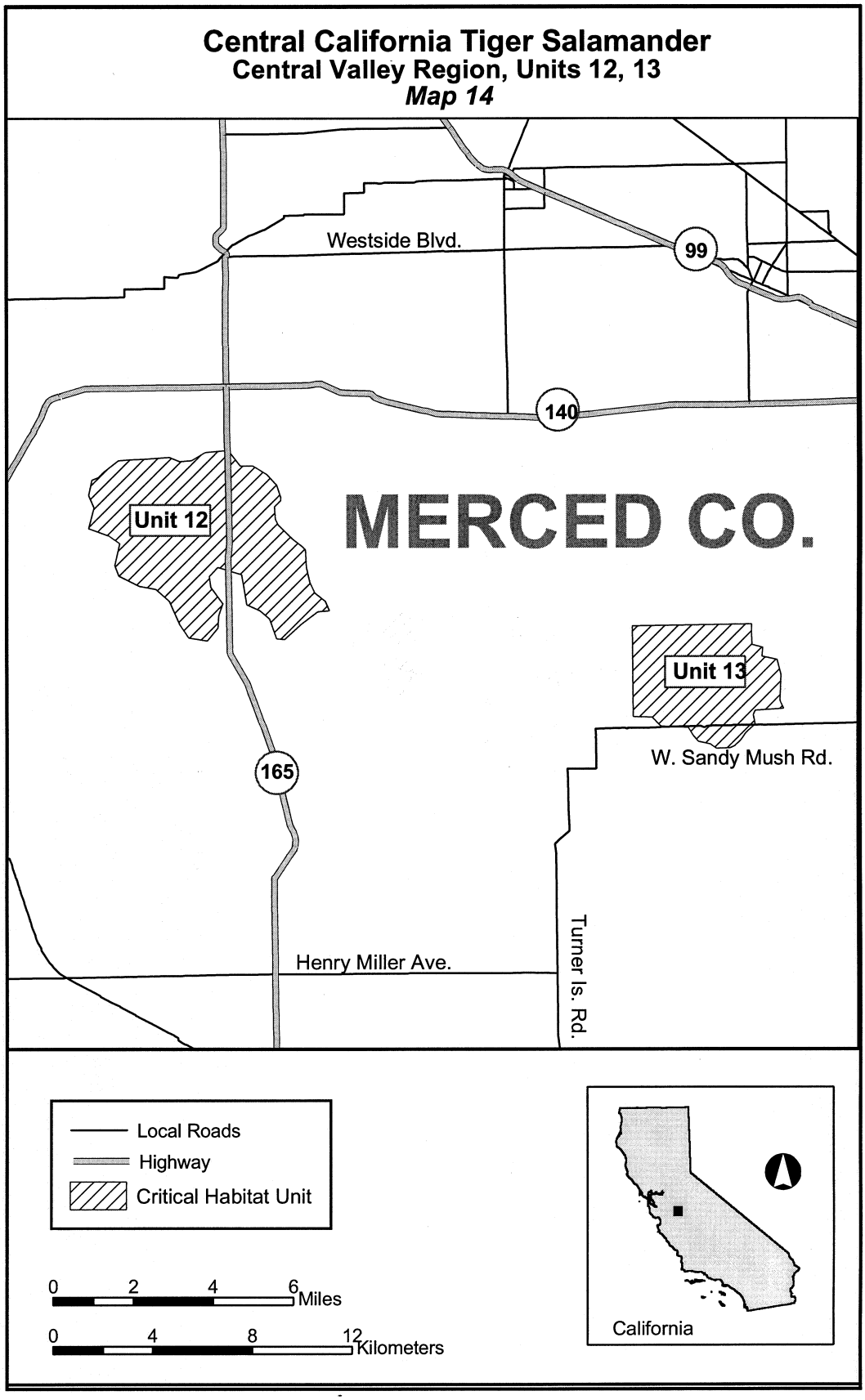
(i) From USGS 1:24,000 quadrangle maps Gustine, Stevinson, Ingomar, and San Luis Reservoir, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 689748, 4121346; 689002, 4121470; 688629, 4122009; 688215, 4122920; 687676, 4123417; 687013, 4123542; 686184, 4123956; 686019, 4124370; 686226, 4125240; 685770, 4125572; 684983, 4125862; 685190, 4126691; 684983, 4127188; 685107, 4127809; 685397, 4127934; 685604, 4128141; 686184, 4128597; 686640, 4128638; 687676, 4128680; 688215, 4128721; 688629, 4128555; 689126, 4128597; 689665, 4128928; 690576, 4129011; 691074, 4128390; 691571, 4128390; 692151, 4128017; 692524, 4127602; 692690, 4127105; 692690, 4126981; 692441, 4126732; 692482, 4126235; 692607, 4125986; 693145, 4125448; 693518, 4125158; 693684, 4124992; 693725, 4124287; 693850, 4123707; 694057, 4123252; 694471, 4122920; 694637, 4122547; 694181, 4122506; 693518, 4122009; 692855, 4121387; 692524, 4121428; 692234, 4122216; 691861, 4122547; 691322, 4122796; 691198, 4123583; 691115, 4123997; 690162, 4124287; 689831, 4123915; 689872, 4123500; 690369, 4122837; 690204, 4122340; 690162, 4121843; returning to 689748, 4121346.

(ii) **Note:** Unit 12 is depicted on Map 14—Units 12 and 13—see paragraph (28)(ii).

(28) Central Valley Region: Unit 13 Sandy Mush, Merced County, California.

(i) From USGS 1:24,000 quadrangle maps Turner Ranch, and Sandy Mush, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 710169, 4117012; 709914, 4117191; 709453, 4117293; 709261, 4117524; 709056, 4117856; 708327, 4117882; 707931, 4117907; 707585, 4118266; 706830, 4118291; 706805, 4121924; 711590, 4122001; 711602, 4121170; 712037, 4121067; 711999, 4120709; 712626, 4120581; 712779, 4119967; 712754, 4118944; 712882, 4118624; 711743, 4118547; 711666, 4118355; 711730, 4117984; 711385, 4117652; 711154, 4117332; 710924, 4117127; 710720, 4117025; returning to 710169, 4117012.

(ii) **Note:** Unit 13 is depicted on Map 14—Units 12 and 13—which follows:


Central California Tiger Salamander
Central Valley Region, Units 12, 13
Map 14
Westside Blvd.
99
140
Unit 12
MERCED CO.
Unit 13
W. Sandy Mush Rd.
165
Henry Miller Ave.
Turner Is. Rd.
Local Roads
Highway
Critical Habitat Unit
0 2 4 6 Miles
0 4 8 12 Kilometers
California

(29) Central Valley Region: Unit 14 Mulligan Hill, Contra Costa County, California.

(i) From USGS 1:24,000 quadrangle maps Honker Bay, and Clayton, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 594583, 4201700; 594107, 4201859; 593888, 4201998; 593611, 4202335; 593293, 4202613; 592956, 4202772; 592698, 4202534; 592460, 4202335; 592102, 4202355; 591765, 4202534; 591567, 4202752; 591408, 4203010; 591150, 4203288; 590912, 4203526; 590852, 4203704; 590892, 4204101; 590436, 4204399; 590019, 4204816; 589999, 4205173; 590019, 4205748; 590356, 4206165; 590614, 4206383; 590793, 4207157; 590932, 4207316; 591110, 4207435; 591448, 4207495; 591666, 4207395; 591666, 4207098; 591666, 4206899; 591785, 4206641; 591924, 4206463; 592301, 4206483; 592559, 4206721; 592817, 4206840; 592856, 4206860; 593432, 4206423; 593690, 4206483; 594027, 4206502; 594365, 4206264; 594702; 4375000; 4206284; 595079, 4206403; 595436, 4206423; 595833, 4206423; 595992, 4206264; 596071, 4205987; 596230, 4205788; 596409, 4205629; 596587, 4205371; 596607, 4205074; 596468, 4204776; 596289, 4204518; 595932, 4204280; 595734, 4204121; 595694, 4203645; 595833, 4203248; 595853, 4202891; 595714, 4202375; 595674, 4202335; 595377, 4201938; 595059, 4201740; returning to 594583, 4201700.

(ii) **Note:** Unit 14 is depicted on Map 15—Units 14, 15, and 16—see paragraph (31)(ii).

(30) Central Valley Region: Unit 15 Deer Valley, Contra Costa County, California.

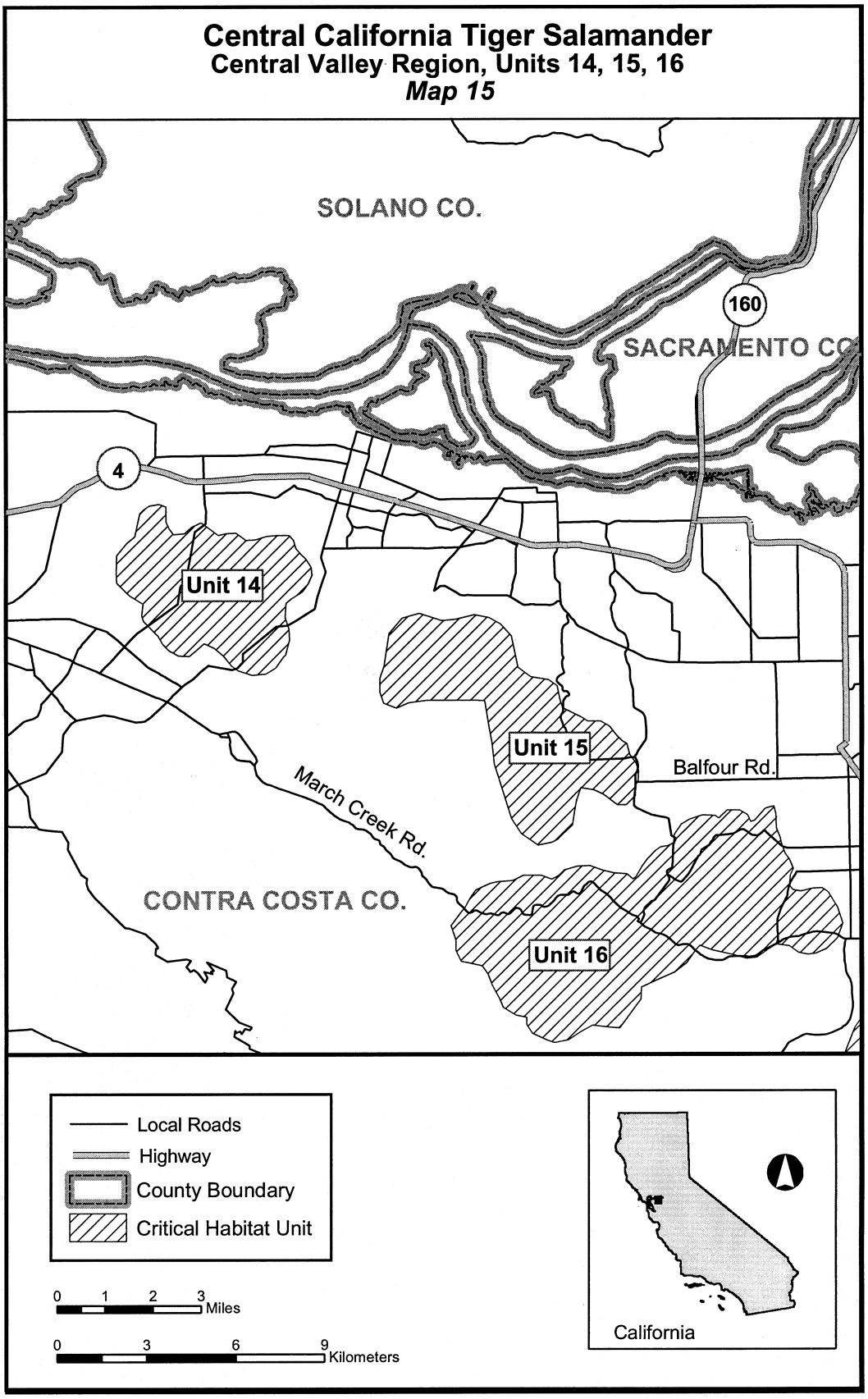
(i) From USGS 1:24,000 quadrangle map Antioch South, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 604235, 4195940; 603680, 4196311; 603332, 4196843; 602753, 4198696; 602684, 4199414; 602591, 4199923; 602429, 4200826; 602151, 4200849; 601758, 4200849; 601179, 4200849; 600484, 4200849; 599882, 4200780; 599465, 4200595; 599025, 4200757; 598909, 4201127; 598909, 4201590; 599048, 4202007; 599141, 4202586; 599210, 4203096; 599673, 4203628; 600229, 4203790; 600993, 4203536; 601480, 4203582; 602082, 4203744; 602568, 4203651; 602985, 4203420; 603332, 4203026; 603564, 4201961; 603981, 4201637; 604583, 4201544; 604884, 4201336; 604976, 4200896; 605069, 4200595; 605301, 4200479; 605717, 4200270; 605903, 4200155; 606343, 4200155; 606667, 4199969; 606898, 4199645; 607084, 4199460; 607246, 4199391; 607338, 4199020; 607547, 4198719; 607639, 4198464; 607616, 4198094; 607524, 4197955; 607524, 4197607; 607223, 4197306; 606922, 4197306; 606435, 4197677; 606111, 4197816; 605694, 4197885; 605532, 4197445; 605463, 4197028; 605393, 4196612; 604930, 4196149; 604698, 4196033; returning to 604235, 4195940.

(ii) **Note:** Unit 15 is depicted on Map 15—Units 14, 15, and 16—see paragraph (31)(ii).

(31) Central Valley Region: Unit 16 Marsh Creek, Contra Costa County, California.

(i) From USGS 1:24,000 quadrangle maps Antioch South, Brentwood, Tassajara, and Byron Hot Springs, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 604791, 4189225; 604513, 4189340; 604050, 4189549; 603842, 4189850; 603842, 4190105; 603471, 4190174; 603054, 4190429; 602915, 4190753; 602684, 4191216; 602545, 4191563; 602337, 4191841; 601850, 4191957; 601642, 4192003; 601457, 4192374; 601457, 4192721; 601294, 4193208; 601665, 4193694; 601758, 4193786; 601920, 4194111; 602128, 4194412; 602337, 4194527; 602638, 4194643; 602892, 4194713; 603332, 4194736; 603402, 4194759; 603749, 4194921; 604351, 4194921; 604699, 4194782; 604953, 4194921; 605138, 4195106; 605578, 4195222; 605995, 4195245; 606435, 4195083; 606806, 4194991; 607246, 4194968; 607454, 4194782; 607547, 4194852; 607732, 4195176; 607917, 4195454; 608218, 4195755; 608380, 4195871; 608635, 4195917; 608820, 4196010; 608844, 4196288; 609075, 4196658; 609376, 4196820; 609793, 4196959; 610210, 4196936; 610349, 4196843; 610627, 4197121; 611020, 4197121; 611321, 4196959; 611414, 4196728; 611553, 4196774; 611923, 4197191; 612201, 4197260; 612271, 4196982; 612294, 4196519; 612410, 4196195; 612456, 4196010; 612572, 4195662; 612734, 4195454; 612873, 4195130; 612757, 4194921; 612734, 4194574; 612850, 4194412; 613128, 4194365; 613521, 4194458; 613845, 4194481; 614054, 4194342; 614355, 4193833; 614540, 4193277; 614355, 4192768; 613984, 4192420; 613614, 4192258; 613359, 4192235; 613035, 4192281; 612711, 4192513; 612294, 4192582; 611993, 4192397; 611622, 4192119; 611275, 4192096; 610858, 4192212; 610117, 4192374; 609700, 4192536; 609561, 4192374; 609260, 4191934; 608867, 4191633; 608705, 4191563; 608288, 4191378; 607732, 4191123; 607709, 4190707; 606991, 4189734; 606621, 4189757; 606088, 4189827; 605671, 4189595; 605277, 4189340; return to 604791, 4189225.

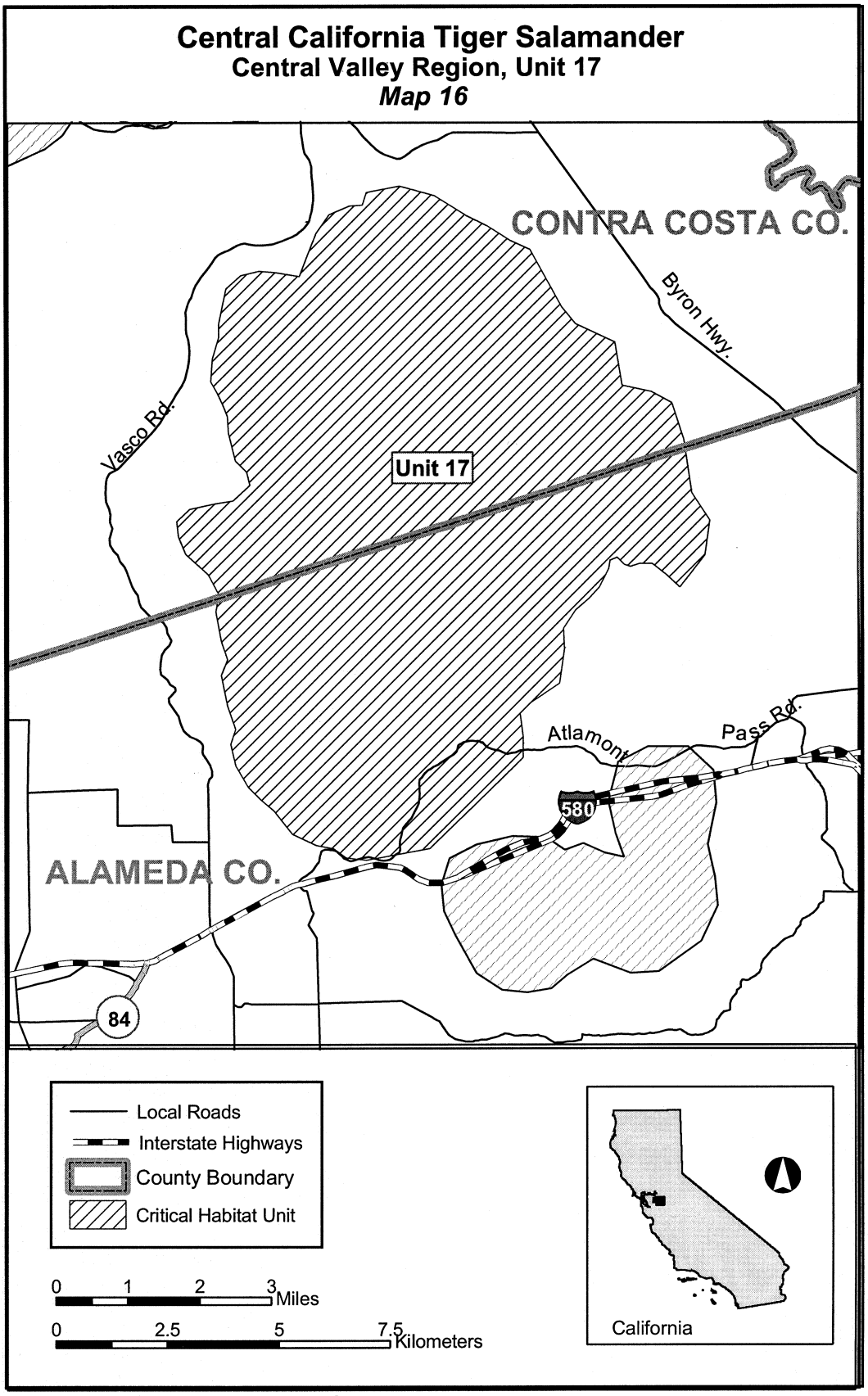
(ii) **Note:** Unit 16 is depicted on Map 15—Units 14, 15, and 16—which follows:


Central California Tiger Salamander
Central Valley Region, Units 14, 15, 16
Map 15
SOLANO CO.
160
SACRAMENTO CO
4
Unit 14
Unit 15
Balfour Rd.
March Creek Rd.
CONTRA COSTA CO.
Unit 16
Local Roads
Highway
County Boundary
Critical Habitat Unit
0 1 2 3 Miles
0 3 6 9 Kilometers
California

(32) Central Valley Region: Unit 17 Benthany Reservoir, Alameda and Contra Costa Counties, California.

(i) From USGS 1:24,000 quadrangle maps Byron Hot Springs, Clifton Court Forebay, and Altamont, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 616069, 4175678; 615606, 4175724; 615328, 4175933; 614934, 4176002; 614401, 4176257; 613985, 4176789; 613683, 4177044; 613406, 4177322; 613128, 4177808; 613012, 4178271; 613128, 4178619; 612942, 4179128; 612804, 4179823; 612942, 4180170; 612804, 4180587; 612688, 4181235; 612757, 4181629; 612526, 4182069; 612016, 4182532; 611854, 4182926; 611808, 4183273; 612109, 4183551; 612665, 4183667; 613081, 4183736; 613452, 4184084; 613382, 4184385; 613128, 4184640; 612966, 4185265; 612942, 4185635; 612850, 4185890; 612711, 4186168; 612572, 4186423; 612618, 4186932; 612757, 4187418; 612757, 4187719; 612919, 4188507; 613243, 4188808; 613660, 4188900; 614031, 4188877; 614563, 4188785; 614749, 4189271; 614934, 4189734; 615235, 4190174; 615698, 4190359; 615976, 4190383; 616069, 4190660; 616810, 4190799; 617574, 4190591; 618292, 4190151; 618755, 4189919; 619264, 4189595; 619727, 4189387; 620445, 4188090; 620746, 4187719; 621626, 4187303; 621788, 4186330; 622437, 4186191; 622900, 4185936; 623178, 4185103; 623340, 4183922; 623757, 4183296; 623641, 4182509; 623085, 4181791; 622784, 4182069; 622460, 4182324; 622182, 4182324; 621974, 4182254; 621835, 4182301; 621673, 4182463; 621511, 4182393; 621487, 4182208; 621279, 4181791; 621047, 4181537; 620746, 4181282; 620468, 4180865; 620492, 4180402; 620376, 4179638; 619751, 4179221; 619496, 4178966; 619565, 4178457; 619565, 4177970; 618390, 4176820; 617484, 4175935; returning to 616069, 4175678.

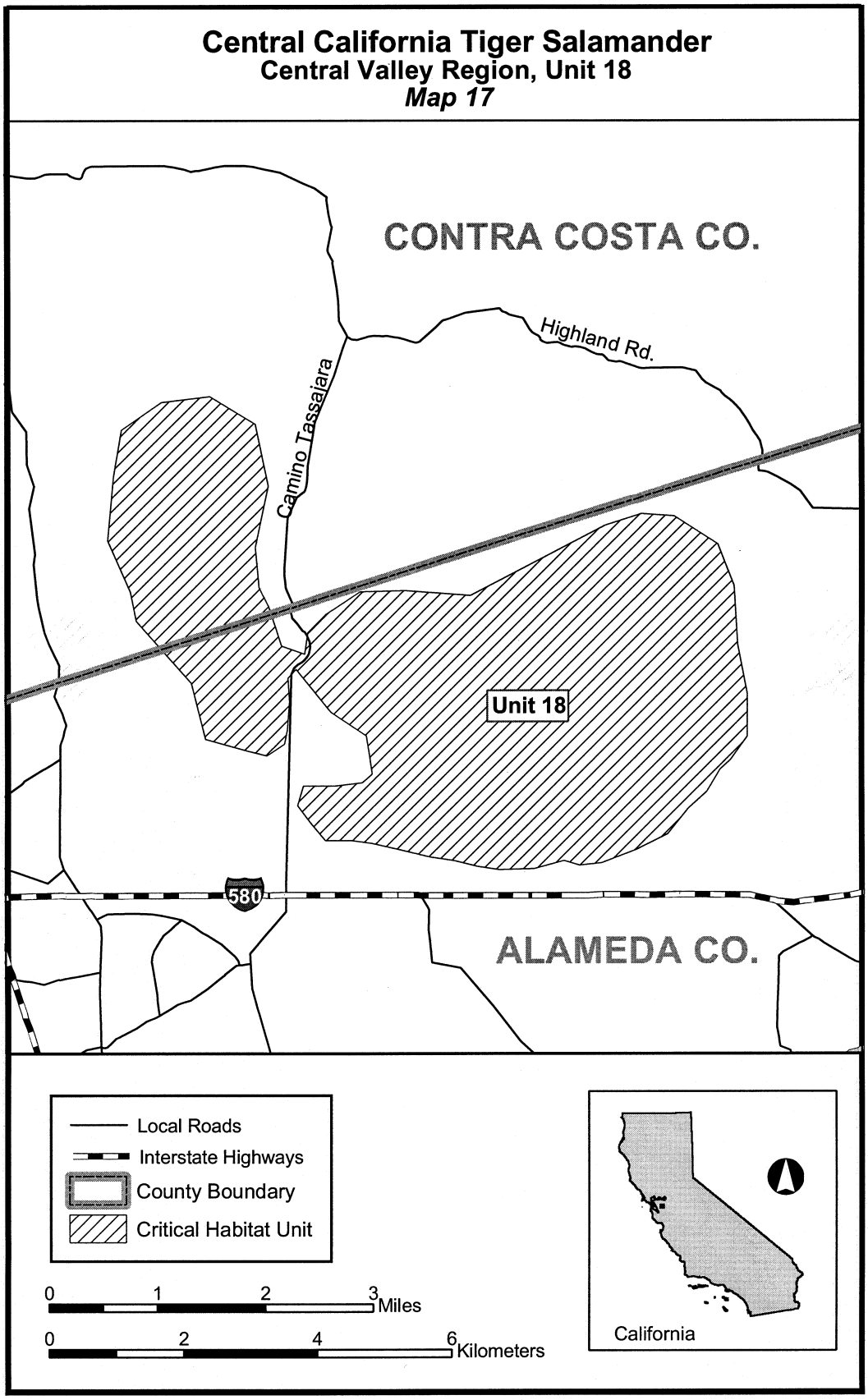
(ii) **Note:** Unit 17 (Map 16) follows:


Central California Tiger Salamander
Central Valley Region, Unit 17
Map 16
CONTRA COSTA CO.
Byron Hwy.
Vasco Rd.
Unit 17
Atlamont
Pass Rd.
580
ALAMEDA CO.
84
Local Roads
Interstate Highways
County Boundary
Critical Habitat Unit
0 1 2 3 Miles
0 2.5 5 7.5 Kilometers
California

(33) Central Valley Region: Unit 18 Doolan Canyon, Alameda and Contra Costa Counties, California.

(i) From USGS 1:24,000 quadrangle maps Diablo, Tassajara, Dublin, and Livermore, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 602667, 4173458; 602354, 4173510; 602005, 4173597; 601657, 4173649; 601204, 4173754; 600787, 4173858; 600473, 4173893; 600090, 4173893; 599864, 4174154; 599672, 4174415; 599759, 4174711; 600229, 4174711; 600647, 4174764; 600787, 4174885; 600700, 4175460; 600177, 4175808; 599655, 4176452; 599533, 4176313; 599550, 4175965; 599516, 4175547; 599481, 4175338; 599220, 4175164; 598924, 4175234; 598297, 4175408; 598088, 4176243; 597269, 4177166; 597182, 4177602; 596852, 4178368; 596939, 4179325; 597061, 4180022; 597653, 4180440; 598366, 4180527; 599045, 4180109; 599237, 4179186; 599045, 4178263; 599098, 4177671; 599237, 4177393; 599428, 4176801; 599777, 4176679; 599829, 4176992; 600108, 4177271; 600612, 4177602; 601274, 4177619; 602249, 4177549; 604251, 4178594; 604791, 4178768; 605279, 4178733; 605923, 4178316; 606167, 4177689; 606219, 4176818; 606358, 4176087; 606358, 4175443; 606114, 4175094; 605958, 4174955; 605766, 4174624; 605488, 4174381; 605192, 4173997; 604704, 4173754; 604199, 4173562; 603868, 4173527; 603642, 4173597; 603189, 4173475; returning to 602667, 4173458.

(ii) **Note:** Unit 18 (Map 17) follows:


Central California Tiger Salamander
Central Valley Region, Unit 18
Map 17
CONTRA COSTA CO.
Highland Rd.
Camino Tassajara
Unit 18
580
ALAMEDA CO.
Local Roads
Interstate Highways
County Boundary
Critical Habitat Unit
0 1 2 3 Miles
0 2 4 6 Kilometers
California

(34) Southern San Joaquin Region: Unit 1 Millerton, Madera County, California.

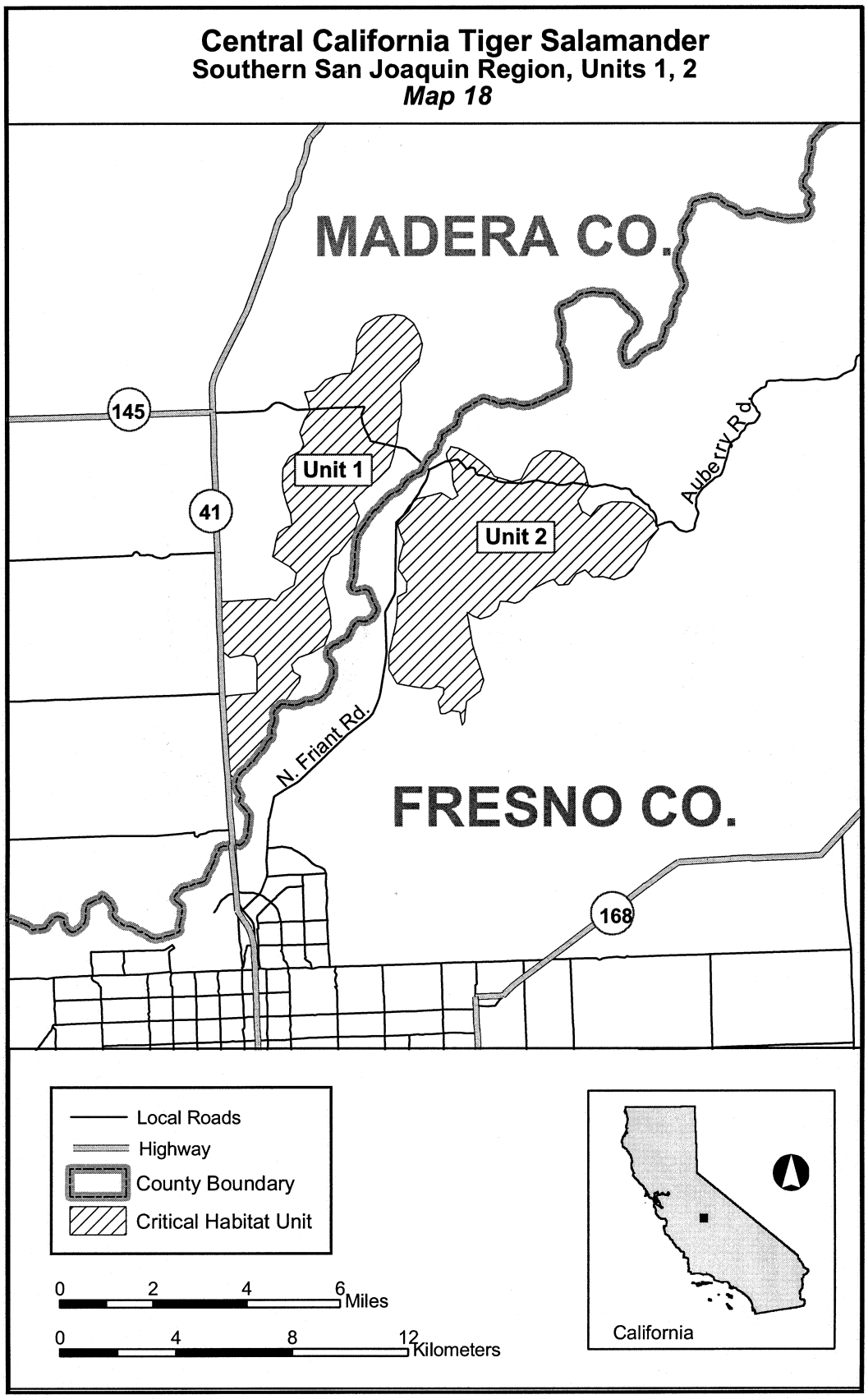
(i) From USGS 1:24,000 quadrangle maps Little Tableton, Millerton Lake West, Lanes Bridge, and Friant, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 251488, 4086839; 251202, 4087087; 251266, 4087526; 251291, 4087931; 251296, 4088286; 251248, 4088660; 251180, 4088983; 251181, 4089550; 251192, 4089727; 252080, 4089759; 252381, 4089776; 252408, 4090199; 252445, 4090781; 252388, 4090997; 252021, 4091091; 251558, 4091032; 251272, 4091280; 251265, 4091457; 251265, 4092007; 251286, 4092341; 251343, 4092958; 253025, 4092958; 253232, 4092875; 253479, 4093141; 253900, 4093345; 253998, 4093782; 253782, 4094008; 253510, 4094185; 253221, 4094380; 253290, 4094642; 253361, 4094920; 253467, 4095197; 253725, 4095358; 253941, 4095415; 253933, 4095840; 253828, 4096149; 253734, 4096614; 253713, 4096846; 253765, 4097392; 254020, 4097783; 254422, 4097970; 254523, 4098176; 254426, 4098607; 254611, 4099021; 254807, 4099309; 254775, 4099648; 254671, 4099973; 255046, 4100003; 255422, 4100351; 255981, 4100510; 256301, 4100526; 256511, 4101062; 256586, 4101676; 256787, 4102053; 256920, 4102205; 257360, 4102424; 257892, 4102444; 258243, 4102387; 258578, 4102100; 258716, 4101755; 258815, 4101359; 258634, 4100732; 258219, 4100334; 257973, 4100084; 257970, 4099482; 257922, 4098989; 257813, 4098677; 257723, 4098098; 257565, 4097559; 257418, 4097179; 257023, 4096832; 256598, 4096540; 256129, 4096127; 256271, 4095569; 256038, 4094964; 255504, 4094360; 255213, 4094237; 254952, 4093758; 254876, 4093390; 254955, 4092960; 255051, 4092511; 255065, 4092174; 255060, 4091821; 254793, 4091235; 254372, 4091014; 253886, 4090885; 253622, 4090636; 253695, 4090383; 253916, 4090245; 253850, 4090037; 253583, 4089735; 253429, 4089533; 252970, 4088994; 252716, 4088621; 252722, 4088426; 252645, 4088041; 252250, 4087411; 251921, 4087237; 251696, 4087038; returning to 251488, 4086839.

(ii) **Note:** Unit 1 is depicted on Map 18—Units 1 and 2—see paragraph (35)(ii).

(35) Southern San Joaquin Region: Unit 2 Northeast Fresno, Fresno County, California.

(i) From USGS 1:24,000 quadrangle map Friant, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 259348, 4088203; 259307, 4088666; 259010, 4088738; 258792, 4088646; 258633, 4088656; 258587, 4089048; 258780, 4089301; 258793, 4089513; 258586, 4089597; 258333, 4089524; 257879, 4089606; 257512, 4089700; 257198, 4089773; 256965, 4090283; 256997, 4090795; 257312, 4091873; 257382, 4092399; 257403, 4092735; 257730, 4092873; 257769, 4093207; 257594, 4093520; 257498, 4093685; 257575, 4094070; 257751, 4094608; 257643, 4094863; 257561, 4095240; 257813, 4095578; 258005, 4095832; 258322, 4096077; 258625, 4096111; 259128, 4096221; 259500, 4095950; 259703, 4096078; 259568, 4096458; 259552, 4096779; 259570, 4097061; 259492, 4097225; 259412, 4097354; 259387, 4097533; 259522, 4097701; 259563, 4097787; 259824, 4097700; 260233, 4097462; 260571, 4097192; 260853, 4096909; 260996, 4096652; 261586, 4096455; 261891, 4096507; 262187, 4097002; 262340, 4097187; 262798, 4097423; 263274, 4097376; 263735, 4097117; 264068, 4096777; 264184, 4096097; 263783, 4095626; 263902, 4095264; 264191, 4095069; 264494, 4095404; 264945, 4095535; 265298, 4095513; 265684, 4095453; 265954, 4095241; 266321, 4094881; 266490, 4094481; 266110, 4094062; 265945, 4093701; 265601, 4093298; 265520, 4093144; 265279, 4092964; 264865, 4092849; 264501, 4092978; 264129, 4092984; 263880, 4093248; 263589, 4093124; 263303, 4092788; 262947, 4092775; 262785, 4092997; 262531, 4092907; 262223, 4092785; 261965, 4092642; 261719, 4092392; 261590, 4092311; 261410, 4092252; 261219, 4092318; 260922, 4092372; 260796, 4092061; 260554, 4091881; 260212, 4091796; 259955, 4091919; 259768, 4092055; 259875, 4090950; 259972, 4090518; 260073, 4090158; 260186, 4089691; 260039, 4089328; 259557, 4089004; 259481, 4088637; 259426, 4088322; returning to 259348, 4088203.

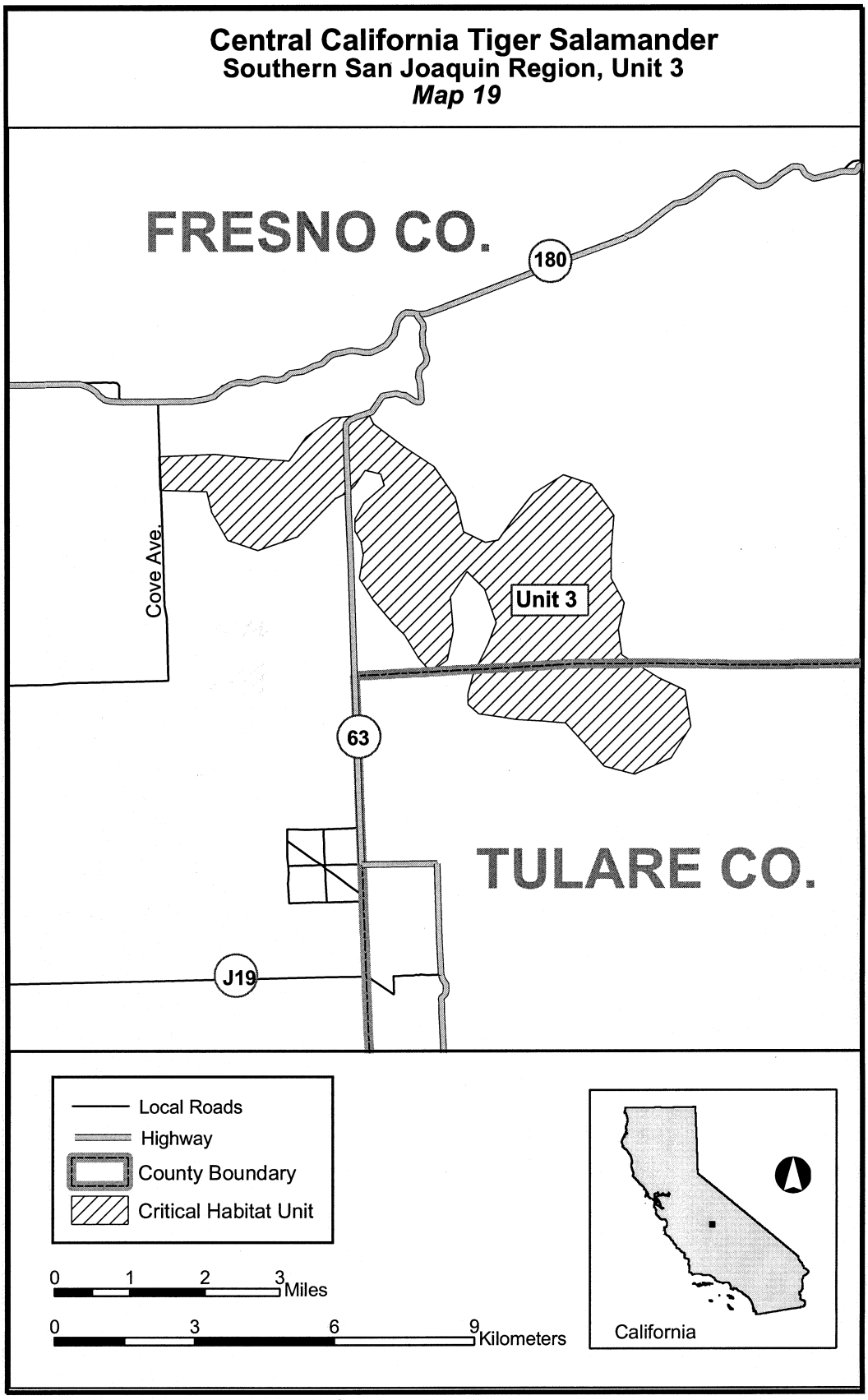
(ii) **Note:** Unit 2 is depicted on Map 18—Units 1 and 2—which follows:


Central California Tiger Salamander
Southern San Joaquin Region, Units 1, 2
Map 18
MADERA CO.
FRESNO CO.
145
41
168
Unit 1
Unit 2
N. Friant Rd.
Auberry Rd.
Local Roads
Highway
County Boundary
Critical Habitat Unit
0 2 4 6 Miles
0 4 8 12 Kilometers
California

(36) Southern San Joaquin Region: Unit 3 Hills Valley, Fresno County, California.

(i) From USGS 1:24,000 quadrangle maps Orange Cove North, and Tucker Mtn., California, land bounded by the following UTM 11 NAD 27 coordinates (E, N299934, 4057038; 299297, 4057253; 298926, 4057727; 298532, 4058227; 298013, 4058310; 297491, 4058367; 297195, 4058436; 296676, 4058544; 296464, 4058757; 296478, 4058981; 296603, 4059374; 296967, 4060002; 297172, 4060465; 296968, 4061203; 296617, 4061601; 296234, 4061074; 296238, 4060348; 296075, 4059732; 295710, 4059505; 295478, 4059795; 295210, 4060312; 294976, 4060577; 294584, 4061102; 294314, 4061595; 294420, 4062089; 294389, 4062391; 294279, 4062623; 294294, 4062872; 294515, 4063209; 294963, 4063556; 294904, 4063810; 294584, 4063905; 294339, 4063595; 294207, 4063478; 293923, 4063346; 293579, 4063042; 293049, 4062575; 292183, 4062329; 291549, 4062594; 291238, 4063214; 291166, 4063669; 290170, 4063757; 290190, 4064481; 291390, 4064456; 292356, 4064295; 292976, 4064206; 293383, 4064705; 293956, 4065070; 294734, 4065096; 294821, 4064891; 295438, 4064352; 296060, 4063888; 296468, 4063212; 296595, 4062453; 297055, 4062199; 297332, 4062231; 297658, 4062636; 298143, 4063182; 298815, 4063540; 299401, 4063303; 299832, 4062600; 299734, 4061831; 299698, 4061257; 299939, 4060717; 299779, 4060151; 299819, 4059598; 300562, 4059076; 301118, 4058766; 301195, 4057985; 300729, 4057339; returning to 299934, 4057038.

(ii) **Note:** Unit 3 (Map 19) follows:


Central California Tiger Salamander
Southern San Joaquin Region, Unit 3
Map 19
FRESNO CO.
180
Cove Ave.
Unit 3
63
TULARE CO.
J19
Local Roads
Highway
County Boundary
Critical Habitat Unit
0 1 2 3 Miles
0 3 6 9 Kilometers
California

(37) Southern San Joaquin Region: Unit 4 Seville, Tulare County, California.

(i) From USGS 1:24,000 quadrangle map Ivanhoe, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 299267, 4038424; 298441, 4038462; 298480, 4039245; 299290, 4039221; 299326, 4040020; 299295, 4040041; 299305, 4040405; 299108, 4040431; 299133, 4040832; 299802, 4040797; 300145, 4040423; 300104, 4039984; 299746, 4039980; 299719, 4039203; 299300, 4039209; returning to 299267, 4038424.

(ii) **Note:** Unit 4 is depicted on Map 20—Units 4, 5A, and 5B—see paragraph (39)(ii).

(38) Southern San Joaquin Region: Unit 5A Cottonwood Creek, Tulare County, California.

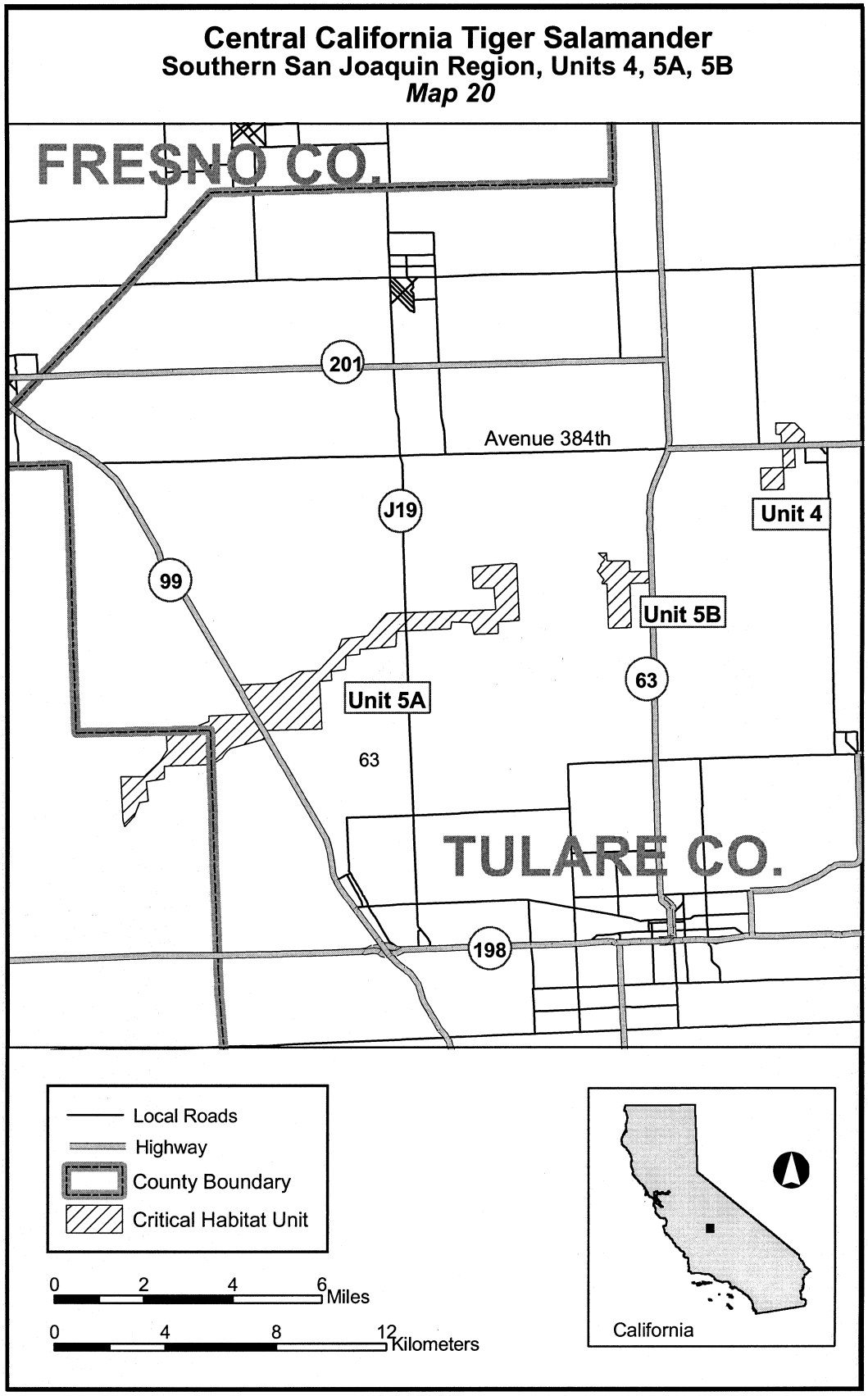
(i) From USGS 1:24,000 quadrangle maps Burris Park, Traver, Monson, and Remnoy, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 274838, 4027770; 274782, 4027997; 274809, 4029585; 275643, 4029545; 276227, 4030027; 276522, 4030432; 276541, 4031101; 277294, 4031102; 278100, 4031382; 278112, 4031569; 279712, 4031552; 279237, 4032618; 280614, 4032602; 281449, 4032975; 282167, 4032965; 282892, 4033638; 283058, 4034040; 284003, 4034098; 284733, 4034866; 288647, 4034751; 288636, 4035528; 287886, 4035563; 287910, 4036340; 289313, 4036369; 289500, 4036346; 289467, 4034311; 288702, 4034312; 288675, 4033890; 287817, 4033909; 287749, 4034324; 287036, 4034404; 286997, 4034159; 285045, 4034198; 284975, 4033638; 283692, 4033635; 283680, 4033447; 283173, 4033432; 283131, 4032940; 282611, 4032902; 282602, 4032584; 282153, 4032565; 282142, 4030859; 280098, 4030927; 280150, 4030641; 278815, 4030372; 278617, 4030219; 278487, 4030027; 278110, 4029827; 276405, 4029862; 276365, 4029417; 275713, 4029352; 275740, 4028644; 275420, 4028617; 275201, 4028124; returning to 274838, 4027770.

(ii) **Note:** Unit 5A is depicted on Map 20—Units 4, 5A, and 5B—see paragraph (39)(ii).

(39) Southern San Joaquin Region: Unit 5B Cottonwood Creek, Tulare County, California.

(i) From USGS 1:24,000 quadrangle map Monson, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 293477, 4033789; 292652, 4033822; 292702, 4035425; 292525, 4035436; 292524, 4035481; 292611, 4035571; 292385, 4035894; 292524, 4036070; 292516, 4036125; 292687, 4036292; 292463, 4036546; 292754, 4036540; 292746, 4036236; 293550, 4036198; 293546, 4035808; 294322, 4035767; 294329, 4035350; 293527, 4035389; returning to 293477, 4033789.

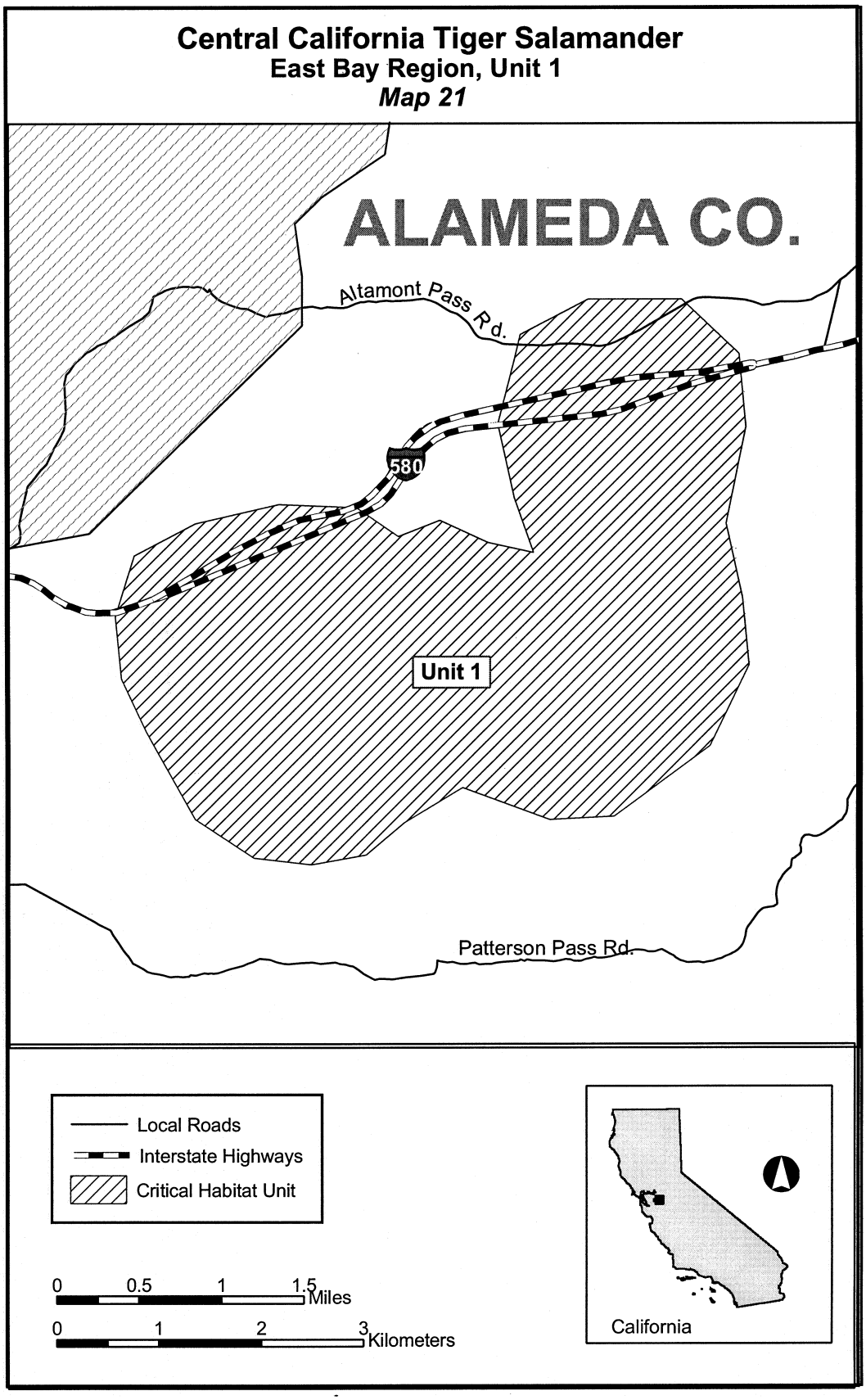
(ii) **Note:** Unit 5B is depicted on Map 20—Units 4, 5A, and 5B—which follows:


Central California Tiger Salamander
Southern San Joaquin Region, Units 4, 5A, 5B
Map 20
FRESNO CO.
201
Avenue 384th
J19
Unit 4
99
Unit 5B
63
Unit 5A
63
TULARE CO.
198
Local Roads
Highway
County Boundary
Critical Habitat Unit
0 2 4 6 Miles
0 4 8 12 Kilometers
California

(40) East Bay Region: Unit 1 Patterson, Alameda County, California.

(i) From USGS 1:24,000 quadrangle maps Altamont, and Midway, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 619653, 4172697; 619087, 4172760; 618521, 4173137; 618050, 4173986; 617798, 4174520; 617735, 4175117; 617924, 4175715; 618521, 4176029; 619339, 4176218; 620093, 4176186; 620502, 4175903; 620911, 4176060; 621382, 4175840; 621822, 4175746; 621634, 4176281; 621476, 4177004; 621634, 4177632; 621696, 4177884; 622357, 4178230; 623268, 4178230; 623834, 4177695; 623897, 4176972; 623708, 4176029; 623866, 4175306; 623928, 4174646; 623551, 4173860; 622608, 4173168; 621979, 4173137; 621131, 4173451; 620565, 4173105; 620187, 4172791; returning to 619653, 4172697.

(ii) **Note:** Unit 1 (Map 21) follows:


Central California Tiger Salamander
East Bay Region, Unit 1
Map 21
ALAMEDA CO.
Altamont Pass Rd.
580
Unit 1
Patterson Pass Rd.
Local Roads
Interstate Highways
Critical Habitat Unit
0 0.5 1 1.5 Miles
0 1 2 3 Kilometers
California

(41) East Bay Region: Unit 2 Mendenhall, Alameda County, California.

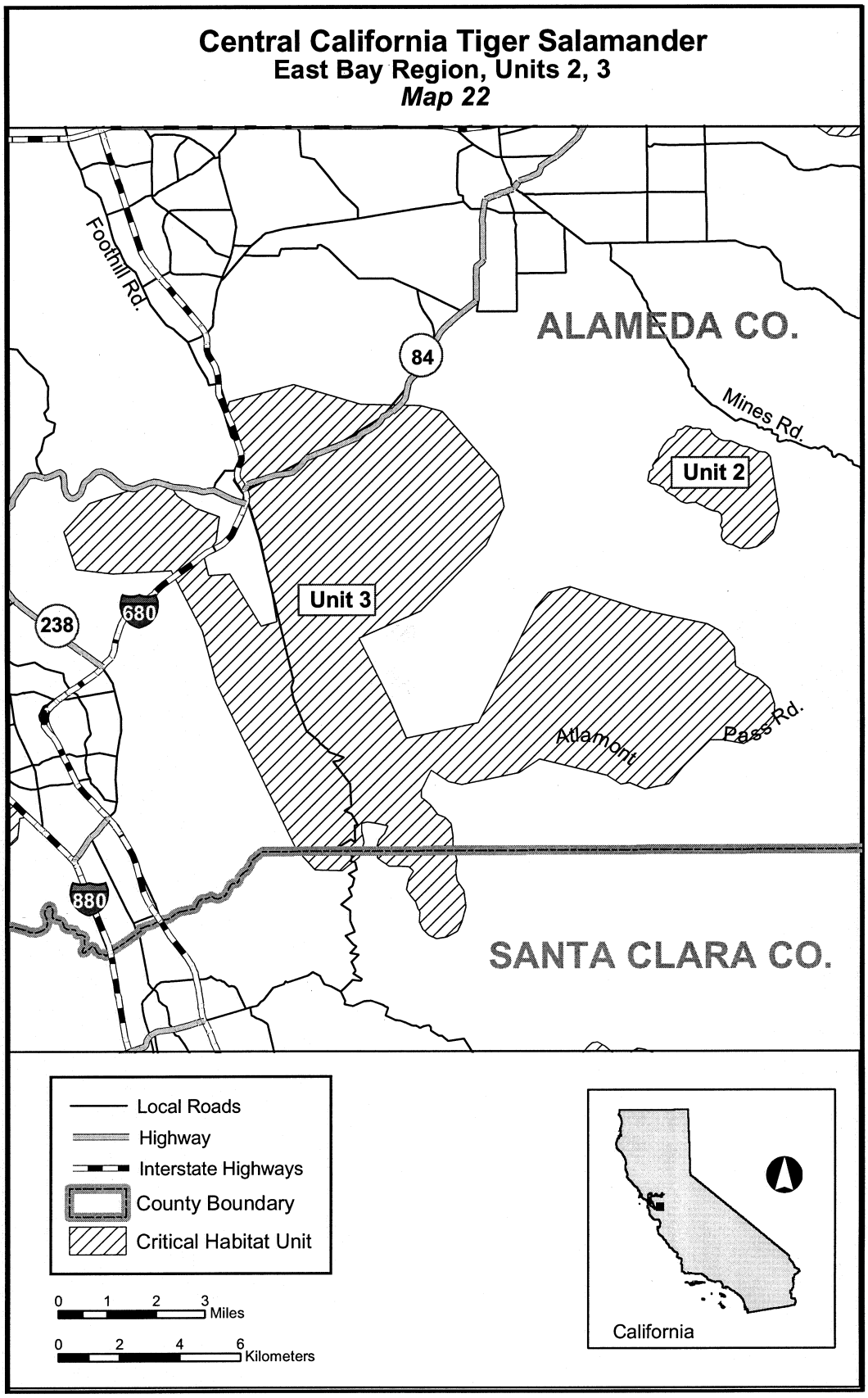
(i) From USGS 1:24,000 quadrangle map Mendenhall Springs, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 616447, 4159080; 616149, 4159080; 615901, 4159209; 615712, 4159239; 615563, 4159358; 615524, 4159487; 615543, 4159596; 615563, 4159696; 615494, 4159864; 615534, 4159963; 615534, 4160093; 615514, 4160231; 615414, 4160301; 615246, 4160331; 615127, 4160380; 615008, 4160440; 614888, 4160509; 614779, 4160559; 614690, 4160618; 614561, 4160609; 614382, 4160579; 614194, 4160638; 614095, 4160708; 613975, 4160827; 613856, 4160877; 613707, 4160966; 613618, 4161105; 613469, 4161184; 613370, 4161224; 613221, 4161234; 613102, 4161323; 613162, 4161641; 613281, 4161730; 613261, 4161849; 613350, 4161978; 613459, 4162077; 613469, 4162226; 613628, 4162494; 613797, 4162703; 613995, 4162812; 614104, 4163010; 614243, 4163050; 614372, 4163139; 614511, 4163129; 614571, 4163070; 614740, 4163080; 614869, 4163050; 615017, 4163020; 615156, 4163040; 615246, 4162881; 615335, 4162792; 615464, 4162713; 615573, 4162663; 615692, 4162643; 615841, 4162653; 615990, 4162584; 616099, 4162524; 616238, 4162464; 616367, 4162455; 616556, 4162395; 616655, 4162335; 616804, 4162296; 616982, 4162276; 617112, 4162177; 617141, 4162127; 617429, 4160321; 617231, 4159576; 616983, 4159318; 616715, 4159140; returning to 616447, 4159080.

(ii) **Note:** Unit 2 is depicted on Map 22—Units 2 and 3—see paragraph (41)(ii).

(42) East Bay Region: Unit Alameda Creek, Alameda and Santa Clara Counties, California.

(i) From USGS 1:24,000 quadrangle maps Niles, La Costa Valley, Mendenhall Springs, and Calaveras Reservoir, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 606135, 4146183; 605860, 4146310; 605670, 4146501; 605543, 4146755; 605585, 4147072; 605500, 4147199; 605437, 4147411; 605289, 4147601; 605140, 4147813; 605204, 4148152; 605373, 4148427; 605204, 4148575; 604886, 4148596; 604548, 4148596; 604188, 4148850; 604146, 4149168; 604230, 4149464; 604400, 4149654; 604527, 4149930; 604230, 4149993; 603849, 4150057; 603659, 4150014; 603659, 4149739; 603743, 4149379; 603574, 4148892; 603024, 4148448; 602114, 4148469; 601500, 4149146; 598854, 4154650; 598388, 4156385; 597372, 4158375; 595446, 4158269; 594240, 4158417; 593837, 4159666; 594684, 4160619; 595933, 4161021; 596399, 4161190; 597288, 4161317; 597584, 4160830; 598155, 4160449; 598960, 4160153; 598833, 4159328; 598452, 4158798; 598600, 4158206; 599298, 4158248; 599743, 4157507; 600336, 4156534; 600865, 4156682; 600695, 4157634; 600336, 4159306; 599933, 4160598; 599891, 4161063; 599701, 4161275; 599574, 4161677; 599701, 4162164; 599425, 4163095; 599193, 4163709; 599277, 4163963; 601415, 4164535; 603638, 4163879; 605606, 4163836; 606326, 4163646; 608167, 4161508; 608358, 4160471; 607765, 4159201; 605627, 4157042; 603574, 4156131; 604569, 4154142; 605140, 4152829; 607511, 4153338; 609395, 4157126; 609818, 4157634; 610538, 4157825; 613014, 4157042; 615067, 4156597; 615554, 4156322; 615956, 4155814; 615999, 4155200; 616316, 4154989; 616718, 4154819; 617121, 4154460; 617290, 4153952; 617269, 4153401; 616888, 4152978; 616274, 4152639; 615618, 4152766; 615173, 4152766; 614306, 4151920; 613819, 4151327; 613014, 4151136; 612506, 4151348; 612210, 4151306; 611744, 4151602; 609522, 4152131; 608866, 4151687; 606961, 4151284; 606516, 4151390; 605945, 4151771; 605627, 4151115; 605627, 4150861; 605712, 4150797; 605924, 4150628; 606178, 4150289; 606410, 4150205; 606601, 4149993; 606664, 4149570; 606664, 4149252; 606791, 4148787; 606749, 4148427; 606791, 4148109; 607024, 4147792; 607088, 4147241; 606961, 4146755; 606813, 4146437; 606453, 4146247; returning to 606135, 4146183.

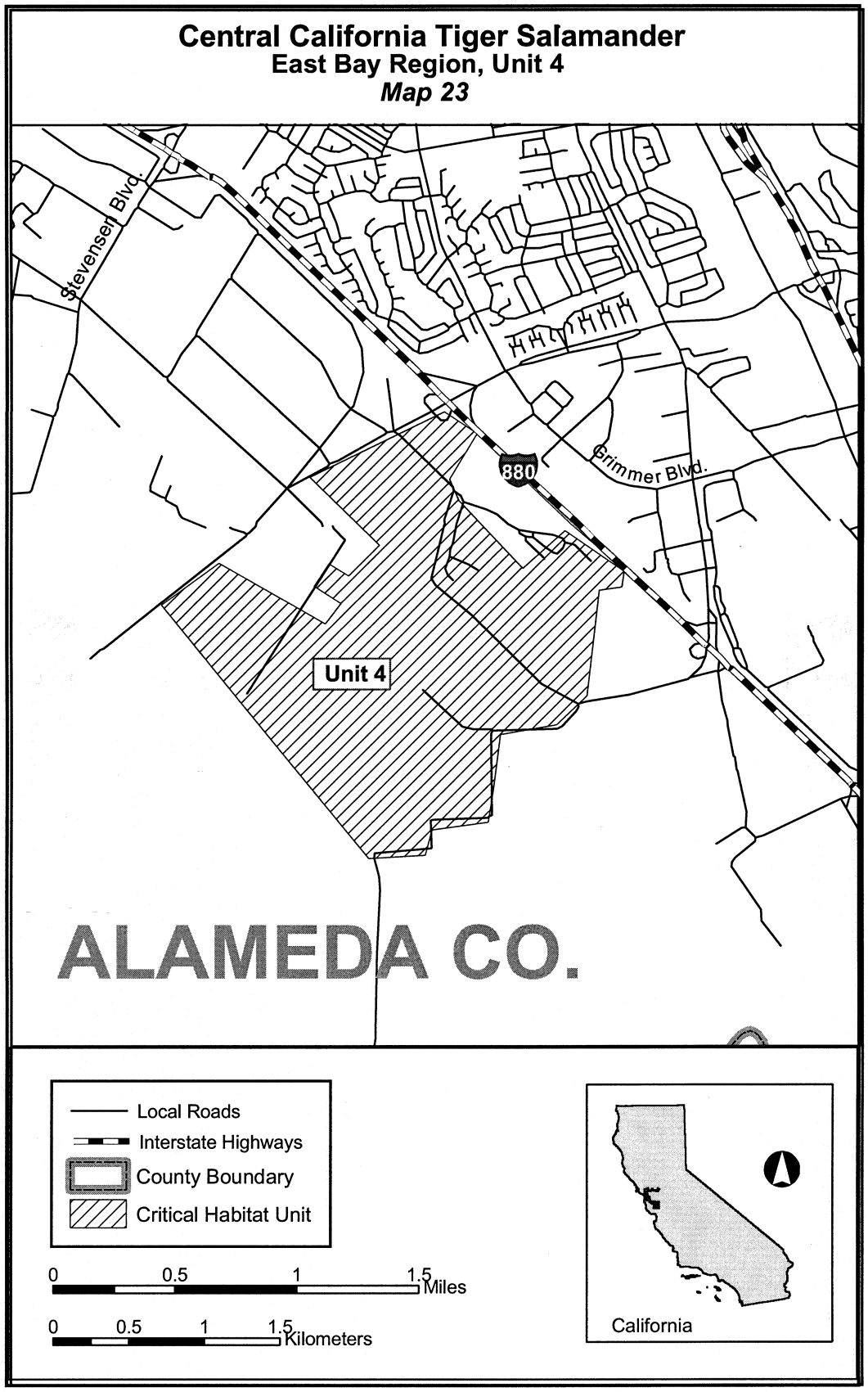
(ii) **Note:** Unit 3 is depicted on Map 22—Units 2 and 3—which follows:


Central California Tiger Salamander
East Bay Region, Units 2, 3
Map 22
Foothill Rd.
ALAMEDA CO.
84
Mines Rd.
Unit 2
Unit 3
238
680
Atlamont Pass Rd.
880
SANTA CLARA CO.
Local Roads
Highway
Interstate Highways
County Boundary
Critical Habitat Unit
0 1 2 3 Miles
0 2 4 6 Kilometers
California

(43) East Bay Region: Unit 4 San Francisco Bay, Alameda County, California.

(i) From USGS 1:24,000 quadrangle maps Niles, and Milpitas, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 590833, 4148432; 589465, 4150107; 589845, 4150385; 590548, 4149983; 590650, 4150115; 590475, 4150232; 590570, 4150378; 590701, 4150297; 590906, 4150502; 590445, 4150956; 591330, 4151387; 591550, 4151241; 591367, 4150941; 591426, 4150802; 591850, 4150349; 592128, 4150597; 592516, 4150327; 592501, 4150224; 592355, 4150202; 592274, 4149507; 592077, 4149317; 591704, 4149251; 591660, 4148900; 591623, 4148673; 591250, 4148622; 591206, 4148454; returning to 590833, 4148432.

(ii) **Note:** Unit 4 (Map 23) follows:


Central California Tiger Salamander
East Bay Region, Unit 4
Map 23
Stevenson Blvd.
880
Grimmer Blvd.
Unit 4
ALAMEDA CO.
Local Roads
Interstate Highways
County Boundary
Critical Habitat Unit
0 0.5 1 1.5 Miles
0 0.5 1 1.5 Kilometers
California

(44) East Bay Region: Unit 5 Poverty Ridge, Santa Clara County, California.

(i) From USGS 1:24,000 quadrangle maps Calaveras Reservoir, and Mt. Day, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 613623, 4139261; 613395, 4139338; 613177, 4139403; 613079, 4139490; 612905, 4139577; 612709, 4139555; 612601, 4139664; 612535, 4139751; 612350, 4139697; 612187, 4139795; 612067, 4139871; 611001, 4139544; 610305, 4139653; 609684, 4140350; 609717, 4140992; 610032, 4141459; 610511, 4141753; 610794, 4141829; 610860, 4142199; 610947, 4142374; 611121, 4142580; 611273, 4142722; 611436, 4142754; 611708, 4142602; 611980, 4142374; 612089, 4142210; 612176, 4142156; 612350, 4142232; 612514, 4142363; 612666, 4142482; 612764, 4142548; 612992, 4142515; 613254, 4142417; 613471, 4142287; 613656, 4142069; 613721, 4141917; 613765, 4141753; 613874, 4141623; 614059, 4141460; 614276, 4141209; 614342, 4140926; 614429, 4140654; 614363, 4140317; 614396, 4140099; 614287, 4139795; 614157, 4139599; 613928, 4139403; 613787, 4139283; returning to 613623, 4139261.

(ii) **Note:** Unit 5 is depicted on Map 24—Units 5, 6, 7, and 8—see paragraph (47)(ii).

(45) East Bay Region: Unit 6 Smith Creek, Santa Clara County, California.

(i) From USGS 1:24,000 quadrangle maps Lick Observatory, and Isabell Valley, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 618437, 4130695; 617379, 4130761; 616784, 4131356; 616585, 4132216; 615990, 4132679; 614865, 4133010; 614072, 4132811; 613344, 4132811; 612617, 4132943; 611889, 4133340; 611294, 4134002; 611227, 4134862; 612153, 4135457; 613146, 4135589; 613807, 4135656; 614733, 4135589; 615725, 4135457; 616122, 4135060; 616254, 4134663; 616651, 4134200; 617379, 4134002; 617842, 4133605; 618636, 4133804; 619165, 4134399; 620157, 4135457; 621017, 4135656; 621943, 4135590; 622538, 4135259; 623001, 4134465; 622538, 4133936; 622274, 4133341; 621480, 4132481; 620885, 4132150; 620422, 4131621; 619760, 4130959; 619099, 4130893; returning to 618437, 4130695.

(ii) **Note:** Unit 6 is depicted on Map 24— Units 5, 6, 7, and 8—see paragraph (47)(ii).

(46) East Bay Region: Unit 7 San Felipe Creek, Santa Clara County, California.

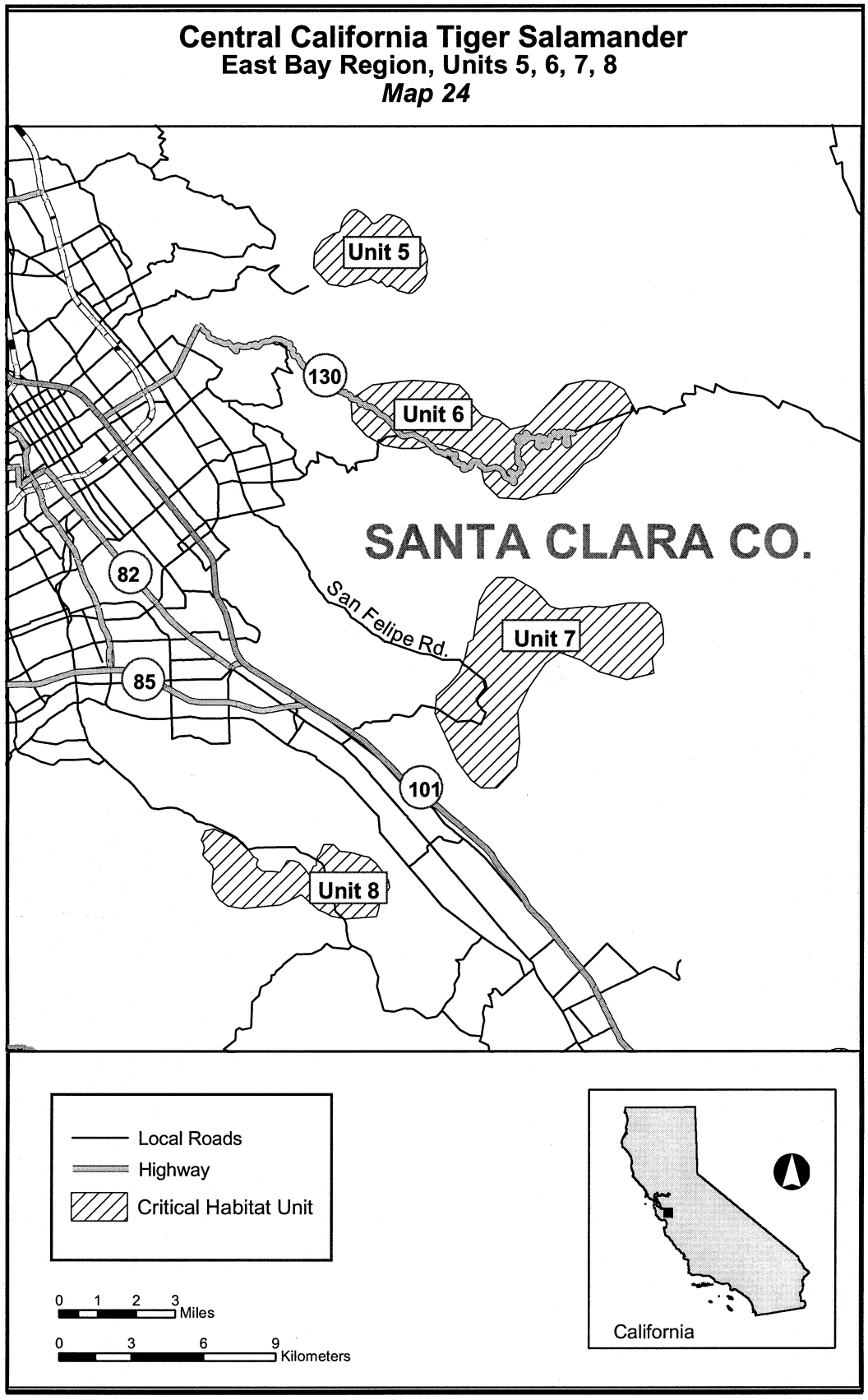
(i) From USGS 1:24,000 quadrangle maps Lick Observatory, Isabell Valley, and Morgan Hill, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 617313, 4118722; 616651, 4118722; 616255, 4119053; 615659, 4119847; 615196, 4120839; 614733, 4121831; 614799, 4122559; 615328, 4123022; 615725, 4123485; 615990, 4124146; 616122, 4124741; 616321, 4124874; 616585, 4126461; 616850, 4126990; 617313, 4127453; 617974, 4127453; 618900, 4126924; 619496, 4126263; 619892, 4126131; 621149, 4126263; 621678, 4126197; 622737, 4126395; 623530, 4126395; 624060, 4125932; 624192, 4125271; 624192, 4124675; 623729, 4124080; 623795, 4123485; 622671, 4123220; 621480, 4123551; 620752, 4124014; 619892, 4124345; 619297, 4123882; 618636, 4122889; 618173, 4121897; 618239, 4120640; 618107, 4119582; returning to 617313, 4118722.

(ii) **Note:** Unit 7 is depicted on Map 24—Units 5, 6, 7, and 8—see paragraph (47)(ii).

(47) East Bay Region: Unit 8 Laurel Hill, Santa Clara County, California.

(i) From USGS 1:24,000 quadrangle maps Santa Teresa Hills, and Morgan Hill, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 611014, 4113296; 610439, 4113395; 610141, 4113573; 609903, 4113653; 609189, 4114288; 608335, 4113871; 607680, 4113812; 606787, 4113712; 606133, 4113831; 605795, 4114070; 605498, 4114566; 605517, 4114883; 605557, 4115359; 605498, 4115518; 605220, 4115796; 605121, 4115955; 605180, 4116252; 605121, 4116451; 605041, 4116570; 605220, 4116947; 605577, 4117026; 605855, 4116907; 606172, 4116788; 606490, 4116629; 606768, 4116471; 606926, 4116252; 607204, 4115875; 607403, 4115756; 607343, 4115578; 607343, 4115498; 607442, 4115379; 607561, 4115280; 607680, 4115260; 607879, 4115260; 607998, 4115260; 608315, 4115220; 608613, 4115717; 608831, 4115717; 609069, 4115637; 609208, 4115498; 609387, 4115300; 609506, 4115141; 609625, 4115340; 609685, 4115478; 609823, 4115518; 609804, 4115637; 609863, 4115856; 609962, 4116014; 610121, 4116391; 610518, 4116391; 610697, 4116193; 610816, 4116094; 611173, 4116074; 611332, 4116034; 611788, 4115895; 612006, 4115856; 612324, 4115578; 612483.1250000 4115359; 612701, 4115082; 612800, 4114903; 612860, 4114586; 612681, 4114268; 612423, 4113931; 612403, 4113732; 612324, 4113375; returning to 611014, 4113296.

(ii) **Note:** Units 8 is depicted on Map 24—Units 5, 6, 7, and 8—which follows:


Central California Tiger Salamander
East Bay Region, Units 5, 6, 7, 8
Map 24
Unit 5
130
Unit 6
SANTA CLARA CO.
82
San Felipe Rd.
Unit 7
85
101
Unit 8
Local Roads
Highway
Critical Habitat Unit
0 1 2 3 Miles
0 3 6 9 Kilometers
California

(48) East Bay Region: Unit 9 Cebata Flat, Santa Clara County, California.

(i) From USGS 1:24,000 quadrangle map Gilroy, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 631693, 4101865; 631375, 4101885; 631078, 4102024; 630740, 4102282; 630562, 4102718; 630562, 4103115; 630641, 4103472; 630919, 4103770; 631157, 4104008; 631316, 4104127; 631514, 4104425; 631514, 4104564; 631197, 4104782; 631018, 4104981; 630621, 4105477; 630443, 4105913; 630403, 4106310; 630284, 4106588; 630125, 4107084; 630363, 4107362; 630562, 4107461; 630800, 4107640; 631117, 4107818; 631395, 4107878; 631704, 4107878; 632099, 4107740; 632464, 4107483; 632602, 4107167; 632701, 4106821; 633017, 4105626; 633086, 4105093; 632800, 4104520; 632602, 4104214; 632583, 4103789; 632800, 4103335; 632839, 4102960; 632760, 4102683; 632662, 4102485; 632464, 4102209; 632189, 4101925; 631812, 4101925; returning to 631693, 4101865.

(ii) **Note:** Unit 9 is depicted on Map 25—Units 9, 10, 11, and 12—see paragraph (51)(ii).

(49) East Bay Region: Unit 10 Lions Creek, Santa Clara County, California.

(i) From USGS 1:24,000 quadrangle maps Mt. Madonna, and Gilroy, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 622609, 4100206; 622423, 4100225; 622158, 4100421; 621972, 4100735; 621776, 4100941; 621540, 4101059; 621285, 4101068; 621119, 4101157; 620883, 4101323; 620874, 4101510; 620981, 4101725; 621070, 4101931; 620991, 4102079; 620795, 4102226; 620629, 4102314; 620491, 4102647; 620570, 4102951; 620540, 4103118; 620511, 4103245; 620658, 4103736; 620589, 4103834; 620550, 4104000; 620736, 4104128; 620972, 4104206; 621080, 4104265; 621197, 4104295; 621334, 4104383; 621511, 4104530; 621707, 4104658; 621903, 4104707; 622168, 4104510; 622521, 4104354; 622629, 4104059; 622580, 4103873; 622570, 4103687; 622599, 4103530; 622580, 4103314; 622560, 4103118; 622433, 4103049; 622295, 4102971; 622217, 4102853; 622207, 4102667; 622325, 4102451; 622472, 4102324; 622698, 4102245; 622884, 4102137; 623031, 4101961; 623109, 4101735; 623178, 4101441; 623217, 4101167; 623227, 4100784; 623129, 4100608; 622992, 4100559; 622854, 4100461; 622688, 4100304; returning to 622609, 4100206.

(ii) **Note:** Unit 10 is depicted on Map 25—Units 9, 10, 11, and 12—see paragraph (51)(ii).

(50) East Bay Region: Unit 11 Braen Canyon, Santa Clara County, California.

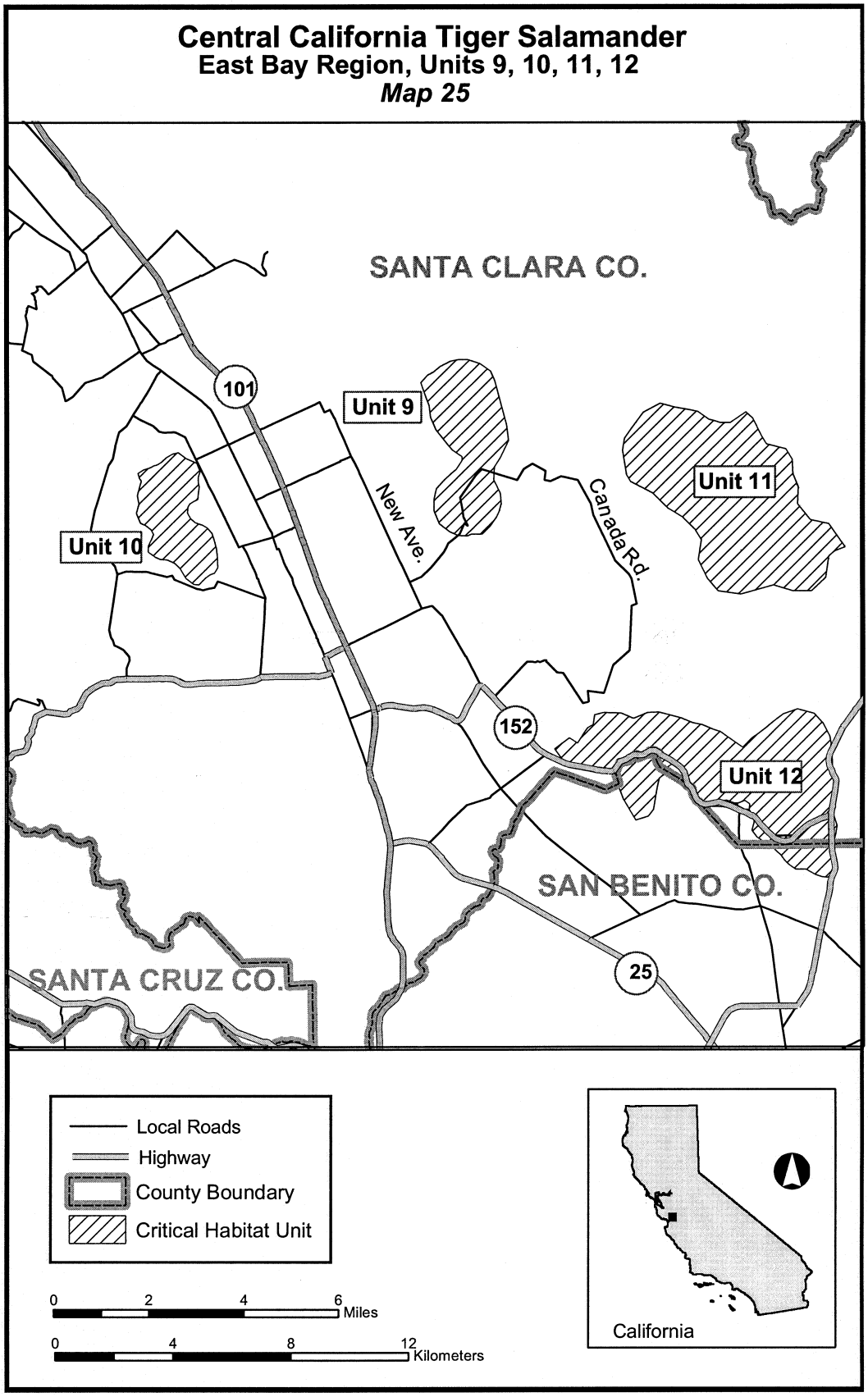
(i) From USGS 1:24,000 quadrangle map Gilroy Hot Spring, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 640950, 4099879; 640184, 4099983; 639836, 4100401; 639523, 4101062; 639627, 4101724; 639418, 4102072; 639000, 4102490; 638513, 4102803; 637956, 4103325; 637225, 4103708; 637086, 4103952; 636947, 4104787; 637016, 4105170; 637225, 4105483; 637678, 4106075; 638235, 4106388; 638722, 4106249; 639105, 4106179; 639488, 4106110; 639871, 4105831; 640254, 4105727; 640602, 4105727; 641124, 4106075; 641367, 4105866; 641646, 4105274; 641820, 4104996; 642481, 4104822; 642690, 4104474; 642725, 4103986; 642899, 4103534; 642864, 4102942; 643317, 4102420; 643943, 4102281; 644500, 4101480; 644152, 4101341; 643943, 4101167; 643839, 4100436; 643351, 4099983; 642725, 4099983; 642064, 4100192; 641472, 4100018; returning to 640950, 4099879.

(ii) **Note:** Unit 11 is depicted on Map 25—Units 9, 10, 11, and 12—see paragraph (51)(ii).

(51) East Bay Region: Unit 12 San Felipe, Santa Clara and San Benito Counties, California.

(i) From USGS 1:24,000 quadrangle maps Gilroy Hot Spring, and San Filipe, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 643926, 4090258; 643737, 4090279; 643461, 4090364; 643165, 4090533; 642805, 4090533; 642594, 4090682; 642467, 4090830; 642318, 4091020; 642086, 4091232; 641832, 4091423; 641514, 4091613; 641324, 4091867; 641408, 4092121; 641429, 4092354; 641239, 4092460; 641260, 4092756; 641091, 4092883; 641089, 4092882; 640879, 4092798; 640625, 4092798; 640624, 4092798; 640623, 4092798; 640476, 4092650; 640138, 4092671; 639863, 4092693; 639567, 4092735; 639511, 4092788; 639417, 4092882; 639269, 4093242; 639219, 4093294; 639142, 4093449; 639049, 4093736; 638948, 4093984; 638676, 4094152; 638507, 4094025; 638452, 4093876; 638422, 4093793; 638205, 4093627; 638150, 4093372; 638119, 4093186; 638011, 4092566; 637841, 4092349; 637406, 4092206; 636981, 4092946; 636640, 4093837; 634982, 4094177; 634649, 4094642; 635153, 4095006; 635432, 4094844; 635772, 4095355; 635966, 4095463; 636012, 4095796; 636315, 4095866; 636911, 4095858; 637342, 4095676; 637808, 4095867; 638189, 4095888; 638930, 4095698; 639332, 4095528; 639650, 4095465; 640009, 4095317; 640242, 4095232; 640687, 4094914; 641025, 4094682; 641027, 4094682; 641345, 4095021; 641578, 4095169; 641768, 4095317; 642064, 4095571; 642403, 4095825; 642867, 4095994; 643438, 4095846; 643756, 4095486; 643968, 4095084; 644010, 4094809; 643989, 4094576; 643925, 4094174; 644052, 4093750; 644158, 4093412; 644179, 4093052; 644116, 4092671; 644116, 4092353; 644222, 4092015; 644179, 4091739; 644116, 4091464; 644103, 4091403; 644073, 4091253; 644010, 4090977; 644095, 4090723; 644116, 4090427; returning to 643926, 4090258.

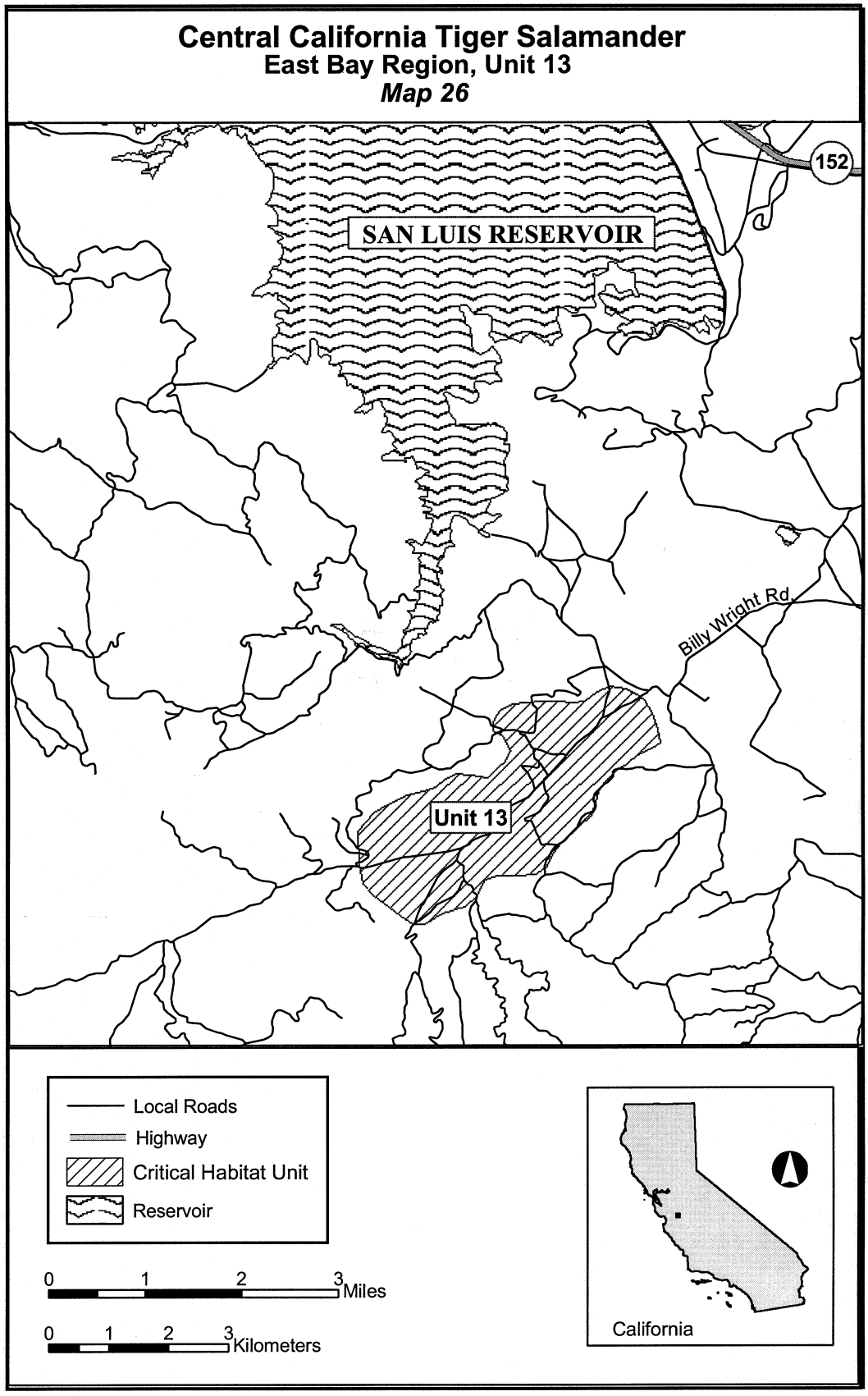
(ii) **Note:** Unit 12 is depicted on Map 25—Units 9, 10, 11, and 12—which follows:


Central California Tiger Salamander
East Bay Region, Units 9, 10, 11, 12
Map 25
SANTA CLARA CO.
101
Unit 9
Unit 10
Unit 11
New Ave.
Canada Rd.
152
Unit 12
SAN BENITO CO.
25
SANTA CRUZ CO.
Local Roads
Highway
County Boundary
Critical Habitat Unit
0 2 4 6 Miles
0 4 8 12 Kilometers
California

(52) East Bay Region: Unit 13 Los Banos, Merced County, California.

(i) From USGS 1:24,000 quadrangle maps Mariposa Peak, and Los Banos Valley, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 666982, 4090221; 666778, 4090372; 666306, 4090726; 666155, 4090908; 666091, 4091241; 666059, 4091778; 666327, 4092089; 666552, 4092229; 666896, 4092390; 667153, 4092465; 667368, 4092529; 667497, 4092636; 667712, 4092744; 667969, 4092733; 668248, 4092679; 668452, 4092883; 668517, 4092926; 668624, 4093130; 668495, 4093366; 668323, 4093474; 668323, 4093613; 668452, 4093796; 668678, 4093924; 668882, 4093935; 668967, 4093935; 669085, 4093957; 669268, 4093957; 669429, 4093957; 669654, 4093946; 669858, 4093967; 670051, 4094118; 670277, 4094203; 670534, 4094150; 670685, 4094096; 670835, 4093989; 670974, 4093763; 671060, 4093495; 671114, 4093259; 670985, 4093162; 670728, 4093066; 670545, 4092905; 670395, 4092808; 670266, 4092669; 670105, 4092508; 669966, 4092046; 669740, 4091842; 669483, 4091606; 669343, 4091413; 669236, 4091187; 669042, 4091059; 668731, 4091037; 668409, 4091037; 668195, 4090973; 668044, 4090672; 667851, 4090533; 667475, 4090415; 667186, 4090232; returning to 666982, 4090221.

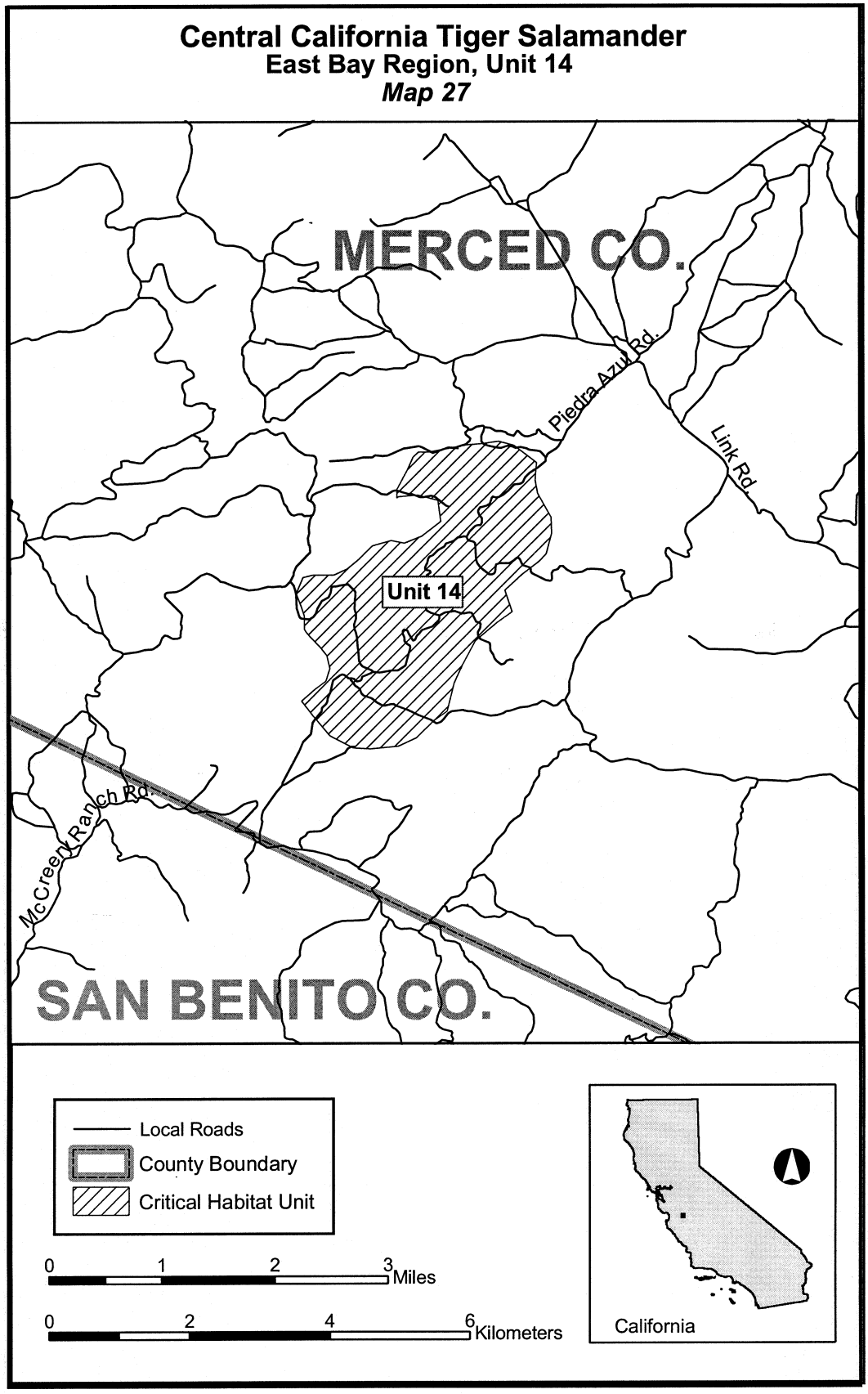
(ii) **Note:** Unit 13 (Map 26) follows:


Central California Tiger Salamander
East Bay Region, Unit 13
Map 26
152
SAN LUIS RESERVOIR
Billy Wright Rd.
Unit 13
Local Roads
Highway
Critical Habitat Unit
Reservoir
0 1 2 3 Miles
0 1 2 3 Kilometers
California

(53) East Bay Region: Unit 14 Landgon, Merced County, California.

(i) From USGS 1:24,000 quadrangle maps Ruby Canyon, and Ortigalita Peak, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 677084, 4074804; 676837, 4074821; 676504, 4074992; 676256, 4075282; 676103, 4075487; 676308, 4075666; 676444, 4075768; 676504, 4075948; 676461, 4076135; 676367, 4076246; 676214, 4076408; 676180, 4076451; 676137, 4076511; 676137, 4076690; 676094, 4076835; 676026, 4077014; 676120, 4077245; 676265, 4077279; 676564, 4077279; 676760, 4077373; 676931, 4077509; 677110, 4077697; 677374, 4077774; 677571, 4077731; 677827, 4077834; 678083, 4078039; 678049, 4078346; 677759, 4078423; 677485, 4078397; 677460, 4078380; 677460, 4078500; 677605, 4078773; 677690, 4078960; 677776, 4079037; 677921, 4079037; 678117, 4079071; 678467, 4079140; 678680, 4079157; 678911, 4079191; 679124, 4079131; 679448, 4078884; 679440, 4078730; 679431, 4078628; 679465, 4078448; 679653, 4078107; 679662, 4077868; 679585, 4077578; 679491, 4077475; 679244, 4077288; 678996, 4077057; 679098, 4076750; 678894, 4076605; 678578, 4076340; 678390, 4075990; 678279, 4075751; 678177, 4075342; 677989, 4075205; 677741, 4074966; 677477, 4074847; returning to 677084, 4074804.

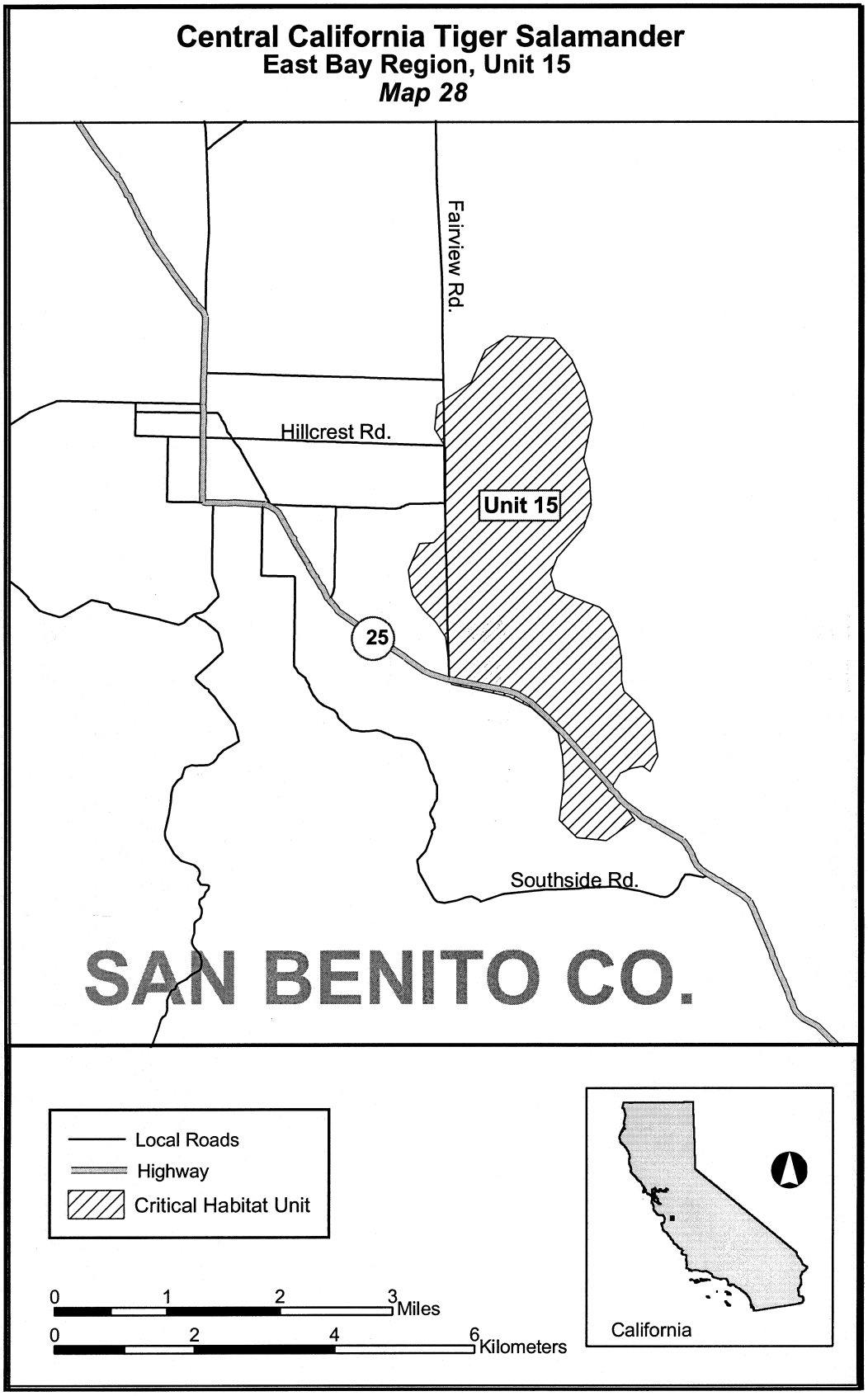
(ii) **Note:** Unit 14 (Map 27) follows:


Central California Tiger Salamander
East Bay Region, Unit 14
Map 27
MERCED CO.
Piedra Azul Rd.
Link Rd.
Unit 14
McCreery Ranch Rd.
SAN BENITO CO.
Local Roads
County Boundary
Critical Habitat Unit
0 1 2 3 Miles
0 2 4 6 Kilometers
California

(54) East Bay Region: Unit 15 Ana Creek, San Benito County, California.

(i) From USGS 1:24,000 quadrangle map Tres Pinos California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 648335, 4073256; 647913, 4073303; 647662, 4073554; 647725, 4074086; 647725, 4074274; 647709, 4074493; 647646, 4074791; 647490, 4074963; 647255, 4075167; 646942, 4075323; 646597, 4075402; 646127, 4075496; 646096, 4075605; 646080, 4075918; 646049, 4076169; 645908, 4076388; 645736, 4076545; 645579, 4076764; 645548, 4076874; 645516, 4077124; 645673, 4077500; 645877, 4077516; 646033, 4077672; 646049, 4077782; 646049, 4077986; 646049, 4078299; 646049, 4078612; 646049, 4078878; 645892, 4079144; 645924, 4079489; 646205, 4079677; 646409, 4079818; 646519, 4080068; 646613, 4080272; 646926, 4080476; 647176, 4080460; 647584, 4080444; 647834, 4080147; 648022, 4079724; 648132, 4079285; 648006, 4078706; 648100, 4078408; 648116, 4078048; 648006, 4077735; 647834, 4077531; 647631, 4077296; 647537, 4077062; 647599, 4076842; 647865, 4076733; 648241, 4076592; 648367, 4076482; 648492, 4076185; 648555, 4075856; 648555, 4075543; 648586, 4075402; 648758, 4075245; 648993, 4074979; 649071, 4074462; 648962, 4074243; 648852, 4074321; 648680, 4074290; 648539, 4074227; 648414, 4074023; 648742, 4073554; returning to 648335, 4073256.

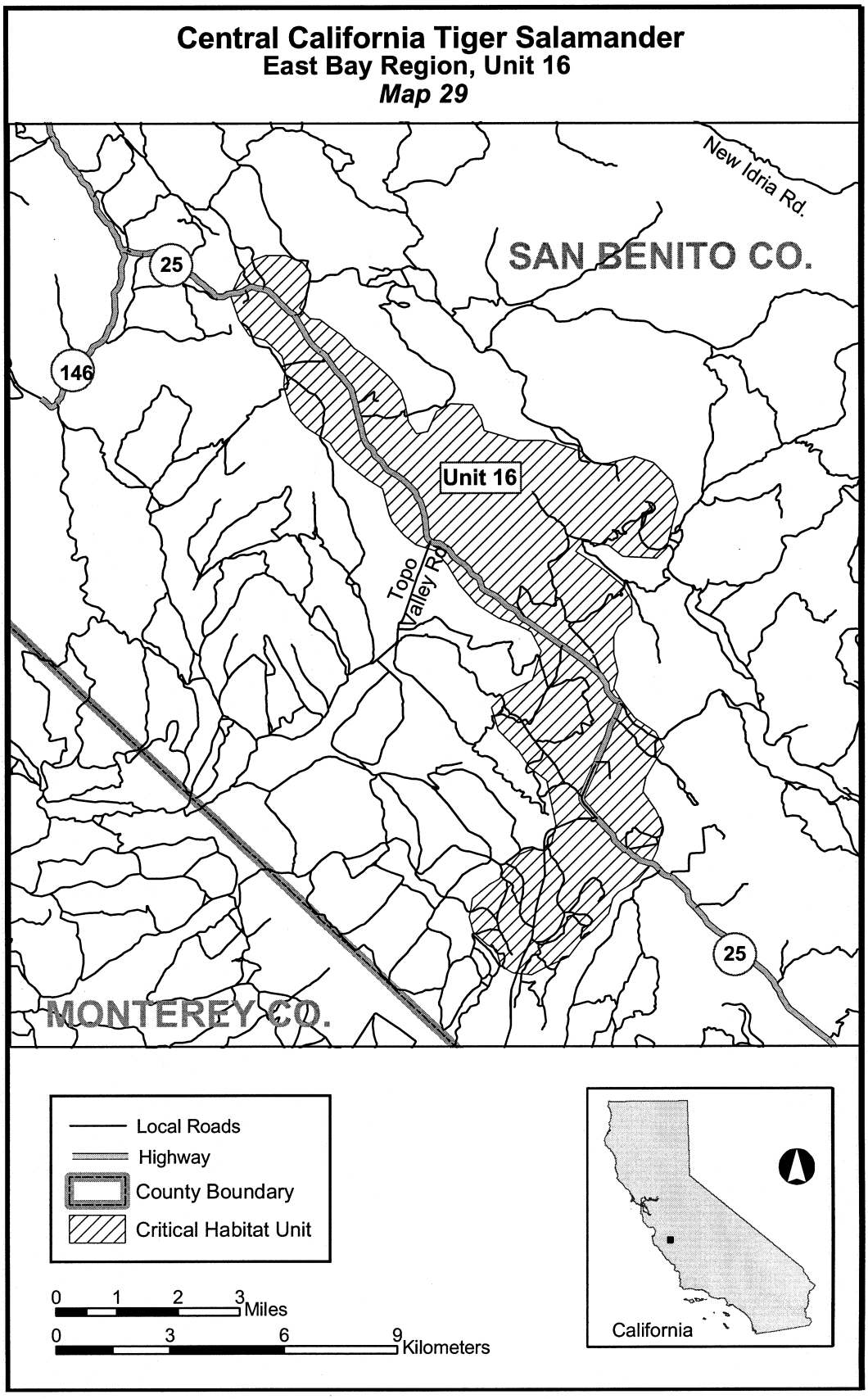
(ii) **Note:** Unit 15 (Map 28) follows:


Central California Tiger Salamander
East Bay Region, Unit 15
Map 28
Fairview Rd.
Hillcrest Rd.
Unit 15
25
Southside Rd.
SAN BENITO CO.
Local Roads
Highway
Critical Habitat Unit
0 1 2 3 Miles
0 2 4 6 Kilometers
California

(55) East Bay Region: Unit 16 Bitterwater, San Benito County, California.

(i) From USGS 1:24,000 quadrangle maps San Benito, Topo Valley, Rock Spring Peak, Pinalito Canyon, and Lonoak, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 677680, 4023667; 677177, 4023720; 676860, 4023905; 676754, 4024328; 676516, 4024461; 676146, 4024805; 676040, 4025202; 676093, 4025466; 676119, 4025678; 676595, 4026075; 676833, 4026207; 677019, 4026472; 677151, 4026577; 677389, 4026868; 677733, 4027001; 677971, 4026948; 678209, 4027160; 678315, 4027636; 678156, 4028429; 678077, 4028800; 677627, 4029144; 677363, 4029567; 676807, 4030123; 676622, 4030731; 677019, 4031102; 677707, 4031446; 677945, 4032213; 677680, 4032716; 677310, 4032901; 676807, 4033086; 676251, 4033430; 675802, 4033959; 675484, 4034488; 675167, 4034859; 674637, 4035017; 674346, 4035256; 674029, 4035626; 673950, 4035811; 673764, 4036499; 673420, 4036711; 673156, 4036922; 672785, 4037213; 672547, 4037452; 672389, 4037716; 671754, 4038113; 671357, 4038563; 671172, 4039198; 671198, 4039700; 671119, 4040018; 670695, 4040415; 670272, 4040547; 669981, 4040970; 669769, 4041605; 670034, 4042187; 670404, 4042558; 670695, 4042664; 671224, 4042664; 671674, 4042479; 671886, 4042188; 671806, 4041711; 671595, 4041288; 671859, 4040997; 672124, 4040970; 672441, 4040732; 672759, 4040521; 673024, 4040203; 673156, 4040124; 673447, 4039912; 673950, 4039462; 674241, 4039092; 674373, 4038695; 674452, 4038272; 674664, 4037954; 674955, 4038007; 675193, 4038536; 675563, 4038748; 676145, 4038722; 676357, 4038351; 676437, 4038034; 676886, 4037901; 677310, 4037769; 677759, 4037769; 678103, 4037769; 679003, 4037478; 679347, 4037161; 679717, 4037161; 680405, 4037346; 680908, 4037187; 681384, 4036684; 681543, 4036129; 681411, 4035626; 681252, 4034912; 680987, 4034647; 680088, 4034700; 679717, 4034991; 679056, 4035097; 678844, 4034832; 679585, 4034356; 680088, 4033933; 680326, 4033536; 680326, 4033166; 679955, 4032848; 679850, 4032610; 679850, 4032134; 679955, 4031657; 679850, 4031234; 680088, 4030864; 680405, 4030440; 680961, 4030070; 681172, 4029673; 680987, 4029382; 680696, 4028879; 680617, 4028509; 680961, 4028006; 681146, 4027636; 680987, 4026948; 680776, 4026498; 680485, 4026154; 679982, 4025863; 679823, 4025678; 679717, 4025281; 679294, 4024831; 678977, 4024567; 678659, 4024143; 678077, 4023879; returning to 677680, 4023667.

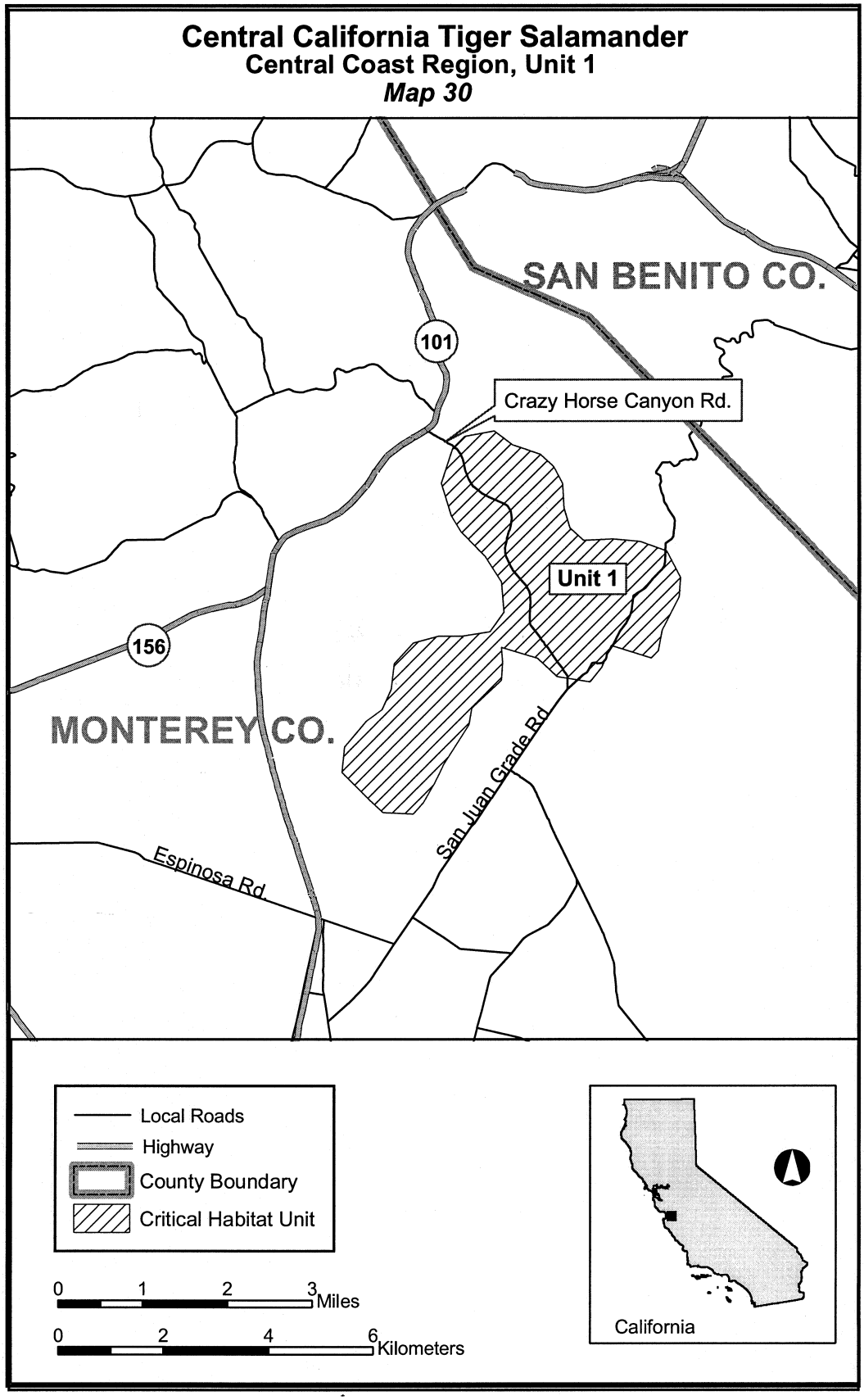
(ii) **Note:** Unit 16 (Map 29) follows:


Central California Tiger Salamander
East Bay Region, Unit 16
Map 29
New Idria Rd.
SAN BENITO CO.
25
146
Unit 16
Topo Valley Rd.
25
MONTEREY CO.
Local Roads
Highway
County Boundary
Critical Habitat Unit
0 1 2 3 Miles
0 3 6 9 Kilometers
California

(56) Central Coast Region: Unit 1 Crazy Horse Canyon, Monterey County, California.

(i) From USGS 1:24,000 quadrangle maps Prunedale, and San Juan Bautista, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 621828, 4068063; 621246, 4068090; 620955, 4068354; 620452, 4068857; 620505, 4069333; 620928, 4069836; 621219, 4070048; 621404, 4070444; 621457, 4070921; 621828, 4071318; 622304, 4071450; 622754, 4071450; 623283, 4071529; 623547, 4071900; 623495, 4072482; 623204, 4072958; 622727, 4073434; 622542, 4073752; 622357, 4074360; 622568, 4075022; 622807, 4075260; 623362, 4075366; 623706, 4075101; 624235, 4074916; 624500, 4074678; 624659, 4074360; 624685, 4073884; 624791, 4073514; 625056, 4073276; 625611, 4073302; 626140, 4073249; 626643, 4073064; 626908, 4072561; 626881, 4072191; 626564, 4071556; 626484, 4071159; 626352, 4071027; 625585, 4071265; 625400, 4070841; 625188, 4070577; 624553, 4070683; 624183, 4071027; 623495, 4071238; 623521, 4070947; 623495, 4070603; 622939, 4070074; 622886, 4069757; 622648, 4069386; 622410, 4069016; 622304, 4068804; 622225, 4068645; 622013, 4068275; returning to 621828, 4068063.

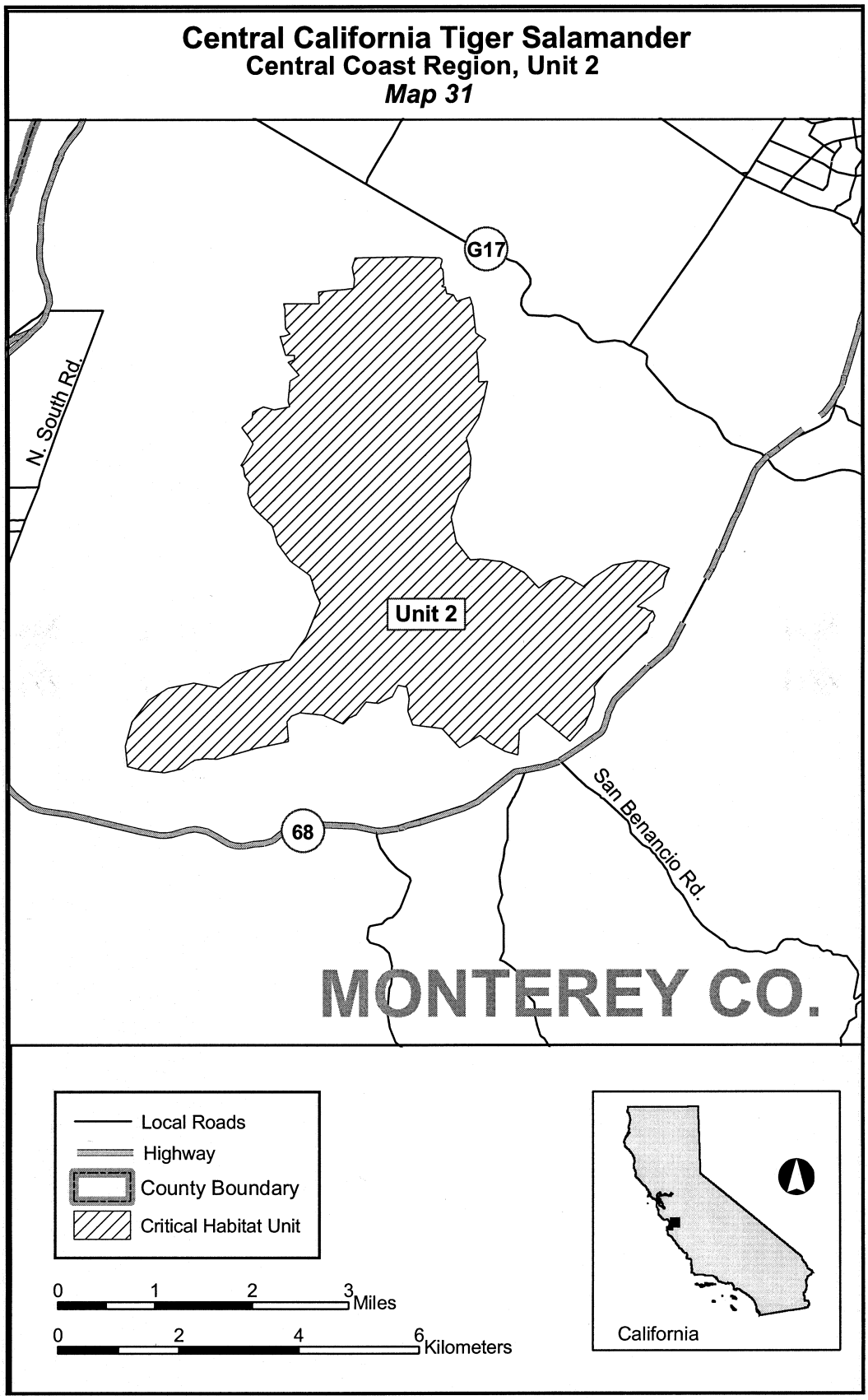
(ii) **Note:** Unit 1 (Map 30) follows:


Central California Tiger Salamander
Central Coast Region, Unit 1
Map 30
SAN BENITO CO.
101
Crazy Horse Canyon Rd.
Unit 1
156
MONTEREY CO.
San Juan Grade Rd.
Espinosa Rd.
Local Roads
Highway
County Boundary
Critical Habitat Unit
0 1 2 3 Miles
0 2 4 6 Kilometers
California

(57) Central Coast Region: Unit 2 Elliott Hill, Monterey County, California.

(i) From USGS 1:24,000 quadrangle maps Marina, Salinas, Seaside, and Spreckles, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 607949, 4048604; 607594, 4048642; 607337, 4048711; 607302, 4049033; 607408, 4049437; 607697, 4049810; 608005, 4050007; 608437, 4050088; 608859, 4050010; 609128, 4050227; 609520, 4050367; 610028, 4050468; 610292, 4050839; 610533, 4051409; 610451, 4051606; 610369, 4051870; 610040, 4052107; 609824, 4052404; 609733, 4052702; 609509, 4052915; 609387, 4053037; 609331, 4053229; 609352, 4053428; 609275, 4053523; 609258, 4053669; 609219, 4053701; 609279, 4053799; 609418, 4054061; 609376, 4054141; 609237, 4054333; 609408, 4054491; 609411, 4054596; 609590, 4054679; 609775, 4054634; 610022, 4054686; 610001, 4054781; 610029, 4055110; 610187, 4055209; 610006, 4055424; 610107, 4055471; 610104, 4055544; 609957, 4055544; 609871, 4055857; 609951, 4055864; 610034, 4055892; 609957, 4055982; 609948, 4056151; 609948, 4056301; 609925, 4056400; 610521, 4056401; 610513, 4056595; 610762, 4056627; 610933, 4056633; 611095, 4056654; 611110, 4056805; 611074, 4056998; 611121, 4057160; 612043, 4057175; 612512, 4057161; 612557, 4057132; 612557, 4057092; 612533, 4057035; 612540, 4056993; 612574, 4056972; 612588, 4056709; 612559, 4056702; 612559, 4056685; 612588, 4056678; 612611, 4056681; 612635, 4056565; 612751, 4056541; 612805, 4056439; 613018, 4056506; 613065, 4056357; 613117, 4055909; 613284, 4055794; 613132, 4055617; 613164, 4055283; 613164, 4055096; 613309, 4055100; 613254, 4054819; 613161, 4054491; 612958, 4054164; 613036, 4053828; 613012, 4053485; 612841, 4053228; 612708, 4052838; 612786, 4052432; 613028, 4052125; 613195, 4052144; 613565, 4052096; 613920, 4051920; 614163, 4051662; 614325, 4051780; 614536, 4051863; 614680, 4051818; 614900, 4051681; 615079, 4051841; 615399, 4052042; 615792, 4052115; 616038, 4052096; 616328, 4051984; 616261, 4051837; 616223, 4051668; 615798, 4051352; 615926, 4051321; 615973, 4051294; 616024, 4051280; 616057, 4051276; 616091, 4051200; 616064, 4051113; 616010, 4051072; 615991, 4051005; 615945, 4050914; 615865, 4050841; 615788, 4050776; 615588, 4050567; 615305, 4050298; 615085, 4050024; 615096, 4049909; 615058, 4049701; 614916, 4049389; 614680, 4049119; 614126, 4049576; 613838, 4049306; 613811, 4048893; 613606, 4048952; 613346, 4049091; 613184, 4049217; 612850, 4049014; 612561, 4049332; 612073, 4049397; 611988, 4049626; 612013, 4049825; 611978, 4050024; 611834, 4050049; 611739, 4049865; 611505, 4049756; 611306, 4049775; 611137, 4049566; 611027, 4049512; 610923, 4049407; 610579, 4049556; 610201, 4049596; 610056, 4049541; 609981, 4049447; 610001, 4049118; 609459, 4049004; 608826, 4048829; 608621, 4048831; 608453, 4048814; 608394, 4048786; 608231, 4048669; returning to 607949, 4048604.

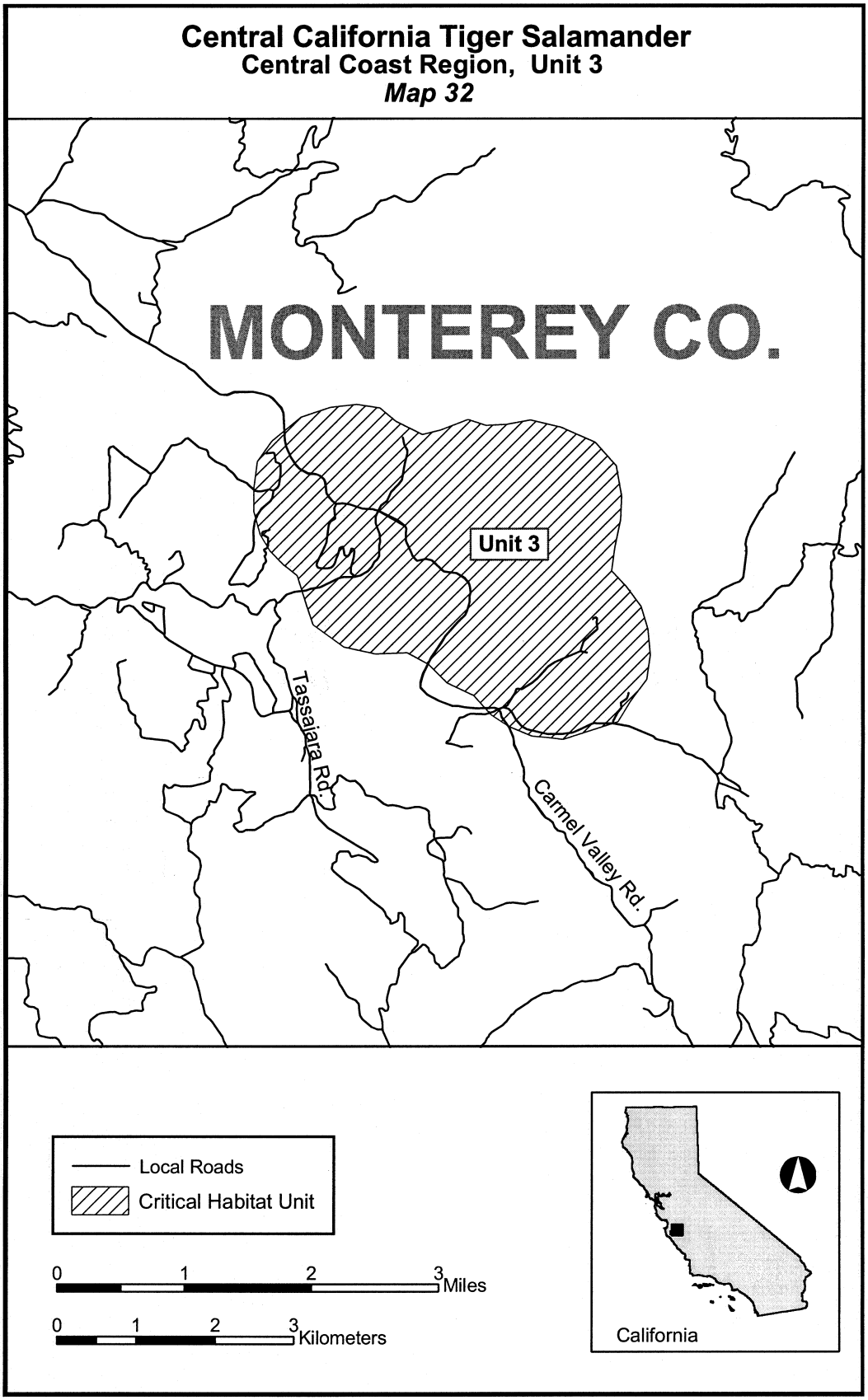
(ii) **Note:** Unit 2 (Map 31) follows:


Central California Tiger Salamander
Central Coast Region, Unit 2
Map 31
G17
N. South Rd.
Unit 2
68
San Benancio Rd.
MONTEREY CO.
Local Roads
Highway
County Boundary
Critical Habitat Unit
0 1 2 3 Miles
0 2 4 6 Kilometers
California

(58) Central Coast Region: Unit 3 Haystack Hill, Monterey County, California.

(i) From USGS 1:24,000 quadrangle map Rana Creek, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 629720, 4026322; 629330, 4026363; 629023, 4026488; 628808, 4026629; 628584, 4026877; 628252, 4027035; 628020, 4027267; 627747, 4027416; 627349, 4027400; 626942, 4027491; 626553, 4027773; 626470, 4028021; 626354, 4028394; 626171, 4028535; 626005, 4028710; 625881, 4028917; 625798, 4029207; 625798, 4029497; 625848, 4029837; 626030, 4030102; 626403, 4030409; 626785, 4030534; 627108, 4030567; 627398, 4030525; 627606, 4030351; 627937, 4030185; 628169, 4030243; 628509, 4030376; 628741, 4030301; 628998, 4030310; 629305, 4030368; 629687, 4030277; 630126, 4030086; 630391, 4029787; 630458, 4029406; 630449, 4029099; 630375, 4028743; 630333, 4028453; 630524, 4028254; 630706, 4028005; 630798, 4027706; 630822, 4027391; 630781, 4027076; 630574, 4026794; 630416, 4026546; returning to 629720, 4026322.

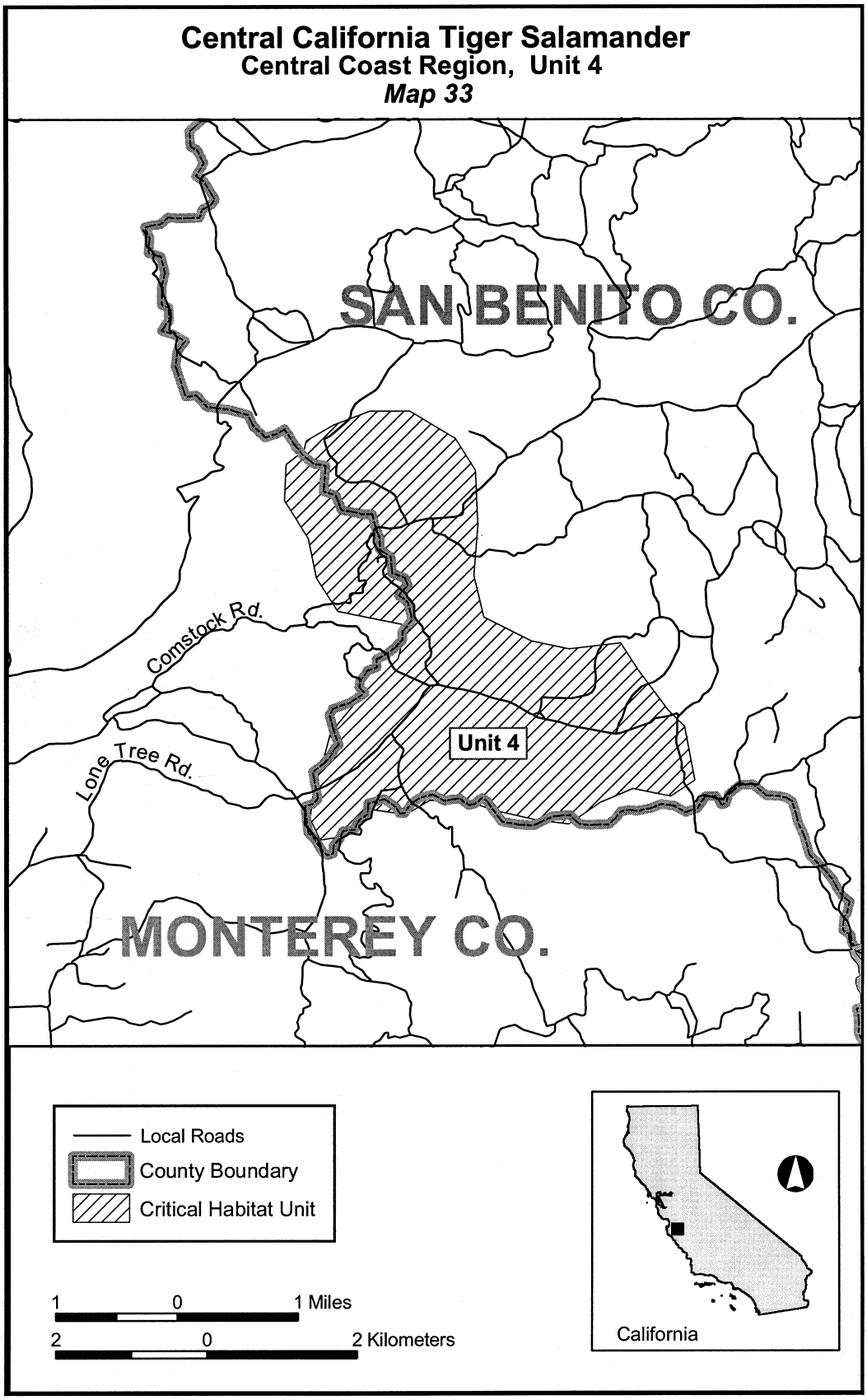
(ii) **Note:** Unit 3 (Map 32) follows:


Central California Tiger Salamander
Central Coast Region, Unit 3
Map 32
MONTEREY CO.
Unit 3
Tassajara Rd.
Carmel Valley Rd.
Local Roads
Critical Habitat Unit
0 1 2 3 Miles
0 1 2 3 Kilometers
California

(59) Central Coast Region: Unit 4 Gloria Valley, Monterey County, California.

(i) From USGS 1:24,000 quadrangle map Mount Jackson, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 651514, 4040626; 651381, 4040917; 651434, 4041367; 651540, 4041632; 651646, 4042055; 652069, 4042558; 652545, 4043034; 652651, 4043484; 651752, 4043669; 651461, 4044119; 651355, 4044648; 651037, 4045151; 651064, 4045627; 651302, 4045812; 651328, 4045944; 651699, 4046156; 652175, 4046341; 652704, 4046341; 653313, 4045971; 653577, 4045547; 653604, 4044807; 653551, 4044145; 653683, 4043589; 654318, 4043272; 654821, 4043166; 655509, 4043245; 655747, 4042875; 656144, 4042346; 656355, 4042134; 656488, 4041420; 656170, 4041208; 655667, 4041314; 655244, 4041129; 654821, 4040838; 654398, 4040891; 653815, 4041023; 653445, 4041155; 652969, 4041155; 652651, 4040970; 652122, 4041049; 651805, 4040679; returning to 651514, 4040626.

(ii) **Note:** Unit 4 (Map 33) follows:


Central California Tiger Salamander
Central Coast Region, Unit 4
Map 33
SAN BENITO CO.
Comstock Rd.
Lone Tree Rd.
Unit 4
MONTEREY CO.
Local Roads
County Boundary
Critical Habitat Unit
1 0 1 Miles
2 0 2 Kilometers
California

(60) Central Coast Region: Unit 5a Fort Hunter Liggett, Monterey County, California.

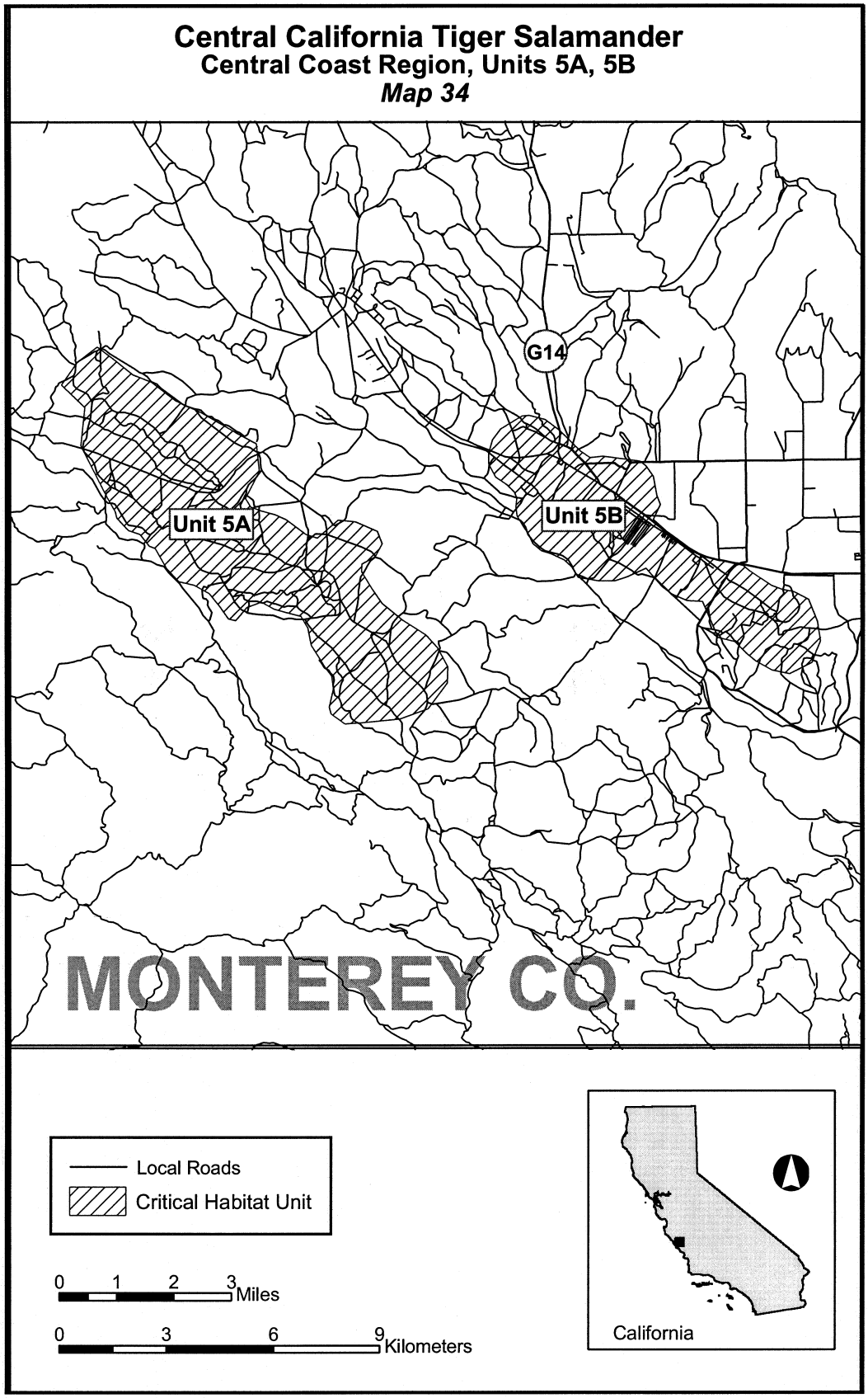
(i) From USGS 1:24,000 quadrangle maps San Luis Obispo, and Jolon, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 658576, 3974270; 658180, 3974545; 658129, 3974734; 658249, 3975250; 658197, 3975611; 658025, 3975835; 657630, 3976471; 657527, 3976970; 657337, 3977279; 656976, 3977365; 656564, 3977486; 656220, 3977675; 655824, 3977520; 655515, 3977159; 655308, 3977211; 655067, 3977555; 654775, 3977916; 654328, 3978157; 653915, 3978260; 653588, 3978604; 653262, 3979188; 653090, 3979257; 652832, 3979584; 652505, 3979687; 652178, 3980048; 652127, 3980238; 651920, 3980599; 651162, 3982084; 651273, 3983155; 650626, 3983780; 651072, 3984426; 651630, 3984850; 652143, 3984471; 652634, 3984069; 653147, 3983869; 653816, 3983356; 654508, 3983021; 655512, 3982441; 656092, 3982129; 656181, 3981348; 655780, 3980589; 655936, 3980344; 656237, 3980237; 656615, 3980134; 656925, 3979997; 657475, 3979584; 657810, 3979474; 658386, 3979979; 658868, 3979928; 659487, 3979670; 659625, 3979309; 659436, 3978948; 659057, 3978741; 659040, 3978535; 659350, 3978019; 659625, 3977641; 660209, 3977159; 660863, 3976746; 661190, 3976385; 661465, 3975869; 661448, 3975405; 660915, 3974700; 660123, 3974408; 659126, 3974304; returning to 658576, 3974270.

(ii) **Note:** Unit 5A is depicted on Map 34—Units 5A and 5B—see paragraph (61)(ii).

(61) Central Coast Region: Unit 5b Fort Hunter Liggett, Monterey County, Counties, California.

(i) From USGS 1:24,000 quadrangle maps Jolon, and Williams Hill, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 671048, 3975666; 670552, 3975765; 670115, 3976003; 669857, 3976221; 669520, 3976559; 669044, 3976678; 668607, 3977690; 668170, 3977710; 667754, 3977888; 667476, 3978106; 667020, 3978622; 666484, 3978384; 666146, 3978265; 665690, 3978265; 665115, 3978364; 664936, 3978662; 664718, 3978860; 664341, 3979039; 664083, 3979118; 663845, 3979317; 663726, 3979595; 663587, 3979793; 663408, 3980091; 663368, 3980349; 663388, 3980607; 663329, 3980765; 663130, 3980964; 662813, 3981182; 662614, 3981559; 662614, 3981857; 662714, 3982234; 662952, 3982551; 663547, 3982908; 663745, 3982928; 664182, 3982809; 664579, 3982512; 664956, 3982135; 665194, 3981896; 665432, 3981738; 665809, 3981777; 666841, 3981639; 667020, 3981500; 667218, 3981202; 667317, 3980666; 667416, 3980408; 667218, 3979992; 667912, 3979376; 668508, 3979039; 668865, 3978880; 669381, 3978801; 669758, 3978702; 669936, 3978543; 670532, 3978146; 670849, 3978027; 671167, 3977968; 671583, 3977749; 671841, 3977134; 671921, 3976579; 671683, 3975983; returning to 671048, 3975666.

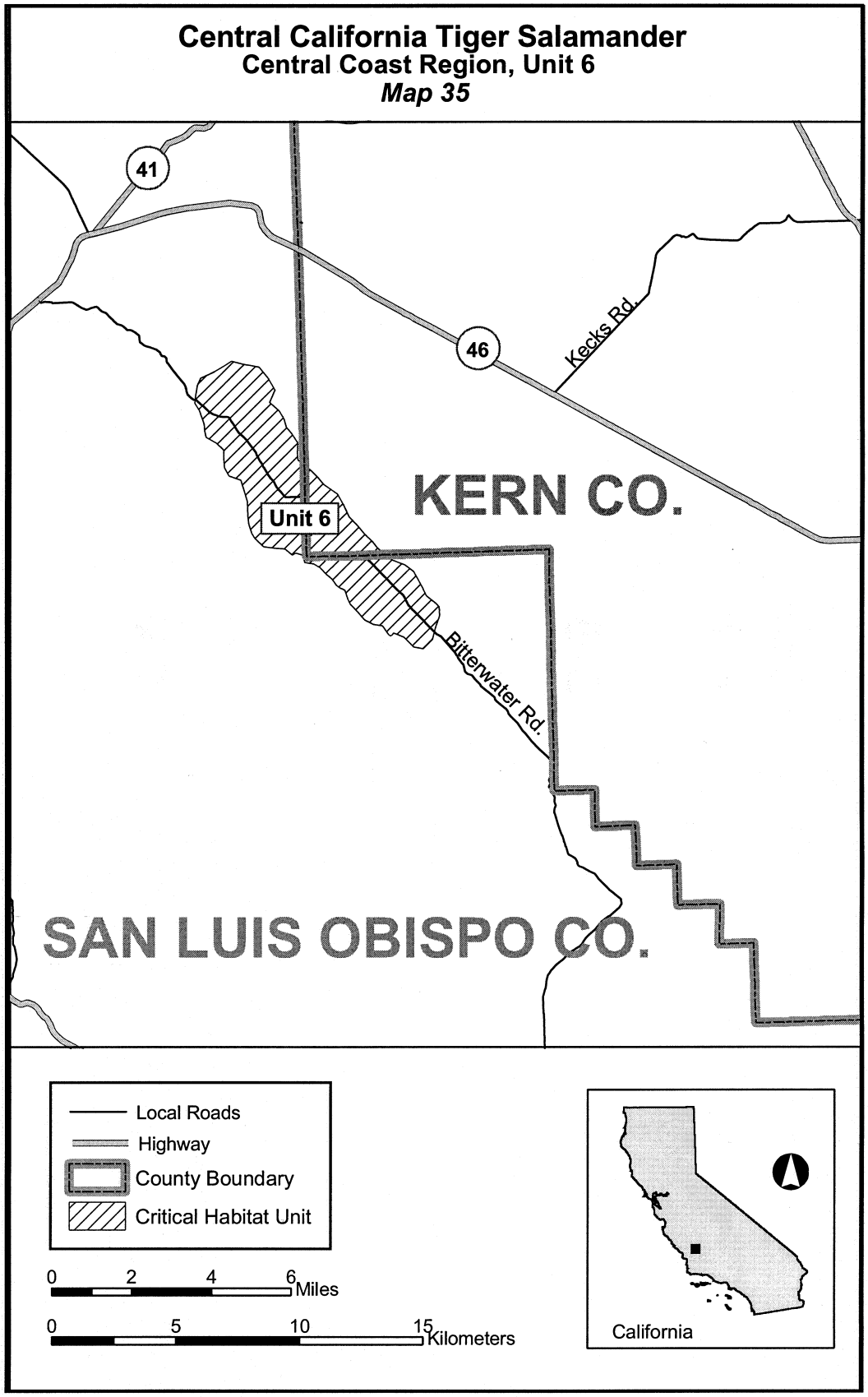
(ii) **Note:** Unit 5B is depicted on Map 34—Units 5A and 5B—which follows:


Central California Tiger Salamander
Central Coast Region, Units 5A, 5B
Map 34
G14
Unit 5A
Unit 5B
MONTEREY CO.
Local Roads
Critical Habitat Unit
0 1 2 3 Miles
0 3 6 9 Kilometers
California

(62) Central Coast Region: Unit 6 Choice Valley, Kern and San Luis Obispo Counties, California.

(i) From USGS 1:24,000 quadrangle maps Orchard Peak, and Holland Canyon, California, land bounded by the following UTM 10 NAD 27 coordinates (E, N): 758978, 3940883; 758581, 3940962; 758184, 3941359; 757787, 3941518; 757655, 3941386; 757576, 3941439; 757338, 3941809; 756967, 3941862; 756597, 3942047; 756359, 3942312; 756015, 3942682; 755909, 3942920; 755803, 3943238; 755591, 3943343; 755485, 3943423; 755274, 3943687; 755036, 3943899; 754824, 3944137; 754533, 3944322; 754163, 3944375; 754110, 3944666; 753819, 3944746; 753686, 3944666; 753369, 3944904; 752945, 3944957; 752522, 3945010; 752178, 3945328; 752019, 3945566; 751914, 3945910; 751887, 3946254; 751861, 3946836; 751702, 3947365; 751596, 3947709; 751120, 3947868; 750935, 3948212; 750908, 3948582; 750908, 3948926; 750617, 3949191; 750194, 3949429; 750141, 3949693; 750114, 3949958; 749929, 3950540; 749744, 3950831; 749770, 3951148; 749850, 3951545; 749982, 3951836; 750538, 3952101; 750934, 3952339; 751226, 3952524; 751728, 3952392; 751993, 3952366; 752337, 3952286; 752707, 3951836; 752972, 3951360; 752760, 3950858; 753157, 3950514; 753342, 3950196; 753422, 3949852; 753660, 3949588; 753898, 3949217; 753871, 3948820; 753898, 3948529; 754401, 3948106; 754692, 3947841; 754956, 3947524; 755512, 3947127; 755724, 3946730; 755962, 3946227; 756332, 3945831; 756623, 3945487; 756914, 3945222; 757126, 3944957; 757708, 3944481; 758211, 3944270; 758608, 3943979; 758925, 3943396; 759110, 3943000; 759454, 3942735; 759613, 3942576; 759639, 3942206; 759481, 3941756; 759348, 3941253; returning to 758978, 3940883.

(ii) **Note:** Unit 6 (Map 35) follows:


Central California Tiger Salamander
Central Coast Region, Unit 6
Map 35
41
46
Keeks Rd.
KERN CO.
Unit 6
Bitterwater Rd.
SAN LUIS OBISPO CO.
Local Roads
Highway
County Boundary
Critical Habitat Unit
0 2 4 6 Miles
0 5 10 15 Kilometers
California

* * * * *

Dated: July 26, 2004.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–17464 Filed 8–9–04; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
August 10, 2004

Part III

Department of Agriculture

Federal Crop Insurance Coporation

7 CFR Parts 400, 402, 407 and 457

General Administrative Regulations, Catastrophic Risk Protection Endorsement; Group Risk Plan of Insurance Regulations for the 2004 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 402, 407 and 457

RIN 0563–AB94

General Administrative Regulations, Catastrophic Risk Protection Endorsement; Group Risk Plan of Insurance Regulations for the 2004 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Group Risk Plan of Insurance Regulations (GRP Provisions); and the Common Crop Insurance Regulations, Basic Provisions (Basic Provisions) to make revisions that will reduce program vulnerabilities and clarify existing policy provisions to better meet the needs of the insured. Further, FCIC is making conforming amendments to the General Administrative Regulations, Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years and Subpart P—Preemption of State Laws and Regulations, and the Catastrophic Risk Protection Endorsement. The changes will apply for the 2005 and succeeding crop years for all crops with a contract change date on or after the effective date of this rule, and for the 2006 and succeeding crop years for all crops with a contract change date prior to the effective date of this rule. In addition, FCIC is finalizing the interim rule published on June 30, 2000, implementing statutory mandates of the Agricultural Risk Protection Act of 2000 (ARPA).

EFFECTIVE DATE: *August 30, 2004.*

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the Cost-Benefit Analysis, contact Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO, 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds that changes in the rule will have positive potential benefits for insureds who do not engage in program abuse. Increased penalties for misreporting information affecting insurance liability should reduce the incidence of misreporting and should reduce the cost and amount of work needed to administer the program. Misreporting can result in increased indemnities and higher premium rates resulting from these higher than necessary payments. When misreporting is reduced, there will be fewer instances of fraud, waste and program abuse. The changes in this final rule will, over time, assist in (1) maintaining actuarial soundness as required by the Act, (2) protect the taxpayer dollar by reducing APH errors and other instances in which insurance liability is misstated and (3) reduce instances in which ineligible persons can obtain insurance benefits. Over time, if program abuse is decreased, premium rate reductions may result. Such reductions would be beneficial to producers who do not abuse the program. However, because the amount of abuse that currently occurs cannot be measured with existing data, immediate rate adjustments are not appropriate. Rather, such adjustments should be made when adequate loss experience is available to support actuarial calculations that satisfy appropriate credibility standards.

The analysis also examines changes made by the interim rule published on June 30, 2000. The analysis finds that the benefits provided outweigh associated costs. The crop insurance policy changes were required under ARPA. The analysis finds that the increases in the administrative fees for the catastrophic risk protection level of coverage from $60 per crop per county to $100 per crop per county, for additional coverage from $20 per crop per county to $30 per crop per county, and for limited coverage from $50 per crop per county, not to exceed $200 per county, and $600 for all counties, to $30 per crop per county with no limits may modestly increase the costs to producers but they will also reduce the overall costs of the program to taxpayers. The analysis also finds that giving producers the option of replacing certain yields in their actual production history (APH) with 60 percent of the transitional yield for the county will result in greater coverage for producers who have been impacted by multiple year disasters. Based on the cost benefit analysis and the requirements of the ARPA, FCIC finds this regulation is in the best interest of the overall crop insurance program.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through February 28, 2005. Government Paperwork Elimination Act (GPEA) Compliance.

FCIC is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. FCIC requires that all reinsured companies be in compliance with the Freedom to E-File Act and section 508 of the Rehabilitation Act.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies this regulation will not have a significant economic impact on a substantial number of small entities. This rule affects insurance for approximately 1,200,000 crop policies, of which 503,000 are held by individual farmers who generally independently own and operate their farms. The other crop policies are held by partnerships, trusts, corporations and various other types of entities. Based on the size

standards specified in 13 CFR 121.201, almost all of the individual policyholders would be considered a small entity or business (revenue of $0.75 million per crop per year).

New provisions included in this rule will not significantly increase costs to small entities or significantly change the amount of work required to have an insurance policy, nor will the changes impact small entities to a greater extent than large entities. The provisions in this rule focus on several program integrity issues, including, the consequences of failing to pay required premiums or other amounts owed, attempts to conceal identity when a person is ineligible to receive program benefits, failing to report accurate information needed to determine insurance liability and premium, *etc.,* and such changes will do very little, if anything, to increase costs to small entities or large entities. Insurance program requirements are the same for all producers regardless of the size of the farming operation. For example, producers are required to submit historical yield information to compute insurance coverage and premium amounts. These requirements are the same whether a producer has 10 or 10,000 acres and there is no difference in the kind of information collected.

Further, the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) provides the authority to waive collection of administrative fees for "limited resource farmers.'' FCIC believes this extra consideration helps assure certain small entities (those that meet USDA's definition of a "limited resource farmer'') can obtain insurance that might not otherwise be able to afford it. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background:

This rule finalizes changes to the Catastrophic Risk Protection Endorsement, Group Risk Plan of Insurance Regulations and the Common Crop Insurance Regulations; Basic Provisions mandated by ARPA, that were published by FCIC on June 30, 2000, as a notice of interim rulemaking in the **Federal Register** at 65 FR 40483–40486. The public was afforded 60 days to submit written comments after the regulation was filed in the Office of the Federal Register. No comments were received.

This rule also finalizes certain changes FCIC published on September 18, 2002, as a proposed rule in the **Federal Register** at 67 FR 58912–58933 to amend the General Administrative Regulations, subpart T–Federal Crop Insurance Reform, Insurance Implementation; the Group Risk Plan of Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions to implement program changes mandated by the Federal Crop Insurance Act (Act), as amended by ARPA, and make other changes and clarify existing policy provisions to better meet the needs of the insureds, effective for the 2003 and succeeding crop years for all crops with a contract change date of November 30, 2002, or later.

Following publication of the proposed rule on September 18, 2002, the public was afforded 30 days to submit written comments and opinions. Based on comments received and specific requests to extend the comment period, FCIC published a notice in the **Federal Register** at 67 FR 65732 on October 28, 2002, extending the initial 30-day comment period for an additional 15 days, until November 12, 2002.

A total of 3,407 comments were received from 209 commenters. The commenters were reinsured companies, attorneys, trade organizations, commodity associations, State agricultural associations, regional agricultural associations, agents, insurance service organizations, universities, producers, USDA agencies, State Departments of Agriculture, grower associations, and other interested parties.

Due to the large number of comments received and the significant impacts of the changes being made, FCIC finalized certain provisions of the proposed rule in a final rule that was published in the **Federal Register** on June 25, 2003, and is finalizing all of the remaining provisions in this final rule. To the maximum extent practicable, any changes made in response to comments have been applied to both the Group Risk Plan (part 407) and the Basic Provisions (part 457) even though the comment may have been directed at only one of these policies.

Below is a summary of the major issues addressed in this rule, the general theme of the public comments received in response to the major issues and the changes, if any, made to address those comments. Following this summary of the major issues identified are the specific comments and FCIC's more detailed responses:

Summary of Major Issues:

(1) *Identification Information Collection:* The proposed rule included the requirement to collect identification numbers (SSNs, EINs) from additional persons, including the children of insured persons. The proposed provisions also required policy voidance if the required identification numbers were not provided.

Commenters indicated the penalty was much too harsh and that children's SSNs should not be required.

In response to the comments, FCIC has eliminated the requirement to report children's identification numbers unless the child has a separate legal interest in the insured. Additionally, FCIC has eliminated the provisions requiring the policy to be voided for failure to provide the required identification numbers unless the person whose identification numbers is not provided is ineligible to receive insurance benefits and maintained the current provisions regarding the reduction of insurable share in cases where the person whose identification number was not reported is eligible for insurance;

(2) *Establishment and Adjustment of Approved Yields:* Proposed provisions

provided for the adjustment of insurance guarantees when past yield history for a unit is inconsistent with other comparable insurance units, when the history is based on small acreage and is being applied to larger acreage, or when the history is based on a farming practice that is being changed.

Commenters agreed with the need for such provisions but asked several questions regarding administration of the provisions, including how comparable units would be determined and how inconsistent yields would be defined.

In response to the comments, provisions regarding "inconsistent yields'' were removed and provisions pertaining to changes in farming practices and yield history based on small acreages were clarified to provide specific criteria to determine when the difference in yields will be adjusted and to provide exceptions;

(3) *Misreporting of Information:* The proposed rule included provisions intended to decrease misreporting of information necessary to determine insurance coverage. The proposed provisions would have denied an indemnity if misreporting exceeded a five percent tolerance, and would have still required the insured person to pay the premium.

Commenters stated the penalty was too harsh and that many inadvertent errors would exceed the five percent tolerance. Additional comments indicated the provisions made the policy coverage unreliable to producers and to lenders.

In response to those comments, the provisions related to denial of an indemnity were removed, a new sanction was added that would reduce the amount of indemnity paid commensurate with the amount misreported, and the tolerance was increased to 10 percent. The provisions were also clarified to specify the new penalty would not apply if the insurance provider or USDA employee was responsible for the error, or if the insured person had reported a preliminary acreage amount while waiting for an acreage measurement;

(4) *Removal of Arbitration Provisions:* The arbitration provisions were removed in the proposed rule and instead any dispute would have to be resolved through the judicial process.

Commenters were split between retaining, removing or replacing the arbitration provisions with provisions that would allow mediation or other means of dispute resolution. Commenters challenged FCIC's basis for removal, claiming the problems cited should be fixed or that the reasons were not justified. Commenters also indicated the judicial process is time consuming and expensive.

In response to these comments, arbitration provisions have been retained in this final rule. FCIC has addressed the concerns expressed by requiring that FCIC provide any policy or procedure interpretations to prevent disparate treatment of producers and having such interpretation be binding unless appealed to the National Appeals Division, clarifying when arbitration must be commenced, eliminating any conflicts of interest, requiring more detailed statements of arbitrator's decisions, allowing mediation, clarifying that arbitration is not binding, allowing only contractual damages unless FCIC determines the insurance provider failed to follow approved policy or procedure, and adding provisions specifying that when FCIC directly participates in the adjustment of a claim, the dispute is against FCIC, not the insurance provider;

(5) *Verification of Production Records:* The proposed rule included provisions requiring insurance providers to verify production records for the previous three years for any loss unit and added a penalty that failure to maintain such records would result in no indemnity due and the producer would still be required to pay the premium.

Commenters stated the penalty was too extreme, would substantially increase costs and delay claims, and that the work force is insufficient to accomplish the increased workload.

In response to the comments, the proposed change is not incorporated in the final rule. The policy provisions already contain record retention requirements and FCIC has determined the same effect could be achieved by having the insurance providers conduct reviews to ensure the producer is properly retaining records and that such records reflect the production reported;

(6) *Combining Insured Entities:* The proposed rule required that all entities composed of the same people be insured under one policy to avoid producers creating new entities to avoid the application of existing policy or procedure, such as the use of past production records.

Commenters stated the proposed change violates entities that are legally separate and protected and that the proposal is inconsistent with IRS and FSA rules.

In response to the comments, the proposed change is not incorporated in the final rule. Instead, FCIC has revised its procedures to require that past records be used anytime an insured received a share of the insured crop production or was a member of or had a substantial beneficial interest (SBI) in an entity that received a share in the insured crop production. This change results in the inability to drop past production history simply by creating a new entity.

Due to the number and complexity of the comments received, FCIC has provided a list of the issues covered in this rule and headings so that the reader can better determine the subject of the comments.

List of the Issues Covered in This Rule

In General—Burdens Imposed in Administering the Policy:

1. Burden on Producers; and
2. Burden on Insurance Providers;

Application of Rule;
Elimination of Good Faith Reliance Provisions;
Revisions to the Preamble;
General Comments to the Definitions;
Revisions to Specific Definitions:

1. Actuarial Documents;
2. Agent;
3. Agricultural Commodity;
4. Annual Crop;
5. Another use, notice of;
6. Application;
7. Border;
8. Code of Federal Regulations;
9. Contract;
10. Contract Change Date;
11. County;
12. Coverage;
13. Crop;
14. Crop Year;
15. Damage, Notice of;
16. Deductible;
17. Delinquent Account;
18. Discernible;
19. Disinterested Third Party;
20. Enterprise Unit;
21. Earliest Planting Date;
22. Field;
23. FCIC and RMA;
24. FCIC Procedures;
25. Farming or Farmed;
26. Household;
27. Indemnity;
28. Insurable Loss;
29. Insurance Provider;
30. Insured;
31. Insured Crop;
32. Irrigated Practice;
33. Liability;
34. Limited Resource Farmer;
35. New Producer;
36. Non-contiguous;
37. Offset;
38. Perennial Crop;
39. Person/Entity;
40. Policy;
41. Practical to Replant;
42. Premium;
43. Premium Billing Date;
44. Prevented Planting;
45. Replanting;
46. Second Crop;
47. Substantial Beneficial Interest;
48. Surrounding Area;

49. Summary of Coverage;
50. Timely Manner;
51. Verifiable Records;
52. Void;
53. Whole Farm Unit; and
54. Written Agreement;
Identity Collection Information—Section 2(b);
Delinquent Debts—Proposed Section 2(e) and Redesignated Section 2(f);
Clarification of Insurance Guarantees, Coverage Levels, Verification of Records,
Establishment and Adjustment of Approved Yields—Section 3;
Contract Changes—Section 4;
Eliminating the Liberalization Provisions—Section 5;
Revisions to Acreage Reports and Misreporting of Information—Section 6;
Clarification of Premium and Administrative Fees—Section 7;
Clarification of Insured Crop—Section 8;
Clarification of Insurable Acreage—Section 9;
Clarification of Share Insured—Section 10;
Clarification of Causes of Loss—Section 12;
Clarification of Replanting Payments—Section 13;
Clarification of the Insured's and Insurance Provider's Duties—Section 14;
Clarification of Production Included in Determining an Indemnity Provisions—Section 15;
Clarifications of the Prevented Planting Provisions—Section 17;
Clarifications to the Written Agreement Provisions—Section 18;
Elimination of the Arbitration Provisions—Section 20;
Clarification of Access to Insured Crop and Records, and Record Retention—Section 21;
Clarification Regarding Other Insurance—Section 22;
Clarification of the Amounts Due Us Provisions—Section 24;
Limitation of the Right to Collect Extra Contractual Damages—Section 25;
Clarification of the Interest Provisions—Section 26;
Policy Voidance Provisions—Section 27;
Transfer of Coverage and Right to an Indemnity Provisions—Section 28;
Clarification of the Subrogation Provisions—Section 30;
Applicability of State and Local Statutes—Section 31;
Notice Provisions—Section 33;
Clarification of the Unit Division Provisions—Section 34; and
New Provisions for Beginning and New Producers.

The specific comments received and FCIC's responses are as follows:

In General—Burdens Imposed in Administering the Policy

1. *Burden on Producers:*

Comment: Several commenters were concerned by what they perceive as unreasonable compliance requirements on producers' reporting procedures and agricultural practices.

Response: To protect program integrity, stronger provisions regarding misreporting and changes in farming practices are necessary. New provisions in this final rule should reduce errors and program abuse that can adversely affect premiums and indemnities. In this final rule, FCIC has attempted to limit the information collection burden and implements only those changes needed to properly administer the program and minimize waste and abuse.

Comment: (1) Many general comments were received regarding added program complexity, severe reporting requirements and associated penalties, increased workloads and program delivery cost, unclear definitions and terms and conditions, legality of certain changes, unpredictability of coverage, reduction in confidence by producers and lenders, customer dissatisfaction, conflicts with Congressional intent, *etc.;* (2) Some of the commenters agreed program integrity issues needed to be addressed. However, the commenters stated that the approaches presented in the proposed rule were far too harsh, could not be administered, and would result in an unreliable, unsaleable product. The commenters recommended focusing penalties on those who are abusing the program as Congress has directed rather than the Draconian measures and overly broad approach presented by FCIC in the proposed rule. Commenters stated that while it may be reasonable to have some penalties associated with unintentional errors, the severest penalties should be reserved for willful and intentional deception, as intended by Congress; (3) Several commenters stated the proposed changes would result in reduced participation, which is directly in conflict with Congressional efforts and direction.

Response: Most of the general comments received are repeated in greater detail in comments to specific proposed changes and are responded to later in this section.

2. *Burden on Insurance Providers:*

Comment: A commenter noted FCIC stated the amount of work required of the insurance providers delivering and servicing these policies will not increase significantly from the amount of work currently required. They believe this is incorrect, as they believe more auditing, verifying, *etc.,* is being required from insurance providers and if more is being required of the insurance providers, they need to be compensated accordingly.

Response: FCIC agrees some additional work will be required to administer new provisions contained in this final rule. However, such changes are necessary to protect program integrity and should ultimately result in savings to the insurance providers. Further, it is anticipated that the new provisions regarding misreporting of information used to determine liability, and improper use of Actual Production History (APH) yields, etc., will reduce some of the work insurance providers must do because there will be fewer errors to correct.

3. *Application of Rule:*

Comment: A commenter noted that FCIC stated the provisions of this rule would not have a retroactive effect. However, they believe this will have a retroactive effect because of the way things are stated in this proposal. The commenter stated that if it is true that it is not retroactive, then it needs to be stated that the rules will only apply from this point forward and not penalize anyone for not keeping records, *etc.*

Response: FCIC agrees the record-keeping provisions contained in the proposed rule would have had a retroactive effect. As stated more fully below, these provisions have been revised in this final rule to eliminate this effect.

Comment: Other commenters were concerned with inclusion of "FCIC'' in so many places in the policy because the contract is between the producer and the insurance provider, and recommended minimizing the visibility of "FCIC.''

Response: FCIC agrees the insurance contract is between the producer and insurance provider. However, to place the insured on notice that procedures issued by FCIC will be used in administering the policy and to denote other areas in which FCIC involvement is required, it is necessary to reference FCIC.

Comment: Some commenters stated FCIC unilaterally developed the proposed provisions without input from insurance providers, producer groups, *etc.,* and recommended all work together to develop any new provisions.

Response: Over the past few years, insurance providers and producer groups provided input on the Basic Provisions and this input was utilized to prepare many of the proposed provisions, and many of the proposed provisions dealing with program integrity issues were developed based on past litigation, arbitration and appeal cases involving insurance providers.

Comment: Some commenters also recommended not finalizing any of the proposed changes without publishing another proposed rule, and allowing for additional comments.

Response: Interested parties were provided adequate time to provide comments and to allow an additional

comment period would delay the implementation of needed changes. FCIC has given consideration to all comments received on all proposed changes and has revised the provisions in this final rule accordingly.

Comment: A few commenters requested their comments to the Basic Provisions be considered for the GRP Provisions where applicable.

Response: FCIC has considered all the comments to the Basic Provisions as if they are applicable to the GRP Provisions. Where applicable, FCIC has made the same or similar changes in both the GRP Provisions and the Basic Provisions.

Elimination of Good Faith Reliance Provisions

Comment: A commenter stated the deletion of the "good faith and reliance on misrepresentation'' provisions will definitely not meet the needs of the insured. The commenter believes the reasons given for the deletion are wholly one sided and inadequate. They cited one reason given for the deletion was "because of the confusion surrounding the applicability of the provisions.'' They believe this is a language problem and not a reason to delete the provision. They cited another reason, which was to "avoid the perception that FCIC was waiving the protection against the applicability of estoppel against it and permitting employees to bind FCIC with their errors,'' does not provide a reason to delete the provision. The commenter believes the purpose of this provision is to clarify how to equitably resolve problems that occur when a producer relies in good faith upon misinformation given to the person by FCIC, by an insurance provider or by an agent. The commenter believes sometimes agents or insurance providers give wrong information to an insured, and sometimes it is so grossly erroneous that it can almost be considered intentional. They believe producers need some sort of equitable protection against that occurrence. The commenter believes if this provision is deleted, producers will have no way to protect themselves from even intentional and malicious misinformation. They believe deletion of this provision would indicate that FCIC believes it has no responsibility for its errors, but at the same time requires that producers be fully responsible for their errors. The commenter believes that perhaps rewording the provision for clarification is appropriate, but that deletion is not appropriate.

Response: FCIC agrees that policyholders should be able to rely on the advice provided by government employees, insurance providers and agents. FCIC uses considerable resources to ensure that these persons have the correct information to provide to policyholders. It publishes policies in the **Federal Register** and on its Web site to ensure that all employees, agents, insurance providers, and policyholders have access to policy terms and conditions. However, even if a government employee provides erroneous advice the authority to provide equitable relief against the government is extremely limited. Only the Secretary has the authority to provide equitable relief on behalf of the government and such relief can only be granted when the producer and employee do not know that the advice provided is contrary to the Act or regulations. The Supreme Court has held that all FCIC personnel, insurance providers, agents and producers are presumed to know the provisions of the Act and the regulations, including all policy provisions, and are bound by the language even when a government employee had provided erroneous advice. Further, most of the advice given to policyholders is provided by agents. Therefore, the interests of insureds are protected because any erroneous advice would be covered by the agents' errors and omissions insurance. In addition, the preamble to the policy specifies that no policy provisions may be waived or varied in any way by an insurance provider, agent or any other contractor or employee of the insurance provider or USDA unless the policy specifically authorizes a waiver or modification by written agreement. To allow for equitable relief could permit government employees, insurance providers or agents to modify or waive policy provisions, which would conflict with the preamble. No change has been made.

Revisions to the Preamble

Comment: A commenter asked how the first statement in the preamble, that reads, "The provisions of the policy are published in the **Federal Register** * * *'' applies to pilot programs that are not published in the **Federal Register**.

Response: FCIC agrees certain policy documents for pilot crop insurance programs and some policies submitted to FCIC under section 508(h) of the Act are not published in the **Federal Register**. Language indicating the policy provisions are published in the **Federal Register** and codified has been removed.

Comment: A commenter believes that in view of the legislative initiatives made by ARPA, FCIC has done the right thing in expanding the list of persons who may not waive or vary any terms of the policy to include RMA and FSA. The commenter stated this portion of the first paragraph, however, also substitutes the term "crop insurance provider'' for "insurance provider,'' and this may introduce some confusion, because neither the current version of the Basic Provisions nor the proposed one defines these terms. The commenter believes that because agricultural producers are familiar with usage of the term "insurance provider'' and since it is used elsewhere in the Basic Provisions, including the very next paragraph of the preamble, it is appropriate to use that term (even if undefined) in the first paragraph. They believe an alternative would be to define "crop insurance provider'' as the "insurance provider'' in the definitions portion.

Response: FCIC agrees that the term "crop insurance provider'' is undefined. The term has been replaced with "we,'' "us'' or "our,'' as applicable to be consistent with the rest of the policy, which refers to the insurance company as "we,'' "us,'' and "our.'' However, the term "insurance provider'' is still used when referring to other than insurance companies.

Comment: A commenter stated the preamble paragraph inaccurately states that the policy cannot be waived or varied in any way when, in fact, written agreements that modify the insurance offer, rates, actuarials (all a part of the policy) are allowed.

Response: FCIC agrees the policy specifically allows for modification by written agreements. FCIC has revised the provision to state that the terms of the policy may not be waived or modified unless a written agreement is specifically authorized by the policy.

Comment: A commenter believes FCIC is proposing a useful addition to the preamble by adding the sentence regarding handbooks, manuals, and directives.

Response: FCIC agrees it is important to provide notice to policyholders that the procedural materials issued by FCIC will be used to administer the crop insurance program.

Several comments were received regarding language in the policy preamble as it relates to the roles of RMA and the insurance providers. The comments are as follows:

Comment: Some commenters stated the proposed language overlooks the fact that this is a privately delivered product and implies the policy is a Federal contract or that a producer should take up policy conflicts directly with RMA.

Response: While this may be a privately delivered product, policyholders must be made aware that they are participating in a Federal program. It is in no way intended to imply that the government is a party to the contract. The agreement to insure clearly indicates that the contract is between the producer and the insurance provider through its reference to "we,'' which is defined in the previous paragraph as the insurance provider. However, the government still has regulatory control over the program. Further, there is nothing in the preamble regarding disputes. Provisions regarding resolution of disputes are contained in section 20 of the Basic Provisions and section 16 of the GRP Provisions. Those provisions make clear which disputes are properly brought against FCIC and those that must be brought against the insurance provider. No changes have been made.

Comment: A few commenters recommended revising the language to indicate procedures approved by FCIC will be used rather than those issued by FCIC. Some of these commenters stated that it appears the new language would require private insurance providers to issue FCIC policy forms and use FCIC handbooks as opposed to National Crop Insurance Services (NCIS) forms and handbooks.

Response: The reference to procedures as issued by FCIC is appropriate. This is to ensure that the same procedures are applicable to all producers regardless of the insurance provider. The procedures allow the insurance providers to create their own forms, in accordance with the procedures.

Comment: A commenter stated a reference to NCIS publications as authoritative guidance should be added, for the consultative process and studied professionalism of those publications frequently is the most complete, consistent and meaningful treatment of key program issues. The commenter stated the terms "procedures'' and "provisions'' in the fourth sentence are not defined, and they believe are ambiguous and open to infinite interpretations, many of which are equally reasonable. The commenter stated the proposal appears to attempt distinguishing between these two terms, but because it defines neither that attempt fails. They also noted the proposal states that procedures and provisions "will be used'' but does not say by whom, when or in what manner.

Response: While NCIS may put out procedures under its own name, those procedures must be the same as those issued by FCIC. Even NCIS forms must contain, at a minimum, the information contained in FCIC's procedures. Therefore, it would be inappropriate to refer to NCIS because it would imply that NCIS is a regulator of the program. The proposed language referencing "provisions'' is clearly modified by the phrase "of the policy.'' Therefore, further clarification of this term is not needed. However, FCIC has revised the provision to specify that "procedures'' refer only to handbooks, manuals, memoranda and bulletins. This will prevent infinite interpretations. FCIC has also revised the provisions to specify that the insurance provider will use the procedures as issued by FCIC in the administration of the policy.

Several comments were received regarding order of precedence of documents referred to in the policy preamble (the Act, regulations, policy, and procedures). The comments are as follows:

Comment: Several commenters stated the proposed preamble is rather confusing as to conflicts between the policy, the Act and/or the regulations. They stated the preamble needs to address the order in which each takes precedence.

Response: FCIC agrees the preamble needs to address the order of precedence of the referenced documents and has revised the language accordingly.

Comment: Some commenters indicated the "agreement to insure'' section establishes an order of precedence among policy documents but omits the Act, Regulations, etc. They recommend this paragraph be reconciled with the changed initial paragraph of the preamble. One of the commenters stated the policy must clearly state what action is to be taken when one of the listed documents is inconsistent with one or more other Agency publications.

Response: FCIC also agrees that there should be one section that sets the order of precedence for all documents and has moved all the provisions to the "agreement to insure'' section.

Comment: Some commenters stated the policy provisions should take highest precedence since the policy is what is given to the policyholder to serve as the "contract'' between insurance provider and policyholder.

Response: FCIC agrees that between the policy regulations and the administrative regulations, the policy regulations should take precedence. However, the policy provisions cannot override the Act.

A few comments were received regarding references to agents in the policy preamble. The comments are as follows:

Comment: A commenter stated that the paragraph seems to reinforce that the agent is separate and apart from the insurance provider. The commenter added that the agent is defined by an agency agreement between the insurance provider and the person or entity acting as an agent for the insurance provider. They believe the proposed language may be interpreted as stating the agent is a broker for the policyholder or some sort of third party.

Response: FCIC has revised the provision to clarify that the "agent'' refers to the insurance agent and that the insurance agent is affiliated with the insurance provider.

Comment: A commenter stated that the term "agent'' as used twice in the third sentence is not clear. They believe the key phrase should be reworded to read "* * * by the crop insurance provider, any insurance agent or any agent or employee of FCIC, the Risk Management Agency * * *''

Response: FCIC has revised the third sentence to clarify that the first reference to "agent'' refers to the insurance agent and has replaced the second reference to "agent'' with "contractor'' to encompass managing general agents, loss adjusters and other contractors of the insurance provider.

Comment: A commenter believes the words "insurance provider providing insurance'' in the second paragraph of the policy preamble should be replaced with the words "insurance provider providing you insurance'' less there be confusion between all providers and this policy.

Response: Since no changes to this paragraph were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter stated it is not clear from the **Federal Register** whether the following definitions remain in the proposed Basic Provisions: "Throughout this policy, 'you' and 'your' refer to the named insured shown on the accepted application and 'we,' 'us,' and 'our' refer to the insurance provider providing insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.'' The commenter believes these definitions are extremely valuable and helpful in understanding a number of the subsequent sections of the policy,

and therefore, they believe these definitions should remain a part of the policy.

Response: As stated in the proposed rule, FCIC has only revised the first paragraph of the preamble. Therefore, the second paragraph remains unchanged.

Comment: A commenter noted that FCIC proposed to remove section 14(d), which states that the insurance provider adjusts losses in accordance with FCIC-approved loss adjustment procedures. The commenter added that to retain this concept in the Basic Provisions, they recommend that FCIC amend the fourth sentence of the preamble as follows: "Procedures, including, but not limited to, handbooks, manuals and directives, issued or approved by FCIC and published on the RMA Web site at *http://rma.usda.gov/* or a successor Web site will be used in the administration of this policy and in the adjustment of any loss or claim submitted hereunder.''

Response: FCIC has revised the fourth sentence of the preamble to specify that procedures as issued by FCIC will be used in the adjustment of any loss or claim.

Comment: A commenter noted the policy indicates "us'' refers to the insurance provider providing insurance. However, the commenter states the term is also used in the context of FCIC.

Response: Under "FCIC Policies,'' the term "us'' refers to FCIC. Under "Reinsured Policies,'' the term "us'' refers to the insurance provider providing insurance. Therefore, it will depend on who is offering the insurance as to which "us'' is actually referenced. For reinsured policies, it will only be the insurance provider. For FCIC policies, it will only be FCIC.

A few comments were received regarding the phrase "cannot pay your loss.'' The comments received are as follows:

Comment: A commenter stated that it is anticipated that the soon-to-be negotiated Standard Reinsurance Agreement ("SRA'') will contain provisions implementing section V.P. of the SRA, including language that provides for the assumption by FCIC and insurance providers of liability of an insurance provider that has become insolvent or is otherwise unable to perform its duties under the SRA. The commenter noted that currently, the Basic Provisions state only: "In the event we cannot pay your loss, your claim will be settled in accordance with the provisions of this policy and paid by the FCIC.'' They believe this statement may not accurately reflect the disposition of policies in the event that an insurance provider becomes insolvent, because in such a scenario, insureds may be transferred in bulk to other insurance providers. The commenter stated that transfer of policies from an insolvent insurance provider to other insurance providers affects the rights and duties of insureds, and FCIC should amend the Basic Provisions to provide: "In the event we cannot pay your loss, your claim will be settled and paid in accordance with the provisions of the Standard Reinsurance Agreement and this policy.''

Response: FCIC has clarified that in the event an insurance provider cannot pay the policyholder's loss, FCIC will be responsible for the amount of such loss. This applies regardless of whether FCIC assumes the policy or it is transferred to another insurance provider.

Comment: A commenter recommended the words "cannot pay your loss'' be clarified. They presume it means to address a case where the provider is insolvent, but it does not say that.

Response: FCIC has clarified that the phrase "cannot pay your loss'' means an insurance provider has become insolvent or is otherwise unable to perform its duties under the SRA.

Comment: A commenter believes the proposed language in the policy preamble seems to preclude FCIC/RMA from making any changes to provisions, procedures, etc. They asked if this is RMA's intent. The commenter stated that for example, it would seem the language would preclude the issuance of bulletins.

Response: FCIC has revised the provision to specify that changes may not be made to the policy except as authorized by the policy. However, bulletins are usually used for the purpose of clarification, interpretation or to fill a gap that may exist in the policy or procedures. Under this revised preamble provision, FCIC may only revise the policy through a bulletin if specifically authorized in the policy. There is nothing in the preamble that affects or restricts the manner in which FCIC revises its procedures. The preamble only specifies that such procedures, which include bulletins, will be used to administer the policy.

Comment: A commenter asked if the availability on the referenced Web site is intended to preclude the need to issue actual policy documents or change notifications to insureds.

Response: The Web site address included in the policy tells the reader where all crop insurance materials can be found. Some of these documents are not provided to the policyholder even though they may affect the terms and conditions of insurance such as the actuarial documents and the manuals and handbooks. Nothing in this rule affects the requirement that insurance providers provide policy information to insureds or the notification requirements. Such information must still be provided to producers.

Comment: A commenter asked why, in the added language, is a specific reference to "FSA'' made, rather than "USDA.''

Response: FCIC has revised the provision to refer to employees of USDA.

Comment: A commenter stated that handbooks, manuals, and directives should not be used to circumvent rulemaking. They stated the policy preamble would add a reference to handbooks, manuals and directives, and that while the use of some interpretive handbooks is common in administrative agencies today, they should not be used to avoid notice and comment rulemaking when promulgating or changing substantive rules. The commenter believes these handbooks must be made readily available to farmers if they are to be relied upon by insurance providers.

Response: Since the policies published in the Code of Federal Regulations have the force of law, procedures cannot be used to modify the terms of the policy. However, they have always been used to administer the policy through interpretations, clarifications or to fill gaps that may exist because of situations that arise that were not contemplated in the policy or procedures. Any change to the policy must be made through the rulemaking process unless otherwise authorized in the policy. Procedures are readily available to the public on RMA's Web site.

Comment: A commenter stated it appears items (1) and (2) in the agreement to insure statement in the preamble are reversed from what they should be.

Response: Since no changes to this paragraph were proposed and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. Any modification to this paragraph in this final rule was the result of a conforming amendment.

General Comments to the Definitions

Comment: A few commenters made the following general statements regarding section 1 (Definitions): (1) Removing ambiguous language and definitions will strengthen the integrity of the Federal crop insurance program; (2) Loosely defined terms such as

"prevented planting'' could be refined to help reduce disputes, and confusion; (3) Some definitions use terms such as "normally'' which causes vagueness; (4) There are some definitions which reference language that is not in the policy itself but is part of the FCIC Act (Act) and many producers do not have access to the Act or consider it burdensome to find and interpret it; and (5) A producer should not need an attorney to interpret the policy.

Response: FCIC agrees terms used in the policy should be as clear as possible and readers should be able to make interpretations without assistance. The terms referred to in this comment have been modified as indicated in response to specific comments included later in this section. In some instances it is necessary to refer readers to other documents such as the Act. However, such references are only used to provide the reader with information regarding the authority for specific actions and it is not necessary to access the Act to interpret the policy or determine the terms and conditions of insurance.

Comment: Some commenters recommended capitalizing words that are used as defined terms throughout the policy to help clarify when a given definition applies.

Response: Capitalization of specific words in the document that is contrary to the general rules of grammar tends to make the document more difficult to read. No change has been made.

Revisions to Specific Definitions

1. Actuarial Documents:

Comment: A commenter stated the word "type'' is ambiguous in the definition of "actuarial documents.'' They stated if the intent is to describe the current actuarial documents, the phrase should be "particular types and varieties of the crop which may be insured.''

Response: FCIC has clarified the definition to specify that "type'' refers to the particular type or variety of the insurable crop.

Comment: Several commenters recommended the first sentence in the definition of "actuarial documents'' be modified to read "* * * agent's office and/or published * * *'' to cover circumstances where the agent may not have the documents in question.

Response: Actuarial documents are necessary to provide the policyholder with information regarding premium rates. Therefore, insurance agents must have this information to be able to advise policyholders. No change has been made.

Comment: A commenter stated that the reference to RMA's Web site in the definition of "actuarial documents,'' and throughout the provisions, leave it unclear as to whether certain documents are required in the agent's office or not.

Response: The definition of "actuarial documents'' clearly indicates the materials are available in the agent's office and on RMA's Web site. Sections 4(b) and (c) of the Basic Provisions also indicate the "actuarial documents'' will be available in both locations. However, insurance agents with offices that have access to the actuarial documents from the Web site are considered to have the documents available for public inspection in their office. No change has been made.

Comment: A commenter stated the reference to the agent's office in the definition of "actuarial documents'' is archaic and should be broadened to include agent Web sites, insurance provider offices and Web sites, RMA offices and Web sites, etc.

Response: These provisions are intended to notify the policyholder where the actuarial documents can be found. If FCIC were to make the requested change, it would require that all insurance agents and insurance providers have Web sites that have links to the actuarial documents. This would impose an unnecessary burden. Further, this information must be available in the agent's office in order to be able to respond to policyholder queries. No change has been made.

Comment: A commenter asked if availability of actuarial documents on the Web site is intended to relieve the responsibility to notify policyholders of changes, and if the Web site is now to be considered a part of the policy.

Response: The Web site is just intended to provide a convenient place to find all materials related to crop insurance. While the policy references the Web site, the content of the Web site has not been incorporated into the policy nor does the Web site revise any requirements in the policy for the insurance provider to notify policyholders of all policy changes in writing.

Comment: A commenter stated the definition of "actuarial documents'' indicates production guarantees are contained in the actuarial documents. They indicated the guarantees are not in the documents now, and asked if this would work since the APH and insurance guarantees change yearly.

Response: FCIC agrees that production guarantees are not included in the actuarial documents. Therefore, FCIC has revised the definition by deleting the reference to production guarantees.

Comment: Some commenters recommended changing "your agent's office'' to "the policy servicing agent's office'' in the definition of "actuarial documents.''

Response: FCIC is unsure of what this change is intended to accomplish. FCIC does not see the distinction between an agent and a policy-servicing agent. Therefore, the recommended change does not appear to clarify or improve the definition. No change has been made.

Comment: Several commenters recommended using a consistent reference to RMA's Web site in the definition of "actuarial documents'' and throughout the rule.

Response: FCIC has been unable to determine how the references are inconsistent but it will check references to the Web site to be certain they are consistent.

2. Agent:

Comment: Some commenters recommended adding the definition of "agent.'' A commenter recommended defining "agent'' as "agent of the insurance provider.''

Response: To the extent that the commenter was concerned that the policy was confusing as to who the agent is affiliated with, FCIC has clarified the preamble to specify that the agent is affiliated with the insurance provider. This clarification avoids the need to add a separate definition.

3. Agricultural Commodity:

Comment: A few commenters suggested expanding the definition of "agricultural commodity.'' One stated expansion was necessary to include livestock and aquatic programs, and the other recommended including any crop or other commodity, whether or not it is insured.

Response: Agricultural commodity is a very broad term and the Act allows it to encompass almost any commodity. FCIC is reluctant to put qualifiers in the definition that could exclude certain commodities in future years. As drafted, the definition includes livestock and aquatic programs through its reference to other commodities. No change has been made.

Comment: A few commenters stated the definition of "agricultural commodity'' is expanded to include commodities other than crops, yet in most cases, the Basic Provisions reference "crop.'' The comments recommended changing some of these references to "agricultural commodity.''

Response: FCIC has already revised those provisions where it has determined it is appropriate to refer to agricultural commodity instead of crop. However, there are still many places

where the reference should remain as "crop.''

4. Annual Crop:

Comment: One commenter recommended changing the definition of "annual crop'' to show the contrast between annual, perennial, and volunteer crops.

Response: The purpose of having separate definitions is to show their contrast. Therefore, it is not necessary to repeat this in each individual definition. No change has been made.

5. Another use, notice of:

Comment: A commenter recommended removing the definition of "another use, notice of'' since definitions of "loss, notice of'' and "damage, notice of'' were deleted.

Response: FCIC has removed the definition accordingly.

6. Application:

Comment: A commenter recommended the definition of "application'' be modified to recognize the application process can be an electronic/paperless process, and not necessarily requiring a "form.'' The commenter also suggested adding language indicating a new application must be filed once the producer again becomes eligible.

Response: Since no changes to this definition were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

7. Border:

Comment: A commenter stated a change from 36,000 to 20,000 plants per acre would be a "border'' within the meaning of the proposal's definition, yet it would not constitute a "discernible break'' as required by established Agency procedures. The commenter stated use of the term "border'' appears to be an attempt to replace "discernable break,'' which they believe is a recognized term that is currently generally understood and consistently applied. They suggested the text of the proposal be revised wherever the term "border'' now appears to state whatever FCIC intends.

Response: FCIC agrees borders created by different plant densities may not be readily discernible and that the proposed definition of "border'' is too subjective and overly broad. FCIC believes the current provisions contained in section 34 that require "a clear and discernible break in the planting pattern at the boundaries of each optional unit'' is a more definitive requirement that has been generally consistently applied. Therefore, all references to "border'' have been removed from the final rule.

Comment: Several commenters recommended revising the definition by removing the words "plant density.'' A few of the commenters stated the term "plant density'' is too liberal. Other commenters stated "plant density'' is not readily identifiable or readily discernable, and therefore FCIC should consider deleting plant densities and adding, "no crop is planted or the planted crop is destroyed by the acreage reporting date.''

Response: See response to the first comment.

Comment: A few commenters stated the definition is unclear. Some commenters recommended deleting "*etc.*'' and "distinction'' because of the possibility of different interpretations. A few commenters stated the term "readily identifiable'' in the definition is too vague and is subject to differing interpretations. A commenter recommended defining "readily identifiable distinction.''

Response: See response to the first comment.

Comment: A commenter stated the definition is overly broad, vague and permits virtually any differentiation between land areas to be deemed a "border.'' They stated FCIC should amend the definition to limit subjectivity or, at a minimum, state the insurance provider shall, in its sole discretion, determine whether a difference constitutes "a readily identifiable distinction.''

Response: See response to the first comment.

Comment: A few commenters recommended changing the definition to read as follows: "A readily identifiable discernable break between two areas of land (*e.g.* different planting patterns or area where no crop is planted).''

Response: See response to the first comment.

Comment: A commenter suggested border be defined as an "unplanted area,'' and that planting it then disking or tilling to create a "border'' should not qualify. The commenter stated the subjectivity of the proposed wording makes it impossible for an agent to properly explain and sell, and it puts the adjuster in a difficult situation.

Response: See response to the first comment.

Comment: A commenter stated the definition conflicts with the definition of field. A few commenters stated the proposed definition is inconsistent with current procedure in the Crop Insurance Handbook which requires a break in the planting pattern.

Response: See response to the first comment.

Comment: A commenter stated the definition is incomplete if additional terms, such as "discernible break'' are needed. The commenter also asked if the border should not be identifiable to the extent that separate harvesting can result and records can be kept.

Response: See response to the first comment.

8. Code of Federal Regulations:

Comment: Several commenters recommended defining the "Code of Federal Regulations (CFR).'' Some stated there should be an explanation of 7 CFR part 400, subpart G in the definitions of "average yield'' and "approved yield,'' and that FCIC should also explain other regulations referenced in the policy.

Response: FCIC agrees the definition of "Code of Federal Regulations (CFR)'' should be added. The new definition includes a Web site address where interested parties can find the full text of the CFR in electronic format. An explanation of the CFR subparts referenced in the policy should not be included in the policy as it would be repetitious with those parts and unnecessarily increase the size of the policy.

9. Contract:

Comment: A commenter was concerned about the terms "contract'' and "policy'' and using them interchangeably.

Response: Since the terms mean the same thing, using the two terms interchangeably should not cause confusion. No change has been made. However, the definition of "policy'' has been revised in response to other comments.

10. Contract Change Date:

Several comments were received regarding the definition of "contract change date.'' The comments are as follows:

Comment: A few commenters recommended retaining the current definition of "contract change date.''

Response: The current definition is too restrictive because FCIC does not have any control over when agents will obtain the policy changes. It would allow for disparate treatment of producers based on whether their agent had the changes in their office by the contract change date. The revised definition gives a date certain and location where the information can be found on that date. No change has been made.

Comment: A commenter recommended not changing the definition because not requiring policy

changes to be available in an agent's office does not appear to meet the needs of limited resource farmers who may not have access to the Internet. The commenter recommended deleting the word "provisions'' because "policy'' is defined, if the new definition is retained. A commenter stated that producers cannot reasonably assess their alternatives regarding contract changes not available for review in the office of their agent. The proposal substitutes the undiscoverable decision of an unknown entity ("changes will be made,'' but by whom?) for a clear, reasonable definition currently in use. A commenter recommended revising the definition of "contract change date,'' to allow for years when no changes are made. The commenter recommended adding "if any'' to the definition. The commenter further recommended clarifying who can make changes in the policy by including the words "the date by which we may make changes * * *'' A commenter recommended changing the definition of "contract change date'' as follows: "The calendar date by which FCIC changes the policy in accordance with section 4.'' The change is recommended because the insurance provider does not have the authority to change the Basic Provisions.

Response: Reference to the location of where the changes can be found is not necessary in the definition of "contract change date.'' The purpose of the definition is just to specify that there is a date by which changes must be made. Provisions in section 4 of the policy specify changes may be viewed either in the insurance agent's office or on RMA's Web site. Further, changes to the policy will still be directly mailed to the policyholder. Therefore, the needs of all policyholders to have sufficient information to make informed decisions will be met. FCIC agrees the word "provisions'' should be deleted and has revised the definition accordingly. FCIC agrees an allowance should be made for years in which no changes are made and has revised the definition accordingly. FCIC does not agree that it is necessary to identify the entity making policy changes. Only FCIC has the authority to conduct the rulemaking necessary to revise the policies published in the Code of Federal Regulations.

Comment: A commenter recommended adding the words "of this policy'' at the end of the definition of "contract change date.''

Response: FCIC has revised the definition to add the phrase "of these Basic Provisions.''

11. County:

Comment: A commenter stated the definition of "county'' does not refer to or allow for the addition of "added land'' to a unit in a legal county that may be in another county.

Response: Since no changes to this definition were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

12. Coverage:

Comment: A commenter suggested revising the definition of "coverage'' by adding "or as we determine to be correct if your summary was based on the incorrect information supplied by you.''

Response: Since no changes to this definition were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

13. Crop:

Comment: A commenter recommended adding the definition of "crop.''

Response: The term "crop'' has been used for many years and connotes many different types of agricultural commodities. It would be impossible to construct a definition that could encompass all possible agricultural commodities that could qualify as a "crop'' without making it too broad to add any clarity to the policy. No change has been made.

14. Crop Year:

Comment: A commenter stated there was no need to add the new wording, "unless otherwise specified in the Crop Provisions,'' to the definition of "crop year,'' since the Crop Provisions override the Basic Provisions.

Response: Since there are currently instances where the definition of "crop year'' is changed by the Crop Provisions, the reader should be referred to the Crop Provisions. No change has been made.

Comment: One commenter recommended revising the definition of "crop year'' by stating the "period'' is a "time period'' and including the idea that fall and spring planted crops generally share the same crop year.

Response: Since the only period that could be applicable is a time period, the change would have no practical effect. Further, there may be instances where spring and fall planted crops may not share the same crop year. No change has been made.

15. Damage, Notice of:

Comment: A commenter stated it was unclear why the definition of "damage, notice of'' was deleted when notice is required in section 14. Some commenters added that retaining the definitions helps the insured read and understand his/her duties. Another commenter recommended not deleting the definition of "loss, notice of'' but shortening it to refer the reader directly to section 14, "Your Duties.'' A commenter stated if the definition of "loss, notice of'' was deleted then "but not later that 15 days after the end of the insurance period'' should be added in section 14, and asked what the effect on late notices and how late notices would be handled if this language is not added back in. Some commenters were concerned deleting the definitions would lead to an unlimited time frame for "initial discovery'' in section 14, and that the reference to the end of insurance period in section 14 is effectively removed.

Response: FCIC proposed to delete the definitions of "damage, notice of'' and "loss, notice of'' because the responsibilities associated with these terms are clearly defined in section 14 (Your Duties). Further, the definitions were inconsistent with the requirements of section 14. Therefore, FCIC does not agree the definitions should be retained. In response to other comments, FCIC has elected not to adopt the proposed revisions in section 14(a) and 14(a)(2), except as needed to remove the reference to notice of loss since that term is not used anywhere else in the section. As a result, the current provisions regarding the time frames will remain in effect, thereby negating the need to adopt the recommendations of the commenters.

16. Deductible:

Comment: A commenter stated the term "deductible'' is not used in the provisions and does not need to be defined.

Response: Since no changes to this definition were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

17. Delinquent Account:

Comment: A commenter recommended revising the definition of "delinquent account'' by adding the phrase "including payments for replants and prevented planting,'' after "indemnities.'' Another commenter recommended refining the definition to clarify that the term "indemnities'' includes overpaid claims, replant payments and prevented planting payments, and to specify whether crop

hail and/or supplementary product premiums are included in "any account you have with us."

Response: FCIC has revised the definition, and all other applicable provisions, to include replanting and prevented planting payments, overpaid amounts and to specify that the provisions apply only to insurance issued under the authority of the Act. FCIC has also changed the term to "delinquent debt" to be consistent with the ineligibility regulations.

Comment: A few commenters recommended changing the definition of "delinquent account" and the provisions of section 2 to not consider an account delinquent until completion of appeals.

Response: FCIC does not agree with the recommended change. Unlike most other lines of insurance, premiums are not paid until after insurance has attached and in many cases not until the end of the insurance period. Therefore, policyholders have already received the benefit of insurance coverage. Further, accounting and program administration would be made more complex if producers are allowed to pay premium at various stages, depending on whether or not they have asked for arbitration, appeal, etc. It would also add program uncertainty if policyholders could be declared ineligible in the middle of the crop year. No changes have been made.

18. Discernible:

Comment: A few commenters recommended defining "discernible."

Response: Terms only need to be defined if they have meaning different from the common meaning of the term or there are multiple common meanings. FCIC intended the common meaning of the term "discernible" to apply, which refers to being able to perceive, detect or recognize as separate and distinct. Therefore, it is not necessary to define this term. No change has been made.

19. Disinterested Third Party:

Several comments were received regarding the definition of "disinterested third party." The comments are as follows:

Comment: A commenter recommended making it clear an interest in the insured crop or policy constitutes an interest in the insured, and eliminating "other personal interests" or quantifying it in some manner. Other commenters asked what constitutes "other interest," "other personal relationship" and "interest in the insured."

Response: FCIC agrees a person having an interest in the insured crop would not qualify as "disinterested" and has clarified the definition accordingly. The phrases "financial interest in the insured," "other personal relationship" and "other interest" have been removed from the definition because these terms are vague and would be difficult to administer.

Comment: A few commenters recommended the definition specify the subject the party must be disinterested in (the crop, the person, or what).

Response: The definition has been clarified to indicate that the person must not have a familial relationship with the insured person or receive a financial benefit from the sale of the insured crop.

Comment: A commenter recommended deleting the definition since the term is not used in the Basic Provisions.

Response: FCIC does not agree that the definition should be deleted. The term is used in several Crop Provisions and defining it in the Basic Provisions avoids unnecessary duplication. No change has been made.

Comment: A commenter recommended deleting the wording "such as familial or other personal relationship" and replacing with the word "crop."

Response: FCIC agrees that the terms "financial interest in the insured" and "personal relationships" should be removed because they would be difficult to administer. However, references to familial relationships are necessary because family members may also have an interest even though it may not be financial.

Comment: A commenter stated the term "insured" is inconsistent and should be replaced with "you" or "your."

Response: FCIC agrees with the comment and has replaced "insured" with "you."

Comment: A commenter recommended using the following definition: "any financial, familial or other personal relationship with the insured."

Response: The suggested definition cannot be adopted because the phrase "other personal relationship" is vague and would be difficult to administer. Therefore, this term was removed.

Comment: A commenter recommended using the following definition: "a person or entity that does not have any financial interest in the insured or disposition or transfer of ownership of the insured crop nor a familial interest in the insured."

Response: The suggested definition cannot be adopted because elevator employees authorized to pull samples and analyze the quality of the crops would have a financial interest in the disposition or transfer of ownership of the insured crop, creating a conflict within the policy. No change has been made.

Comment: A commenter recommended identifying interest in terms of a "substantial beneficial interest" and doing so by specifying a percentage.

Response: Not all interests are financial, such as familial relationships, and may not be measurable. No change has been made.

Comment: Regarding the definition of "disinterested third party," a commenter asked if the wording "financial interest" bars an elevator, gin or similar entity from making quality determinations. Another commenter asked if an elevator involved in the purchase of grain would be a disinterested third party.

Response: The definition has been clarified to specify that persons authorized to conduct quality analyses of the crop can be considered as disinterested third parties.

20. Enterprise Unit:

A few comments were received regarding the definition of "enterprise unit." The comments are as follows:

Comment: A few commenters suggested considering if the change should be made. A few commenters recommended revising the second sentence in the definition of "Enterprise unit" as follows: "An enterprise unit must consist of planted acreage or acreage on which a prevented planting payment is made of the same insured crop in:"

Response: FCIC has revised the definition so that enterprise units will consist of all acreage from the combined optional or basic units, as applicable, regardless of whether the acreage is planted or prevented from being planted as long as some acreage in at least two sections, section equivalents, FSA farm serial numbers, or units established by written agreement contain some planted acres. FCIC has also clarified in section 34 that the discount will only apply to acreage that has been planted. However, a unit containing only acreage that is prevented from being planted cannot be used to qualify for an enterprise unit.

Comment: A commenter recommended adding "in the county" to paragraphs (1) and (2) of the definition of "enterprise unit" but also questioned why a policyholder with a basic unit in two counties could not combine them into an enterprise unit; and (4) A commenter recommended adding "units by written agreement or Unit Division Option" to references to sections, section equivalents, or FSA farm serial numbers, in the definition of "enterprise unit."

Response: The addition of "in the county'' to paragraphs (1) and (2) of the definition is not necessary because the first sentence of the definition already specifies that an enterprise unit is all insurable acreage of the insured crop "in the county * * *'' FCIC does not believe a policyholder with a basic unit in two counties should be allowed to combine them into one enterprise unit, because the policy specifies that all unit division (basic, optional, enterprise, and whole farm units), guarantees, and premium rates are determined on a county basis. No change has been made; and (4) FCIC has revised the definition to include written agreements as a means to establish basic or optional units as applicable.

21. Earliest Planting Date:

Comment: Several commenters recommended defining the term "initial planting date'' instead of "earliest planting date'' to avoid introduction of a new term, and to be consistent with the term used in the Special Provisions. A few of the commenters stated it would be less cumbersome than changing all of the Special Provisions. Another commenter asked if all of the Special Provisions would be changed to be consistent with the new definition.

Response: The term defined and used in the current regulations is the "earliest planting date.'' Therefore, use of the term in the proposed provisions is not new. However, FCIC is aware that an "initial planting date'' is listed in the Special Provisions. To reduce confusion and prevent the need to change the Special Provisions or to change all references to the "initial planting date'' in the regulations, FCIC has revised the definition to change the reference to "calendar date'' to the "initial planting date.''

22. Field:

A few comments were received regarding the proposed definition of "field.'' The comments are as follows:

Comment: A commenter recommended revising the definition of "field'' so acreage within a field must be contiguous.

Response: FCIC cannot accept the requested change. Acreage separated by a waterway would be considered two fields under the definition. However, the same acreage would be considered contiguous under the proposed definition of "non-contiguous.'' Therefore, if the change were accepted, the definitions would be in conflict. No change has been made.

Comment: A commenter suggested the phrase "Natural or artificial boundary'' used in the definition of "field,'' could be anything because everything is either natural or artificial.

Response: FCIC agrees that all boundaries are either natural or artificial. The intent of the provision was to only require some type of permanent or semi-permanent boundary and clarify that the use of planting patterns or different crops cannot be used to create separate fields. The reference to both artificial and natural boundaries is to provide notice that either type of boundary is acceptable.

Comment: A few commenters recommended retaining the current definition of "field.'' One of the commenters stated the definition is inconsistent with the definition of "border'' because the two definitions together would allow several "borders'' within a "field.''

Response: The definition requires revision because of the common perception that acreage planted to separate crops are separate fields. For the purposes of insurance, different planting patterns or planting different crops do not create separate fields because it would adversely affect program integrity by allowing producers to circumvent certain prevented planting provisions. Since, as stated above, FCIC is removing the definition of "border,'' any conflict has been eliminated.

Comment: A few commenters stated the new definition of "field'' is an improvement, but stated there could be a problem if a boundary, *e.g.*, fence line, no longer exists and FSA still considers it to be two fields.

Response: If a fence that separated two fields was removed, in accordance with the revised definition of "field,'' the acreage would be considered one field regardless of whether or not FSA considers it as two fields. This requirement is needed to protect the integrity of the crop insurance program. No change has been made.

23. FCIC and RMA:

Comment: A commenter recommended adding definitions of "FCIC'' and "RMA'' to alleviate confusion that exists among insured's and, to a lesser degree agents and loss adjusters. The commenter also recommended giving attention to their respective roles within the Federal crop insurance program.

Response: Since these definitions were not proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

24. FCIC Procedures:

Comment: A commenter recommended adding the definition of "FCIC procedures'' and including "procedures approved by FCIC'' in it.

Response: FCIC has clarified in the preamble that procedures include handbooks, manuals, memoranda and bulletins. Therefore, a definition is not required.

25. Farming or Farmed:

Comment: A few commenters recommended defining "Farming'' or "Farmed.''

Response: FCIC believes these terms are readily understood and that adding the suggested definitions would not improve or clarify the policy terms. No change has been made.

26. Household:

Comment: One commenter recommended defining "household'' since the term is used in the definition of "substantial beneficial interest.''

Response: The term has been removed from the definition of "substantial beneficial interest.'' However, the term has been added to the definition of "limited resource farmer.'' Therefore, FCIC has added a definition of "household.''

27. Indemnity:

Comment: Several commenters recommended defining "indemnity.'' A few of these commenters recommended defining "indemnity'' to either include or exclude replant and prevented planting payments. Some of the commenters suggested including replant payments and prevented planting payments as indemnities. One commenter suggested including overpaid claims in the definition. Another commenter asked if the replant payment is a loss mitigation payment or an indemnity. An additional commenter suggested using the following definition: "The gross amount due to you from us as a result of a loss of yield or value of your insured crop as a direct result of an insured cause and in accordance with this policy.''

Response: FCIC has clarified throughout this final rule that an indemnity is different from a replant payment or prevented planting payment. FCIC makes the distinction based on the fact that a replant payment is to reimburse for the costs of having to replant the crop, not indemnify for any crop losses. Further, a prevented planting payment is to reimburse for a portion of costs incurred when the producer was unable to plant the crop. It also is not intended to indemnify for any crop loss. Indemnities are intended to provide indemnification for crop losses. Overpayments are just indemnities, replant payments, or prevented planting payments that are

determined not to be due. Therefore, these terms are different and it should not be included in the definition. Indemnities are determined in accordance with the policy provisions and include the entire amount of the loss payable to the policyholder, regardless of whether any premium or other amounts due have been subtracted from that entire amount. Therefore, no definition is required for this term and the suggested definition has not been adopted.

28. Insurable Loss:

Comment: A commenter recommended defining "insurable loss."

Response: FCIC has added a definition of "insurable loss." In addition, section 14(d)(1) (Your Duties) has been revised to remove the requirement to reduce the first insured crop indemnity if the producer does not provide production records needed to determine a second crop indemnity. When records are not provided for a second crop loss, no indemnity can be paid for the second crop. Therefore, because no second crop indemnity can be paid, the first insured crop indemnity cannot be reduced.

29. Insurance Provider:

Comment: A few commenters recommended defining "insurance provider." One of the commenters suggested, as an alternative, replacing "crop insurance provider" in the text with "we," "us," or "our."

Response: FCIC agrees the better alternative is to replace the phrase "crop insurance provider" with "we," "us," or "our" and has revised the provisions accordingly.

30. Insured:

Comment: A few commenters recommended including the spouse and children living at home in the definition of "insured" if RMA intends for the interest of the spouse and children to be included in determining insurable share.

Response: FCIC does not intend to consider the spouse or children as the insured person. Spouses are only considered as having a substantial beneficial interest in the insured unless they can prove otherwise. Therefore, no changes have been made to the definition of "insured."

31. Insured Crop:

Comment: A commenter recommended revising the definition of "insured crop" by adding "and/or Special Provisions" after "Crop Provisions."

Response: The definition of "insured crop" was revised in response to other comments and now refers to the policy so the recommended change is no longer necessary.

32. Irrigated Practice:

Comment: A commenter suggested adding "and quality" after "quantity" in the definition of "irrigated practice."

Response: Since no changes to this definition were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

33. Liability:

Comment: Several commenters recommended replacing "applicable crop" in the definition of "liability" with "agricultural commodity," "insured product," "insured agricultural commodity" or "insured crop or agricultural commodity." One of the commenters recommended using the term "liability" throughout the policy to replace terms such as "maximum amounts of insurance" and "available coverage." Another asked why there needed to be a reference to premium in the definition of liability.

Response: FCIC has revised the definition of "liability" to include the term "agricultural commodity." The term "liability" cannot be used to replace "maximum amount of insurance" or "available coverage" because in many instances the context in which these phrases are used is not consistent with the defined term. For example, maximum amount of insurance does not take into consideration coverage level, price election, number of acres, or share of the policyholder. However, liability would take these into consideration. The reference to "premium computation" is necessary because it provides notice that liability takes into consideration the price election, coverage level, number of acres, and share of the policyholder, which are used to compute premium.

34. Limited Resource Farmer:

Comment: Some commenters recommended the following regarding the definition of "limited resource farmer:" (1) Propose the new definition under a general USDA rule to provide adequate time for comments; (2) Change the maximum gross farm sales amount from $100,000 to $250,000; (3) Delete the farm asset and household income tests in the first factor; (4) Change the second test from 75 percent of the median county income to 175 percent of the relevant poverty line; (5) Clarify the inconsistent use of the words "total," "gross," and "net," particularly in subsection (b), which refers to "total gross household net income;" (6) Clarify whether "total operator household income" means gross or net (the commenter stated that net income is more relevant in determining the resources available to farmers); (7) Clarify "total farm assets" (the commenter stated equity value is a meaningful indicator); (8) Delete the requirement that the standards in subsection (a) be met for the past two years; (9) Eligibility rules for other Federal programs, such as the school lunch program and the CHIPS federal health program, may provide useful models, though they may need to be adjusted to the situations of land-rich, cash-poor farmers; and (10) A commenter recommended using the following definition rather than the proposed definition: " A Limited Resource Farmer or Rancher: (1) Is an individual with gross farm sales less than $100,000, AND (2) has a total household income at or below a qualifying county income level (to be determined annually), in each of the previous two years." The commenter stated the income level would be determined annually for each county based on two objective factors; the level would be the greater of the poverty level for a household of 4 or 50 percent of the median county income level; and a limited resource farmer would be limited to gross farm sales less than $100,000, which would be increased, beginning in fiscal year 2004, by the inflation percentage applicable to the fiscal year in which a benefit is being requested.

Response: After publishing the request for public comments regarding the definition of "limited resource farmer/producer" (LRF) being considered for use by other USDA agencies, USDA determined that it would propose one definition of LRF to be applicable to all USDA programs. USDA proposed the definition in the **Federal Register** on February 10, 2003 (68 FR 6655), comments were received, and the final rule was published in the **Federal Register** on May 30, 2003 (68 FR 32337). In accordance with that directive, FCIC is adopting that definition in this rule. Further, to mitigate the impact of this change, any policyholder who previously had their administrative fees waived because they qualified as a LRF will still be considered a LRF. In addition, FCIC has added the definition of LRF to the Catastrophic Risk Protection Endorsement.

35. New Producer:

Comment: A few commenters recommended defining "New producer."

Response: Since the term is never used in the proposed rule, no changes were required as a result of conforming

amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

36. Non-contiguous:

Several comments were received regarding the definition of "non-contiguous.'' The comments are as follows:

Comment: A few commenters recommended defining "farmed'' so there is no confusion that certain acreage (*e.g.*, pastureland, golf courses, CRP acreage, summer-fallow acreage, etc.) would not be considered farmed, and so there is no confusion regarding policyholders who do not "farm'' the land such as landlords.

Response: The term "farmed'' has been removed.

Comment: A few commenters recommended separating the definition of "non-contiguous'' into two sentences. Some of them suggested; (a) Eliminating the phrase "except that'' or replacing the words with "Nonetheless'' or "However,'' or a similar term at the beginning of the second sentence; (b) adding "or significant beneficial interest holder'' after "you'' in "neither owned by you nor rented by you'' (this would keep insureds from splitting up policies/units when it is not justified); and (c) inserting a period after "share.''

Response: FCIC agrees that separate sentences would improve clarity and has revised the definition to accomplish this. However, adding "substantial beneficial interest'' would not have any practical effect because in order to be able to farm the land of the person with the substantial beneficial interest, it is presumed that the policyholder will either need to lease or own the land.

Comment: A few commenters recommended clarifying "non-contiguous'' because it is confusing.

Response: The definition has been revised to provide greater clarity.

Comment: A commenter suggested changing "farmed by you'' to "controlled by you.''

Response: As previously stated, the term "farmed by you'' has been removed.

Comment: A few commenters recommended retaining the current definition of "non-contiguous.''

Response: The current definition cannot be retained because FCIC has discovered that it is subject to multiple interpretations. One of those interpretations would have allowed policyholders with an insignificant amount of acreage between the fields of the insurable crop to obtain separate units. This creates a program integrity problem because policyholders could use this interpretation to circumvent the unit division requirements. No change has been made.

Comment: A commenter recommended changing the definition of "non-contiguous'' to read as follows: "Acreage owned or operated by you that is separated from other acreage that is owned or operated by you by land that is neither owned or operated by you, or acreage owned or operated by you that is only separated by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.''

Response: FCIC has in effect implemented this change. However, the method suggested could not be used because the repetition of terms would only add confusion to the definition.

37. Offset:

Comment: A commenter recommended defining the term "offset.''

Response: FCIC has added a definition.

38. Perennial Crop:

Comment: A commenter recommended revising the definition of "perennial crop'' to add the phrase "to produce a crop or yield a commodity'' at the end for greater clarity.

Response: The recommended change would not significantly improve the clarity of the definition. However, FCIC agrees that it needs clarification and has revised "perennial crop'' to be more consistent with the common meaning of the term.

39. Person/Entity:

Comment: A few commenters recommended defining the term "person/entity'' (as in the CIH) rather than "person'' to clarify that this includes more than single individuals. Another commenter questioned whether a "group of individuals'' needs to be added to the definition since they are being considered individuals (*i.e.*, spouse and children of a household).

Response: Since no changes to this definition were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

40. Policy:

Comment: Several commenters recommended the following regarding the definition of "policy:'' (1) The definition does not include handbooks, bulletins, and other FCIC writings and procedures that insurance providers are required by the SRA to use (policyholders are not held to standards in the handbooks, *etc.,* while SRA holders are)—references to the handbooks, *etc.,* should be removed from the preamble of the policy and removed from the SRA; (2) If the listing of handbooks, *etc.,* is retained in the policy preamble, the listing should be repeated in the definition; (3) Make certain this definition conforms to the definition of "contract'' in 7 CFR 457.7; (4) Include the summary of coverage which lists the guarantees and liabilities as a part of the policy; (5) Clarify that a policy includes all of an entities crops insured with the same provider; and (6) Clarify the basis of the policy. The commenter questions whether it is on a crop/county basis, multiple crops on a county basis, or multiple crops on a multiple counties basis.

Response: While the preamble states the procedures will be used to administer the policy, they have not been made a part of the policy. This reference cannot be deleted because it is necessary to put all participants on notice that procedures as issued by FCIC are applicable to the policy. Such procedures are needed to ensure that all policies are sold and serviced consistently. The procedures contain the responsibilities imposed on the insurance provider. The responsibilities of the policyholder are found in the policy, not the procedures. For example, the policy states that the policyholder must provide adequate records. The procedures assist the insurance provider in determining what records are adequate. FCIC has revised 7 CFR 457.7 to remove the definition of contract to avoid any conflict with the definition of "policy.'' With respect to the other recommended changes to the definition of "policy,'' FCIC has revised the definition to clarify that each agricultural commodity in each county constitutes a separate policy. In addition, this same change was made to last paragraph immediately preceding the "agreement to insure'' section of the Group Risk Plan Common Policy.

41. Practical to Replant:

Several comments were received regarding the definition of "practical to replant.'' The comments are as follows:

Comment: Several suggested more direction with respect to whether or not it is practical to replant in the late planting period. One recommended a limit in time so it will not be considered practical to replant after fewer days remain to the end of the late planting period than have elapsed since the beginning of the late planting period, unless it would be a good farming practice with respect to the insured unit to replant.

Response: The definition is silent regarding replanting within the late

planting period because of the extreme variation between crops, areas, and climatic conditions which affect the factors used to determine whether it is practical to replant, such as time to crop maturity. Determinations of the practicality of replanting must be made on a crop-by-crop, and area-by-area basis. Providing a fixed number of days in the late planting period during which replanting would be practical would not provide the flexibility needed by insurance providers to properly consider the factors contained in the definition. No change has been made in response to this comment.

Comment: Some stated there is a conflict between requiring replanting in the late planting period as is required in the definition and no requirement to plant in the late planting period for the purposes of prevented planting coverage.

Response: FCIC agrees the planting requirements are different during the late planting period depending on whether replanting or prevented planting is involved. However, such differences are needed in the fair and equitable administration of the policy. When acreage that is prevented from being planted is planted during the late planting period, the guarantee is reduced for every day that the crop is late planted. Such reductions do not apply to crops replanted during the late planting period. Further, prevented planting payments are based on the expected costs incurred in the preparation of planting and are usually limited to 60, 65 or 70 percent of the production guarantee for planted acreage. In contrast, once the crop is planted during the initial planting period, policyholders are eligible for payment based on 100 percent of the production guarantee. In addition, when it is practical to replant the crop, the policyholder does not have a loss other than the cost of replanting. The purpose of a replant payment, if available, is to cover a portion of such costs. Therefore, it is reasonable to require policyholders to replant in the late planting period because they will still receive the full benefit of insurance for which they paid the full premium. However, policyholders who are prevented from planting would receive reduced benefits if they were required to plant during the late planting period even though they paid a full premium. No change has been made.

Comment: A few stated that clarification is needed for contracted crops when different acreage sometimes has to be replanted in order to fulfill the contract.

Response: FCIC understands that there may be situations where acreage initially planted may not be available for replanting due to flooding, *etc.*, and other acreage not initially planted to the contracted crop may be planted to replace it. However, FCIC cannot adopt this recommendation at this time because it does not know the impact of the change on premium rates or other aspects of the program. No change has been made.

Comment: A few recommended clarification or removal of "generally occurring'' and "area,'' and linking the definition to the definition of "good farming practice.'' One stated the words "unless replanting is generally occurring in the area'' are subject to second guessing and various interpretations and a possible solution would be for FCIC to declare, by area, at the time issues arise, its determinations as to the practicality of replanting.

Response: FCIC has removed the requirement that it will not be considered practical to replant after the final planting date unless others in the area are replanting. Determinations of whether it is practical to replant the policyholder's acreage should be based on the objective factors stated in the definition, not whether others are replanting. FCIC has clarified the term "area'' in a final rule published prior to this rule (Vol. 68, No. 122/Wednesday, June 25, 2003). FCIC does not agree that determination of "practical to replant'' should be linked to the definition of "good farming practice.'' The policy specifically states that replanting can be done under a practice that is not insurable. Therefore, adoption of this recommendation could cause a conflict in the policy.

Comment: A few recommended revising the definition to specify the cost of seed or plants will be considered. One recommended a waiver mechanism be made available for exceptional cases when seed is extremely costly or unavailable.

Response: FCIC does not agree with the recommendation. Crop insurance is not intended to cover the business practices of seed or plant suppliers, including their ability to maintain an adequate supply necessary to replant damaged crops. No change has been made.

Comment: One recommended revising the definition to specify replanting is practical if it reduces the payable loss, and removing the requirement of the crop reaching maturity.

Response: FCIC does not agree that practicality to replant should be dependent on mitigation of a payable loss. There is no practical method to determine whether replanting will mitigate the loss. There may be instances where the crop still fails and the policyholder is still eligible for a full indemnity in addition to the replant payment. FCIC also disagrees with removing the requirement that the crop should have time to reach maturity. If there is insufficient time for the crop to reach maturity, then it almost guarantees that the crop will fail and a full indemnity will be due. No changes have been made.

Comment: One suggested passive language be made active (The high cost or unavailability of seed shall not determine the practicality of replanting).

Response: The suggested change does not improve the clarity of the definition. No change has been made.

Comment: A few recommended expanding the term "cost'' to include components other than seed, such as irrigation.

Response: FCIC agrees input costs other than seed should not impact whether or not it is considered practical to replant. The definition has been revised accordingly.

Comment: One recommended removing "marketing window'' from the definition because FCIC has taken positions counter to this wording in several cases.

Response: FCIC cannot remove "marketing windows'' because it is statutorily required to be considered. No change has been made.

Comment: One stated the difficulty of comparing "geography, topography, soil types, and the weather conditions and exposure'' from one farm to the next is significant, and the importance of taking all of these factors into account should be reflected in the definition of practical to replant.

Response: FCIC agrees it is important to take geography, topography and other factors mentioned in the comment into consideration. There is nothing in the definition that precludes the consideration of these factors. The definition requires consideration of all factors that would impact the practicality of replanting, not just those listed. No changes have been made.

Comment: One recommended providing for a review of determinations of whether it is practical to replant because the determination should be subject to reconsideration, mediation, and appeal.

Response: Determinations of "practical to replant'' cannot be included in the appeals process applicable to good farming practices. That process was statutorily created and states it is only applicable for good farming practice determinations. In

response to other comments, the arbitration process has been retained and policyholders can seek arbitration of findings that it is practical to replant because they are factual determinations. No changes have been made.

42. Premium:

Comment: A commenter recommended defining "premium.''

Response: Terms only need to be defined if they have meaning different from the common meaning of the term or there are multiple common meanings. FCIC intended the common meaning of the term "premium'' to apply and the section on annual premium and administrative fees explains how premiums will be computed. Therefore, it is not necessary to define this term. No change has been made.

43. Premium Billing Date:

Comment: A commenter recommended removing the restriction in the definition of "premium billing date'' that does not allow the insurance provider to bill until a certain date, because the premium is payable at any time with an indemnity.

Response: Since no changes to this definition were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

44. Prevented Planting:

Many comments were received regarding the definition of "prevented planting.'' The comments are as follows:

Comment: Retain the current definition.

Response: As stated in FCIC's response to comments on proposed prevented planting changes in section 17, FCIC will not incorporate the proposed definition of "prevented planting'' in the final rule, but will defer revising the definition until FCIC has had an opportunity to further review the issue and possible solutions. The current definition will remain in effect.

Comment: It is not clear if the producer must initially be prevented from planting by the final planting date to be eligible in the late planting period. It is not clear if planting has to be prevented until the end of the late planting period. It is unclear if the producer is required to plant within the late planting period.

Response: See response to first comment under this heading.

Comment: Rewrite the last sentence to require that planting be prevented by the final planting date before qualifying within the late planting period. Revise so planting must be prevented from the time planting may start until the end of the late planting period.

Response: See response to first comment under this heading.

Comment: Establish a date ten days after the final planting date and require planting be prevented until this date, or, as an alternative, allow prevented planting within the late planting period but reduce the prevented planting guarantee by one percent per day. Establish a date half way through the late planting period and require planting be prevented until this date. Establish a date 10 days past the end of the late planting period and require planting be prevented until this date.

Response: See response to first comment under this heading.

Comment: Add "with the proper equipment'' after "inability to plant'' in the first sentence.

Response: See response to first comment under this heading.

Comment: The phrase "* * * such that the seed would not be expected to germinate,'' is ambiguous because it does not indicate who would expect germination, or if most, some or none of the seed is expected to germinate. A time element should be added to clarify if seed would be expected to germinate if it is very dry throughout the normal planting period, but rains an inch a day for two weeks prior to the final planting date.

Response: See response to first comment under this heading.

Comment: Add "designated in the Special Provisions'' after "by the final planting date.'' The reference to "You may also be eligible for a payment * * *'' is inappropriate in this definition. Reference to "you may also be eligible for a payment'' indicates the payment has been mentioned earlier in the definition. If the intent is "* * * germinate or produce a crop, or because you could not plant the insured crop with the proper equipment within the late planting period,'' then that is what the definition should say. Does "unable to plant with the proper equipment'' mean a disabled tractor could prevent planting. It is unclear if drought is intended to be an acceptable cause of loss for prevented planting.

Response: See response to first comment under this heading.

Comment: Revise to prevent producers from filing claims for drought losses in successive crop years. Although prevented planting coverage due to drought remains in the policy, no one can qualify for it under the proposed provisions and it (drought) should be removed.

Response: See response to first comment under this heading.

Comment: Incorporate the concept of "good farming practices'' into the definition. Prevented planting payment amounts should be based on the late planting guarantee. Retain the last sentence of the current definition. The definition does not address the issue of two or more crops having the same planting period and which crop is actually the one that is prevented from being planted. Replace the proposed definition of "prevented planting'' with the following: "The inability to plant the insured crop by the end of the late plant period for the crop, as specified in the Special Provisions, with the proper equipment, due to excess moisture or because weather conditions are such that it would not be expected to produce a crop.''

Response: See response to first comment under this heading.

45. Replanting:

Comment: A commenter stated the proposed definition is too restrictive if it requires the same crop variety to be replanted because later planting may require use of a different variety. Another commenter thought the proposed definition is too restrictive because it requires replanting the same crop in situations in which it might be a better choice and reduce losses if a different crop were planted.

Response: The definition does not require the same variety or type to be replanted unless it is otherwise required under the policy. The definition has been clarified accordingly. However, under the common usage of the term, replanting has to mean planting the same crop. It cannot mean planting a different crop.

Comment: Several commenters recommended not deleting "with the expectation of producing at least the yield used to determine the production guarantee'' because the proposed language would appear to allow seeding at a reduced rate; could be interpreted to force a producer to replant in a manner that produces a loss; or could conflict with the definition of "good farming practices,'' which includes the requirement to plant in a manner to produce the yield used to determine the guarantee.

Response: FCIC acknowledges that the proposed language could result in the replanting of crops that would produce yields less than the guarantee. However, the requirement to replant is intended as a means of loss mitigation because without such a requirement, the insurance providers would be required to pay 100 percent of the liability. The requirement that the policyholder use good farming practices in the manner in

which the crop is planted is still applicable.

Comment: A commenter stated the current requirement of planting with the "expectation of producing at least the yield used to determine the production guarantee'' is too restrictive because it does not allow a producer to plant a shorter season variety that had greater potential of success, but may not have the same yield potential as the original seed.

Response: FCIC agrees and that is why FCIC removed it in the proposed rule.

46. Second Crop:

Comment: Some comments were received regarding the definition of "second crop.'' One commenter stated the definition of "second crop'' encroaches on the definition of "cover crop'' by implying a cover crop could be hayed, grazed or harvested.

Response: FCIC originally responded in the June 25, 2003, final rule that the provisions had been revised to consistently use the terms. However, subsequent queries have demonstrated that it is unclear whether or not a cover crop or volunteer crop can be harvested for grain after the crop year without consequence to the prevented planting payment for a first insured crop. There was never any intent to allow a cover crop or volunteer crop to be harvested for grain at any time without reducing a prevented planting payment for a first insured crop. The definition of "second crop'' and the provisions in section 15(g)(3)(i) have been revised accordingly.

47. Substantial Beneficial Interest:

Many commenters disagreed with proposed changes in the definition of "substantial beneficial interest'' (SBI) that would include children as having a SBI, and recommended removing the proposed changes. The reasons given and questions received are as follows:

Comment: The definition is overly broad as it requires the social security number ("SSN'') for minor children who have no interest and do not participate in the farming operation. The requirement to obtain SSNs for children is extremely burdensome and places an unreasonable burden on insurance providers to verify and account for every member of a household.

Response: For many of the reasons stated above, FCIC agrees the proposal to include children as having a substantial beneficial interest should not be retained, and has revised the definition accordingly.

Comment: Insurance providers have no reasonable means to determine whether a SSN was provided for each person that "resides in the same household.'' The commenter also questioned what assistance FCIC will provide and who is responsible to accurately report all members of a household. Including minor children as having a "substantial beneficial interest'' raises questions regarding children's future eligibility if a father becomes ineligible and remains ineligible, and the children's responsibility for the father's debt. It is not fair for a child's eligibility to be affected by a parents failure to pay a debt. A child has no legal obligation to satisfy the debts of a parent and no legal right to any portion of an indemnity due the parent and the same is true from the parents' standpoint with regard to rights and obligations of the child, and a parent has no right to bind an adult child to a policy (the converse is also true). Because a minor may void any contract other than a contract for necessities, FCIC may not bind a minor to an insurance contract, even if the minor's parents are parties to the contract.

Response: See response to first comment under this heading.

Comment: The term "substantial beneficial interest,'' as used in the Basic Provisions is a legal term of art and FCIC may not create such an interest out of whole cloth. The terms "household'' and "children'' should be defined and the commenter questioned whether it includes students who live at home 3 months per year, and how will "household'' be determined when divorced parents have joint custody. Need to clarify if the new provisions pertain only to children who are actively participating in the farming operation. The phrase, "derive no benefit from the farming operation of the insured or applicant'' is far too expansive and places an onerous burden on insured producers to prove spouses and children derive no material benefit from the farming operation; and needs substantial clarification to tell the insurance provider what proof will determine whether the spouse or household children derive benefit from the farming operation. Need to clarify if the definition is asking children to prove they have no beneficial interest in the farming operation.

Response: See response to first comment under this heading.

Comment: The recently implemented procedure requiring spousal SSNs should remain unchanged until FCIC, insurance providers and producers have developed clear and workable guidelines. With the revised definition of SBI, insurance providers now must go back to all policyholders and obtain SSNs for resident children after having gone through this process of obtaining spousal SSNs. RMA indicated previously that it would not impose a requirement to collect SSNs for children, but only for spouses. Requiring children's SSNs could be considered harassment. It is logical to assume that a spouse, especially one who is making an active contribution to the farming operation, would have a substantial beneficial interest in the operation and thus meet the SBI definition and need to have pertinent information on file, but it is not clear why the extension is made to automatically include children or other individuals that reside in a household as meeting this requirement. The new requirement to collect SSNs provides little opportunity to prevent fraud and abuse and will only provide more opportunity for inadvertent reporting mistakes to become future cause for denial of insurance applications, denial of coverage and/or collection of administrative fees and penalties without a finding of intentional wrongdoing. The whole process is very single and narrow-minded in order to trap a few renegades. Producers will be reluctant to provide children's SSNs and there are privacy concerns involved with collecting this information.

Response: See response to first comment under this heading.

Comment: If the concern is about ineligible parents who farm ground in their minor child's name, then require the parent's name be reported as a substantial beneficial interest. A commenter asked how anyone could propose a rule which would require the social security number of children as a prerequisite of participation in the program. This will be unacceptable to the American farmer, and in their opinion would be a violation of the farmer's rights to privacy under the Constitution. If an insured has a child born during a policy period and fails to notify his/her agent he/she would lose coverage the following year. The **Federal Register** explanation states the definition was revised "to clarify the status of spouses,'' and if this is the intent, then the references to "children'' and "children that reside in the same household'' should be removed.

Response: See response to first comment under this heading.

Comment: A commenter stated the proposed definition of "substantial beneficial interest'' greatly diminishes the chances for spouses to unfairly manipulate the system, and that requirements to provide SSNs for all entities with 10 percent or greater interests in an operation will help prevent fraud and abuse.

Response: FCIC agrees with the commenter and has retained

requirements to collect social security numbers for spouses and all persons having a substantial beneficial interest in the applicant or insured.

Comment: A commenter recommended clarifying that prenuptial agreements that specify spouse's interests override the requirements in this definition and stated that FCIC has previously not recognized the terms of a legal prenuptial agreement that stated the spouse had no interest in the farming operation.

Response: Prenuptial agreements containing evidence indicating that a spouse does not have an interest in the acreage farmed by the applicant or policyholder during the course of the marriage can be used for the purpose of the definition. However, most prenuptial agreements involve the disposition of property after the dissolution of the marriage. They do not specify how such property will be utilized during the course of the marriage. In such cases, prenuptial agreements cannot be used to determine whether the spouse has an interest in the farming operation. No changes have been made.

Comment: A commenter stated, as written and contrary to current procedure, only spouses residing in the same household are required to provide SSNs.

Response: FCIC did not intend the provision to apply only to spouses residing in the same household. Provisions indicating the "same household'' have been removed from the definition.

Comment: A commenter stated that requiring SSNs of anyone who has a substantial beneficial interest in the applicant or insured could make acquiring coverage virtually impossible.

Response: FCIC has clarified that only the individuals or persons other than individuals that have a substantial beneficial interest in the applicant or insured must report their SSNs. Individuals with an interest in the person with a substantial beneficial interest in the applicant or insured would not have to report their SSNs unless such persons have at least a 10 percent interest in the applicant or insured.

Comment: A commenter stated the need to clarify how extensive the requirement to collect SSNs is when dealing with corporations as policyholders, bank trusts, Indian trusts, and other entities that do not have spouses or children.

Response: FCIC agrees clarification is needed and has revised the definition to specify that only the spouses of the individual applicant or insured are required. If the applicant is an individual, then the requirement to report the SSN of the spouse would be applicable. However, if the applicant is an entity other than an individual, then it cannot have a spouse and the requirement to report the spouse's SSN is not applicable. Further, FCIC has clarified that the entities must report their EINs and the individuals who make up that entity whose interest in the applicant or insured, not the entity, is at least 10 percent must report their SSNs. For example, if the applicant is a trust, each beneficiary of the trust with at least a 10 percent interest in the trust must report his or her SSNs. If the applicant is a trust and the beneficiaries of the trust are two partnerships, each of the individuals participating in the partnerships with at least a 10 percent interest in the trust must report his or her SSN.

48. Surrounding Area:

Comment: Several commenters recommended defining "surrounding area.''

Response: FCIC added a definition of "area'' in the final rule published on June 25, 2003 (68 FR 37697).

49. Summary of Coverage:

Comment: A commenter stated units are determined by county but it is not clear in the definition of "summary of coverage,'' if the contract is by county or multiple counties.

Response: FCIC has revised the definition of "policy'' to clarify that each agricultural commodity in each county constitutes a separate policy.

50. Timely Manner:

Comment: A commenter recommended defining "timely manner.''

Response: FCIC has revised certain provisions that reference "timely manner'' so that a single common meaning of the term can apply, which refers to occurring within a reasonable amount of time.

51. Verifiable Records:

Comment: Some commenters recommended defining "verifiable records.''

Response: Verifiable records must be provided to support the production report that is used to establish the actual production history. The definition of "actual production history'' references 7 CFR part 400, subpart G, which contains a definition of "verifiable records.'' Therefore, it is not necessary to repeat the definition in the Basic Provisions. No change has been made.

52. Void:

Comment: A commenter stated the definition of "void'' is incomplete because there are other reasons that a policy may be voided. The commenter recommended replacing the proposed definition with: "When the policy is legally considered not to have existed,'' or insert a comma after "fraud'', delete "or'' and insert "or other justifiable reason'' after "misrepresentation.'' The commenter also recommended adding a definition of "Voidable.''

Response: Since no changes to this definition were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

53. Whole Farm Unit:

Several comments were received regarding the definition of "whole farm unit.'' The comments are as follows:

Comment: Several commenters were opposed to the proposed definition of "whole-farm unit'' for the following reasons: (a) Adding the phrase "no one crop can exceed 75 percent of the total liability'' unnecessarily further complicates an already complex unit determination process; (b) the proposed definition effectively would make a producer growing 80 percent corn and 20 percent beans in a single county ineligible for whole farm unit treatment; (c) adding the "75 percent provision'' makes it so eligibility cannot be determined until the acreage reporting date; and (d) the additional requirements will discourage producers from electing the whole-farm unit structure.

Response: Because a whole farm unit gives the producer a premium discount, it is important to include some limitation so a policyholder will not try to qualify for a whole farm unit discount by planting a negligible amount of another crop. FCIC has determined that the crop mix percentages should be reduced to 10 percent to be consistent with other policies currently available that offer whole farm units, which will allow more producers to qualify. FCIC agrees eligibility for the whole farm unit cannot be determined until the acreage reporting date. This is consistent with the current policy language for all units, which states that units will be reported on the acreage report.

Comment: A few commenters recommended the following revisions to clarify what happens when a person who elects a whole-farm unit does not qualify for it: (a) Add a sentence to the end of the proposed definition which reads, "If you do not qualify for a whole-farm unit, insurance will be provided on an enterprise unit basis;'' (b) Add a sentence to the end of the proposed definition which reads, "If you do not

qualify for a whole-farm unit, we will assign the most similar eligible unit structure;'' and (c) Clarify in the definition of "whole farm unit'' what unit structure would be applicable when a producer does not qualify for a whole farm unit.

Response: As proposed, section 34(a)(3)(iii) specifies if the producer does not qualify for the whole farm unit when the acreage is reported the basic unit structure will be assigned. There may be instances where producers would not qualify for enterprise units. Further, it would be impossible to determine what is the most similar unit since each different crop may have different shares or qualify for enterprise or optional units. Since the change is included in section 34, it does not need to be included in the definition.

Comment: Some commenters recommended inserting a hyphen in the term "whole-farm'' throughout the policy.

Response: A hyphen is not necessary to clarify the term or make it more grammatically correct.

Comment: A commenter asked how, and on what basis, the 75 percent level was determined in the definition of "whole-farm unit.''

Response: The 75 percent level was revised to 10 percent to ensure consistency among policies that offer whole farm units.

54. Written Agreement:

Comment: A commenter recommended adding "as submitted and approved by RMA'' to the definition of "written agreement.''

Response: FCIC has revised section 18 to specify that written agreements are approved by FCIC because only FCIC has the authority under the Act to offer written agreements.

Comment: A few commenters stated the terms "policy,'' "crop policy,'' and "crop'' are used inconsistently in section 2 and throughout the Basic Provisions.

Response: FCIC has revised the Basic Provisions to change the references of "crop policy'' to "policy'' in each section it appears and has clarified the definition of "policy'' to make it clear that each separate agricultural commodity insured under the Basic Provisions is considered as a separate policy.

Identity Collection Information—Section 2(b)

Many comments were received regarding the requirement in section 2(b)(1) to collect social security numbers for everyone with a substantial beneficial interest in the applicant. The comments received are as follows:

Comment: A few commenters believe the proposed provisions which require social security numbers be collected for all persons with a beneficial interest, is another overreaching provision that requests the corporate veil to be pierced and requires insurance providers and agents to go back to all policyholders to obtain this information. Most producers question the purpose of collecting this information, and who will use the information. They are also concerned as to whether the insurance providers and agents will be held responsible for the accuracy of this information. Insurance providers and agents have no means of determining if the Social Security information is correct, or if all persons with a "beneficial interest'' have been accounted for.

Response: The requirement to provide SSNs of persons with a SBI in the applicant or insured is in the current provisions and this requirement remains. The requirement is necessary to prevent a person who is ineligible from receiving crop insurance benefits by simply becoming a part of an entity using a different identification number. Therefore, the SSNs will be used by FCIC and insurance providers to determine eligibility. It is the producer's responsibility to provide the correct information to the insurance provider. If the correct information is not reported for each person with a substantial beneficial interest, the penalties specified for failure to provide the SSN will apply.

Comment: A commenter stated spouses and children's social security numbers are now required since the definition of substantial beneficial interest has been revised. They stated it is extremely hard to police or verify and this will increase workload for insurance providers. They asked whether FCIC considered and ruled out the possibility of merely requiring the names of family members. Their chief concern with the proposal is with how it will be implemented.

Response: As previously stated, the requirement to collect children's SSNs has been removed. The amount of work required to obtain spouse's SSNs should not increase since this is already a program requirement and the policy provisions are only being clarified in this regard. FCIC did not consider only collecting the names of family members because many persons have the same name and tracking ineligibility in this manner would not be possible.

Comment: A commenter suggested referencing "spouse, landlord, tenant, corporation/partnership members, etc.'' when referring to "individuals with a substantial beneficial interest in the applicant.'' They also stated this provision will likely lead to a number of major systems problems.

Response: The proposed provisions in section 2(b)(1) (now section 2(b)) have been clarified to specify that any person with a substantial beneficial interest in the applicant must provide a SSN, which includes individuals and entities. Since SSNs and EINs must already be reported, FCIC is unsure of how this requirement will cause major systems problems.

Comment: Several commenters stated the proposed language "* * * the application will not be accepted * * *'' suggests that discovery of ineligibility or missing SBI information must take place before the first-year application is actually accepted. If it is intended to apply to discovery any time during the initial year, better wording might be "* * * the policy will be void and not considered to have been in effect * * *'' or "* * * the application will be considered not to have been accepted * * *'' Another commenter stated it is not practical to expect the verification process to be complete prior to acceptance of the application.

Response: FCIC has revised the provision to specify that if the applicants SSN or EIN is not on the application, the application is not acceptable. With respect to the SSN or EIN of persons with a substantial beneficial interest who are eligible for insurance, failure to provide such SSN or EIN on the application will result in reducing coverage consistent with that person's interest in the applicant. If the person with the substantial beneficial interest is not eligible for insurance, the policy will be void and no payments will be due under such policy. If premium has been previously paid, the premium will be returned, less an amount to reimburse the insurance providers for their administrative costs already incurred. In those cases where the premium has not been paid, it would be too administratively difficult to determine whether the insurance providers have incurred the costs and to collect the portion of the premium owed. Therefore, if the premium has not been paid, the producer will not be required to pay the portion of the premium to reimburse the insurance providers for administrative costs they may have incurred.

Many comments were received regarding the requirement in section 2(b)(2) to collect social security numbers for everyone with a substantial beneficial interest in the applicant. The comments received are as follows:

Comment: Many commenters stated it is unclear if a corporation having a 10

percent interest in an applicant or insured would have to provide SSNs for everyone in the corporation. The commenters indicated that if this is the case, the provision would be very difficult to administer. Many commenters stated the provisions will require huge numbers of SSNs to be collected and provided examples in which thousands of individuals would be required to submit SSNs. A few commenters suggested only the individuals with a 10 percent or greater interest in a privately held entity be required to report their SSNs. Many commenters stated the proposed provisions would make the entire corporation and thousands of shareholders ineligible even if only one of the shareholders were actually ineligible. The same concerns were provided with regard to corporate trustees, partnerships, Indian tribes and other types of insureds. These commenters stated that this aspect of the proposal either should be narrowed and clarified or not be adopted. Several commenters stated the proposed policy provision will create an untenable situation with respect to large farming organizations with numerous shareholders, and it will be difficult in many situations to determine if all shareholders have been accounted for. Commenters further stated that FSA documentation that identifies shareholders often does not coincide with the information contained in the corporate charter, and it is unclear how a conflict should be resolved and how far a insurance provider must go to verify that the information reported is accurate.

Response: FCIC has revised the provision to only require those persons with a 10 percent or more interest in the applicant to report their EIN or SSNs, as applicable. This means that individuals who are part of corporations or other legal entities with a substantial beneficial interest in the applicant must only report their SSN if the individual has at least a 10 percent interest in the applicant. This will eliminate large corporations with many shareholders from having to provide each shareholder's SSN to the applicant. FCIC has also revised the provision to clarify that individuals must provide their SSNs and persons other than individuals must provide an EIN.

Comment: Many commenters stated the provision creates a second layer of social security number collection and verification. Some of these commenters raised questions regarding privacy issues and the legality of requiring individuals with interests in a corporation to provide SSNs as this appears to pierce the corporate veil and limited liability protection provided by corporate law. A commenter further stated the following: the law recognizes corporations as independent, legal entities that have duties and rights different than the duties and rights of the shareholders. The law restricts the conditions upon which the corporate form may be disregarded because corporations, and to a lesser degree partnerships, often are formed to keep separate the liability of the entity from that of the persons that own the entity. If a corporation has a substantial beneficial interest in an insured and, as a result, the corporations incur liability either to them or FCIC, that liability may not taint the corporation's shareholders. The corporation's liability does not de jute result in liability for the corporation's shareholders, and unless they or FCIC satisfy the state law standards for piercing the corporate veil, the shareholders will not incur any liability. Corporate law notwithstanding, nothing in the Act, even as amended by ARPA, authorizes the changes set forth in section 2(b)(2). Specifically, the Act authorizes FCIC to collect the name only "of each individual that holds or acquires a substantial beneficial interest in the insured.'' 7 U.S.C. 1506 (m)(3). The Act is concerned with only the top two rungs of potential liability, not the third. In sum, requiring them to collect the name and SSN of each person that has an interest in the individual that has a substantial beneficial interest in an insured or applicant adds another level of bureaucratic busy-work and expense that runs afoul of the law of corporations and that is not authorized by the Act or ARPA.

Response: The purpose of collecting SSNs is not to pierce the corporate veil, affect the corporate structure or for the purposes of assessing liability. The purpose of such a collection is only to identify all the persons who are obtaining benefits under the Federal crop insurance program to ensure that such persons are eligible. Only reporting the names of persons with a substantial beneficial interest in the applicant would not have any meaning because there are many persons with the same name. Further, if only the EINs of entities were collected, many producers could form entities for the express purpose of hiding ineligibility. Interpreting the Act in this manner would thwart the purpose of the Act and render the language in section 506(m) of the Act ineffective. Therefore, to effectuate the purpose of the Act, FCIC has interpreted section 506(m) of the Act to allow for the collection of SSNs and EINs from all persons with a substantial beneficial interest.

Comment: A commenter stated references to "social security numbers'' should include "or employer identification numbers'' as well.

Response: FCIC has revised the provisions accordingly.

Comment: A commenter stated the term "entity'' is not a defined term.

Response: The reference to entity has been removed from this final rule.

Comment: Several commenters stated it is unclear who is responsible for discovery and what assistance will be provided in that discovery process. They thought this section would penalize those that do not, as a matter of practice, abuse the system. Some commenters asked how an agent or insurance provider is supposed to know if an entity is omitted, who is responsible for the verification of the required information and when the verification process must be completed, if the insurance provider must undertake its own independent investigation in each instance, and who would incur the additional cost.

Response: The only responsibility of the agent or insurance provider is to explain the requirements of section 2(b) to the policyholder. No independent investigation is required. It is the policyholder's responsibility to obtain and report all the required information. In this final rule, FCIC has reduced the burden on policyholders to report this information. Further, this is not an issue of abuse. This is an issue of being able to identify all persons who are receiving benefits from the Federal crop insurance program. The reporting of such information is the only effective way of accurately identifying such persons.

Comment: A commenter stated the new provision would require applications to be re-designed to routinely request information regarding relevant business and family arrangements. They further recommend that producers be required to sign new contracts with bold type or a larger font to draw attention to the new requirement.

Response: Applications do not need to be redesigned because they already request the SSN or EINs from persons with a substantial beneficial interest. FCIC has revised the provisions to require policyholders to update their applications if the persons with a substantial beneficial interest have changed or where all the applicable information was not provided on a previous application. It is the responsibility of the insurance provider

and agent to explain this requirement to the policyholder.

Many comments were received regarding the sanctions provisions in proposed section 2(b)(3). The comments received are as follows:

Comment: Many commenters stated the proposed penalty in this section was too harsh. Some of the commenters asked why the penalty is the same for those who are eligible and inadvertently omit a SSN and those who are ineligible and intentionally omit a SSN. Others thought it inappropriate to deny insurance for an entire entity when only a small share of the entity failed to provide a SSN, particularly when the small share is eligible for insurance. Additional commenters stated that the penalties should apply only to those who willfully or intentionally violate the requirement. These commenters agreed that if persons with substantial beneficial interests are omitted, and it is determined that the missing person is ineligible, then denying benefits to the insured entity is appropriate, but that denying benefits for simply omitting an SSN appears harsh. Another commenter stated that this surely is not the legislative intent and it should not be the regulatory result. Another of these commenters stated it would seem that if a SSN is left off the application and it is determined that the person omitted is not ineligible, there would not be any harm in correcting the SBI information.

Response: FCIC agrees the proposed sanction is too harsh for those who omit a SSN and are eligible to receive insurance benefits. The provisions have been amended to only reduce the insured share by the percentage interest of the person who did not provide the SSN when such person would otherwise be eligible for insurance. It would be impossible to administer the provisions if the consequences were only applied if the omission was willful and intentional because it is difficult to prove willful or intentional. FCIC does not agree there is no harm in adding SSNs that are inadvertently left off the application. If allowed, it would reduce the incentive to initially properly identify all required persons with substantial beneficial interests.

Comment: Some commenters stated the proposed provision is grossly unfair to absentee landlords, passive shareholders in farming corporations, persons who have given powers of attorney regarding crop insurance to tenants or insurance agents and others who reasonably rely on the active farm operators to do what is necessary to insure their interest in the crop. These commenters further stated that it is grossly unfair to insurance providers who have no reasonable means of ascertaining or verifying either the existence of significant business interests or the social security numbers provided by producers and agents, yet are put at risk by this section of the proposal of losing administrative and operating reimbursement and being unable to recover indemnity payments they could not have known were inappropriate under the proposal's standard.

Response: As stated above, the burden is on the policyholder to correctly report the required information. FCIC has reduced the risk to insurance providers by allowing insurance for the persons with substantial beneficial interests that did provide SSNs, provided any other person whose interest in the applicant was not reported was eligible for insurance. However, as with all overpayments, insurance providers are at risk that they will not be able to collect the overpaid amount. While FCIC attempts to mitigate the effects on the insurance provider, there is no way to eliminate the effects. The use of specific consequences is one way to provide an incentive for policyholders to comply with program requirements. It is not unfair to absentee landlords, passive shareholders, or persons who have given powers of attorney, who rely on the operator to insure their share. Such landlords, passive shareholders, or persons who have given powers of attorney have expressly given permission for their share to be insured and should be held to the same standards as the policyholder with respect to the requirement to provide the applicable SSNs or EINs. If they have a substantial beneficial interest, they should provide the applicable information to the operator.

Comment: Some commenters recommended denial of coverage apply only to those persons who knew or reasonably should have known of the requirement and failed to comply. These commenters further stated that insurance providers who implement and consistently follow realistic and responsible measures to obtain required information also should not suffer adverse consequences if those measures are defeated by those intent upon program abuse or fraud.

Response: All policyholders are legally presumed to know the terms and conditions of insurance. Further, it would be difficult for insurance providers to determine which persons "knew or reasonably should have known'' of the requirement. No change has been made.

Comment: Some commenters stated the proposed section has no temporal element and provided the following example: If the existence of a 10 percent silent partner is first discovered years after the loss is paid, the provision requires the insurance provider to reimburse FCIC for the paid loss in the initial and all subsequent years, and the severe penalties would apply to the insured even though several years may have passed. Other commenters stated it would be reasonable to provide notice of deficiencies and a chance to correct applications in the first two crop years the requirement is enforced, unless there is evidence of willful or intentional deception. An additional commenter stated it is unclear whether the insured is required to repay an indemnity if an overlooked SSN is subsequently discovered.

Response: Consequences that were in effect prior to the effective date of this final rule would apply to any instance of noncompliance in those prior years. The provisions contained in this final rule are only effective for violations that occur after its effective date. Further, after the effective date of this final rule, all policyholders are presumed to know of the requirement and, therefore, there is no basis for a two year period to allow for corrections. FCIC has revised the provision to require that policyholders that currently may not be in compliance amend their applications to provide the required information. In addition, this requirement is consistent with compliance findings. In many cases such investigations occur years after the crop year is over. In those cases, if non-compliance is discovered, appropriate adjustments must be made for the crop year in which the error occurred. FCIC has revised the provision to state that if an indemnity has been paid, the indemnity will be adjusted and the overpaid amounts must be repaid.

Comment: Several commenters stated no premium should be due when no indemnity is paid. One of these commenters asked how they could charge an insured a premium if an insured is deemed ineligible. The commenter further stated that if a private insurance provider tried this scheme, they would be flooded with lawsuits.

Response: FCIC is not requiring premiums be paid when the policy is voided. However, consistent with other administrative regulations, in certain cases, FCIC is simply requiring the policyholder to reimburse the insurance provider for the administrative expenses associated with the policy. Such amounts are not considered premium payments.

Comment: Several commenters stated this provision is harsh because the

insured or applicant is penalized for the actions of others not subject to or under his/her control. Current procedure that reduces the share by the amount of the ineligible person's interest is fair.

Response: The policyholder has the ability to choose with whom it does business. Therefore, it is fair to require the policyholder to obtain the compliance of those persons with whom it elects to do business. However, as stated above, in certain circumstances, the policy will allow the share insured to be reduced instead of the denial of all indemnities. FCIC has revised the policy to provide that the share can be reduced by the interest of an ineligible person as long as the required information is included on the application.

Comment: A commenter stated many things are unclear regarding the 20 percent premium amount and asked if the 20 percent applies to the gross premium or farmer-paid premium, and what it will be based on if no acreage report is filed. The commenter stated that this penalty is inconsistent with other penalties in the proposed changes because the insured is required to pay 20 percent of the premium, but not the administrative fee, and elsewhere in the policy no indemnity is due and 100 percent of the premium is charged (section 21(e)(2), for example) and the administrative fee presumably is still due since it is not mentioned. The commenter further stated there does not appear to be any explanation or logical reasons for these differences. It also appears that the only penalty on CAT policies is no claim payment, as CAT policyholders do not pay premium, and this paragraph states that no administrative fee will be due. A commenter asked if the 20 percent "penalty'' is not paid for a CAT policy, should the insurance provider report the entity as a debtor to the Ineligible Tracking System. Another commenter asked if the insurance provider keeps the 20 percent penalty since they have done the work on the policy.

Response: The provision has been revised to clarify that it is based on the farmer paid portion of the premium. Further, FCIC has clarified that the 20 percent only applies to the premium if the premium has already been paid. If no acreage report has been filed, no premium can be paid. FCIC has revised the provisions to make them consistent within the Basic Provisions to the extent practicable. Further, the sanction for additional coverage policies has been made consistent with other administrative regulations published at 7 CFR chapter IV. In addition, since producers do not pay a premium for CAT coverage, the 20 percent sanction would not be applicable to them. However, they will still have their coverage reduced. FCIC recognizes that this results in disparate treatment but there is no basis to charge CAT producers a premium or allow administrative fees to be used to provide reimbursement for administrative costs. Sections 508(b)(5)(D) and 508(e)(2)(A) of the Act, respectively, specifically preclude the use of CAT fees to reimburse the insurance providers and required FCIC to subsidize 100 percent of the premium. With respect to buy-up policies, the insurance providers will be permitted to retain the 20 percent of the farmer paid premium.

Comment: A commenter stated that investigation, enforcement, and implementation present significant issues, and one is whether individuals (those with any interest in an entity with an SBI in the insured) are placed on the Ineligible Tracking System.

Response: If the issue is the failure or incorrect reporting of the individual's SSN, then the Ineligible Tracking System is not applicable because such persons would not be considered ineligible unless separate grounds exist. However, if the issue involves indebtedness or other basis for ineligibility, individuals with an interest in a person with a substantial beneficial interest in the applicant will not be placed on the Ineligible Tracking System unless it is currently permitted under the ineligibility regulations or grounds exist to pierce the corporate veil or other entity structure.

Comment: A commenter stated "no indemnity'' should be more explicit in either including or excluding replant and prevented planting payments, and that confusion could be eliminated with a definition of "indemnity.''

Response: FCIC agrees with the commenter and has clarified that no indemnity, prevented planting payment, or replanting payment can be made.

Comment: Some commenters stated this provision would seem to indicate that all instances of not reporting a SSN are deliberate.

Response: The provisions are not based on whether or not the failure to provide SSNs is deliberate. Applicants are required to provide this information and it would be difficult for insurance providers to determine those instances in which omission of the SSN was deliberate. Therefore, the provisions are written to address the consequences of not providing the SSNs and do not depend on the insurance providers determination of whether or not the omission was deliberate.

Delinquent Debts—Proposed Section 2(e) and Redesignated Section 2(f)

Many comments were received regarding the sanctions provisions in proposed section 2(e). The comments received are as follows:

Comment: A commenter recommended clarifying what "eligibility may be affected'' means. Another commenter stated the second sentence refers to "benefits under USDA programs'' and that it should be "crop insurance and other USDA programs.'' Also, "may affect'' is a far cry from the former "you will be determined to be ineligible.''

Response: FCIC has moved certain provisions that were in section 2(e) and created a new section 2(f) for clarification, readability, and to address many of the following comments. FCIC has revised the provision to clarify that failure to make payment when it is due will make the policyholder ineligible for crop insurance. However, with respect to other USDA programs, it would be up to the agency that administers the particular program to determine whether ineligibility for crop insurance affects the eligibility for their applicable program. For this reason, FCIC can only state that eligibility may be affected.

Comment: A commenter stated they believe the policy should not be terminated if a claim is pending because farmers who have suffered losses due to natural disasters may be extremely strapped for cash for farm operating and family living expenses until they receive their crop insurance indemnity payment, and they should not be penalized if payment is delayed or the disaster arrives shortly before a premium is due.

Response: FCIC agrees that in some cases the indemnity will exceed the amount of premium due. However, the offset of premium from an indemnity is for the convenience of the policyholder and insurance provider and was never intended to abrogate the requirement that premiums and other payments be made by the due date. To allow anything different will result in the disparate treatment of policyholders based solely on whether they file a claim. Further, it adds a significant administrative burden for insurance providers to have to track all open claims, determine whether the claim is legitimate, and whether it will cover the amount of premium owed. No change has been made in response to this comment.

Comment: A commenter stated section 2(e) provides that "any amount due'' the insurance provider "will be deducted from any indemnity due'' the

insured. They believe they also have the right to deduct amounts due the insured from replant payments and prevented planting payments, neither of which are indemnities. Moreover, they believe that such deductions should be discretionary not obligatory. They stated there may be situations in which such a deduction is unadvisable or contrary to other statutes. Thus, they recommended that the compulsory "will'' be replaced with the permissive "may'' and that the third sentence of section 2(e) be amended as follows: "Any amount due us for any crop insured by us under the authority of the Act may be deducted from any prevented planting payment, indemnity or other payment due you for this or any other crop insured with us.'' Further, they stated, redesignated section 2(f) suggests that an insurance provider is obligated to enter into a payment agreement with a delinquent insured. Because FCIC may not compel them to agree to a payment arrangement, they recommend that FCIC amend redesignated section 2(f) to include the following sentence: "Nothing in this provision shall be construed to require us to enter into a payment agreement with you.''

Response: FCIC agrees that premiums should be deducted from prevented planting payments, and has clarified section 2(e) provision accordingly. However, FCIC does not agree that premiums should be deducted from replanting payments because these payments are intended to provide funds to the policyholder to help defray the costs of replanting. Further, the premium billing date is generally quite some time after a replanting payment would generally be made. FCIC also does not agree the deductions should be discretionary. One major premise of the program is to ensure that all policyholders are treated the same, regardless of which insurance provider they select. To permit this change would introduce the potential for disparate treatment. In addition FCIC is not aware of any circumstance in which it would be contrary to another Federal statute to deduct the premium from an indemnity payment. To the extent that such a requirement would conflict with state law, the state law would be preempted. The suggested revision has not been made. Since the policy previously stated that payment plans were available to avoid ineligibility, such payment plans had to be offered by insurance providers. Nothing in this rule changes this requirement. Making this requirement discretionary could result in the disparate treatment of policyholders based on the insurance provider selected. This is contrary to the principles stated above. Further, the recommended change could have the effect of eliminating the availability of payment agreements. Since this was not proposed and the public was not afforded the opportunity to comment on this change, FCIC cannot adopt this recommendation.

Comment: A few commenters stated they recommend the word "paid'' in the first sentence of redesignated section 2(f) be replaced with "received by the insurance provider.'' One commenter stated "indemnities'' and "other administrative offsets'' should be defined for the purpose of clarity. One commenter asked if the offsets in section 2(e) apply only to administrative fees and related interests (*see* subsequent reference to "offset'' in sections 7(b) and 24(e)) and how will offsets be implemented.

Response: FCIC has revised the definition of "delinquent debt'' to replace the word "paid'' with "postmarked or received by us or our agent'' to provide a more easily administered time frame for establishing delinquent debts. The reference to postmarks is needed to prevent policyholders from being penalized for delays in mail service. In response to previous comments, throughout the Basic Provisions, FCIC has clarified that indemnities, prevented planting payments and replant payments are different and that offsets can only be used against the indemnities and prevented planting payments. Therefore, the term does not need to be defined. However, FCIC has defined "offset.'' The respective provisions state what will be offset. FCIC has removed the references to offset of administrative fees from this section and has included all such provisions in section 24 and clarified how they will be implemented.

Comment: A commenter asked what "termination'' means in the phrase "termination may affect your eligibility * * *'' They ask whether it means termination of the policy. If so, they ask under what circumstances is termination relevant in this context. If the policy is terminated because the insured chooses to do so, or simply does not plant for three years, they ask if the insured is barred from other programs. The intent of this section must be clarified. Perhaps the intent is "Termination under section 2(e) may affect * * *'' Identification of delinquent producers in the Ineligible Tracking System must be swift and certain if approved providers are to have any hope of collecting premium and other amounts, and the program is to be protected from people who simply do not pay their premium. In addition, FCIC should ensure that amounts due under the crop insurance program will be withheld from benefits payable under the "other USDA programs'' to which this portion of the proposal refers and remitted to the approved provider to whom the crop insurance-related debt is owed. In addition, the proposal should be revised to ensure that if a producer is delinquent as to any one crop insurance policy, that producer also will be considered delinquent under all other policies in which the producer has an interest.

Response: FCIC has revised redesignated section 2(f) to make it clear that ineligibility and termination of the policy will preclude the producer from receiving an indemnity, prevented planting payment or replanting payment and may affect eligibility for other USDA programs. This revision clarifies that the provision is only applicable when the policyholder fails to make a payment when it is due. FCIC agrees ineligible persons should be placed on the Ineligible Tracking System as quickly as possible and will continue to work with insurance providers in this regard. FCIC will ensure that all administrative offsets are conducted as expeditiously as possible in accordance with 31 U.S.C. chapter 37. However, administrative offset only applies to amounts owed to FCIC and the provision has been revised accordingly. FCIC does not have the authority to collect amounts owed to the insurance provider through administrative offset. Therefore, any amounts recovered by FCIC will be retained by FCIC. Redesignated section 2(f) has been revised to state that if there is a delinquent debt for one policy, the policyholder is ineligible for insurance and all other policies will terminate effective of the next termination date. However, having a delinquent debt on one policy does not create a delinquent debt on all other policies. Delinquent debts only apply to those policies for which applicable payments have not been paid by the due date.

Comment: A commenter asked whether the sentence "All administrative fees and related interest are owed to FCIC * * *'' needs to be in redesignated section 2(f). FCIC is not a party to this contract, and the language already says other benefits may be affected. Another commenter stated the language indicates that all administrative fees and related interest are owed FCIC. The commenter asked if all accrued interest is owed FCIC, or just accrued interest on the administrative fee. If all accrued interest is owed FCIC, the commenter asks if FCIC be

responsible for the collection process for unpaid interest. The commenter asks if FCIC is going to calculate accrued interest and require all insurance providers to access accrued interest on the date specified in the policy. It would seem practical to do so if the accrued interest is a condition of termination. Another commenter stated the provision "all administrative fees and related interest are owed to FCIC * * *'' seems to change the existing collection process. The commenter also stated the subsection would benefit from defining the term "due'' and also recommended defining "insured crop'' and/or "under the authority of the Act'' because these phrases are used here and elsewhere in the proposed Basic Provisions.

Response: The reference to administrative fees being owed to FCIC is not necessary in this section since it is more appropriate to include this in section 24 and FCIC has revised the policy accordingly. Section 24 has also been revised to clarify that only accrued interest on administrative fees is owed to FCIC. Interest on amounts owed to the insurance providers should be determined and collected by the insurance providers. FCIC has clarified that administrative fees are paid to the insurance providers but they are actually owed to FCIC and if the policyholder fails to pay the administrative fee, FCIC is responsible for collection. The term "insured crop'' is already defined. Further, FCIC believes the phrase "under the authority of the Act'' is not a term that can be easily defined without being overly restrictive. This term would encompass all policies reinsured by FCIC and since new policies are being developed and offered all the time, it is impossible to specifically identify all these policies. With respect to the term "due,'' terms only need to be defined if they have meaning different from the common meaning of the term or there are multiple common meanings. FCIC intended the common meaning of the term "due'' to apply, which refers to payable immediately or on demand. Therefore, it is not necessary to define this term.

Comments were received regarding proposed section 2(e)(3). The comments are as follows:

Comment: A commenter stated proposed section 2(e)(3) must be reconciled with proposed section 2(e)(5), or at least the two sections should be cross-referenced.

Response: Proposed section 2(e)(3) has been redesignated as section 2(f)(1)(i) and FCIC has revised redesignated section 2(f) to ensure there are no inconsistencies with the provisions in proposed section 2(e)(5).

Comment: A few commenters stated, if this proposed language is retained, the word "and'' should be replaced with "or'' following the word "fee'' in proposed section 2(e)(3)(i).

Response: FCIC agrees that interest is not always owed and has revised the provisions where necessary to refer to interest owed as applicable.

Comment: A commenter stated proposed section 2(e)(3)(ii) seems to contradict proposed section 2(e)(2).

Response: Proposed section 2(e)(2) specifies when the policy terminates, and proposed section 2(e)(3)(ii) specifies when ineligibility starts. Since these refer to different matters, there is no conflict between these two sections. Ineligibility specifies the period for which the policyholder can no longer obtain insurance. However, ineligibility does not terminate policies that were in effect before the person became ineligible. These policies must be terminated and the termination provisions provide the date on which these policies are no longer in effect. However, for the purposes of clarity, FCIC has revised the provisions regarding termination and ineligibility.

Comment: A few commenters stated proposed section 2(e)(3) seems to require an insurance provider to offer a payment plan. This was not previously in the policy. If so, a payment agreement needs to be made part of the policy as an insurance provider option with language to specify what constitutes an agreement. Another commenter asked if an insurance provider must do a payment plan or if it is optional. The commenter stated, if it is optional, the language should state this.

Response: Since the policy previously stated that payment plans were available to avoid ineligibility, such payment plans had to be offered by insurance providers. Nothing in this rule changes this requirement. However, FCIC has revised the definition of "delinquent debt'' to specify that the agreement to pay must be acceptable to the insurance provider. The insurance provider should determine what terms are acceptable because this is an agreement between the policyholder and the insurance provider and such agreements may vary based on individual circumstances. The agreement does not need to be made part of the policy because the policy expressly states the consequences of entering or violating such an agreement.

Comment: A commenter stated they have concern when an insured with a payment agreement transfers to Insurance provider B. Insurance provider B pays an indemnity and later the insured defaults on the payment agreement with Insurance provider A. Which insurance provider will be responsible for collecting money from the insured.

Response: Since insurance provider B paid the indemnity, it would be up to insurance provider B to collect the indemnity back from the policyholder. Insurance provider A would not have privity of contract with the policyholder. However, insurance provider A would still be responsible to collect the amount of premium due under the payment agreement.

Comment: A commenter stated proposed sections 2(e)(3)(ii) and (iii) seem to contradict proposed sections 2(e)(4) and (5) and asked if proposed sections 2(e)(4) and (5) are saying the same thing. The commenter further stated that the insured should only become eligible after the bankruptcy is discharged, not when it is filed. This would alleviate the problem addressed in the final sentence.

Response: The sections do not conflict. Proposed sections 2(e)(3)(ii) and (iii) specify when a producer becomes ineligible while proposed sections 2(e)(4) and (5) specify when policies will be terminated. As explained above, these are different matters. Proposed sections 2(e)(4) and (5) are not repetitive although a portion of proposed section 2(e)(5) does clarify that a policy in place at the time a person becomes ineligible does remain in place until the next termination date. Proposed section 2(e)(5) (redesignated section 2(f)(3)) also clarifies when an ineligible person can again purchase insurance. FCIC does not agree that a person should be ineligible for insurance during bankruptcy proceedings because such proceedings obviate the requirement that persons repay amounts owed. It would be contrary to the purposes of bankruptcy to make a person ineligible based on a debt they may no longer owe.

Comment: A commenter asked if the insurance provider must return any administrative and operating subsidy it has received when termination is retroactive.

Response: When ineligibility is retroactive, any administrative and operating subsidy associated with the policy must be returned for the applicable crop year. Any changes in this requirement should be addressed in the reinsurance agreement, not the crop insurance policy.

Comments were received regarding proposed section 2(e)(6). The comments are as follows:

Comment: A few commenters stated if an insured defaults on a payment agreement with his previous insurer after the insured's present insurance provider has paid a subsequent claim, an overpaid claim situation results which in all likelihood would be uncollectible. In situations such as this, the current policy language is preferable.

Response: FCIC understands that making the ineligibility retroactive may create overpayments. However, when eligibility for crop insurance for the year is based on an agreement to pay a debt, benefits should not be paid for that crop year if the payment agreement is breached. No change has been made in response to this comment.

Comment: A commenter has concern with the possible litigation this could create when insurance has attached on a policy and then the insurance provider will cancel current insurance because an agreement to pay was defaulted on by the insured. The commenter prefers to keep current language in the provisions. If proposed section 2(e)(6) is kept, an insured that has an agreement to pay that continues four or five months past the termination date, could intentionally default on the agreement. They would intentionally default because they feel they will not have a loss in the current year and therefore would not be required to pay premium. RMA could propose charging the current year premium on acres even though they will not qualify for a loss, in this situation. This proposal could be viewed as harsh because they are charging premium for a policy in which they have no hope of collecting an indemnity. Also agreements to pay with multiple installments have a higher likelihood to be late on a payment because insureds are not billed in advance of their next payment installment. A commenter suggested the current language be retained because the proposed language seems to imply that an insurance provider retroactively cancels all policies and establishes no other payment plans for any crops. It should also address situations where another insurance provider has a payment plan in place. The reference to "crop year'' is a departure from "reinsurance year.'' It is irrelevant which insurance provider holds the payment agreement. If such agreement is breached, the policy automatically terminates effective with the beginning of the crop year. Once a policyholder becomes ineligible, he or she will be placed on the Ineligible Tracking System with a date on which ineligibility began, which will provide notice to other insurance providers that the policyholder is no longer eligible. Since the policy is provided to producers on a crop year basis, the provisions must refer to crop years rather than reinsurance years. This is the only fair and equitable way to operate the program and prevent abuse.

Response: Eligibility for the current year is conditioned on the payment of the debt in accordance with a payment agreement. If that payment agreement is breached, the condition is no longer met and the policyholder has no longer met the conditions for eligibility. This principle should be recognized by the courts and terminating the policy retroactively is no different than voiding the policy. Although there is no direct monetary penalty when a policyholder defaults on a payment agreement, there is a consequence because benefits will not be in place for the crop year in which the payment agreement was breached and until the debt is paid. The current provision affords no protection because policyholders could still breach the agreement, which rendered them ineligible on the date such payment was missed, and allow them to become eligible later in the same crop year by paying the debt in full when a loss is likely to occur. This would result in the administrative difficulty of trying to determine when the policyholder was eligible and whether an indemnity could be paid. FCIC cannot charge a premium even though the policy was terminated retroactively because it was not proposed and the public was not afforded the opportunity to comment on it. Insurance providers are responsible to manage these payment agreements and determine whether there is a failure to make a scheduled payment. There is nothing in this provision that prohibits late payment provided the scheduled payment is made. No change has been made in response to this comment.

Comment: A commenter suggested adding the word "crop'' between "your'' and "policies'' in proposed section 2(e)(6). This paragraph seems consistent with proposed section 2(e)(3)(iii), but inconsistent with proposed section 2(e)(5). The added language will create many problems if coverage is terminated retroactively, as many lenders rely on coverage being in place, as do other holders of assignments of indemnity.

Response: FCIC has replaced the reference to "crop policy'' with "policy'' to make the provisions consistent and has revised the definition of "policy'' to specify that each crop is considered to be covered by a separate policy. FCIC has revised the provisions to eliminate any inconsistencies. FCIC understands lien holders depend on crop insurance payments being made, and that additional complexities arise when more than one insurance provider is involved. However, whether crop insurance exists is within the control of the policyholder and benefits should not be allowed when premiums or other amounts due are not paid in a timely manner.

Comment: A commenter stated they agree with the provision in proposed section 2(e)(6).

Response: Although FCIC has revised the provisions, the requirements in proposed section 2(e)(6) have been retained in redesignated section 2(f).

Comment: A commenter asked if failure of a payment plan is limited to just this debt. They stated this appears to be the case, since reference to "the debt'' is used.

Response: The phrase "the debt'' in this section has been replaced with "amounts owed'' to clarify that it covers any amounts covered under the payment agreement.

Comment: The proposed language changes the current application of ITS (Ineligible Tracking System) in that it implies a retroactive termination. Also, this language conflicts with proposed section 2(e)(4).

Response: FCIC understands the proposed language constitutes a change in the time a producer becomes ineligible and may require more frequent monitoring of the Ineligible Tracking System. However, as stated above, a producer should not receive benefits for a year in which a previously agreed upon payment is not made. FCIC has revised the provisions to reconcile when policies are terminated and policyholders become ineligible.

Comment: A commenter recommended revising proposed section 2(e)(7) because, by definition, there can only be one policy. They question whether this means "county crop contract,'' and ask why not define and use that term.

Response: FCIC has revised the definition of "policy'' to clarify that each agricultural commodity in each county constitutes a separate policy. Proposed section 2(e)(7) refers to each policy that is terminated, which could be multiple policies in a given crop year. No changes have been made as a result of this comment.

Comment: A commenter stated there must be a "lag time'' allowed between signing the claim for indemnity and termination (*i.e.* claim for indemnity signed today, termination date is tomorrow) in proposed section 2(e)(9).

Response: As stated above, the offset of premium from an indemnity is for the convenience of the policyholder and insurance provider and was never

intended to abrogate the requirement that premiums and other payments be made by the due date. To allow anything different will result in the disparate treatment of policyholders based solely on whether they file a claim. Further, it adds a significant administrative burden for insurance providers to have to track all open claims, determine whether the claim is legitimate, and whether it will cover the amount of premium owed. No change has been made in response to this comment.

Comment: A few commenters suggested adding replant payments to the next to the last sentence in proposed section 2(e)(10).

Response: FCIC agrees and has made the proposed change in redesignated section 2(f)(5).

Several comments were received regarding proposed section 2(e)(11). The comments received are as follows:

Comment: A commenter stated it was unclear how individuals (those with any interest in an entity with a substantial beneficial interest in the insured) would be placed on the Ineligible Tracking System if they are not involved in the crop insurance program.

Response: FCIC agrees the provision is too inclusive. However, there may be situations, such as certain partnerships, where the partners are liable for the debt of the partnership and such persons will also be ineligible if the partnership becomes ineligible. Further, there may be other entities where piercing the corporate veil is appropriate based on the common law standards. This provision has been revised to put everyone on notice that persons with a substantial beneficial interest may be ineligible but it does not abrogate the legal requirements of determining when such persons may be held liable for the entity's debt or vice versa. Tracking should be no different than any other ineligible person.

Comments: A few commenters stated proposed section 2(e)(11) would not appear to be legally permissible if the "person'' with a substantial beneficial interest in the insured happens to be a corporation. Some of the commenters stated this language also may make others with an interest in the corporation liable for unpaid premium and the proposed language attempts to illegally pierce the corporate veil and make shareholders personally liable above and beyond their investment in the corporation.

Response: See response to first comment under this subsection.

Comment: A commenter stated that in general terms, shareholders are insulated from the actions of a corporation and this section goes against this principle. Another commenter stated this section violates constitutional and legal provisions.

Response: See response to first comment under this subsection.

Comment: A commenter stated RMA should research the legality of this provision.

Response: See response to first comment under this subsection.

Comment: A commenter stated the proposed amendment is a good one, but will present major tracking and compliance problems.

Response: See response to first comment under this subsection.

Comment: A commenter stated in their opinion proposed section 2(e)(11) is too broad when determining ineligibility. If someone is involved in a corporation and also has an individual policy then becomes ineligible on the individual policy, the new language would make all other shareholders of the corporation ineligible on any other policies in which they had a substantial beneficial interest. The current procedure that would lower the corporations' insurable interest by the ownership amount of the person ineligible is fair and defendable. They suggested not adding this paragraph.

Response: See response to first comment under this subsection.

Comment: A commenter stated proposed section 2(g) should be "cancel,'' not "terminate.''

Response: FCIC agrees the term "cancel'' should be used because the use of the term "terminate'' is inconsistent with the definition of the term "termination date'' and has revised section 2(h), as redesignated, accordingly.

Comment: The following comments were received regarding section 2(i). A commenter questions whether section 2(i) is needed. They stated it should be deleted or at a minimum, the portion referencing FSA be deleted. A few commenters stated section 2(i) requires "* * *information regarding crop insurance coverage on any crop previously obtained at any other local FSA office or from an approved insurance provider, including the date such insurance was obtained and the amount of the administrative fee.'' This does not distinguish between federally subsidized crop insurance and other types, such as crop-hail. FCIC should consider if the reference to "any other local FSA office'' is still necessary; if so, at least the word "other'' should be deleted. FCIC also should clarify whether "the date such insurance was obtained'' means the effective crop year (question whether the specific day is necessary). The commenter questioned the necessity of learning "the amount of the administrative fee'' (if kept, add "if any'' since the fee is a fairly recent addition).

Response: Since no changes to this section were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Clarification of Insurance Guarantees, Coverage Levels, Verification of Records, Establishment and Adjustment of Approved Yields—Section 3

Comment: A few commenters suggested deleting "for Determining Indemnities'' from the heading of section 3 since guarantees, levels, and prices are used for other purposes as well.

Response: Since this is merely a technical change since headings do not affect the meaning of the provisions, FCIC has revised the heading accordingly.

Comment: A few commenters suggested rearranging the order of section 3 so redesignated paragraphs (g)–(j) are further redesignated as (c)–(f), and the APH-specific paragraphs, currently (c)–(f), are at the end of the section.

Response: FCIC has revised section 3 to put all like provisions together.

Comment: A commenter stated section 3(a) should be clarified as follows: "(a) Unless adjusted in accordance with this policy, the production guarantee or amount of insurance, coverage level, and price used to calculate and establish your coverage as shown on your summary of coverage for each crop year also will be used to determine any indemnity that may be due with respect to that crop year. The information necessary to determine those factors will be contained in your application, the Special Provisions, the actuarial documents or a combination of these documents.''

Response: FCIC agrees the provision should be revised to specify that reported information will be used for the summary of coverage unless the information is adjusted or limited by the policy. Further, FCIC has removed the reference to the location of the "factors'' to be consistent with other changes made as a result of comments and because it is duplicative.

Comment: A few commenters recommended FCIC consider whether the first sentence in proposed section

3(b) should refer to prices as well as to coverage levels since both are included in the rest of the paragraph. A commenter also asked if the limitation in proposed section 3(b) to one coverage level means one per county crop (for example, a grower could insure corn in County A at one level and corn in County B at a different level). (This is an issue of defining policy, contract, etc., and they suggested that the policy clarify that coverage choices are on a county-crop basis.).

Response: Not all crops have only one price election. Some crops have multiple price elections for different types, varieties, etc., and provisions regarding the number of applicable prices are contained in the Crop Provisions. FCIC has revised the definition of "policy'' to clarify that each crop in each county is considered a separate policy. Further, FCIC realizes the first sentence of redesignated section 3(b) conflicts with the first sentence of redesignated section 3(d). Therefore, the first sentence in redesignated section 3(d) has been removed and FCIC has revised the first sentence of redesignated section 3(b) to specify that only one coverage level for additional coverage may be selected unless one of the exceptions apply.

Many comments were received regarding the proposed language in proposed section 3(b) that would not allow increases in coverage levels when there was a cause that could or would result in a loss. The comments are as follows:

Comment: The new language added to section 3(b) is an admirable attempt to prevent adverse selection against FCIC. However, the phrase "could or would'' is overly broad and puts an unreasonable and excessive burden of proving the unknown on the insurance provider and should be deleted from the proposal. Proposed section 3(b) mirrors section 17(b)(4), which imposes similar restrictions with respect to prevented planting. The provision, whether in proposed section 3(b) or in section 17(b), is problematic, speculative, difficult to determine, and is impractical to administer. It creates an administrative burden because it compels the insurance provider to conduct an inquiry as to whether a cause of loss has occurred each time an insured requests an increase to the coverage level or price election. They assume the insurance provider has the authority to determine a loss occurred prior to the insured making the change in price election or coverage level and proposed section 3(b) should so state.

Response: FCIC agrees that the provision is unworkable with respect to coverage level selection and has removed it from redesignated section 3(d).

Comment: The policy covers natural, unavoidable causes of loss. People cannot control the weather and other insured perils. They ask who would decide if there is a potential loss situation. The weather can change daily. A completely dry winter can become a blizzard with 2 feet of snow the next day. The final sign-up deadline is March 15 for some crops in some areas. A producer requesting a policy change in February cannot be allowed to have an advantage over a producer requesting a policy change in March after a blizzard.

Response: See response to first comment under this subsection.

Comment: If a geographic area has suffered drought for the past year or two, this provision would not enable producers to increase their coverage level even though a known cause of loss is likely to adversely impact the producer. In the instance where an insured has a certain level of coverage when a drought begins, would that insured not be able to increase his or her coverage throughout the duration of the drought. It could be hard to police the increases of coverage if a cause of loss is present at the sales closing date. A prime example is the drought in the U.S. That means even with the rains that have occurred in areas, if you look on the drought maps, there are areas that are basically stuck with what they had this year because of the continuing drought.

Response: See response to first comment under this subsection.

Comment: They ask how do you prove in all cases if loss or potential loss may have occurred before election changes and what equitable standard should be used in making these determinations. It is difficult to determine or quantify situations in which a cause of loss could or would result in an insured cause of loss that has occurred before an insured's request for an increase of coverage. It is difficult to manage and monitor in dry areas. They ask whether in a drought situation if an insurance provider denies an increase in coverage because of ongoing drought and a month later, after a rainfall, can the insurance provider accept another request for an increase in coverage provided it is before the sales closing date. Insureds should be allowed to change coverage levels, price elections, plans of insurance, etc., anytime on or prior to the sales closing date specified in the Special Provisions. The proposed provision would be nearly impossible to determine/enforce.

Response: See response to first comment under this subsection.

Comment: FCIC should make the determination if a cause of loss that could or would result in an insured loss has occurred prior to the time the producer requests the increase. FCIC should issue Managers Bulletins defining counties and crops in which FCIC has determined that a cause of loss existed prior to the sales closing date and no increase of coverage from the prior year would be allowed. The burden should not be on the producer, agent or insurance provider to declare that such a condition exists, presuming that the sales closing dates are set properly. If FCIC believes a condition exists that should cause the offer of coverage to be withdrawn, it should advise all and withdraw the offer.

Response: See response to first comment under this subsection.

Comment: There are system issues to properly "block'' applications from areas/situations that would not be eligible under this language. The proposed language seems to be counter to an insured's ability to make risk management changes from year to year. Producers may find it more difficult to obtain loans from their lenders when coverage cannot be increased because the likelihood of losses is apparent. The provision seems contrary to the intent of ARPA, which encourages producers to take out higher levels of coverage. Producers, unable to utilize existing risk management tools, will appeal to Congress for disaster aid. Will the determination be by insured, county, region, state, etc., and who will make it.

Response: See response to first comment under this subsection.

Comment: A "knowledge qualifier'' should be added to proposed section 3(b) as well as a time element. Thus, the proposal should be revised to read "* * * you may not increase your coverage * * * if as of the sales closing date you knew or reasonably should have known a cause of loss had occurred that is reasonably likely to result in an insured loss * * *'' Suppose there is no rain for six months before the sales closing date; as written, the provision would prohibit coverage changes because "a cause of loss that could or would result in an insured loss has occurred. * * *.''

Response: See response to first comment under this subsection.

Comment: This section does not preclude insureds from changing to a different plan, such as Crop Revenue Coverage or Revenue Assurance, or changing approved insurance providers and then revising the coverage level or price election. How soon will the

insurance provider know what coverage the producer previously had when the producer comes to them and do they back off at a later date when they find that the producer increased coverage when a cause of loss was already there.

Response: See response to first comment under this subsection.

Comment: A commenter recommended FCIC amend proposed section 3(b) as follows: "However, you may not increase your coverage level or price election after the occurrence of an insurable cause of loss.

Response: See response to first comment under this subsection.

Comment: They ask why existing policyholders should be prevented from making coverage changes, when a new applicant can choose the highest coverage level available on the sales closing date even though a cause of loss exists. This appears to be unfair and discriminatory.

Response: See response to first comment under this subsection.

Comment: A commenter stated the word "since'' in the fourth sentence of proposed section 3(b) should be amended to read "because.''

Response: Since "since'' or "because'' are synonymous, either are correct in the fourth sentence. No change has been made.

Many comments were received regarding proposed section 3(d). The comments received are as follows:

Comment: A significant number of commenters complained of the excessive burdens on agents and loss adjusters to perform the work, on producers as a result of delayed claims, and the costs to the insurance providers as a result of this requirement. They claim the provisions conflict with other record requirements in the policy.

Response: FCIC agrees with the commenters who indicated the proposed provision would delay claims processing, significantly increase program costs, and would conflict with current record retention requirements. Therefore, FCIC has removed the proposal requiring the insured to provide written verifiable records for the loss unit for at least the three most recent crop years of the producer's production history from redesignated section 3(f). However, verification of yields is important to maintaining program integrity. The policy provisions already contain record retention requirements and FCIC has determined the same effect can be achieved through APH reviews by insurance providers.

Many comments were received regarding proposed sections 3(d)(2) and (3). The comments are as follows:

Comment: Many commenters stated the provisions are unworkable and do not solve or mitigate the problem they are attempting to fix. Several commenters stated the penalty of denying a claim yet still charging premium when over or under a 5 percent tolerance level from the APH is far too harsh, and could easily be legally challenged because a premium is charged, yet no coverage and service is provided. A commenter stated denying the indemnity even after recalculating the average yield and still requiring premium payment will likely result in legal action and claims of Bad Faith. Some of the commenters further stated this penalty is unacceptable, and pointed out there is no coinsurance law in the Act. Other commenters indicated the penalty is unreasonable and should be deleted. A commenter stated the current processes in place to address APH and acreage tolerances is working, and the proposed provisions will unduly penalize insureds and create unbearable exposure for agents. A commenter stated that if APH audits are to be required as stated in section 3(d), then APH and unit corrections should be made to the policy, and indemnities subsequently paid based on the corrected information.

Response: FCIC has revised redesignated section 3(f) to specify that the consequences of misreporting are now contained in section 6(g) to eliminate any inconsistencies with that section. FCIC has removed the provisions stating that insurance will be denied and a premium will still be owed. FCIC agrees that the consequences could be overly harsh because it provides the same consequences regardless of whether the error was large or small. Instead, FCIC will utilize the consequences currently stated in section 6(g) and a consequence has been added that is commensurate with the error when such error exceeds established tolerances. These changes will be much less harsh but still provide an incentive for policyholders to accurately provide information.

Comment: A few commenters stated the proposed language refers to tolerances applied to the "average yield.'' This does not seem to consider that the average yield is not always the same as the approved APH yield, due to yield substitutions and other yield adjustments. They questioned if the "sanctions'' should be applied if the "correct yield'' does not affect the (adjusted) approved APH yield by more than the tolerance. A commenter asked, if the statement "* * * results in a yield more than five percent different than the correct yield'' refers to the APH yield or an individual year's yield. The commenter stated five percent of an individual year's reported yield may be excessively stringent as there may be instances of a simple error such as gross yield being reported instead of net yield. This may not make much of a difference in the APH but could exceed five percent for an individual unit.

Response: Tolerances are now based on liability, not the components that make up the liability, such as yield or acreage.

Comment: A few commenters stated it is unclear how the language meets the stated purpose of better meeting the insured's needs. According to the **Federal Register** explanation, "* * * This change is necessary to protect the integrity of the crop insurance program because the operation of the program relies heavily on the accurate reporting by producers. A tolerance of 5 percent is included to be consistent with tolerances in other aspects of the program. However the receipt of complete and accurate information is crucial to the program * * *'' They agree with the motive, but disagree with the method proposed. The 5 percent tolerance provides some allowance for minor differences in what is reported at different times, but still may not be flexible enough. (In addition, this tolerance is not consistently applied in other provisions of the proposed revisions to the Basic Provisions.) The demand for accuracy needs to be tempered with the recognition that measurements of acreage and production can result in different (but not inaccurate) figures each time. FCIC may want to consider leaving the specific tolerance out of the policy language and letting it be handled in procedure instead. One set of tolerance percentages may be too restrictive for some crops and situations but too loose for others. (For example, the CIH provides a 5 percent tolerance for many Category B APH crops, but a 2 percent tolerance for other Category B and all Category C crops.) A commenter stated the 5 percent tolerance in proposed section 3(d)(3) is unrealistic. The commenter further stated that errors do happen, but corrections can be made. They noted that typically, if information is misreported to the FSA, corrections are allowed. The commenter added this provision could potentially not only deny an insured a payment due to an insurable loss but could also cost him a premium on acreage deemed uninsurable, because of an honest error.

Response: These changes meet the needs of insureds by preventing program abuse and keeping premiums down. The tolerance has been increased

to 10 percent to reduce the impact on those producers whose errors are more likely to be inadvertent and add greater flexibility. The tolerances in the procedures are not relevant because the purpose of the tolerances in the policy is to determine when a sanction will apply.

Comment: A commenter asked if one loss unit is out of tolerance, what happens to the remainder of the units. The commenter further stated there is a conflict between language in section 6 (the insurance provider "may elect'' whether to use reported information or the information determined to be correct) and proposed section 3(d)(3) which indicates "corrected liability'' will be used with penalties attached.

Response: Since liability is on a unit basis, the tolerances are also applied on a unit basis.

Comment: A commenter stated proposed section 3(d)(3) makes no sense, as there may not even be a claim. The commenter also provided the following example: An insured reports APH production based on the bin measurements (no loss), the next year he/she has a loss, and the APH must be verified, by that time the prior year's production is sold, and the actual production sold differs from his/her APH by 5.5 percent, which should not be unreasonable due to moisture, shrink, etc., differences. The commenter stated that under the proposed language, it appears that his/her indemnity could be denied.

Response: As revised, the monetary sanction only applies when there has been a claim. However, the information is still corrected so that future determinations of liability are correct. If the bin measurement, which is done by the insurance provider, differs from the sold production, the producer cannot be penalized because it was not the producer who reported the production. The producer relied on the insurance provider. In cases where the discrepancy cannot be explained under the current procedures, the information should be reconciled and appropriate corrections made.

Comment: A commenter stated that unless fraud is evident, producers should be allowed to correct any discrepancies or errors in production reporting, and be paid any indemnity due, in return for premium paid. The commenter further stated the proposed provision exposes lenders to unneeded risk. A few commenters stated RMA already has in place punitive measures to deal with fraudulent behavior, and, if the proposed provision is implemented, the producers who will be most affected by the proposed tolerances and attendant sanctions will be those who simply make inadvertent errors. The commenters further stated that if a tolerance is maintained, it should be more reasonable and allow for exceptions. In addition, they believe that if a producer's claim is denied because of inaccurate yield reports exceeding a tolerance, the insured should not be responsible for the full premium, and in such cases only a modest administrative fee is warranted. A commenter stated that determining the nature of misreported information could be difficult. Therefore, they suggest consideration of a graduated monetary penalty matrix for misreported information resulting in an average yield of greater than 105 percent of the correct yield. If a reporting discrepancy of greater than 105 percent can be credibly attributed to an error made in good faith or variable reporting information, perhaps a maximum monetary penalty could be imposed with denial of the claim waived. Progressive monetary penalties short of claim denial would still serve as a strong incentive to report accurate information. Annual verification of certified yields would eventually alleviate the potential for misreported information problems because the actual production history yields would have been verified prior to the loss claim. A commenter recommended penalties be tailored toward willful and intentional actions.

Response: It is almost impossible to distinguish intentional from unintentional errors and provisions requiring such determination would create a very difficult standard to administer. However, errors must be identified and corrected. FCIC has increased the tolerances to lessen the impact on growers who make small, inadvertent errors.

Comment: A commenter suggested changing the wording in the lead-in sentence in proposed section 3(e) to read, "We will revise your actual yield(s) which may change your approved APH yield when:''

Response: "Approved yields'' are the yields upon which production guarantees are based and are the yields that ultimately must be revised. However, as stated above, redesignated section 3(g)(1) has been revised to reference individual crop year yields.

Comment: Several commenters recommended amending the introductory phrase in proposed section 3(e) to read: "We *may* revise your approved yield when: * * *'' The commenters stated that proposed section 3(e), as written, compels them to revise an insured's yield if the conditions in proposed sections 3(e)(1) through (3) are satisfied. Because there are many circumstances now unforeseen that may impact the revision of an insured's yield, proposed section 3(e) should authorize, but not require, revision of the approved yield. The **Federal Register** explanation for the proposed change states the language was changed to "Clarify that yields may also be adjusted * * * '' however, the actual proposed language states "We will revise your approved yield.''

Response: The provisions in redesignated section 3(g) must apply the same for all producers. Therefore, if an insurance provider discovers producers who meet all the criteria for having the approved yield adjusted, such yield must be adjusted. The provisions themselves contain any exceptions, if applicable. If no exception is stated, FCIC did not intend for there to be any exception and none can be made. To require otherwise could result in disparate treatment.

Comment: A few commenters stated existing regulations may not allow an approved yield to be revised as suggested, and thought providing an insured an "approved yield'' and then revising it could raise legal questions.

Response: The final rule published on June 25, 2003 (68 FR 37697) revised the definition of "approved yield'' to include adjustments made under redesignated section 3(g). Therefore, adjustments of the approved yield are permitted.

Comment: Several commenters stated proposed section 3(e) is too general and random, and asked what the procedure will be, in what time-frame will the adjustments occur, and to what levels will the inconsistent yields be adjusted. One of the commenters stated the processes for revisions are subjective and leave the insurance providers open to dispute and litigation. An additional commenter stated they could not assess the impact of this subsection without knowing what the specific procedures will be.

Response: FCIC has revised the provisions in redesignated section 3(g) to be specific regarding when the adjustments apply and exactly how the adjustment will be made to reduce subjectivity and make the standards more certain. FCIC has added provisions stating that reductions in the approved yield will occur at any time the circumstances warranting such reduction are discovered. The procedures will only specify when the insurance providers must review the policies to determine whether redesignated section 3(g) is applicable and the standards that FCIC will use to

determine whether the yields are excessive.

Comment: A few commenters recommended removing proposed section 3(e) since computation of the APH yield is not otherwise addressed in the Basic Provisions, and stated the modified language could properly be included in the program materials governing APH determinations.

Response: The final rule published on June 25, 2003 (68 FR 37697) revised the definition of "approved yield'' to include all adjustments made, including those under redesignated section 3(g). Therefore, the Basic Provisions now address, in part, the computation of the approved yield. No change has been made in response to this comment.

Comment: A commenter stated yield edit procedures are already in place to contain and identify certain yields, and asked why it is necessary to add proposed section 3(e). The commenter stated a unit could contain more than one APH database, and asked how the determination in proposed section 3(e) would be made in this case.

Response: The producer must be notified that the approved yield may be adjusted, the reasons for such adjustment, and the manner of such adjustment. Since the yield edit procedures are not a part of the policy, they do not provide adequate notice. The provisions in redesignated section 3(g) have been revised to specify that determinations are made on a database basis.

Comment: Some commenters recommended defining or explaining what an "inconsistent yield'' is as used in proposed section 3(e)(1) because the phrase will be subject to multiple interpretations. One of these commenters thought using the term "materially inconsistent'' would be more appropriate because it would not be beneficial to make small changes. Commenters recommended defining or explaining what a "surrounding farm'' is. The commenters asked how big or small of an area make up the "surrounding farms'' and if the area is measured in distance. A commenter suggested replacing "approved yield'' with "actual yield per acre for each crop year reported.'' Another commenter thought "approved yield'' should be replaced with "average yield.''

Response: FCIC agrees that the proposed provisions may be too broad and difficult to administer. FCIC has eliminated references to "inconsistent yield,'' and "surrounding farm'' and has revised the provisions in redesignated section 3(g)(1) to state that approved yields will be adjusted by substituting assigned yields when individual crop year yields are excessive and the producer does not have verifiable records to support the yield. FCIC has also added provisions to handle situations where the producer provides verifiable records but the yield may be significantly different from other yields in the county or his other databases and there is no explanation for the difference.

Comment: A commenter stated the language proposed in proposed section 3(e)(1) infers those involved in crop insurance, particularly FCIC, can more accurately determine actual yields using averages in the area than the insured who personally harvested the crop. The commenter disagrees with that notion.

Response: FCIC does not presume to be able to determine actual yields more accurately than the producer. However, since yields are certified, some may not reflect the actual production. FCIC has revised redesignated section 3(g)(1) to use specific criteria to determine when differences in yields are sufficient to require adjustment. In addition, provisions have been added that allow the producer to avoid an adjustment of an approved yield by providing verifiable records of production and an explanation of yield differences.

Comment: A few commenters stated the **Federal Register** explanation of the changes in proposed section 3(e)(1) "* * * Given the ease in which production can be shifted to create losses or to increase approved yields, the policy must provide a mechanism to allow correction when the surrounding yields show the reported yields are not accurate * * *'' appears to contradict the proposed language in proposed section 3(d) which only requires hard copy records "for the loss unit.''

Response: Changes proposed in proposed section 3(d) have not been retained in this final rule. However, the proposed requirement to provide records was limited to the loss unit to decrease the administrative burden on the insurance provider and policyholder. Section 508(g)(2) of the Act requires that the producer have satisfactory evidence of the yields in the database or receive an assigned yield. Therefore, the producer must still maintain the records even if they are not requested or there is no loss. As revised in redesignated section 3(g)(1), in certain circumstances, such records can now be used to avoid the application of the adjustment to the approved yield. However, the producer must still explain any discrepancies from other yields. This should address situations where production may have been shifted.

Several additional comments were received regarding proposed section 3(e)(1). The comments are as follows:

Comment: A commenter stated proposed section 3(e)(1) is not clear as to where the responsibility lies to obtain yields from "surrounding farms,'' and that insurance providers are not generally authorized to compel this type of information from neighboring farmers. Some commenters stated it is unclear how policyholders will be able to provide "evidence'' from surrounding farms that are not part of their operations. A commenter stated it is unclear how anyone will know if surrounding farms have similar characteristics and farming practices.

Response: The provisions regarding surrounding farms have been removed and FCIC will now determine whether yields are excessive based on procedures.

Comment: Some commenters stated the provisions do not specify what acceptable explanations for inconsistency would be nor does it consider in which direction (higher or lower) the inconsistency exists. These commenters pointed out that soil type, rainfall, wind, heat, etc., can affect the yield of one farm, as compared to another just across the road. A few commenters asked if a unit with low yields in its history due to losses could have a yield increased due to surrounding yields, or if non-loss units would be revised to the same yield level as units with losses or just lower yielding units. Some commenters stated, as written, the parenthetical sentence "(The inconsistent yield will be revised * * *)'' indicates yields will be changed even if satisfactory evidence is provided to support the yield. A commenter asked if it was the intent to revise yields that are deemed inconsistent, even though production records are provided that substantiate the inconsistent yield.

Response: The provision has been revised to indicate that only verifiable records can be used to explain inconsistencies and where such records have been provided yield adjustments will not be applicable unless there is no reason for the discrepancy. The revised yield adjustment provisions are not dependent on whether the unit suffered a loss. If the criteria are met, the adjustment will apply.

Comment: A commenter stated the phrase "similar characteristics'' is subject to various interpretations and should be explained.

Response: The reference to "similar characteristics'' has been removed from this section.

Several additional comments were received regarding proposed section 3(e)(2). The comments are as follows:

Comment: Some commenters stated they understood the goal of preventing inflation of a producer's APH yield, but thought provisions in proposed section 3(e)(2) that do not allow yields to be based on acreage under 25 percent of the current acreage would create problems. The commenters stated changes in market prices, farm program acreage restrictions and production technology would result in many legitimate situations in which the 25 percent level would be reached. The commenters recommended making the threshold percentage less than 25 percent to limit harm to producers who have changed cropping patterns for the above reasons. Other commenters recommended reducing the 25 percent threshold to 10 percent.

Response: There may be cases where a 400 percent increase in size is legitimate. However, the purpose for using APH is to obtain a yield that is reflective of the actual production capability of the unit. FCIC has evidence that 400 percent or more increases in size have been used to create yields that do not represent the yield potential for the unit for the express purpose of creating losses. FCIC selected this threshold, and included the requirement that the yield would exceed 115 percent of the other similar units, to limit the application of the approved yield reduction to those instances where the evidence shows the yields are not reflective of the potential production for the unit. To increase the threshold to 1000 percent, as recommended, would defeat the purpose of this provision because it would allow instances where FCIC has established that such increases have been used for improper purposes. No change has been made to redesignated section 3(g)(2) in response to this comment.

Comment: Some commenters stated proposed section 3(e)(2) should reference average acres in the database or field rather than acres in the unit, and that the proposed language may not provide the desired results. The commenters recommended more direct language that would simply state that establishing high yields on small acreages that are then applied to large acreages is prohibited. Some commenters stated there is no indication of how yields would be revised, and, even though the details may belong in procedure rather than the policy, it is very difficult to comment when it is not known what effect the specific procedures will have on insurance providers and insured producers. A commenter stated proposed section 3(e)(2) places a burden on the insurance provider, after the APH is approved, to compare planted acres reported on the acreage report to the average acres in the APH. The commenter asked if they are comparing current acreage within the unit to the average acres within the APH for the unit, or if the comparison is done by APH database when multiple databases exist for a unit.

Response: There may be a small burden added to insurance providers. However, not all databases will have to be reviewed. FCIC's procedures will establish the criteria for reviewing such databases. FCIC has revised this provision to state that it applies on a database basis. However, since every circumstance cannot be included in the policy, FCIC approved procedure will provide direction for situations in which there is more than one database involved. Further, FCIC has added provisions stating how the approved yield will be adjusted. The recommended change cannot be adopted because it fails to specify what constitutes small and large acreages.

Comment: A commenter suggested replacing the phrase "25 percent of the current acreage in the unit'' with "25 percent of the current available cropland in the unit'' in proposed section 3(e)(2). The commenter stated this would prevent someone from building a yield database on a unit with substantially more available cropland that could use the yield established on the small amount of acreage on the entire unit, and that using cropland acres would be consistent with current added land procedure.

Response: Producers do not report cropland acres and to make the recommended change would require additional reporting that would be meaningless because cropland has never been reported in the past, nor is it used to calculate approved yields. Since yield differences are also a factor, the current acreage must be compared to the acreage on which the APH yield was established and the current acreage will be available on the acreage report and the acreage on which the APH was established should be readily available to insurance providers from their APH databases. No change has been made.

Comment: A commenter was concerned the 25 percent threshold in proposed section 3(e)(2) would be triggered too often when insureds who reported past production as basic units decide to break out into optional units. The commenter stated producers would have difficulty meeting the 25 percent requirement when breaking a basic unit into more than four optional units.

Response: Approved yield reductions only apply when producers increase their acreage. Since optional units are usually smaller than the basic units from which they are derived, it is unlikely the provisions regarding reduction in approved yields would apply. This comment suggests there may be confusion regarding whether the 25 percent refers to an increase or decrease in acreage. Therefore, FCIC has revised the provision in redesignated section 3(g)(2) to clarify that yield reductions only apply when current year's acreage is more than 400 percent of the average acreage in the database.

Comment: Some commenters stated language in proposed section 3(e)(2) requires yield revision, regardless of the reason for an acreage increase, and makes no distinction between the "average number of acres'' for a database with one or two years of actual history and a database with five to ten years of history. The commenters asked if this rule should apply to perennial crops where trees/vines must reach a certain age before they are considered insurable, and if this revision changes the current "added land'' procedures for category B crops.

Response: The yield reduction can apply any time the producer has actual yields in the database. FCIC has not made any distinction based on the number of years because the purpose of this provision is to prevent producers from using small amounts of acreage to create artificially high yields and applying them to large acreages where such yield would not reflect the yield potential. This practice can happen regardless of the number of years in the database. Actual yields are only necessary to determine whether any increase existed that would meet the stated criteria for reduction. This provision applies to all crops. However, based on how perennial crops are produced, it is unlikely that the situation will ever arise where these yield reduction provisions are applicable. All applicable procedures will be revised to be consistent with this rule.

Comment: A commenter stated reducing the threshold from 50 percent (the percentage currently used in added land procedures) to 25 percent as specified in proposed section 3(e)(2) will result in increased loss adjustment expenses.

Response: Revisions to approved yields for acreage exceeding the revised 400 percent limitation in redesignated section 3(g)(2) should be made by insurance provider underwriters, not by

adjusters when working claims. The information needed to determine whether an approved yield adjustment is necessary will be available by the acreage report date and any adjustment should be reflected on any summary of coverage. Therefore, this provision should not result in increased loss adjustment expenses. Further, the 50 percent threshold in the added land procedures has been removed effective for the 2004 crop year. However, applicable procedures will be revised to be consistent with this rule.

Comment: A commenter recommended considering acres in each individual year compared to the current years' acres in determining the use of such year in the calculation of the approved yield rather than looking at the average number of acres.

Response: The use of individual years would add an unnecessary complexity because of the variance between crop years and the determination of how each individual year would be evaluated. The average number of acres used to calculate the approved yield is easily understood and is a credible method to use for this purpose. No change has been made.

Comment: Some commenters stated the language in proposed section 3(e)(2) is very unclear, and there is no practical way for insurance providers to implement the provisions. Other commenters stated the proposed language is unworkable and unnecessary.

Response: FCIC has revised the provisions to improve clarity and the ease of implementation.

Comment: A commenter asked whether proposed section 3(e)(2) eliminated the need to perform silage appraisals on corn insured as grain but harvested as silage. Another commenter asked if they could or could not use a corn silage appraisal on 81 percent of the acres for APH purposes, if the appraisal and the yield on the remaining acres result in no loss.

Response: Proposed section 3(e)(2) does not eliminate the need to perform silage appraisals on corn insured as grain but harvested as silage. The purpose of this provision was to prevent producers who did not have a loss from leaving high yielding acreage in a field for appraisals and destroying or putting the lower yielding acreage to another use in order to artificially inflate their actual yields. FCIC has revised the provision to state that appraisals obtained from only a portion of the acreage in the field that remains unharvested after the remainder of the crop within a field has been destroyed or put to another use will not be used to establish the actual yield unless representative samples are required to be left in accordance with the Crop Provisions. The provision has also been moved to redesignated section 3(e)(4) because it is more related to the other provisions establishing yields, not adjusting them.

Many comments were received regarding the sanctions provisions in proposed section 3(e)(3). The comments received are as follows:

Comment: Some commenters stated the example in proposed section 3(e)(3) is confusing and asked if it is intended to address what may or may not be considered "good farming practices.'' The commenters suggested revision to avoid confusion with insurable practices listed in the actuarial documents. Another commenter stated the example is confusing because there is no "partial irrigated practice,'' and an insured crop is either irrigated or non-irrigated. An additional commenter asked what practice this would be called, irrigated or non-irrigated, and if the yield would be raised. The commenter stated that during a season and between crop years are different issues (a new database could be developed for the next year to reflect the different practice).

Response: FCIC agrees with the comments and has clarified the provisions in redesignated section 3(g) to indicate adjustments will be made when the approved yield is based upon cultural practices that are different than the cultural practice that will be carried out for the crop year. This provision is intended to address any change in practice that may affect the yield, even if both practices are considered good farming practices. The revised provisions require the producer to notify the insurance provider prior to the acreage reporting date if a cultural practice will be performed that will reduce the insured crop's production from previous levels. The example has been revised to clarify that the practice remains non-irrigated but the actions of the producer are different under that practice, which could affect the yield. Databases are established by practice, not the specific actions that comprise that practice. Therefore, it may not be possible to develop a new database for subsequent years.

Comment: A commenter stated proposed section 3(e)(3) suggests that an insured's ability to change farming practices during the growing season is unrestricted. Because changing the farming practice may require a revision to the acreage report, this section should, at a minimum, advise the insured that other policy provisions or procedures may affect the insured's ability to change practices. Another commenter asked in the event of a claim and acreage reported as irrigated that has not been watered, if the practice would be changed or if it would remain as irrigated with an appraisal for an uninsured cause of loss.

Response: FCIC has clarified the example to those situations where the cultural practices within a farming practice have changed, not the farming practice itself. If the farming practice has changed, different databases should be established or if the producer fails to carry out the good farming practice, appraisals for uninsured causes of loss must be made. Therefore, the ability to change farming practices is not unrestricted.

Comment: A few commenters recommended revising proposed section 3(h) to allow producers to elect two different levels of additional coverage for non-high risk and high risk acreage. The commenters claimed producers want to buy additional coverage on their high-risk ground, but it is not affordable at the level of coverage they have for their non-high risk ground. They also stated if high-risk rates are accurate, there is no reason a producer should not have a higher level than CAT or a different insurance plan. Current provisions discriminate against the farmer who farms both non-high risk and high risk ground versus the farmer who farms only high risk ground or only non-high risk ground. Current provisions force producers with high risk acreage to accept insurance insufficient to protect the income at adequate levels or pay astronomically high premiums. They state that current restrictive provisions prevent producers from using subsidy levels and other benefits provided by the legislature to the maximum extent possible. They also claim that current provisions force the producer to make the difficult choice between excluding the high risk ground from insurance or having coverage too low (CAT), reducing coverage on all acres to make the premium affordable, or paying an extremely high premium to maintain a high coverage level/plan of insurance on all acres. The commenters provided the following data for Hamilton County, Illinois, to show the prices being paid for the various levels of CRC coverage in 2002 based on a 120–bushel corn APH and a 45–bushel soybean APH. "Farmer 1'' has all non-high risk land and elects 75 percent coverage with the following coverage and costs per acre:

Crop	Coverage	Cost
Corn	$208.80	$13.30
Soybeans	152.10	8.20

"Farmer 2'' has only high-risk ground, lowers coverage to 60 percent to keep insurance affordable and has the following coverage/costs.

Crop	Coverage Rating/Cost Rating/Cost
Corn	$167.00 AAA/$8.70 BBB/$16.40
Soybeans	$121.50 AAA/$5.90 BBB/$11.60

"Farmer 3'' has both high risk ground and non-high-risk ground, insures at 75 percent and has the following coverage/costs:

Crop	Coverage Rating/Cost Rating/Cost
Corn	$208.80 AAA/$23.80 BBB/$44.50
Soybeans	$152.10 AAA/$16.20 BBB/$31.50

The commenters further stated, if "farmer 3'' who has both non-high risk and high risk land chooses to exclude the high risk ground and carry only CAT on it, the high risk CAT coverage is only $66/an acre on corn and only $61.87/an acre on soybeans, and furthermore, he/she would lose replant coverage, choice of optional units, and the ability to collect both crop insurance indemnity payments and disaster program payments in the event of a disaster bill. The commenters recommended using the following language to make this revision:

"(h) You must obtain the same level of coverage (catastrophic risk protection or additional) for all acreage of the crop in the county unless one of the following applies:

* * *

(2) If you have additional coverage for the crop in the county and the acreage has been designated as "high-risk'' by FCIC, you would be able to obtain a High-Risk Land Exclusion Option for the high-risk land under the additional coverage policy and insure the high-risk acreage under a separate policy at a level of coverage and/or plan of insurance less than that obtained on the other acreage, provided that the high-risk policy is obtained from the same insurance provider from which the additional coverage on the other acreage was obtained.''

Response: Since no changes to this paragraph were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made as a result of this comment.

Comment: A commenter suggested changing the word "comparable'' to "equivalent'' and deleting the phrase "as established by FCIC.'' A few commenters stated it will be beneficial to add the clarification in proposed section 3(i) that at least 65/100 coverage is required to exclude hail/fire. Some of the commenters recommended adding language indicating that equivalent hail/fire liability can be obtained with a hail/fire policy (as in the Crop Insurance Handbook, section 4E(3) & (3)(c)). A commenter stated the phrase "A comparable coverage as established by FCIC'' is ambiguous because it provides neither the producer nor the insurance provider a definitive standard for determining when this ostensible contract alternative may be utilized. The commenter asked if the phrase "comparable coverage'' refers to alternative plans of insurance or whether FCIC intends to review each hail and fire exclusion. The commenter recommended the phrase either be clarified or omitted.

Response: Since section 508(c)(7) of the Act refers to "equivalent,'' redesignated section 3(i) has been revised accordingly. However, the reference to "as established by FCIC'' was added to be in compliance with the Act and only refers to the determination of whether the producer selected a coverage level that is equivalent to 65/100 for its multiple peril crop insurance policy. FCIC has also added a provision to redesignated section 3(i) to specify that to be eligible for the exclusion, the producer needs to have purchased the same or a higher dollar amount of coverage for hail and fire from another source in conformance with the Act. The insurance provider must determine whether the producer has met this requirement based on the amount of coverage privately purchased.

Comment: Commenters stated RMA might consider if proposed section 3(j) belongs in section 3 since it deals with who may sign crop insurance documents for the insured entity, which affects more than just level/price and APH documents. The commenters thought it might be better located in the definition of "Person'' or possibly in a separate section of its own. One commenter suggested revising the provision to read, "* * * on behalf of you, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing the person to sign and act on behalf of you. We may request a copy of the power of attorney or legally sufficient document.''

Response: In response to this and other comments, FCIC has moved proposed section 3(j) to section 2 since this section contains provisions relating to the manner in which application is made.

Contract Changes—Section 4

Comment: A few commenters stated the phrase "local insurance provider'' should be defined if it is used in section 4. Another commenter does not believe the word "local'' is necessary and pointed out the agent may be in another state.

Response: FCIC agrees the term "local crop insurance provider'' should not be used and has revised the provisions to indicate all changes will be available upon request from the producer's crop insurance agent.

Comment: A few comments were received regarding language in section 4(b) that indicates changes will be posted on RMA's Web site or filed with the Office of the Federal Register. A commenter stated that the language proposed infers that FCIC considers the posting of a change on RMA's Web site or the filing of a change with the Office of the Federal Register to be sufficient to effectuate a change to the Basic Provisions, which is incorrect. The commenter added that because the Basic Provisions is a substantive rule promulgated in accordance with the Administrative Procedure Act (APA), changes to the Basic Provisions also must be effected in accordance with the APA. The commenter believes posting a contract change on RMA's Web site, even if prior to the contract change date, is legally inadequate and will not change the Basic Provisions. The commenter stated that similarly, filing a change with "the Office of the Federal Register not later than the contract change date'' also is legally insufficient to change the policy. At a minimum, any change to the Basic Provisions must be published in the **Federal Register** not later than the contract change date. The commenter recommended that FCIC amend the rule accordingly. A commenter stated they did not object to the posting on RMA's Web site of changes not later than the contract change date contained in the Crop Provisions. They do believe, however, that it is inappropriate to suggest that a change is sufficient and timely made if simply filed with the Office of the Federal Register on the contract change date. The commenter stated the Office of the Federal Register has specific rules determining when filings are available

for public inspection, and to avoid any legal controversy, either this portion of the first sentence of subsection (b) should be eliminated or should be revised to read "or available for public inspection at the Office of the Federal Register'' (then continuing with the sentence as written).

Response: Nothing in section 4(b) is intended to supplant the APA or change the legal requirements for when a rule is effective. Those provisions stating that policy changes will be posted on the RMA Web site or from agents are simply intended to provide alternative methods for producers to access the changes on the contract change date so the producer can select one that best meets the needs of the particular producer. To avoid confusion regarding the effective date of the changes, the reference to the **Federal Register** has been removed. It is the responsibility of FCIC to ensure that policy changes are made in accordance with the APA.

Comment: A commenter states that section 4(b) strongly suggests the contract of insurance is between FCIC and the producer, which it is not. They believe the existing provision is preferable, although the following could be inserted without harm: "Policy provisions may also be viewed on the RMA Web site at http://www.rma.usda.gov or a successor Web site. * * *'' They recommended the first sentence begin with "All policy provisions, amounts of insurance and other information referred to in this section also will be available * * *'' They stated that alternatively, the insurance provider apparently can fulfill its obligations with respect to publication of contract changes by making available to producers computer equipment with internet access, and asked if that is the proposal's intent. Another commenter asked if the reference to the Web site in section 4(b) is intended to relieve the insurance provider from having to provide notification of changes. They stated if it is not, it should be deleted. The commenter also questioned the purpose for posting on the Web site.

Response: The "agreement to insure'' provision contained in the policy clearly specifies the contract of insurance is between the insurance provider and the producer. FCIC has revised the provision to specify that the changes are available for viewing on the RMA Web site. Section 4(b) specifies the information that must be available by the contract change date and the location of such information. This section does not relieve the insurance provider of the responsibility to provide written notice to policyholders of contract changes. Such notification is still required by section 4(c). The purpose of providing the Web site to producers is to provide an alternative way for policyholders to obtain information.

A few comments were received regarding the last sentence in section 4(b). The comments are as follows:

Comment: A few commenters stated it is unclear what exactly needs to be available at the agent's office. A commenter prefers retaining the current policy language in section 4(b) regarding making the information available from the agent instead of the insurance provider. The commenter believes most insureds have easier access to their agent's office than their crop insurance provider.

Response: As stated above, changes are made to the policy through the rulemaking process, not through the agent. To eliminate the confusion regarding when the contract changes must be made available, FCIC has deleted the reference to agents in section 4(b) and added it to section 4(c). This separation was needed to clarify that the contract changes must be on the Web site by the contract change date but agents do not need to make the information available until after the contract change date. This provides a location for producers to get a hard copy of the changes if they want them prior to 30 days before the cancellation date and they do not have access to the Internet. Further, FCIC agrees that use of the term "local insurance provider'' is not correct since most producers will get the information from their agent and has changed the provision accordingly. The new provision in section 4(c) has also been revised to indicate that agents must make available all of the changes referenced in section 4(b).

Comment: A commenter stated that FCIC, not the insurance providers nor their agents, has the duty of notifying the public of changes to the insurance policy. For this reason, FCIC should revise the final sentence of the section 4(b) to read as follows: "This information may be available to you from your local crop insurance agent.''

Response: The purpose of the requirement that agents make policy changes available is not to provide notice to the public of such changes. The purpose is to provide an alternative source of information for such changes for those producers who do not have access to the RMA Web site or the **Federal Register**. Therefore, agents must have the changes in their offices. However, as stated above, the provision has been moved to section 4(c) and clarified that the changes will be available from the agent after the contract change date.

Comment: A commenter stated the added last sentence implies that crop insurance agents will make their computers available to insureds for searching the RMA Web site.

Response: The reference to the RMA Web site only provides a site where the changes can be found. FCIC has revised section 4(b) to remove the reference to the agent to avoid any perception that the agents' computers are to be made available to access the Web site.

Comment: A few commenters suggested the last sentence be deleted. One of the commenters wanted it deleted in view of the requirements in section 4(c). Some of the commenters stated if the sentence is not deleted they suggested changing "will be available to you'' to "may be requested.'' Some of the commenters stated the phrase "insurance provider'' is used whereas "insurance company'' is used in other places in the policy. A commenter asked what the purpose of the last sentence is, and if it is contradictory with the earlier information regarding Web site posting.

Response: As stated above, FCIC has moved this sentence to section 4(c). The requirement is not contradictory because it only provides an alternative location for the information. FCIC has also revised the provision to specify the information will be available upon request.

Comment: A commenter believes the language in section 4(b) that no longer requires policy changes to be available in the agent's office does not appear to meet the needs of limited resource farmers who may not have access to the internet.

Response: FCIC agrees that policy changes should be available in the agent's office and has revised the provisions accordingly.

A few comments were received regarding section 4(c). The comments received are as follows:

Comment: A few commenters stated it is unclear what constitutes notification. A commenter stated that since RMA does not provide insurance providers with a summary of changes to the Special Provisions, how does RMA expect insurance providers to provide a summary of changes to policyholders. The commenter further stated this subsection seems inconsistent with (b) above. They asked what RMA's overall intent is for this issue. They asked whether it is the insurance provider's burden to notify of changes, or the policyholder's burden to check the Web site. The commenter stated that in the past, RMA has taken the position for its direct policies that once it was

published in the **Federal Register**, the burden was on the policyholder. They asked if that is still the position of RMA.

Response: The provision has been revised to clarify that notification means the insurance provider must provide the insured with a copy of the changes to the Basic Provisions and Crop Provisions and a copy of the Special Provisions because this document may change every year and FCIC agrees that insurance providers should not be required to have to compare the previous and current year's Special Provisions to determine what, if any, changes were made. Therefore, a summary of changes is provided to insurance providers and others at the time actuarial documents are released. Section 4(c) is not inconsistent with the provisions of section 4(b). Section 4(b) is intended to provide a location where changes can be found by the contract change date. However, many producers do not have access to this information so section 4(c) requires insurance providers to provide actual notice of the policy changes. Section 4(c) imposes the burden on the insurance provider to provide the required information. However, nothing in this provision changes the legal principle that once the policy is published in the **Federal Register**, producers are presumed to know what is in the policy and can be held responsible for such knowledge regardless of whether they actually received a copy of the policy from the insurance provider.

Comment: A few commenters stated it may help to clarify the reference is to "* * * the cancellation date preceding the effective crop year for the insured crop * * *'' in section 4(c).

Response: The definition of "cancellation date'' refers to the date by which the policy renews for the next crop year. Further, by its very nature, the policy changes must be made before insurance attaches (except for prevented planting). Therefore, the producer knows that the cancellation date must precede the next year's insurance. No changes have been made.

Eliminating the Liberalization Provisions—Section 5

A few comments were received regarding deletion of the current liberalization provision. The comments are as follows:

Comment: A commenter stated that FCIC proposed to delete the provisions contained in section 5, but did not explain its reasons for doing so. The commenter stated that because the removal of the provisions contained in section 5 is a material change to the Basic Provisions, FCIC's failure to provide an explanation precludes them and the public from commenting on said deletion and therefore constitutes a violation of the APA. Accordingly, they request that FCIC explain the basis for deleting this provision and they reserve the right to file comments at a later date.

Response: The Background section of the proposed rule did state why section 5 was being deleted. The **Federal Register** 67 FR 58917 under section 5 states, "Delete the liberalization provisions because they conflict with the preamble to the Basic Provisions.'' Therefore, the public was provided the opportunity to comment on the proposed change and the reason for it and comments were received. No additional comments will be entertained on this issue prior to the finalization of this provision.

Comment: A few commenters recommended the liberalization provision in the current provisions be retained. One of the commenters suggested a legal opinion on the issue. They stated that according to the **Federal Register** explanation, this was deleted because it conflicted with the preamble (opening paragraph) of the Basic Provisions, and they question if this is really a conflict as long as the policy provisions include such a liberalization clause. Another commenter stated this provides policyholder protection in the event liberalization occurs. One of the commenters stated that the preamble is errant since the policy can be revised by written agreement, and added that liberalization allows for some authorized flexibility.

Response: The preamble stated that the policy could not be waived or varied in any way by any person. Section 5 stated that coverage could be broadened, which constitutes a variation of policy terms. Therefore, a conflict existed. FCIC agrees that the policy can be modified by written agreement and has revised the policy preamble accordingly. However, the liberalization provisions cannot be retained because they are difficult to administer, add a level of uncertainty, and could result in disparate treatment of producers. Further, many requests were received after losses had occurred and it was very difficult to determine the affect such change would have on premium. Changes made after losses had occurred also subjected FCIC to significant litigative risk.

Comment: A commenter agreed with deletion of the current liberalization provision. They believe the presence of the language which FCIC proposes to delete is simply an invitation to litigation. The commenter stated that such a provision, moreover, can be misinterpreted as providing a rationale for introducing actuarially unsound changes in coverage.

Response: FCIC agrees with the comment and no change has been made.

Revisions to Acreage Reports and Misreporting of Information—Section 6:

A few comments were received regarding section 6(d). The comments received are as follows:

Comment: A commenter believes the current language in section 6(d) appears to adequately cover both planted and prevented planting acreage revisions. Therefore, they question whether the added language regarding prevented planting acreage is necessary. A few commenters stated there already is a final acreage reporting date in each county actuarial, and recommended that the provisions continue to allow revisions up until that date, rather than as proposed in section 6(d).

Response: The proposed revision is necessary to prevent situations in which producers revise their acreage report to try to claim a different planting intention in order to receive a higher benefit. This change is necessary to protect program integrity by preventing abuse.

Comment: A commenter stated the rule should give examples of the types of circumstances under which consent, as specified in proposed section 6(d), may be given. They believe one such circumstance might well be when government errors are discovered.

Response: FCIC has revised the provision to add criteria upon which consent can be given to revise an acreage report and to restructure it for readability.

Comment: A commenter stated the provisions in section 6(d) address reporting of planted acreage and revising prevented planting acres but leave out what happens if prevented planting acres fail to be reported. They believe the proposed language could give the impression that if the insured failed to report prevented planting acres, they could be added after the acreage report deadline. They suggested the words "or fail to report any prevented planting acreage'' be added in the first sentence after the words "for any planted acreage * * *''

Response: The recommended change could not be made because it would suggest the prevented planting acreage could be added after the acreage reporting date with the insurance providers consent. FCIC has added a provision to clarify that if a producer fails to report any prevented planting acreage on the acreage report, it cannot

be added later. Producers should know all prevented planting acreage by the final planting date or after the late planting period, as applicable. Acreage acquired after such dates would not be insurable as prevented planting because a cause of loss would already have occurred before the acreage was acquired.

Comment: The commenter stated that acreage can be revised with an insurance provider's consent provided it meets certain appraisal requirements and that policyholders who under-report acreage can request to add these acres to their policy with no additional expense to them. They added that the insurance provider then incurs the expense of inspection and if the acres do not make the appraisal guarantee, acres are not increased. The commenter stated that insureds are not charged for failure to report acres correctly and the insurance provider incurs expense for the errors of the insured. They propose charging insureds a fee when insureds fail to report acres and request inspection by the insurance provider. They believe the fee could be based on a flat charge per unit, number of acres, actual expense to inspect or a combination thereof.

Response: There is no authority in the Act to impose other fees in addition to the administrative fee. Further, the SRA precludes insurance providers from imposing fees unless such fees are authorized by the Act and approved by FCIC. No changes have been made.

Many comments were received regarding changes proposed in section 6(f). The comments received are as follows:

Comment: Most of the commenters stated the proposed penalties are much too harsh, will cause undue hardship for those making reasonable or inadvertent errors, and that the current, time tested, provisions should be retained. A commenter stated the proposed revisions to section 6, like those to section 3, reflect FCIC's belief that every error is malum in se. They stated given FCIC's world view, it is not surprising that its proposals, particularly the penalties for the misreporting of acreage, are Draconian. Other commenters requested consideration of an approach other than the proposed "all or nothing.'' Several of the commenters stated the current provisions are more consistent with other forms of insurance in the way they deal with unintentional errors. Another commenter stated the current provisions were too harsh in some circumstances. Some of the commenters stated penalties should be targeted toward willful and intentional misstatements, not inadvertent mistakes. A commenter stated discretion must be given to the circumstances of misreported information and suggested a graduated penalty matrix and claim denial waiver ability for misreported acreage resulting in a liability exceeding the established tolerances. A commenter was hopeful there is still a human side to our society today where a mistake is still possible. The commenter stated FSA corrects mistakes made, but the proposed rule allows no tolerance for crop insurance mistakes.

Response: The purpose of the provision is not to punish but to provide an incentive for producers to take such actions as are necessary to ensure that information is properly reported. FCIC has an obligation to taxpayers to ensure that program funds are properly spent. FCIC has also added provisions that allow the correction of information in certain circumstances and the incorrect information will not be considered as misreported in such cases. The new provisions now take into consideration the severity of the misreporting and should not impact those making small, inadvertent errors. Further, FCIC has revised the provision to clarify that producers will be required to repay any overpaid amounts that result from the correction of misreported information to be consistent with other provisions in the policy that require the repayment of such amounts.

Comment: Most commenters stated the 5 percent tolerance is unrealistic, intolerable and there is no reason to deny claims when information provided on the acreage report exceeds the proposed 5 percent tolerance. They stated the current provisions should be used because they prohibit liability increases after the reporting date (without insurance provider approval) and, in nearly all cases, if an insured misreports acreage, it almost always results in a disadvantage for the insured, because if over-reported, premium is paid on unplanted acreage, and if under-reported, the guarantee is reduced and the claim is paid on the lesser of acres reported or acres determined. Some of the commenters stated that if tolerances remained, the insured should be responsible for only a modest administrative fee and not the full premium.

Response: FCIC has revised the provisions to increase the tolerance to 10 percent, removed the provisions disallowing the payment of a claim while still requiring payment of the premium, and added provisions that require claims be reduced by an amount commensurate with the misreporting in excess of the 10 percent tolerance. For example, if a producer reports 100 acres in the unit and there was actually 150 acres, any payable claim would be reduced by 23.3 percent (100/150 acres = 0.667 and 0.90–0.667 = 23.3 percent reduction). Further, the current provisions regarding over-reporting or under-reporting liability will be retained. Tolerances are a set number. However, to determine whether something exceeds the tolerance there must be a comparison between the reported and actual information, which is what is required in the provisions.

Comment: A commenter stated the changes in section 6(f) create a policy that is strewn with fine print which makes a payable claim nearly impossible if not at least unreliable. Several commenters pointed out most of the measurements used in agriculture are not precise and there is no gold standard. They stated acreage measurements, even by Geographic Information System (GIS), do not generally measure actual surface area, but assume a flat earth. Several commenters stated it is not reasonable to hold farmers accountable for measurement errors made by third parties. Some commenters believe FSA measurements are poorly constructed with uncorrected photos, worn planimeters, or bouncing wheels. They stated in areas of significant slope or in case of errant FSA measurements, the proposed rule would deny claims. Other commenters asked whose acreage determination will be determined to be the "correct'' one, for example, the insurance provider's or FSA's, or others. The commenter recommended this section include a discussion of how the "correct'' acreage is to be determined and by whom, for instance Global Positioning System (GPS), FSA, etc. The commenters stated producers often report acreage that is recorded by "FSA,'' and FSA acres are many times determined to be inaccurate (except that they are used for other farm programs). Other commenters stated that under 4–CP, the FSA compliance manual, farmers whose acreage or production records exceed the five percent tolerance of error are notified of the discrepancy on their acreage or production records and an adjustment is made to their records and payments. They stated producers who have production records with innocent discrepancies are not declared ineligible to receive FSA benefits. Some commenters thought it very confusing to farmers if they are allowed to correct their records without penalty at the FSA office, but their crop insurance information must be error free or they

will be denied coverage. Some commenters asked if the individual will be able to seek recourse against that government agency or if the producer will be prohibited from collecting any payments when the error was beyond his/her control (*i.e.* processing error). A commenter stated the proposal does not take several issues into consideration such as: (a) The degree of the violation; (b) Did the producer measure or employ others to measure the acreage; (c) Did the producer rely on photocopies or past acreage determinations; and (d) Did the producer control the acts contributing to the violation. The commenter believes these types of issues are important to consider because they indicate the violation or error was not a result of fraud.

Response: FCIC agrees the policy must provide a reliable means to cover losses for producers and the proposed provisions regarding "no insurance'' has been removed. FCIC also understands acreage measurements may not be entirely accurate and has added provisions to allow for exceptions for those who exceed the new tolerance because they relied on FSA measurements. In such cases, the information can now be corrected and the reduction in claim for misreporting shall not apply. FCIC understands acreage measurements vary depending on the method used. FCIC has revised section 6(d) to specify that if there is an irreconcilable discrepancy in acreage, the acreage that is determined by the insurance provider through an on farm measurement will be used. If no on farm measurement by the insurance provider is done, the measurement obtained from FSA will be used. FCIC understands FSA may have different methods of adjusting errors. However, because the various programs have different goals and associated issues, it sometimes is necessary to have different consequences for non-compliance. If the government or the insurance company commits the error, the error will be corrected. If a third party commits the error, the producer always has legal recourse against such person. However, it would add substantial program vulnerability to allow corrections for the errors committed by third parties.

Comment: Other commenters stated the proposed provisions would make the product less appealing to producers who do not abuse the program, go way overboard, and will drive many producers out of the program. Other commenters stated the proposal undermines ARPA and places unnecessary burdens on producers that could discourage them from using the program. The commenters added agricultural bankers rely on farmers obtaining crop insurance to cover a major portion of their production risk when approving an operating loan. They stated crop insurance is used as a form of collateral and helps ensure community bank's farm customers will have the ability to repay their operating loans. They believe this is especially true given the current adverse economic conditions caused by severe drought impacting roughly 50 percent of the nation and increased reliance on crop insurance indemnity payments by farmers and their lenders. They stated making the policy so unreliable and uncertain will threaten the ability of many producers to obtain loans from bankers who would be concerned the collateral they thought they had to back up the crop loan may be canceled due to no fault of the producer. Some of the commenters asked who pays if the loss was supposed to repay a bank loan when the claim is denied due to a tolerance issue. They also asked who the banking industry goes after and who gets sued. Some of the commenters stated there is no need to over-react to prevent fraud and abuse, and that from the information available to them, it appears the crop insurance industry is taking significant steps to prevent fraud and abuse and cited preventative measures being worked on such as data mining and spot checking. Some of the commenters also thought the proposal would create a paper work nightmare and stated it will not work.

Response: FCIC agrees the proposed provisions would make the program less appealing to those who do not abuse the program and make it less reliable for lending institutions. However, the above stated revisions should remove the uncertainty and help maintain the reliability of the program.

Comment: A commenter questioned if it is legal to charge premium when denying a claim and stated it is likely the provision will be challenged. Some commenters stated the provision requiring premium for no coverage is illegal and in violation of insurance principles.

Response: FCIC has removed the consequence of no insurance while still requiring the payment of the premium and replaced it with a payment reduction commensurate with the misreporting. Since producers will still receive coverage, charging the full premium is appropriate.

Comment: Several commenters recommended FCIC simply adjust the acreage and/or yields to reflect the actual conditions when an error is made, since the error could be made through no fault of the producer and with no intent to defraud. A commenter stated this type of allowance would be consistent with other provisions of the proposed rule, such as those allowing cancellation of multiple contracts when the extra contracts are not the fault of the producer. The commenter stated the proposed provision is more restrictive than other types of insurance policies such as property or commercial insurance where errors are taken into consideration and the amount of the indemnity payment is adjusted accordingly, but not completely denied.

Response: FCIC does not agree that errors should simply be fixed. Fraud is not the only issue. Any misreporting can result in increased outlays and cause premiums to increase. If no consequences are in place for misreporting, there would be no incentive to accurately report information and program abuse and costs would increase. However, the consequences of misreporting have been revised to take into consideration the extent of the error. While other lines of insurance may be willing to accept the risk of misreported information, the crop insurance program uses taxpayer dollars so there is a heightened duty to ensure such dollars are properly paid.

Comment: A commenter stated the proposed penalties imposed for under or over reporting acreage will cause an explosion of lawsuits, all of which will be lost. The commenter also stated the proposed provision would create unbearable exposure for agents, and the new language requires revision of all errors, no matter how small, and will create tremendous administrative expense. The commenter stated the provision should refer to "reported liability'' instead of "corrected liability'' to have true tolerance—otherwise there is no tolerance.

Response: The new provisions now take into consideration the severity of the misreporting and should not impact those making small, inadvertent errors. In addition, this should significantly reduce the litigative risks.

Comment: A commenter thought some producers seeking to defraud the government would deliberately seek to keep their misstatements within the 5 percent margin of error, while some unintentional errors may deviate from the correct report by more than 5 percent. Some commenters stated the proposed language would encourage under-reporting of liability within the 5 percent tolerance if it will be corrected at loss time. They also stated the proposed rule already includes a potentially costly consequence for innocent errors, in that the proposal says if the Corporation or insurance

provider discovers a producer has misreported any information (including, presumably, within the 5 percent margin of error) the producer may be required to document the producer's acreage in future years, including an acreage measurement service at the producer's own expense.

Response: FCIC agrees that producers may try to misreport within the tolerances, but this is true for whatever tolerance is set. There must be a balancing test between meeting the needs of those producers who have inadvertent errors and those who may seek to defraud the program. However, even information misreported within tolerance will be subject to the under and over-reporting provisions.

Comment: A commenter asked how claims can be paid at the corrected liability (105%) without correcting policy coverage and the associated premium.

Response: The tolerance only determines when an additional consequence will apply. Any time there is incorrect information reported, the policy coverage should be corrected or limited as necessary, and any adjustments necessary must be made.

Comment: Some commenters stated that in fraudulent situations there already exist other punitive measures at RMA's disposal. The commenters believe if the proposed provisions are implemented, the producers who will be most affected by the proposed tolerances and attendant sanctions will be those who simply make inadvertent errors. They stated if a tolerance is maintained, they believe it should be more reasonable and consider exceptions. They also stated many growers have noted that it is often logistically impossible for an acreage measuring service to complete its survey of a parcel of land by the specified acreage reporting date. Therefore, they believe when an insured producer has contracted for the services of an acreage measuring service, the insured should only be required to file a preliminary acreage report by the acreage reporting date, which should be followed by a reasonable time period (*e.g.*, 30-days) for the insured to file a final acreage report and have his production guarantee adjusted accordingly without penalty. A commenter stated acreage reports for wheat covered under the winter coverage endorsement are required before acreage is measured by FSA and an allowance needs to be made for this.

Response: FCIC agrees there are measures in place to deal with fraudulent situations. However, as stated above, the measures in this rule are intended to cover all errors, not just fraud. FCIC agrees that in some cases, final determination of acreage must be delayed until acreage measurement services are performed and has revised section 6(d) accordingly.

Comment: Some commenters stated the proposed provisions would not meet the following purpose stated in the preamble "* * * stronger sanctions are imposed to ensure that producers completely and accurately report material information'' and the statement that the provisions "will better meet the needs of the insured.'' They did believe the proposal would reduce participation by honest producers who are hit with tough penalties for accidental errors. A commenter stated the proposed provisions might discriminate against the small producer who may report 21 acres and have 19 acres at loss time and not be paid the loss and still owe the premium. They suggested FCIC consider using a minimum number of acres, such as 5 acres.

Response: The needs of producers are met because incorrect payments can be reduced, which can result in reduced premiums. It is impossible to set a *de minimis* amount of acreage that would be fair to both large and small producers. As stated above, FCIC has revised the provision to make the consequences commensurate with the offense and increased tolerance levels to mitigate the consequences for inadvertent errors. This should avoid any discrimination.

Comment: A commenter stated the proposed provisions would allow unit liability to increase or decrease at loss time, and did not believe this should be allowed after damage to the crop.

Response: FCIC generally agrees unit liability should not increase after damage to the insured crop. The provisions retained in this final rule do not allow such increases in liability.

Comment: A commenter suggested revising provisions to allow the acreage found to be misreported in excess of 5 percent to be revised to what is correct if it results in a lower liability yet the insured pay the original premium amount, including prevented planting acres reported. They further recommended allowing a claim to be paid based on the liability of the reported amount but charge premium on the correct amount of acreage, if the acreage is under reported by more than 5 percent. A few commenters recommended retaining the current misreporting provisions but to add a penalty equal to what the premium would have been on an unreported unit.

Response: As stated above, the 5.0 percent tolerance has been removed. However, the consequences of misreporting recommended would not affect any catastrophic risk protection policies since no premium is owed. FCIC has revised the provision to reduce any claim paid so it will affect all producers, regardless of the coverage level selected.

Comment: Some commenters thought the provisions could conflict with section 6(d), which allows late revisions with the insurance provider's consent, and (e), which states the insurance provider "may elect'' to use reported information or the information determined to be correct (while (f) indicates "corrected liability'' will be used with penalties attached). Another commenter stated the proposed language has the appearance of taking away the ability to revise submitted acreage reports even prior to the acreage reporting date which is allowed by another paragraph in section 6.

Response: FCIC has revised both section 6(d) and 6(f) to remove any inconsistencies. FCIC intended to restrict revisions to the acreage report when the acreage has been prevented from being planted even if the acreage report was submitted prior to the acreage reporting date. The acreage report can still be revised prior to the acreage reporting date for planted acreage under certain circumstances.

Comment: A commenter questioned how this provision affects the rest of the policy when only one loss unit is out of tolerance.

Response: The reductions in the claim for misreporting apply on a unit basis. Other units insured under the policy that are within tolerance would not be affected by the claim reduction.

Comment: A few commenters stated the provision proposed in section 6(f)(2) totally disregards tolerances that may already be in place, such as tolerances recently implemented in the Pacific Northwest.

Response: In most situations, the tolerances will no longer be applicable. Under certain circumstances, revisions to the acreage report will be made and the originally reported information will not be considered as misreported.

Comment: A commenter suggested section 6(f) be revised to read as follows: "You are responsible for the accuracy of all information reported by you, or by someone else on your behalf, on the acreage report and you should verify the information prior to submitting to us.''

Response: FCIC has revised the provision to specify that the producer is responsible for the accuracy of all information contained in any reports. However, current section 3(i) has been moved to section 2(k) and revised to specify that the producer is responsible

for the accuracy of all information submitted on their behalf.

Several comments were received regarding section 6(g). The comments are as follows:

Comment: Some commenters asked if the language proposed in section 6(g) would allow insurance providers to charge insureds for acreage measurement services. Some of the commenters thought this would be similar to charging for appraisals in traditional property and casualty policies. One of the commenters thought this issue should be addressed in the SRA, but stated the presence of this language in the policy raises the issue and that it should be addressed for consistency.

Response: There is no basis for the insurance provider to charge a fee. Under FCIC's procedures, the insurance providers are required to verify acreage and are compensated for this obligation under the administrative and operating subsidy. If the insurance provider elects to provide acreage measurements under section 6(h), they still cannot charge for it because such service will be considered as part of their responsibilities under the procedures.

Comment: A commenter asked whether insurance providers could provide the acreage measurement service or use FSA measurements, and on what basis the insurance provider elects to require third-party measurement services in subsequent years. The commenter also pointed out that a policyholder can easily switch insurance providers to avoid the requirement and associated expense.

Response: The insurance providers are in the best position to determine the possible reason for the misreporting and whether there is a risk that information will continue to be misreported in subsequent crop years. If the insurance provider feels that a risk of misreporting still exists, it can require documentation to support the reported information. It would be very difficult to set standards for when the information is required.

Comment: A commenter stated the proposed provision is confusing because acreage measurement cannot be performed or documented after the fact.

Response: This section contains a requirement to substantiate information reported in subsequent crop years. It is not intended for the purpose of making corrections in the crop year that information was misreported. No changes have been made.

Clarification of Premium and Administrative Fees—Section 7

Comment: A few commenters wanted clarification of provisions in section 7(a) regarding the time premium is due. One of the commenters stated they should be able to bill the policyholder anytime after premium is determined.

Response: The annual premium is earned and payable at the time coverage begins. However, many producers may have used their available capital to produce the crop and there has always been concern that billing producers up front would discourage or prevent participation. This problem still exists today and it would be detrimental to producers to change this provision. Producers must generally be able to use the proceeds of the crop or their insurance, as applicable, to pay the premium to mitigate the financial barrier to participation in the program. No change has been made.

The following comments were received regarding the provisions in section 7(b) that specify premium or administrative fees owed may be offset from an indemnity.

Comment: Several commenters agreed with the change.

Response: The proposed changes have been retained in the final rule.

Comment: Some commenters wanted to add "replant payment'' with indemnity and prevented planting.

Response: FCIC has clarified throughout this final rule that a replant payment is different from an indemnity or prevented planting payment. FCIC makes the distinction based on the fact that a replant payment is to reimburse for the costs of having to replant the crop, not indemnify for any crop losses. No change has been made.

Comment: A few commenters recommended changing "may'' to "will.'' A few commenters recommended keeping "may'' so the insurance provider has the option, but not the obligation to offset premium due from indemnities. One of these commenters recommended changing it to "We may deduct from any replant payment, prevented planting payment or indemnity due you under any policy issued by us under the authority of the Act, any amount you owe us related to any insurance policy issued by us.'' A commenter asked why the reference to "crop insured with us under the authority of the Act'' was removed.

Response: FCIC has revised the provision to use "will'' instead of "may'' to be consistent with section 2(e). Offsets cannot be discretionary without making producers subject to disparate treatment based on their insurance provider. FCIC has revised section 2(e) to add that the amounts must be due for policies authorized under the Act and section 7(b) cross-references section 2(e). Therefore, it is not necessary to add the language to section 7(b).

Comment: A few commenters asked to have the ability to offset outstanding premium due under a negotiated payment agreement with the producer.

Response: There is nothing in the policy that precludes the insurance provider from including in their payment agreement a provision that would allow offset. However, if the payment agreement does not contain such a provision, no offset can be permitted unless such offset is mutually agreed to by the producer and insurance provider.

Comment: A few commenters recommended section 7(b) clarify that premium due for fall crops could be withheld from fall payments and premium due from spring crops could be withheld from spring payments (but not both unless there is a past due situation).

Response: FCIC does not agree with the recommended change. If a premium is due for a fall crop it should be withheld from the next indemnity or prevented planting payment due, regardless of whether the indemnity due is for a spring or fall crop. The insurance provider should not have to pay indemnities when there is an outstanding amount owed.

Comment: A commenter stated further clarification is needed to determine if the word "offset'' means the same as "administrative offset'' in section 2(e). If so, there appears to be a conflict between the two.

Response: FCIC has defined the term "offset'' and the term "administrative offset'' is only used in conjunction with the governments ability to offset amounts owed to it. Therefore, there should no longer be confusion between the two sections.

Comment: A commenter is concerned about the "zero tolerance'' provision of the program, where non-payment of premium by termination date results in ineligibility to participate in the program—without recourse.

Response: FCIC believes it is necessary to enforce premium payment provisions, including the consequence of ineligibility for failure to make required payments. Failure to do so could result in significant administrative difficulties involving collections, increased accounting, etc. Further, the program accommodates producers as much as possible by generally delaying the payment of premium until after the growing period to allow the premium to be paid from the crop proceeds or offset from the indemnity or prevented planting payment. To allow producers to

continue to participate when they have not paid their premiums could cause program abuse. However, producers do have recourse. They have the ability to challenge the amount owed with the insurance provider through the arbitration process. They can further appeal their inclusion on the Ineligible Tracking System to the National Appeals Division. No changes have been made.

Clarification of Insured Crop—Section 8

The following comments were received regarding section 8(b):

Comment: A few commenters recommended section (b) be left as currently written.

Response: The current provisions can not be retained because there have been questions regarding insurability of specific practices and the use of the Special Provisions for exclusions in the last few years that demonstrate they need clarification.

Comment: A commenter asked for clarification of the section.

Response: This proposed section has been revised to specify that if the acreage does not qualify as planted acreage the crop is not insurable or if a crop type, class or variety or the conditions under which the crop is planted are not generally recognized in the area, the crop is not insurable. This was done to set an objective standard and make the provision easier to administer. This standard is similar to standards used elsewhere in the policy so there is more consistency among policy provisions. FCIC has retained the provisions regarding when information necessary for insurance is not included in the actuarial documents but has moved it to a new provision for readability. FCIC has removed the reference to "adapted to the area'' because such determinations are now included in determinations of "generally recognized.'' The provision regarding whether a practice, type, class or variety has been excluded from the actuarial documents has been moved to a newly created section 8(c) and clarified to indicate that specific exclusions do not mean everything else is insurable. FCIC also revised the definition of "insured crop'' to remove the references to the Basic and Crop Provisions and refer to the policy to be consistent with section 8, which also refers to the actuarial documents.

Comment: A few commenters recommended the definition in parentheses at the end of the sentence in (b)(1) be removed. A commenter recommended the last sentence in section 8(b)(1) that references written agreements be removed from that section and be included in either the definition of written agreement or in section 18, which covers written agreements.

Response: FCIC agrees that the parenthetical is not appropriate in this section and has moved it to section 3 and clarified that it is only for high risk land that transitional yields and premium rates can be changed.

Comment: A few commenters stated section (8)(b)(2) states "if any farming practice, type, class, or variety is not established or widely used in the area, it may not be considered a good farming practice.'' This sentence fails to reflect section 123 of ARPA and must be modified in the final rule. A few commenters stated the "good farming practice'' is not objective and makes it difficult for producers and insurance providers to know if a crop is insured or not, and it should be changed.

Response: FCIC has removed all references to "good farming practices'' because this determination is separate and distinct from a determination of insurability. FCIC also revised the definition in the June 25, 2003, final rule to make the standard more objective. Further, FCIC agrees that "widely used'' should not be used to determine insurability and has revised the provision to use the standard of "generally recognized'' for the area to determine insurability.

Comment: A commenter requested the provisions state when a crop is not covered. A commenter stated that better wording for section 8(a)(2) would be: "A farming practice, type, class or variety that is not excluded by the policy may not be insurable.'' But this provision still requires FCIC to develop an exhaustive list of "good farming practices'' that are established, general to the area, and widely used.

Response: As stated above, all references to "good farming practices'' have been removed. However, there are so many factors that could render a crop uninsurable, it is impossible to list them all. FCIC has set an objective standard for making such determinations to add stability and consistency to the program.

Comment: A few commenters believed the use of "expressly'' is misleading and "just because'' is un-professional language to use in an insurance contract.

Response: FCIC agrees with the comment and has revised the provision accordingly.

Comment: A few commenters asked if section 8(b) covers substitute crops.

Response: Section 8(b) is applicable to all crops.

Comment: A commenter recommended the entire section 8(b) be altered to read as follows:

"(b) A crop which will NOT be insured will include, but will not be limited to, any crop:

(1) For which the information necessary * * *;

(2) Grown using a practice or a type, class or variety that is not adapted to the area or is expressly excluded by the policy or the actuarial documents; and

The policy's failure to expressly exclude a specific farming practice, type, class, or variety does not mean that the practice, type, class, or variety is insurable. If any farming practice, type, class or variety is not established or widely used in the area, as determined by FCIC or us, it may not be considered a good farming practice. It is your responsibility to determine prior to planting whether the practice, type, class, or variety is insurable under this section.''

Response: The recommended revision has not been used because the provision has been revised as indicated above. Additionally the recommended language would require FCIC to determine whether or not certain types, classes, or varieties are adapted in an area. FCIC believes these determinations should be made by agricultural experts for the area.

Comment: Two commenters asked if section 8(b)(4) should be revised since there is a new definition of "second crop.''

Response: FCIC agrees section 8(b)(4) should not use the term "second crop'' and has amended the provision accordingly.

Clarification of Insurable Acreage—Section 9

Comment: A commenter recommended section 9(a) be revised to add the words "in the county'' between the words "insurable'' and "except.''

Response: Since no changes to this provision were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter stated that "three'' versus "3'' should be consistent in sections 9(a)(1) and 9(a)(1)(i)(A) and also in item B with "4''. The commenter stated this language creates a burden on the grower, and asked how the agent knows to ask. The commenter believes this creates errors and omission exposure to the agent that is not reasonable. The commenter also asked

for the purposes of "harvested'' as used herein, if they are to use the applicable "harvest'' definition found in the crop provisions.

Response: FCIC agrees these terms should be consistent and the numbers contained in paragraphs 9(a)(1)(i)(A), 9(a)(1)(i)(B), and 9(a)(1)(iii) have been spelled out. FCIC does not agree that section 9(a) created a burden on the producer or unreasonable exposure to agents. The purpose of this provision is to ensure that only acreage that has the capability of producing a crop is insured. Agents are only required to explain the operations of the crop insurance program to producers, including conditions required for acreage to be insurable. Therefore, the agent only commits an error if the agent fails to inform the producer of the policy requirements. It is the obligation of the insured to provide the information. The definition of the term "harvested'' contained in the Crop Provisions should be used. However, if there are no Crop Provisions covering the crop, the common meaning of the term should be used.

Comment: Several commenters believe it is unclear who is responsible for the burden of proof regarding the requirements found in section 9(a)(1). They believe it is unclear whether the agent is required to ask or the insured is required to volunteer the information.

Response: It is the agent's responsibility to make sure the producer is aware of and understands insurability requirements so that he or she can properly report insurable and uninsurable acreage. It is the producer's responsibility to provide the information when acreage would not meet the insurability requirements of section 9(a)(1).

Comment: One commenter believes the provisions in section 9(a)(1) imply the agent needs to be involved in the loss process, which they stated is not acceptable in the eyes of compliance.

Response: Determinations of insurability should be made at the beginning of the crop year, not after a loss has occurred. Loss adjusters are required to verify that the acreage on the acreage report is insurable. No change has been made.

Comment: A few commenters stated the provisions in section 9(a)(1) need further clarification because the language as written could be interpreted to mean that it only takes one year in the past three that a crop was not planted and harvested to make the acreage uninsurable. Therefore, any acreage with a loss in one of the past three years that was not harvested would be uninsurable. They believe the language could also be interpreted to mean that two out of the past three years where the acreage was planted and harvested is good enough. A commenter recommended using the following: "(1) That has not been planted with the intention of harvesting within one * * *.''

Response: FCIC agrees the provision requires clarification and has revised the language to indicate acreage is insurable unless it has not been planted and harvested in at least one of the three previous crop years. FCIC also revised the provision to add that the acreage is insurable if the acreage was insured in any of the past three years. This was done to clarify that prevented planting acreage had to be insured because it would be extremely difficult to establish when acreage was actually prevented from being planted in past years unless there is an insurance record and to address the situation where the acreage was insured but not harvested during the last three crop years. The recommendation to use language based on the intention of the producer has not been used because of administrative difficulties in determining intent.

Comment: Several commenters stated that the provisions in section 9(a)(1) make it very difficult to verify on an acreage basis. A commenter asked that the current provisions contained in section 9(a) be retained.

Response: The current provisions have been subject to multiple interpretations and must be clarified. This new provision is intended to identify acreage where it may not be appropriate to insure a crop because of the production capacity of the acreage. There are means to determine the previous use of the acreage through FSA records, satellite imaging, or even previous insurance records. This provision is necessary to protect program integrity. No change has been made.

Comment: One commenter stated the provisions in section 9(a)(1)(i)(A) and (B) that require harvest may be a problem if the crop is destroyed by an insured cause of loss.

Response: The concern is addressed in this final rule by revising section 9(a)(1) to allow insurance for acreage that has been insured in any of the three previous crop years. The requirement in section 9(a)(1)(ii) has been deleted because of the revision in section 9(a)(1).

Comment: Several commenters asked that section 9(a)(1)(i)(C) not be deleted as proposed. The commenters stated that in areas with poor drainage and wet cycles there are areas of cropland that do dry up after the final planting date. They believe deleting the current provisions contained in section 9(a)(1)(i)(C) would be very discriminating to the prairie pothole region of the country. The commenters added that not all excessive rainfall disappears in several weeks like river flooding. Commenters questioned what the issue is if a producer has not planted a crop on the ground in the past three years. They noted there are justifiable reasons, too dry, too wet, etc. The commenter believes the proposed provisions potentially penalize a grower for making prudent planting decisions.

Response: FCIC agrees provisions allowing insurance for acreage that has been prevented from being planted for the three previous years should be retained. However, rather than retaining section 9(a)(1)(i)(C), section 9(a)(1) has been revised to allow insurance for such acreage if it has been insured in any of the previous three crop years.

Comment: A few commenters were concerned if the proposal was intended to make acreage that has had a prevented planting payment for three consecutive years uninsurable. A commenter stated that such acreage should be insurable.

Response: FCIC agrees acreage referenced in the comment should be insurable provided the acreage was insured, and has revised section 9(a)(1) to accomplish this as stated above.

Comment: A commenter stated a compromise to restricting insurability for acreage that has been prevented from being planted for the previous three crop years should be considered. The commenter suggested reinstating the provisions of section 9(a)(1)(i)(C) with additional language similar to the following:

"Due to an insurable cause of loss that prevented planting. However, prevented planting will not be an insurable cause of loss until planting viability has been re-established. Should the acreage again be prevented from planting, no indemnity will be paid nor premium due on the acreage for the current crop year, or * * *'' Another commenter recommended the prevented planting issue be left as it is currently. Another commenter stated insurance for acreage that is prevented from being planted is a crucial part of the safety net for farmers who have been repeatedly hit by drought or flood in recent years. The commenter stated it is farmers who have been struck by disaster several years in a row who have the greatest need for continued insurance coverage, for example, they may need to show proof of insurance in order to obtain operating credit. They believe it would be unfair

to pull the coverage away from the farmers because they have had to use it.

Response: As stated above, prevented planting is now covered under section 9(a)(1) provided the acreage was insured. The current prevented planting provisions impose some restrictions because there is a limited time period in which the cause of loss must occur. If the cause of loss occurs outside of that period and no crop was planted and harvested on the acreage, the acreage would not insured for the crop year. If this occurs for three subsequent crop years, the acreage is not insurable. If in any one of the last three crop years, the acreage was insured and qualified for prevented planting, the acreage would be insurable for the subsequent year. No change has been made.

Comment: One commenter stated they do not understand why changes were proposed in section 9(a)(1)(i). They believe the proposed language appears to be more confusing than the current provision, therefore, they recommended retaining the current language, but deleting subsections 9(a)(1)(i)(B) & (C).

Response: Past inquiries have indicated a need for clarification of this provision. Changes were proposed to clarify the number of years that acreage cannot be planted to comply with another USDA program, to avoid uninsurability when a de minimis amount of acreage is uninsurable, and to remove provisions that allowed insurance for acreage that was prevented from being planted for the three previous years. The provisions have been further revised as stated above to provide additional clarification. FCIC does not agree that section 9(a)(1)(i)(B) should be deleted because rotational practices sometimes require the same crop to remain on the acreage for three or more years. This acreage may not have been planted during those years, such as alfalfa, and such acreage may not be insurable. Therefore, if section 9(a)(1)(i)(B) were deleted, the acreage would not be insurable. Section 9(a)(1)(i)(C) has been incorporated into section 9(a)(1) as stated above.

Comment: A few commenters suggested the 5 percent tolerance proposed in section 9(a)(1)(iii) is too restrictive because it would require over 30 acres in a section. The commenters recommended the 5 percent be reduced to 1 to 2 percent.

Response: The suggested change would be more restrictive than the proposal. The purpose of this provision is to identify a de minimis amount of acreage that if added to the unit would not significantly impact a loss on the unit. This is intended to apply in situations such as when fence rows or structures are removed and the acreage is converted to crop land. The provision does not require a full five percent of the acreage in the unit to be added. Any amount of acreage up to five percent of the acreage in the unit can be added without requiring a written agreement. No change has been made.

Comment: Regarding section 9(a)(3), a few commenters stated, based on their past experience, only FCIC knows when actuarial documents do not provide the necessary information. The commenters further stated that in reality, the option is unavailable.

Response: The reference to the information on the actuarial document was used because there are instances where the actual premium rate is not on the actuarial document. The actuarial document contains a premium rate or a formula to determine the premium rate for each insurable situation. If a rate can be determined for the acreage in question based on such formulas, it is insurable. If a premium rate cannot be determined from the actuarial documents, the acreage still may be insurable if a written agreement provides a rate. No changes have been made.

Comment: A few commenters stated the provision proposed in section 9(a)(4) which is currently (a)(3) should not be changed. They believe the phrase "as soon as it is practical'' creates ambiguity and leaves it open to interpretation as to whose decision this is. An additional commenter stated the phrase "as soon as it was practical to do so'' establishes a requirement that cannot reasonably be implemented or enforced. They stated as they previously noted, and certainly as universally recognized among producers and insurance providers, simply determining whether it is "practical to replant'' is a very difficult task. They believe requiring the additional determination of the earliest date upon which it was "practical to replant'' assures conflict and inconsistency for the sake of insignificant benefit to the program. Another commenter stated the proposed change is too subjective and impossible to defend or prove.

Response: FCIC agrees the phrase "as soon as it is practical'' should be removed and has deleted this proposed change from the final rule.

Comment: Several commenters commented on the provision in section 9(b). Some of the commenters stated that RMA should be responsible to help make definitive determinations regarding the amount of irrigation water available at the beginning of the insurance period rather than after the fact. They stated the phrase "knew or had reason to know'' is difficult to substantiate, especially since water district authorities are reluctant to predict the amount of water that will be available at a later time. A commenter asked what "adequate water'' is if the crop is not under full irrigation and some rainfall is needed in addition to irrigation water to produce a crop. One commenter recommended clarifying provisions regarding irrigation practice requirements. A few of the commenters stated the provisions remain ambiguous as they relate to coverage in adverse weather conditions such as drought. One of the commenters stated that the absence of a more precise description of a "good irrigation practice'' in section 12(e) is a serious concern for many producers and recommended language be added to acknowledge that conditions may arise when continued irrigation is no longer beneficial to the crop. One commenter asked who is to determine what acres should be reported as irrigated versus non-irrigated in drought or dry situations, and how this should be administered. The commenter stated policy language that does not have a clear way of being administered should not be issued.

Response: Since no changes to sections 9(b) or 12(e) were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Clarification of Share Insured—Section 10

Comments received regarding section 10(b) are as follows:

Comment: A commenter supported the proposed new requirement that a single policy be required where the same people are involved in multiple farming operations. The commenter believes this change would help prevent abuse.

Response: Based on other comments received, FCIC agrees that the proposed provisions could affect legitimate entities in ways that were not intended, would add complexity to the program, and could be circumvented. However, there are significant problems within the program that are caused by the use of multiple entities that can be used to circumvent program requirements. An examination of the program has revealed that there may be procedures that provide incentives for the creation of such entities and abuse of the system. Instead of precluding the insurance of individual entities, FCIC has revised its

procedures to reduce incentives to abuse the program through the creation of multiple entities. The procedures have been amended to require that previous production records be used to establish the insurance guarantees any time a producer has been involved with a particular farming operation. This requirement will reduce instances in which producers create separate entities to avoid using records of production established by other entities in which they have been involved. The proposed revisions to section 10 have been removed in their entirety.

Comment: Many commenters recommended deleting the language added to section 10(b). Some stated the existing language is far more clear than the proposed language. A commenter believes that all parties on one policy will not work. They stated that farm partnerships or corporations operate land over hundreds of miles and that one partner may live in a community 100 miles away from another producer. They stated that producer A may want his policy in his home town while producer B wants his coverage with his agent in his home town with his existing insurance provider. The commenter believes requiring all of these issues be handled as "one'' does nothing for the benefit of the insured, insurance provider, or RMA. The commenter finds that when there is more than one insurance provider involved in a loss situation, each insurance provider "patrols'' the other to make sure the submitted data is correct. They believe this is far too cumbersome and serves no benefit and, therefore, urged this provision be dropped.

Response: See response to first comment under this subsection.

Comment: An additional commenter stated no person should be permitted to receive an indemnity payment unless they have an insurable interest in the property lost or damaged. The commenter added that the proposal perpetuates this error by permitting landlords and tenants to insure each other's interest, even though they have no economic or legal ownership of the other's interest. An additional commenter stated the provisions do not appear to address insuring the persons share of a corporation, partnership, etc., when the corporation and/or partnership does not have a policy. The commenter stated that current procedure contained in the Crop Insurance Handbook (CIH) requires this acreage to be reported on the person's policy. A few additional commenters stated that the proposed changes in section 10(b) launch a very wide net that encompasses everyone who is even remotely related to the insured to be disclosed and included on the policy. The commenters stated that, aside from the fact that it can be very difficult to determine if all necessary persons are included under the policy, it also appears to be a rather blatant violation of the freedom of contract between the producer and the insurance provider, as this provision would dictate who would be incorporated as a contracting party. The commenters stated that if this language were included in the Basic Provisions of the policy, it would probably not be an enforceable contract, as all parties did not voluntarily enter into the contract. They stated that a corporation is a recognized legal entity that is separate from its shareholders, and added that the proposed language would also require "piercing the veil'' of the corporation to expose all persons with whom the insured might have remote affiliations. The commenters stated that the corporate veil may only be pierced through a judicial process if it is found that the officers of a corporation committed intentional or illegal acts outside the scope of their duties. The commenters believe it is unreasonable for there to be a presumption of wrong doing by every policyholder to warrant a court proceeding to "pierce the veil'' of every corporation affiliated with the insured. Another commenter believes the proposal would eliminate two aspects of the program they feel are today working well for farmers. The commenter stated that first, under the proposal, producers would no longer be able to separately insure separate shares in the same crop, which is a common practice today and works well for both landlords and tenants.

Response: See response to first comment under this section.

Comment: A commenter suggested separate policies be issued for each insured person to help mitigate the potential for fraudulent activities.

Response: See response to first comment under this section.

Comment: A few commenters stated that if section 10(b)(2) is retained, the last sentence should be revised. They stated for example, Bureau of Indian Affairs trusts often do not have an SSN/EIN, but instead use the allotment number to create an identification number as referenced in Exhibit 32 of the Crop Insurance Handbook (CIH).

Response: See response to first comment under this section. FCIC agrees that BIA trusts may not have an SSN or EIN and has revised section 2 to provide an alternative means of reporting.

Comment: One of the commenters added that insurance providers have some concerns with this clause, which allows the additional entity's share to be given the policyholder's APH and guarantee for the unit. The commenter stated that this allows abuse of the program because those with lower APHs will want to insure their share on the person's policy with the higher APH. They stated that this can create a serious problem in high loss ratio counties and that each entity should be required to use his/her individual APH records.

Response: See response to first comment under this section.

Comment: A commenter stated that landlords who wish their tenants to handle their insurance affairs can provide a power of attorney allowing them to do so. The commenter added that while this would require a separate policy, it will be easier to administer. Another commenter recommended the tenant and landlord each insure their individual interests through individual policies, and separately provide the identifying information the proposal requires.

Response: See response to first comment under this section.

Comment: A commenter stated that trying to gather the information about all of the husbands, wives, and children who are involved would be virtually impossible. They stated that the proposed provision would change the fundamental role of an insurance agent from being someone knowledgeable in the policy, its provisions, and how they apply to a growers situation to that of a private investigator. The commenter feels this provision implies there is a great deal of fraud within the system that must be prevented. They believe if that is true, every legitimate legal means to prevent the fraud should be used, but it should be done by trained fraud investigators and not the insurance agents. The commenter stated that agents' backgrounds and training do not prepare them for duties such as this. The commenter added that because agents are not trained in gathering this information and verifying its legitimacy, they now have a significant liability exposure. The commenter added that currently, many agents have trouble obtaining this coverage at all. The commenter feels that implementing this change would result in eliminating the agency force that has done a very commendable job of delivering this product to this point. A few other commenters suggested that "child, or any member of your household'' be removed, because identification of such individuals and subsequent enforcement will be very difficult. An

additional commenter asked if agents or insurance providers will be held accountable for enforcement, and if so, if they will be held liable for incorrect information given to them by other parties, including FSA. They do not believe an agent can be expected to validate the share arrangements of every insured farmer.

Response: See response to first comment under this section.

Comment: A few commenters stated the language contained in section 10(b)(1) indicates that the insured share includes that of "* * * your spouse, child, or any member of your household * * *'' which they believe conflicts with the definition of "substantial beneficial interest,'' which only includes spouses and children who reside in the household (if the children are not removed), not non-resident children or other household members.

Response: See response to first comment under this section.

Comment: A few commenters stated that if the language in section 10(b)(1) remains, procedural questions need to be addressed (though perhaps not in the policy) regarding proof of separate farming operations. The commenter noted that currently, each spouse may prove that he or she has totally separate farming operations in certain limited situations, however, with the addition of children and other household members who may derive their income from something other than farming, it may be difficult to prove that they have "separate'' operations; A few additional commenters stated that they understood the intent (as indicated in the **Federal Register** explanation) of the provisions proposed in section 10(b), but stated it will be very difficult to administer and enforce.

Response: See response to first comment under this section.

Comment: A commenter stated they understand the revised provisions contained in section 10(b) are trying to stop the insuring of high risk land under separate policies, however, they believe that if an entity is recognized as independent by the FSA and IRS it would seem that to be consistent it should be considered a separate entity for crop insurance purposes as well.

Response: See response to first comment under this section.

Comment: A few commenters doubt that data reconciliation ramifications have been considered sufficiently to make the change in section 10(b).

Response: See response to first comment under this section.

Comment: A few commenters do not believe the new wording in section 10(b), "* * * or under your policy for any insured crop * * *'' is as clear as the current sentence. An additional commenter stated FCIC's determination of the entities would not coincide with FSA's or other government programs. A few additional commenters feel the change from "may'' to "will,'' in section 10(b) could be understood to include uninsurable acreage. A few additional commenters stated that the first sentence is lengthy and unclear, and in fact, the **Federal Register** explanation is superior. The commenters doubt this is intended to mean that an insured individual may no longer insure his/her share of an uninsured partnership that is not composed entirely of other family members, but they feel the new language may be interpreted that way. The commenters stated they do not have any serious objection to what FCIC is trying to accomplish, but they are not sure that the objective can be accomplished with any degree of certainty. They stated they trust that feasibility studies have been performed to see if this is even possible to administer and that procedures will be made readily available by RMA in order to implement the provisions of section 10(b)(2) effectively.

Response: See response to first comment under this section.

Comment: A commenter asked if the provisions proposed in section 10(b)(2) are finalized as proposed, what happens with currently insured policies that would no longer be permissible under this language. A few commenters were concerned about the effect on unit structure. One of the commenters asked if these provisions survive to final rule, how basic and optional units will be determined under these provisions. A few commenters stated the provisions are unclear as to who would receive the 1099 if losses were paid. A few of the commenters presumed the named insured would receive the 1099, but believe this becomes more complicated when other parties are involved.

Response: See response to first comment under this section.

Comment: A commenter stated that the proposed provisions would jeopardize lending institutions. Several commenters urged FCIC to modify the language of the proposed rule to clarify that the intent is no broader than the current requirement that common owners/operators within a county have all of their farming operations under one policy.

Response: See response to first comment under this section.

Comment: A commenter stated that the proposed provisions contained in section 10(b) relate to the requirement that common owners and operators within a county have all of their farming operations under one policy and further require producers to "prove that the acreage farmed by your spouse, child, or any member of your household is a totally separate farming operation in accordance with FCIC approved procedures.'' The commenter suggested that FCIC clarify that the purpose of this rule is for the original intent of common owners and operators being covered by one policy.

Response: See response to first comment under this section.

Comment: A commenter stated that the American farmer has the same rights as other business professionals and individuals to operate under various legal entities. A commenter stated the proposal would require a partnership to insure all of its various crops within a single county under the same policy, which they believe removes flexibility from the program and further discourages participation. They stated the proposal seems to shift the focus of the program away from insuring a particular crop in a particular location and toward insuring particular people. The commenter believes this is inappropriate in an insurance program where it is a particular risk to a particular crop that is being insured. The commenter recognizes that FCIC is attempting to eradicate past instance of so-called "over-insuring'' the same crop, however, they believe this proposal goes too far in the other direction. The commenter added that by trying to eliminate a very small problem, the proposal creates a disincentive for using the program.

Response: See response to first comment under this section.

Comment: A commenter stated that while they agreed with the intent to keep insureds from creating new entities and either shifting production between entities or taking the highest coverage available on one piece of ground and CAT coverage on the other, they believe the people FCIC is trying to keep from abusing the program will just find a way to work around this, and only the people with legitimate business reasons will be affected. The commenter stated that three individuals working together would be able to create seven different entities without falling under the proposed language, and that adding a fourth individual increases the ability to establish 13 different entities.

Response: See response to first comment under this section.

Comment: A commenter asked what effect these provisions would have when one shareholder has less than a 10 percent interest for SBI purposes but the same individuals in another entity all

have over 10 percent interest in the entity. The commenter also asked how this can be checked and enforced through the duplicate policy listing. A few commenters stated they are concerned how this is to be administered when more than one policy with different insurance providers are involved.

Response: FCIC agrees that the proposed provisions could affect legitimate entities in ways that were not intended, would add complexity to the program, and could be circumvented. However, there are significant problems within the program that are caused by the use of multiple entities that can be used to circumvent program requirements. An examination of the program has revealed that there may be procedures that provide incentives for the creation of such entities and abuse of the system. Instead of precluding the insurance of individual entities, FCIC has revised its procedures to reduce incentives to abuse the program through the creation of multiple entities. The procedures have been amended to require that previous production records be used to establish the insurance guarantees any time a producer has been involved with a particular farming operation. This requirement will reduce instances in which producers create separate entities to avoid using records of production established by other entities in which they have been involved. The proposed revisions to section 10 have been removed in their entirety.

Comment: A commenter stated it is unclear why sections 10(c) and 10(d) are necessary or where these definitions have any effect under the policy. They stated that these two sections should be included in the definitions sections if anywhere.

Response: Since no changes to these subsections were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Clarification of Causes of Loss—Section 12

Comment: A few commenters questioned the use of the words "natural disaster'' in section 12. Some of the commenters recommended "act or acts of nature'' should be used instead.

Response: FCIC agrees that "natural disaster'' can be interpreted in a number of ways. However, the term "act of nature'' has the same problems. The purpose of the provision is to ensure conformity with the Act, which precludes losses caused by things that are not naturally occurring. FCIC has revised the provision to specify a "naturally occurring event.''

Comment: A commenter stated FCIC should change section 12(b) to "approved by us.'' Another commenter believed removal of "farming practices'' from section 8(b)(1) would be detrimental to the provisions in section 12(b).

Response: The recommended change is not appropriate because in the Final Rule published on June 25, 2003, agricultural experts make the determination of whether a production method constitutes a good farming practice. Further, the reference to "farming practices'' in section 8(b)(1) created an ambiguity because that section deals with whether the crop is insurable and it could be confused with the failure to follow good farming practices, which deals with uninsurable causes of loss after insurability has been established. Therefore, the reference had to be removed from section 8(b)(1) and that provision has been revised as stated above.

The following comments were received regarding the provisions proposed in section 12(c):

Comment: A commenter supported the proposed change.

Response: Although there was general agreement with the proposed changes, additional information has indicated that it may not be possible to implement the change regarding released water on acreage where there is a water easement in an actuarially sound manner. Water flowage easements are extremely variable in location. For example, in some cases, easements have been purchased outside of older levee systems, while inside the older levee systems easements were not purchased. In this case, disparate treatment of insureds would result because the proposed provisions would provide coverage for the acreage most often flooded and no coverage would be provided for acreage less frequently flooded. In addition, because of variability in location of the water easements, it would be very difficult to provide separate premium rates for land with and without water easements. Further, the proposed provision would create additional loss adjustment difficulties because it can be very difficult to separate damage caused by released water and generally wet conditions that often occur at the same time. Therefore, FCIC has not retained the proposed provision regarding released water in this final rule.

Comment: A commenter requested this type of acreage be uninsurable.

Response: There may be years when no water is released or the timing of the release still allows a crop to be produced. Therefore, there is no basis to determine the acreage uninsurable. No change has been made in response to this comment.

Comment: A commenter wanted clarification of "contained,'' "contained by'' and "flood water.'' A few commenters wanted clarification of "water easement'' and "seepage.''

Response: FCIC agrees that this provision may have needed clarification and has revised it to clarify what constitutes water contained behind the structure and water released from the structure and has added an example for further clarification. As stated above, the term "water easement'' has been removed from this rule. Since the proposed provisions regarding released water have been removed, it is not necessary to clarify how released "flood water'' and "seepage'' will be considered.

Comment: Several comments were received regarding provisions proposed in section 12(d). A few commenters agreed with changing 12(d) as written in the proposed rule. Some commenters stated "reasonable effort'' should be clarified and that guidelines should be added in the policy stating who is responsible to determine what is practical and what is not a reasonable effort. A few commenters stated the phrase "unless we determine it is not practical to do so'' should be removed.

Response: Since situations may vary greatly, it would be impossible to set a single standard that would encompass all situations. "Reasonable efforts'' means the producer must attempt to repair the damage unless the insurance provider determines it is not possible to make repairs or it would not be practical to replace the equipment because the need for irrigation no longer exists because of the insured peril. It is the insurance provider's responsibility to determine whether the producer made reasonable efforts and whether it is practical to require that such efforts be made based on the individual circumstances, such as the extent of the damage to the equipment and the extent of damage to the crop. FCIC does not agree the phrase "unless we determine it is not practical to do so'' should be removed because there may be times that reasonable efforts to restore the equipment in a timely manner may not be possible or practical, such as when the crop is destroyed. To be consistent with other provisions, FCIC has clarified that cost will not be a factor in

determining whether it is practical to restore the equipment or facilities.

Comment: A few commenters stated section 12(e) needs clarification as to "good irrigation practice'' because there are times when continued irrigation is no longer beneficial because of agronomic factors.

Response: Since no changes to this subsection were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

A few comments were received regarding the provision proposed in section 12(f). The comments are as follows:

Comment: A commenter agreed with the proposed provision.

Response: FCIC agrees that some provision is needed.

Comment: A few commenters requested clarification of what is "discoverable'' and "placed in storage.''

Response: FCIC has modified the provision to replace the word "discoverable'' with "that is not evident or would not have been evident'' to avoid any perception that the insurance provider is required to conduct tests on the crop before the end of the insurance period or to determine whether it has been damaged when no notice of damage has been filed. However, the insurance provider is still required to conduct proper loss adjustment if a notice of damage has been filed. Producers are still required to ascertain whether damage occurred after a cause of loss for the purposes of timely filing their notice of damage. FCIC has removed the reference to "placed in storage'' and referred to "the end of the insurance period'' to increase clarity.

Comment: A commenter did not agree a producer should have reduced coverage for losses suffered during the insurance period, just because the damage could not be discovered until the crop was placed in storage.

Response: Many crops will not be affected by this change because most of the time that a crop is damaged by an insurable cause of loss, the damage is evident before the crop has been removed from the field. However, FCIC agrees there may be some situations where a crop may be affected by an insurable cause of loss and the damage is not apparent until after it is placed in storage. In many of these cases, it is extremely difficult, if not impossible, to determine whether the damage was due to an insured cause of loss that occurred within the insurance period or due to a cause of loss that occurred during transport, was due to intermingling with other producer's damaged or diseased crop while in storage or was first damaged while in storage, making accurate loss determinations impossible. In situations where it is possible to determine that the cause of loss occurred during the insurance period and it is possible to determine the extent of the insurable damage, the Crop Provisions may permit such coverage. No change has been made in response to this comment.

Comment: Several commenters recommended coverage be excluded for the following causes of loss: (1) War, invasion, any act of terrorism (including biological and chemical), and warlike operations whether or not war is declared; (2) genetically modified organism (GMO) contamination (production or price loss); (3) Fire if artificial or man-made origin; and (4) Early harvest of a crop that reduces yield, but receives a premium from the processor.

Response: Since these changes were not proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made. However, in the proposed rule, FCIC revised the first paragraph of section 12 to clarify that all causes of loss, except where the Crop Provisions specifically cover loss of revenue due to a reduced price in the marketplace, must be due to a naturally occurring event. Since the causes referenced in the comments are not due to naturally occurring events, they are already excluded under the policy.

Clarification of Replanting Payments—Section 13

Several comments were received regarding replanting payment provisions contained in section 13. The comments are as follows:

Comment: A commenter stated the replant provision is a loss mitigation provision for the benefit of the insurance provider because it reduces losses, instead of an added benefit.

Response: Since no changes to this section were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended changes the recommendations cannot be incorporated in the final rule. No change has been made.

Comment: Several commenters requested an additional subsection (4) be added to section 13(b) stating, "On which you did not incur costs to replant.''

Response: See response to first comment under this section.

Comment: Several commenters recommended deleting the "actual cost'' item stating the administrative cost to determine the actual cost is counterproductive and results in more cost than is saved by just paying the amount specified and referring directly to what is stated in the Crop Provisions.

Response: See response to first comment under this section.

Clarification of the Insured's and Insurance Provider's Duties—Section 14

Comment: A commenter stated there are two distinct areas under section 14, "Your Duties'' and "Our Duties'' and each of these areas are then lettered or numbered consecutively from (a)(1), creating confusion and inability to clearly reference the correct provision. The commenter recommended that section 14(a) should be "Your Duties,'' and everything below that should be relettered and renumbered accordingly; and section 14(b) should be "Our Duties'' and treated similarly.

Response: To make this change, FCIC would be required to identify all references to section 14 found throughout the Basic Provisions, the specific Crop Provisions and Special Provisions to also make the corresponding changes. New documents would have to be provided to all insureds. As has been done by FCIC, references can be made to section 14(a)(2) (Our Duties) or section 14(a)(2) (Your Duties) to distinguish between these provisions. The burden of making the change would outweigh the benefit that would result from making this change. No change has been made.

Comment: A commenter stated if providing 3 years of records when a claim is filed is an insured's responsibility, it should also be included in section 14 of "Your Duties.''

Response: Based on the comments received regarding the changes proposed in section 3(d) that required the insured to provide records for at least the three most recent crop years that were certified in the producer's APH database for any unit for which the insured files a claim, FCIC removed the requirement in section 3(d) and, therefore, there is no need to incorporate it here.

Comment: A commenter recommended that the phrase "In case there has been a cause of loss'' be changed to "When there is a cause of loss'' in section 14(a) (Your Duties).

Response: In response to other comments, FCIC has elected not to adopt this proposed change. Therefore, the recommended revision is no longer applicable.

Comment: A commenter stated the word or should be added to the end of section 14(a)(1) (Your Duties).

Response: FCIC does not agree with the recommended change. The producer must comply with all the requirements listed in section 14(a) (Your Duties). The recommended change would only require them to comply with any one of the requirements, not all. No change has been made.

Numerous comments were received regarding the provisions proposed in section 14(a)(2) (Your Duties). The comments are as follows:

Comment: A commenter stated it is unclear why "occurrence'' was added. The commenter believes the term should be defined.

Response: Based on the comments received, FCIC will not incorporate the provisions proposed in sections 14(a) and (a)(2) (Your Duties) in the final rule.

Comment: Several commenters stated the proposed revision that requires notice "within 72 hours after the occurrence * * *'' (instead of " * * * your initial discovery * * *'') places an undue burden on absentee landlords. A commenter stated the proposed change removes the ability to accept late notice of loss from absentee landlords, insured's whose companion policyholder notice was turned in timely and other situations where insurance providers are able to accurately adjust the loss.

Response: See response to first comment under this subsection.

Comment: Another commenter believes the proposed language would result in agents submitting claims for a large number of insureds anytime a peril occurred in the area just to be certain the 72-hour after occurrence requirement was met.

Response: See response to first comment under this subsection.

Comment: Several commenters stated the current provision should be retained and that it is more simple and direct. The commenter stated the proposed change would result in a producer failing to report events that they knew caused damage, but which the producer alleges he or she did not recognize was from a "cause of loss'' or that "may affect the amount of production or quality.''

Response: See response to first comment under this subsection.

Comment: A commenter was opposed to eliminating the requirement to provide notice when a producer "initially discovers'' damage to an insured crop as they believe adoption of this proposal will prevent insurance providers from learning about potential losses and inspecting the insured crop before deterioration from uninsured causes occurs. The commenter believes adoption of the proposal would erode program integrity and significantly increase the opportunity for program abuse and fraud.

Response: See response to first comment under this subsection.

Comment: A commenter stated the provisions need reference to a calendar date. The commenter recommended using "by the end of the insurance period'' versus "15 days after * * *''

Response: See response to first comment under this subsection. With respect to the current 15 day notice requirement and parentheses in section 14(a)(2), since no changes to this provision were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation to require notice by the end of the insurance period cannot be incorporated in the final rule. No change has been made.

Comment: A commenter suggested retaining the current provision but delete the parentheses. The commenter believes the parenthetical portion is necessary and does not put the program at risk. The commenter stated if the revision is incorporated, it will be directly in conflict with state law in several jurisdictions and will limit an insurer's ability to deny claims due to late notice in situations where the insurer cannot accurately adjust the claim. The commenter added that if this provision is inserted, it must specifically preempt contrary state laws.

Response: See response to first comment under this subsection. With respect to the current 15 day notice requirement and parentheses in section 14(a)(2), since no changes to this provision were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation to require notice by the end of the insurance period cannot be incorporated in the final rule. No change has been made.

Comment: A commenter recommended the section be revised to establish an absolute obligation to give notice, when there is a continuing cause of loss, no later than the end of the insurance period.

Response: See response to first comment under this subsection.

Comment: Another commenter stated the proposed changes are too extreme. The commenter believes there are valid reasons for filing a late notice of loss and the provisions do not need to be so restrictive. They also stated the current language is sufficient.

Response: See response to first comment under this subsection.

Comment: A commenter stated that section 14 should allow some lee-way for delayed reporting in exceptional circumstances and that the extension request option should also be available for the initial reporting deadlines in section 14(a) (Your Duties).

Response: See response to first comment under this subsection.

Comment: A few commenters stated it is not clear how the proposed language will affect the "delayed notice'' language in the Loss Adjustment Manual (LAM).

Response: See response to first comment under this subsection.

Comment: A commenter recommended the words "specified in the Crop Provisions'' be inserted following "cause of loss'' in section 14(a)(2) (Your Duties). The commenter stated that this approach adds clarity and is consistent with the revisions proposed in section 2.

Response: See response to first comment under this subsection.

Numerous comments were received regarding the provisions proposed in section 14(a)(3) (Your Duties). The comments are as follows:

Comment: A commenter stated it is unclear why representative samples of the unharvested crop must be left only if the insured reports damage within 15 days of the time they begin harvest of the damaged unit. The commenter believes that representative samples should be left in any case, at any time, whenever the insurance provider determines it cannot accurately determine the loss at the time a claim is made, because that is the purpose of representative samples. Another commenter similarly stated that representative samples should be required in all cases.

Response: The purpose of this provision is to ensure that insurance providers have the ability to adjust the loss. If notice of loss is provided more than 15 days before harvest begins, the assumption is that the insurance provider will have time to inspect the crop prior to its harvest to verify the cause of loss. If notice is provided within 15 days of harvest, it is possible that insurance providers will not have time to inspect the crop while it is still in the field and representative samples must be left. If the insurance provider determines it cannot accurately

determine the loss, representative samples may be required under the claims section in the Crop Provisions. Therefore, it is unnecessary to add the provision to the Basic Provisions. No change has been made in response to this comment.

Comment: Several commenters recommended the current provisions be retained and rely on the Crop Provisions for additional requirements regarding representative samples. They believe the proposed provision would create undue hardship for growers of higher value crops. A few of the commenters stated if the proposed provision is adopted, FCIC should rewrite it to avoid confusion, such as "Leave representative samples (if authorized in the Crop Provisions) of the unharvested crop intact if you report * * *'' while one of the commenters stated if the proposed provision is adopted, FCIC should rewrite it to avoid confusion, such as "Leave representative samples (if not authorized in the Crop Provisions) of the unharvested crop intact if you report * * *''. A few commenters recommended that section 14(a)(3) (Your Duties) be deleted from the Basic Provisions and included in specific Crop Provisions to allow for crop differences. They believe the proposed description of a sample may not be realistic for all crops, with one commenter adding this is probably the reason such has not been included before. The commenters stated if the proposed language is retained, the number and frequency of samples should be addressed. The commenter believes the Crop Provisions should define the particular types of samples appropriate to the particular crop and various potential circumstances. They recommend the proposal therefore should not be adopted. One commenter stated the current language is sufficient and should be retained while another commenter stated the current language should be retained and refer the insured to the Crop Provisions. A commenter suggested adding the word "not'' after the word "If.'' The commenter stated this requirement should apply if not already provided for in the crop provisions, and suggested keeping the current wording because the crop provisions address this requirement better. The commenter stated this would allow a producer to give notice on the 14th day after harvest and still be in compliance.

Response: The proposed rule moves the representative sample provisions from the Crop Provisions to the Basic Provisions to be consistent with FCIC's ongoing efforts to consolidate common requirements. When Crop Provisions, which currently require representative samples, are next revised, only the requirements that differ from those listed in the Basic Provisions will be contained in the specific Crop Provisions (for example, different sample sizes, *etc.*). To leave the provisions in the Crop Provisions instead of the Basic Provisions, would lead to unnecessary duplication and the difficulty of revising every Crop Provision when the common requirements change. The number and frequency of samples should not be included in the Basic Provisions because the requirements may change by crop. FCIC does not agree that moving the current provisions from the Crop Provisions to the Basic Provisions would create an undue hardship for growers of higher value crops because the proposed provisions will not apply if the Crop Provisions do not require the representative samples. Most Crop Provisions for higher value crops do not require representative samples. FCIC agrees the proposed provisions should be clarified. FCIC does not agree the phrase "if not authorized in the Crop Provisions'' should be added because the issue is whether the samples are required by the Crop Provisions and the provision has been revised accordingly. FCIC agrees this was not the intent of the provision and has revised it to require representative samples if notice is provided less than 15 days before harvest or during harvest.

Comment: A commenter stated it is unclear why the proposed provisions added statements that the 15-day time limit to retain the representative samples may be extended if it is necessary to accurately determine the loss and provided that the insured will be notified in writing of any such extension. The commenter believes it would be simpler to require that the samples be left intact until such time as the insurance provider is able to determine the loss or permission is granted in writing to destroy or harvest the samples. They feel this would be simpler and better because otherwise, if the time period expires and was not extended in writing by the insurance provider, and no accurate determination of loss was made, how would the loss be determined. A commenter stated the provision proposed contains language stating, "You will be notified in writing * * *'' which the commenter believes is an additional Insurance provider expense addressing something the insured already has in writing—the policy and crop provisions.

Response: The requirement to leave the sample for 15 days after harvest is to ensure that there is adequate time to inspect the crop. However, insurance providers are required to adjust all losses in a timely manner. Further, the producer is required to expend resources to care for the sample and should not be required to maintain the sample indefinitely. The added language is only intended to allow the insurance provider to extend the time period to provide additional time when unusual circumstances exist that preclude the insurance provider from inspecting the crop within the 15 day time period. Since this is an exception to a policy term, *i.e.,* the requirement that the sample only needs to be maintained for 15 days after harvest, the producer must be notified that the insurance provider is exercising its right to extend the time.

Comment: A commenter stated the phrase "length of the field'' is not defined in section 14(a)(3) (Your Duties) and may be interpreted differently with different dimensions, shapes, and planting patterns of the field. A few commenters suggested further consideration of the following: (a) Usage of the term field with respect to leaving representative samples may require clarification because, per the revised definition of "field,'' a field could include multiple crops; and (b) The length of the field could be interpreted to be row direction or longest point from one end to another, and leaving strips perpendicular to row direction could be impractical.

Response: "Field'' is defined and the provision is clarified to indicate that the samples must be the length of the rows, if the crop is planted in rows, or, if the crop is not planted in rows, the longest dimension of the field. The provision has been further clarified to specify the crop within each field because units may have multiple fields. FCIC also agrees it would not be practical to leave strips perpendicular to row direction. Therefore, FCIC has revised the provisions as stated above.

Comment: A commenter recommended the word "investigation'' be replaced with the word "adjustment'' in section 14(a)(4) (Your Duties). A few commenters recommended the word "written'' be inserted following the word "obtain'' in section 14(b) (Your Duties). Another commenter stated written consent for and written notification of the actions listed in section 14(b) (Your Duties) should be required.

Response: Since no changes to section 14(a)(4) (Your Duties) were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be

incorporated in the final rule. No change has been made.

Comment: A commenter supports the provision proposed in section 14(c) (Your Duties) that allows written requests for extensions. The commenter also recommended the standard under which such requests will be reviewed should be set forth. A commenter stated the extension period proposed in section 14(c) (Your Duties) should not be adopted. The commenter stated that sixty days is more than sufficient time for producers who disagree with the insurance provider's adjustment of their loss to assemble and submit all data and analysis available to support the producer's determination of an appropriate adjustment. They believe the requirement that providers consent to extensions will be abused and manipulated as a result of normal market forces, and will be ignored by finders of fact, with the result that producers who claim "a good reason'' for submitting data and documentation of their claim a year after the insurance period will be permitted to do so and insurance providers will have no meaningful way to address that data and documentation regarding a crop long since rendered inaccessible and conditions that no longer exist.

Response: There may be circumstances beyond the producer's control that could prevent the determination of the amount of the loss within the 60 day time period after the end of the insurance period, such as the unavailability of crop settlement records. Further, notice of damage must be provided within 72 hours of the discovery of such damage and not later than 15 days after the end of the insurance period. Therefore, the insurance provider has the opportunity to inspect the acreage or access the other documentation prior to the claim being filed. The provision has been revised to clarify that extensions can only be granted if the amount of the loss cannot be determined within the time period because the information needed to determine the amount of the loss is not available. This should eliminate any potential abuse.

Comment: A commenter suggested the word "other'' should be deleted following the words "complying with the'' in section 14(c) (Your Duties). The commenter views the requirements of subsections (a) and (c) to establish separate obligations of insureds, and they believe applicable judicial precedents dictate this view. They added that FCIC's proposed addition of the word "the'' makes the use of "other'' superfluous.

Response: FCIC agrees and has revised the provision accordingly.

Comment: A commenter suggested adding the words "we will assist you in preparing a claim for indemnity'' in section 14(c) (Your Duties).

Response: Certain information required to complete a claim is provided by the insured while the insurance provider provides other needed information. The suggested language does not help clarify the necessary steps or the claims process in general. Therefore, no change has been made.

Comment: A commenter stated the provisions in section 14(c) (Your Duties) are not practical for some crops, for example information needed to complete an avocado insurance claim is not known or available until after 60 days.

Response: FCIC is aware there may be circumstances in which determinations necessary to finalize a claim cannot be made within 60 days. This is the justification for adding the extension in writing language to section 14(c) (Your Duties) in the proposed rule that allows for additional time to submit a claim for indemnity with the insurance provider's approval. If individual crops require a longer time period, the crop provisions may provide for this. No change has been made.

Comment: A commenter stated that a claim for indemnity referenced in section 14(c) (Your Duties) is more commonly referred to as a production worksheet. The commenter also asked if this part was even necessary.

Response: Although some insurance providers may use a specific form to record and transmit claim information, the claim for indemnity is a common generic term used throughout the insurance industry and the policy provisions. This is the document that contains all the information necessary to pay the claim. The information in section 14(c) (Your Duties) is necessary as it provides a deadline for insureds to submit a claim for indemnity to ensure that claims are not submitted years after the fact when it is impossible to verify the cause of loss or the records. However, an exception does need to be made for those situations where the producer was genuinely prevented from submitting the claim timely. No change has been made.

Comment: Several commenters suggested adding "s'' after "examination'' in section 14(d)(2) (Your Duties) to allow for the possibility that more than one sworn statement may be necessary in some instances.

Response: The second paragraph in the heading of the Basic Provisions states that unless the context indicates otherwise, use of the singular form of the word includes the plural. No change has been made.

Comment: Several comments were received regarding the provision proposed in section 14(d)(2) (Your Duties). A commenter stated that USDA is not a party to the contract and it has no right to directly require the producer to do anything, nor should insurance providers suffer the exposure to liability resulting from use of a contract to which they are a party as a means through which a USDA employee abused a producer or violated the producer's civil rights. They stated that if an examination under oath is needed, FCIC should direct the insurance provider to conduct such an examination. The commenter does not believe a producer should be required to submit to multiple examinations by FCIC, FSA, the Office of Inspector General (OIG), whoever else in USDA may be interested, and also by the producer's insurance provider, who alone has the direct obligation to deliver the program in accordance with its requirements. Other commenters stated reference to "any USDA employee'' is too broad and should be more limited.

Response: Although the contract is between the producer and the insurance provider, the Act specifies that FCIC and FSA have oversight responsibilities since taxpayer money is involved in the crop insurance program, which includes conducting investigations and other fact-findings. Further, the Office of Inspector General Act authorizes OIG to conduct investigations. In addition, insurance providers would not be held accountable for the actions of any USDA employee. Any adverse decision rendered by an USDA employee is appealable to the National Appeals Division. Further, USDA employees who are authorized to conduct investigations cannot abdicate their responsibility by allowing the insurance provider to conduct the examinations under oath. To the maximum extent practicable, USDA employees will coordinate their efforts so that multiple examinations are not required. The provisions have been revised to limit the reference to any USDA employee authorized to conduct investigations.

Comment: A commenter suggested the words "by you or your agent'' be inserted after "confirmed'' and "to us'' after "writing'' in section 14(g) (Your Duties).

Response: Since no changes to section 14(g) (Your Duties) were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be

incorporated in the final rule. No change has been made.

Comment: A commenter suggested that the words "and such failure affects our ability to accurately adjust the loss'' be added after the word "section;'' in 14(h) (Your Duties). A commenter believes the penalty seems out of proportion, particularly when the producer may be in an extremely difficult situation due to the aftermath (or ongoing nature) of a natural disaster. The commenter recommended graduated penalties based on the length of the delay, with provisions for waivers for good cause shown. Another commenter stated the proposed provisions are very restrictive and should not be a part of this rule. Many commenters stated they do not believe an insured should be held responsible for the full premium when coverage is denied because of an inadvertent failure to meet the much reduced notification deadlines. Most of those commenters believe that in such cases, only a modest administrative fee is warranted. A commenter recommended the provisions be revised to read as follows: "If you fail to comply with the notice requirements and we believe that such failure prejudiced our ability to make all determinations required to verify your loss, no indemnity will be due.'' A commenter stated that the sanction in section 14(h) (Your Duties) of claim denial for not meeting the 72-hour notification requirement of a prevented planting claim is troubling because of potential extenuating circumstances that could be considered good cause for missing the 72-hour requirement. The commenter suggested a monetary penalty such as reduced indemnity percentage(s) and/or sanction waiver ability for reasonable and justifiable late claim notifications. Another commenter objected to the proposed change because they do not believe it is legal to charge premium and not offer coverage. A commenter questioned how an insured can be charged a premium for acreage that was never planted. A commenter recommended that language be added to section 14 to expressly state that the insured's duties are conditions precedent to the payment of any claim for loss or damage under the policy. The commenter added this is important because it shifts the burden of proof of compliance with "Your Duties'' to the insured in a disputed situation.

Response: FCIC agrees that there are circumstances where an indemnity, replanting or prevented planting payment should be allowed if the insured's failure to comply in a timely manner with the notice requirements of section 14 did not preclude the insurance provider from accurately determining the loss. FCIC has revised the provision accordingly. If failure to comply with the requirements of section 14 results in the insurance provider's inability to accurately determine the loss, a claim cannot be paid since the amount of the insurable loss cannot be determined. It is not illegal to charge the full premium for planted or prevented planting acreage because the insured still received the full benefit of insurance coverage for the crop. However, FCIC agrees that there is a discrepancy between the notice of damage and the notice of prevented planting. FCIC intended that the exception for when a claim can still be adjusted to apply to both. To ensure that this exception is consistently applied, it has been added to section 14(h) and removed from section 14(a)(2). Further, there is no authority to impose a modest administrative fee and there is no basis to establish a graduated penalty. FCIC agrees that it should be the insured's duty to prove compliance with all policy provisions because the policy imposes the burden on the insured to comply with the requirements and the provisions have been revised accordingly. FCIC has also clarified the consequences for such failure.

Comment: Several commenters recommended deleting the words "in a timely manner'' in section 14(h) (Your Duties), because they feel the 72-hour requirement covers this.

Response: FCIC agrees that the provisions contain the requirements for providing notice and this section simply states the consequences for failing to meet those requirements. The provision has been revised accordingly.

Comment: A commenter believes that section 14 (Our Duties) should require the insurance provider to notify the producer if the information submitted is incomplete, which the commenter believes generally happens in practice.

Response: Since nothing relating to this recommended change was proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter recommended that the provisions proposed in section 14(a)(3) (Our Duties) be deleted because if there is no basis for investigation, this becomes meaningless. They added that it implies the insurance provider would have to check with USDA before paying any claim to see if there was a USDA investigation under way. The commenter further stated that no time limit is set for completion of USDA's investigation, which could result in unreasonable delays in policyholders receiving valid indemnity payments. Another commenter stated the proposed provisions will require RMA to notify insurance providers when an insured is under investigation regarding a policy with a previous insurance provider.

Response: FCIC agrees that this provision only applies if there is an investigation and has revised the provision to add ",if applicable,''. FCIC agrees that if payment of a claim is to be delayed, the insurance provider must be notified. Insurance providers are not required to determine whether there is an investigation before paying a claim. Investigations are completed as expeditiously as possible. However, many investigations are very complex and it would be impossible to set specific time limits. Therefore, no time limit can be included.

Comment: Numerous commenters suggested retaining the current language in section 14(d) (Our Duties) that was proposed to be deleted. One commenter stated the language is extremely valuable for insurance providers in court cases, while others added that the Standard Reinsurance Agreement allows for approved documents. Another commenter stated that removing the reference to the application of FCIC loss adjustment procedures in this section will hinder insurance providers' ability to defend their conduct in litigation or arbitration. One other commenter expanded to say they feel this contract needs to be very clear in establishing that both the insurance provider and the producer are bound by loss adjustment procedures approved by the Agency. The commenter believes that deletion of this section will result in producers challenging as inaccurate, unscientific or otherwise insufficient the Agency's often very technical and specific requirements for determining production, quality and many other issues that routinely arise. Another commenter objected to the proposed deletion, stating that although there may be a reason to modify somewhat the language, as done with the preamble, the concept embodied in the existing subsection (d) should remain specifically as a provision of section 14. While the commenter believes the preamble is a part of the policy and binding contractual language, they are concerned, however, that a court may view the matter differently, for instance, treating the preamble as merely introductory or explanatory language as opposed to a binding contractual

provision. The commenter added that since the Standard Reinsurance Agreement obligates insurance providers to follow FCIC's prescribed "or approved'' procedures, there is no reason to delete this obligation from the description of insurance providers' loss adjustment duties as described in section 14.

Response: To avoid any confusion regarding the legal affect of putting the language in the preamble, FCIC agrees to retain the current language in section 14(d) (Our Duties). FCIC disagrees that producers are bound by the procedures. While the procedures will be used to establish the loss, if the loss adjustment procedures impose any burden on the producer not contained in the policy, the producer is not bound by such procedures.

Clarification of Production Included in Determining an Indemnity Provision—Section 15

Several comments were received regarding section 15(b). The comments are as follows:

Comment: A commenter suggested the policy should be amended to give insurance providers the option of paying indemnities based on appraised production when a farmer's harvested production is substantially lower than the appraised production for the same unit (as determined by a growing season inspection).

Response: FCIC does not agree the insurance provider should have the "option'' of paying indemnities based on appraised production when the harvested production is substantially lower than the appraised production. The purpose of this provision is to establish that harvested production is presumptively more accurate than appraised production and should be used to establish indemnities except in those situations where the crop is harvested after the end of the insurance period. After the end of the insurance period, it is extremely difficult to determine whether an additional cause of loss occurred or whether the crop simply deteriorated so the appraised production is presumptively more accurate. FCIC has revised the provisions to make it clearer when appraised production is used and when harvested production is used. Further, if it is an issue of the appraisal, the procedures allow producers to dispute the appraised amounts through the controversial claims process. However, if there has been a growing season inspection and the appraised production was significantly higher than the harvested production, there may be a need for further investigation but the harvested production should not be automatically rejected.

Comment: A few commenters recommended retaining the current language in section 15(b) and adding "If your claim is based on appraised production and you later decide to harvest the acreage, you must provide us with the amount of harvested production. Claims will be adjusted if the harvested production exceeds the appraised production and you will be required to repay any overpaid indemnity.'' A commenter would like to change the language from "only if you are not going to harvest'' and replace with "if the crop is not harvested by the end of the insurance period.''

Response: FCIC does not agree the current provisions in section 15(b) should be retained because the current provisions state the amount of production of any unharvested insured crop "may'' be determined based on appraisals, instead of "will'' be determined based on appraisals. This led to confusion in situations where the crop was later harvested after the crop was appraised and indemnities may have been paid. However, FCIC has revised the proposed provision to remove the term "only'' in the first sentence because it created an inconsistency. Appraised production will be used to calculate the claim if the insured does not harvest the acreage, or if the insured later decides to harvest the acreage after the end of the insurance period and the harvested production is less than the appraised production. FCIC has also revised the fourth sentence of the proposed provision, to clarify that claims will be adjusted using the harvested production, if the harvested production exceeds the appraised production.

Comment: A few commenters believe the new language will leave policies open-ended since there is no closure date.

Response: FCIC agrees there is no closure date or time frame in which a producer must harvest the acreage. However, there should be few instances in which harvest is delayed for any significant period because if the crop is economically viable, the incentive will be to remove it as quickly as possible. Further, since the appraised production is used if the crop is harvested after the end of the insurance period and the harvested production is lower than the appraised production, insurance providers are not harmed by the delay and producers have the freedom to choose the management practices that best suits their operations.

Comment: A few commenters asked if the insurance provider pays a higher indemnity if harvested production is lower than appraised production. They also asked if the producer is required to repay overpaid indemnities when the harvested production is higher than the appraised production.

Response: When the appraisal occurs at the end of the insurance period and the crop is harvested after the end of the insurance period, if the appraised production is greater than the harvested production, the claim will be paid based on the higher appraised production. However, FCIC has clarified that the harvested production may still be used if the producer can prove that no additional causes of loss or deterioration of the crop occurred after the end of the insurance period. Producers will be required to repay overpaid indemnities if the harvested production was greater than the appraised production.

Comment: Several comments were received regarding the meaning of the term "commensurate'' in sections 15(e)(2)(ii) and 15(f)(2)(ii).

Response: FCIC originally responded in the June 25, 2003, final rule that the term was clear. However, subsequent queries have demonstrated that although the term may be clear, its application is not. FCIC has revised the provision to clarify that the 65 percent reduction in the amount of the indemnity will also result in a 65 percent reduction in the amount of premium owed by the producer.

Comment: Several comments were received regarding the provisions proposed in section 15(j) that require producers to certify production has been destroyed before a claim can be paid, when a Federal or State agency requires such destruction. One of the commenters stated producers that are no-till farming need flexibility to leave appraised crops standing. Several other commenters asked if there was a conflict between the Federal and State agency's decisions, whose decision rules.

Response: The provision is only applicable if there is an injurious disease present. If any State or Federal agency requires the crop to be destroyed, then the producer is required to destroy the crop, regardless of whether the producer used no-till or any other production methodology. However, if the State or Federal agency only requires destruction of the production, then the producer could leave the plants standing. FCIC has revised the provisions to allow for this distinction. If either a State or Federal agency requires destruction, destruction must occur before a claim can be paid.

Clarifications of the Prevented Planting Provisions—Section 17

Many general comments were received regarding proposed prevented planting changes. The comments are as follows:

Comment: A few commenters stated that while improvements and simplification in prevented planting provisions are long overdue, they believe that producers and the insurance industry would be better served if RMA deferred action on this section until the agency has an opportunity to fully evaluate the input and recommendations from the Prevented Planting Forums.

Response: Based on the comments received regarding proposed changes to the prevented planting provisions, FCIC has decided to defer action on most of the proposed prevented planting proposed changes until it has an opportunity to fully evaluate other possible solutions. Any other recommended changes would be proposed in the **Federal Register** and the public would be provided an opportunity to comment. FCIC was required to make certain prevented planting changes that were mandated by ARPA. Those changes were included in the Final Rule FCIC published in the **Federal Register** on June 25, 2003. Additionally, while FCIC has agreed to defer most of the proposed prevented planting changes, as stated more fully below, it has decided to incorporate proposed changes to prevented planting provisions that are necessary to protect program integrity.

Comment: Several commenters stated it is now widely acknowledged that current rules are impractical for many prevented planting situations, particularly those related to extended drought and that RMA has established Prevented Planting Work Groups to provide the agency with guidance on the development of new prevented planting provisions. The commenters believe RMA should refrain from promulgating any prevented planting changes until the Prevented Planting Work Groups have completed their work, except for those necessary to implement other provisions (*e.g.*, the "double insurance'' provisions mandated by ARPA).

Response: See response to first comment under this section.

Comment: A commenter stated they would like to see an entirely fresh approach taken with regard to prevented planting. They understand that work groups have been, or are being, formed to discuss alternative approaches or changes to the current language, and stated that if it has not been considered, there should be a representative from each Standard Reinsurance Agreement holder included in these workgroups. They offer the following as several alternatives to the current and proposed language: (a) Abandon the idea of eligible acres by crop; (b) abandon the idea of rolling prevented planting acres to another crop; and (c) establish the idea of a "window of opportunity'' something on the order of "According to NASS Crop Reporting District, you must have been unable to do fieldwork on a minimum of 70 percent of the days from the earliest planting date on the policy to the end of the late planting period on the policy.'' The commenter stated that an idea like this would establish a defined area that is either eligible or ineligible for prevented planting payments and that it would also promote planting, such as a subsequent crop after the final planting date for some earlier crop.

Response: See response to first comment under this section.

Comment: A commenter noted there were numerous proposed changes in the prevented planting provisions. They are also aware that an RMA-backed prevented planting work group is being formed to address possible solutions to current prevented planting issues. The commenter suggested that it may be best to minimize the prevented planting changes being made in the new policy until the work group has a chance to complete its work, then make one, rather than two, changes to prevented planting provisions and the associated procedures. They stated that while the current prevented planting provisions and procedures have their problems, there will be a tremendous amount of cost, training and learning curve associated with changes, and they believe going through that process one time rather than two times may be the most prudent approach. The commenter generally believes that RMA should wait for the prevented planting work group to finish its work and provide recommendations before any prevented planting provisions are changed. They believe the current provisions are nearly impossible to administer but they do not believe the proposed provisions are any better. They believe there may be benefit to only going through the pain of one change rather than two changes.

Response: See response to first comment under this section.

Comment: A commenter stated that prevented planting provisions need simplification and a concise determination of what qualifies. They stated the provisions continue to show vagueness and subjectivity as to what is supposed to be eligible. They believe now is the time to improve this part of the provisions that have been a burden on all parties. The commenter feels the use of seven pages of a forty-page document should be a good indication of the complexity of prevented planting coverage. The commenter believes serious consideration should be given to delaying these proposed provisions if for no more reason than to rectify the issues with prevented planting. The commenter stated producers want to plant a crop. However if they cannot, they want to know what they can collect. They stated it is difficult to provide an answer without going through a major process. The commenter also believes consideration should be given to the following: (a) The prevented planted acreage; (b) the insured peril; (c) acreage left as black dirt should be paid an amount low enough to encourage producers to plant if at all possible; and (d) the crop to be paid on would be the largest planted acreage crop in the producer's database for any such acreage prevented from being planted. The commenter stated there does not appear to be any valid reason to determine if a loss caused by perils covered under the policy for one insured should be based on what other producers did or did not do. The commenter asked if insureds get paid a fire loss on their homes based upon if the neighbors did or did not have a loss on their homes. They also asked if hail losses are paid to an insured based upon the hail his neighbor received. They further asked why FCIC thinks they have to determine an insured's claim based on others and asked if this was the intent of Congress when prevented planting was requested to be covered.

Response: See response to first comment under this section.

Comment: A few commenters do not agree with the new prevented planting provisions. They believe the current prevented planting provisions are already an administrative nightmare and are difficult to understand without introducing additional options. The commenters recommended retaining the current provisions as they are until the prevented planting provisions can be simplified.

Response: See response to first comment under this section.

Comment: A commenter stated they support the long discussed idea of a flat payment per acre. The commenter stated this approach could also use NASS data based on average land rental rates by Crop Reporting District.

Response: See response to first comment under this section.

Comment: A commenter noted that provisions contained in section 17(a)(1) require that the insured was prevented from planting the insured crop, "due to an insured cause of loss that is general in the surrounding area and generally prevents other producers from planting acreage with similar characteristics. Failure to plant at any time on or before the final planting date when other producers in the area with acreage with similar characteristics are planting will result in the denial of the prevented planting claim provided that such planting constitutes a good farming practice.'' The commenter stated this requirement presumes there is one sound and correct practice that constitutes "good planting practices.'' They believe this requirement pits one producer against another as the resultant successful practice is not known until well after a crop is planted or is considered prevented from being planting. In this regard, the commenter suggested that in light of the fact that RMA is organizing a "Prevented Planting Forum,'' that resolution of this issue be postponed until RMA further reviews the issue.

Response: See response to first comment under this section.

Many comments were received regarding provisions proposed in section 17(a)(1). The comments are as follows:

Comment: A few commenters believe the term "general in the surrounding area'' is vague, ambiguous, and cannot be administered without specific guidelines. A commenter stated the proposal's use of "general in the surrounding area'' is unworkable. They believe a reasonableness standard coupled with an objective definition of "good farming practice'' as previously proposed should be substituted. They suggested the following language, "(1) In view of the geography, topography, soil types, weather conditions and exposure, it was not reasonable and would not have been a good farming practice, for you to plant the insured crop on the insured acreage due to an insured cause of loss. (Failure to plant at any time on or before the final planting date when it would have been reasonable and a good farming practice to plant will result in denial of a prevented planting claim).''

Response: FCIC has deferred most of the changes proposed in section 17(a)(1) until it has an opportunity to fully evaluate other possible solutions. Any alternatives will be proposed in the **Federal Register** and the public will be provided an opportunity to comment. However, there is a program integrity issue that arises when producers are able to plant the crop on some or all of the days early in the planting period but elect not to do so until the end of the planting period, where adverse weather may prevent them from planting. Producers should not receive a prevented planting payment if the producer elected not to plant on those days other producers in the area were planting. If a producer has been planting crops throughout the planting period when it was possible, but weather conditions prevented further planting, the producer would still be eligible for a prevented planting payment. In response to comments applicable to the June 25, 2003, final rule, the term "area'' is now defined. FCIC has revised section 17(a)(1) accordingly.

Comment: A commenter stated the proposed changes will be unenforceable in litigation or in arbitration. They stated the Special Provisions establish a planting period, the conclusion of which is marked by the final planting date, and that accordingly, an insured who plants by the final planting date is eligible for insurance (provided that the insured satisfies all other conditions of the policy). The commenter noted however, that subsection (a)(1) suggests that, for the purposes of prevented planting, the final planting date may be irrelevant and that an insured, to maintain eligibility for prevented planting, must have planted by some arbitrary date that may be a day, a week, or a month before the final planting date. They believe that unless a latter-day Nostradamus participates in the Federal crop insurance program, neither FCIC, the insurance providers, nor insureds have the ability to anticipate the possibility of future conditions that may prevent planting.

Response: See response to first comment under this subsection.

Comment: A commenter suggested deleting everything after the word "loss'' in the second line, because they believe everything else is subjective and not defensible. They stated that if the proposed language stays, RMA should issue its up front timely determination on a by area basis of what will be considered acceptable prevented planting locations and situations. They feel insureds and agents must be able to know what the rules and expectations are at the time possible prevented planting conditions exist and cannot be subjected to after the fact second guessing, particularly in situations where some are planting and some are not in the same conditions. The commenter recommended that a subsection (iii) be added to specify that an insured should only get paid prevented planting one time, not consecutive years for the same cause of loss (for example, the same potholes that are filled with water every year).

Response: See response to first comment under this subsection.

Comment: A commenter stated that the proposed change is a good improvement regarding initial planting period.

Response: See response to first comment under this subsection.

Comment: A few commenters stated language should be added that an insured must be prevented from planting during the regular planting period prior to the final planting date to be eligible for payment in the late planting period.

Response: See response to first comment under this subsection.

Comment: A few commenters recommended a requirement be included that a producer must show that an effort was made to plant when conditions were favorable. A few commenters believe the phrase "generally prevents other producers from planting * * *'' suggests there could be situations where some producers are eligible for prevented planting payments even though other producers in the area were able to plant. A few commenters stated the parenthetical statement following is absolute and that this needs clarification.

Response: See response to first comment under this subsection.

Comment: A commenter stated that allowances should be made for eligible prevented planting payments and planted acres. A few commenters stated the policy should be absolutely clear as to whether insurable and planted acreage can exist in the same area. A commenter stated they realize the language for prevented planting was written in the farm bill, however they suggested to address abuse, the provisions should require that to qualify for prevented planting, a producer must be prevented from planting during the initial planting period. The commenter also believes that prevented planting claims should not be allowed until the midpoint in the late planting period has passed.

Response: See response to first comment under this subsection.

Comment: A commenter stated the language does not clarify whether or not the farmer must initially be prevented from planting during the original planting period. A few commenters recommended a specific date should be established to remove the guesswork. One of the commenters stated that prevented planting, as a general matter, requires continuing analysis with a view to maintaining program integrity, being

able to offer a sound insurance product, and having a clearly understood program.

Response: See response to first comment under this subsection.

Comment: A commenter stated it is their general position that prevented planting claims should be allowed if a producer is prevented from planting by the end of the documented planting window. They believe that to expand the requirement further puts RMA in the position of dictating management practices and other decisions that are solely the responsibility of the producer. However, they do not believe RMA should simply look away from situations where there is an indication that committing fraud was the main objective, especially those situations where an individual is clearly pushing the edge of the envelope in regard to planting activities in the surrounding area.

Response: See response to first comment under this subsection.

Comment: A commenter stated the provisions specify that "Failure to plant at any time * * * will result in the denial of the prevented planting claim. The surrounding area includes * * *'' They asked who determines that everyone else should have been planting when a drought may be in effect. They stated that perhaps the other producers should not have been planting to collect their full guarantees. The commenter stated that some people will virtually always plant, because that it is what they have always done even though it may not be a "good farming practice.'' They believe the Colorado statement on prevented planting is very good.

Response: See response to first comment under this subsection.

Comment: A commenter stated that the proposed language requires a producer to have been prevented from planting the entire planting season which could penalize the producer who in the early part of the planting season, waits on better planting conditions, and finds later in the season planting is impossible.

Response: See response to first comment under this subsection.

Comment: A few commenters were concerned about inequitable treatment between replant requirements and prevented planting requirements. A few of the commenters believe both situations should be treated similarly while one of the commenters stated that consistent requirements would help simplify the program.

Response: There are different planting requirements between prevented planting and replanting. However, the purpose for the payment and the circumstances are significantly different and warrant different treatment. When acreage that is prevented from being planted is planted during the late planting period, the guarantee is reduced for every day that the crop is late planted. Such reductions do not apply to crops replanted during the late planting period. Further, prevented planting payments are based on the expected costs incurred in the preparation of planting and are usually limited to 60, 65 or 70 percent of the production guarantee for planted acreage. In contrast, once the crop is planted during the initial planting period, policyholders are eligible for payment based on 100 percent of the production guarantee. In addition, when it is practical to replant the crop, the policyholder does not have a loss other than the cost of replanting. The purpose of a replant payment is to cover such costs. Therefore, it is reasonable to require policyholders to replant in the late planting period because they will still receive the full benefit of insurance for which they paid the full premium. However, policyholders who are prevented from planting would receive reduced benefits even if they were required to plant during the late planting period and they paid a full premium. No change has been made.

Comment: A commenter stated that under the notice of loss section, the insured must give notice of prevented planting and in section 17(a)(2) it appears he must give a prevented planting acreage report. The commenter asked if there is a deadline for the prevented planting acreage report.

Response: Current provisions contained in section 17(a)(2) require prevented planting acreage to be included on the insured's acreage report. Therefore, the deadline would be the acreage reporting date specified in section 6(a).

Comment: A commenter stated the burden of the provisions contained in section 17(a)(4) should be on FCIC to withdraw the offer of insurance if these conditions exist in a specific area or for a specific crop. They believe if that happens, FCIC should provide timely notice to insurance providers and the public that its offer of insurance or increases in coverage is withdrawn.

Response: FCIC believes the commenter is referring to current provisions contained in section 17(b)(4). Since no changes to section 17(b)(4) were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few commenters believe coverage at the 60 percent level should be reduced to 50 percent. A few commenters stated that buy-up coverage for prevented planting should be eliminated. One of the commenters believes this change would address the current abuse created by the moral hazard of too great an incentive not to plant. A commenter recommended that the option to increase prevented planting coverage by an additional five or ten percent be eliminated in section 17(h)(1). They believe the base coverage provided is already too much incentive to not plant. A few commenters believe the incentive to not plant is too great. A commenter stated prevented planting, as a general matter, requires continuing analysis with a view to maintaining program integrity, being able to offer a sound insurance product, and having a clearly understood program. The commenter believes that in certain situations, the highest available coverage level is such that it may serve as an incentive not to plant which leads to vulnerability to program abuse when a producer perceives it more profitable not to plant rather than to incur the additional costs of planting and tending a crop through harvest. Another commenter stated that reducing the incentive to not plant (reducing the amount of prevented planting payments) would likely reduce the tendency of growers to "stop'' trying to get a crop planted when conditions are less than ideal.

Response: Since no changes to the prevented planting coverage levels were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter suggested RMA consider declaring areas or counties eligible for prevented planting due to drought which would allow producers within the area who choose not to plant to receive a prevented planting payment. They stated this would be similar to the Palmer Drought Index that was previously used, except it would be more precise and could be based on information from FSA, Natural Resources Conservation Service (NRCS), and the Extension agents reported to the RMA/Regional Office.

Response: Since no such changes to the prevented planting provisions related to drought were proposed, no changes were required as a result of

conforming amendments, the public was not provided an opportunity to comment on the recommended change, and only technical amendments were proposed, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter stated that FCIC should prohibit insureds from filing prevented planting claims based on drought in successive years.

Response: Since no such changes to the prevented planting provisions related to drought were proposed, no changes were required as a result of conforming amendments, the public was not provided an opportunity to comment on the recommended change, and only technical amendments were proposed, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter asked how the possibility of inadequate irrigation water from reservoirs or other water facilities will be addressed in terms of prevented planting.

Response: Inadequate water from reservoirs or other water facilities is already addressed in the current provisions of section 17(d), which discusses failure of the irrigation water supply. Since only technical corrections were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on any changes, no additional changes can be incorporated in the final rule. No change has been made.

Comment: A few commenters stated the provisions in section 17(d) need to be consistent with other sections that require qualification for the entire planting period rather than the final planting date. A commenter recommended that the words "or within'' be changed to the words "or throughout.'' A commenter stated that as they expressed previously regarding the definition of "prevented planting,'' section 17(d) does not clarify whether or not the farmer must initially be prevented from planting during the original planting period. They believe it appears the farmer must be prevented from planting throughout the entire planting period to be eligible for prevented planting coverage during the late planting period. Commenters also believe that "drought'' and "normal precipitation'' for prevented planting purposes need to be defined.

Response: There is no need for a conforming amendment to require the inability to plant throughout the planting period. To qualify for coverage under section 17(d), the cause of loss of drought must continue over a prolonged period and there must be insufficient soil moisture. Therefore, by its very terms, those conditions must exist throughout the planting period. The reference to the final planting date is simply to provide the date on which the conditions stated in section 17(d) must exist. Since no changes to the terms "drought'' and "normal precipitation'' were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few comments were received regarding section 17(d). A commenter suggested striking "if you elect to try to plant the crop'' from the last sentence. A commenter suggested changing the words "final planting date'' to "late planting date.''

Response: Since only technical corrections were proposed to section 17(d), no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

A few comments were received regarding section 17(d)(1). The comments are as follows:

Comment: A few commenters stated the term "toward crop maturity'' is an undeterminable and ambiguous term.

Response: Since only a technical correction was proposed to section 17(d)(1), no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommended changes cannot be incorporated in the final rule. No change has been made.

Comment: A commenter suggested deleting the words "or progress toward crop maturity.'' They believe this change would make the determination of prevented planting due to drought easier.

Response: See response to first comment under this subsection.

Comment: A commenter believes the provisions are totally subjective. They believe RMA should issue these determinations up front to providers and policyholders for the locales where the determination applies. The commenter does not believe agents should be subjected to the error and omission exposures this language creates, and that insureds should know up front how the policy will react when these conditions exist.

Response: See response to first comment under this subsection.

Comment: A few commenters stated the term "germination of seed'' is an ambiguous term and leaves much guesswork. They stated that insurance providers are not able to determine "good farming practices,'' and that the provisions seem to require that FCIC provide a determination in time for the grower to make an accurate decision. One of the commenters stated recent FCIC interpretation through FAD–012 has attempted to incorporate a sense of "good farming practice'' as a criteria for prevented planting eligibility due to drought, *i.e.*, if it is a "good farming practice'' to plant, then one should not be prevented, and vice versa. They stated the difficulty is that the policy also provides coverage for planted acreage that fails due to drought. The commenters added that the policy does not define drought, nor does it adequately describe the severity of dryness needed in order to qualify for prevented planting coverage and therefore, drought needs to be defined. They believe eligibility for prevented planting due to drought should be viewed as a significantly harsh weather-related condition and that eligibility needs to be based on NRCS or other governmental agency declaration that soil should not be disturbed due to dry conditions or the insured is physically unable to properly prepare the seed bed (as verified by an adjuster) due to dry conditions.

Response: See response to first comment under this subsection.

Several comments were received regarding section 17(d)(2). The comments are as follows:

Comment: A few commenters stated that FCIC should determine whether "reasonable expectation'' exists prior to the time the decision must be made. They stated the policy states that there must not be a "reasonable expectation'' of having adequate water to carry out an irrigated practice. They believe with the myriad of informational sources available with respect to irrigation water and agriculture, the provision leaves both the policyholder and insurance provider open to subjectivity and second-guessing. They believe that in situations where water availability is controlled by water districts (*e.g.*, reservoirs, canals, etc.), RMA should be required to facilitate the distribution of available water resource data, which would provide for consistent information being provided to all insurance providers. The commenters believe that existing policy language

was adequate with respect to individuals who relied on their own water sources (*e.g.*, wells) as these situations need to be handled on a case-by-case basis. A few of the commenters believe if access to the water supply is adversely affected and the cost of modifying equipment to obtain the irrigation water equals or exceeds the indemnity, such modification should not be required, even though actual failure of the water supply may not have occurred. Another commenter stated the policy language is vague relative to insurability for prevented planting. A commenter believes the provisions proposed are totally subjective and that RMA should issue these determinations up front to providers and policyholders for the locales where the determination applies. They do not believe agents should be subjected to the error and omission exposures this language creates. The commenter stated that insureds should know up front how the policy will react when these conditions exist. A commenter stated they would expect FCIC to determine whether the expectation exists prior to the time when the decision must be made.

Response: With respect to the recommendations that FCIC make the determinations of whether the producer had a reasonable expectation, many of these decisions are made on a case by case basis because individual circumstances can vary significantly. FCIC does not have the information (local weather data, available water or other information from irrigation districts, etc.) or personnel to make decisions on an individual producer basis. The insurance provider would have a much greater access to local conditions and the availability of water. No change has been made.

Comment: A few commenters believe the change from "reasonable probability'' to "reasonable expectation'' simply is a bad idea. They believe the former is objective and the latter is subjective. They stated that while weather bureau records can establish whether there is a "reasonable probability'' of adequate water, only the producer's psychiatrist can state whether that producer had a "reasonable expectation.'' The commenter suggested section 17(d)(2) be revised to read as follows: "(2) For irrigated acreage, you have not been notified by the supplier(s) upon whom you intend to rely for irrigation water that the supplier(s) does(do) not expect sufficient water will be available to you at appropriate times throughout the growing season to constitute a good farming practice for the insured crop on the insured acres.''

Response: FCIC proposed to amend section 17(d)(2) to only replace the word "probability'' with the word "expectation'' to conform to other policy provisions, such as section 9(b). It was not intended to change the meaning of the provision. FCIC agrees that there is a degree of subjectivity in both terms. It is impossible to totally remove the subjectivity because there is no way to know for certain at the final planting date whether the producer will have adequate water to irrigate the crop for the remainder of the crop year. Too many factors are unknown. However, FCIC will clarify when there is no reasonable expectation. The information used to determine whether or not there is a reasonable expectation must be from objective sources such as weather stations, reservoir levels, snow pack measurements, etc. Subjective information, such as letters from water districts that are not supported by the other evidence, will not be sufficient to establish a reasonable expectation.

Comment: A commenter stated that the provisions proposed in section 17(e) are entirely too complex for the average agent or insured to understand.

Response: Since the commenter did not reference any specific provisions contained in section 17(e) that they believe are complex or difficult to understand, FCIC cannot respond or make any specific changes as a result of this comment. As stated above, FCIC has elected not to make the proposed changes unless they are necessary to protect program integrity. FCIC elected to incorporate the proposed changes to section 17(e)(1)(i)(A) into the final rule to clarify that prevented planting payments cannot be collected on uninsurable acreage. If the acreage is not insurable, it cannot be used to determine eligible acreage for the purposes of prevented planting. The proposed changes to section 17(e)(1)(ii)(A) have been incorporated into the final rule because some prevented planting payments may have been allowed on the maximum number of acres specified in the processor contract even though the processor contract only guaranteed to accept production from a minimum number of acres and acceptance of any production from acreage above the minimum was optional or conditional. Further, there were instances where processors canceled contracts because the acreage was prevented from being planted, which, under the existing language, could render the acreage ineligible for prevented planting. This outcome would render the prevented planting coverage useless for such producers.

Comment: A commenter recommended the provisions proposed in section 17(e) be revised as follows: (1) Near the end of the statement in the first column, insert a comma after "available'', delete "or'' and insert "or elect to use another growers APH records'' after the word "guarantee'; and (2) At the end of the statement in the second column, insert a comma after "available'', delete "or'' and insert '', unless you elect to use another growers APH records'' after the word "guarantee.''

Response: Since no changes to these provisions were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

A few commenters suggested that section 17(e)(1)(i)(A) be revised as follows:

Comment: Near the beginning of the first sentence, insert the words "in any one of the 4 most recent crop years'' after the word "purposes.''

Response: FCIC has revised the provision to clarify that the phrase "in any one of the 4 most recent crop years'' applies to both the acres certified for APH purposes and the insured acreage reported.

Comment: In the last sentence, insert the words "during the normal planting period'' between the words "planting'' and "may.''

Response: The issue involves whether the crop has been prevented from planting and such determinations can only apply to the period in which the crop is normally planted. No change has been made.

Several comments were received regarding section 17(f)(1). The comments are as follows:

Comment: A few commenters recommended removing the entire parenthetical statement and adding language specifying payment or per-acre liability would not exceed that of the crop that is planted or reported for prevented planting. One of the commenters further stated the provision's "20/20'' rules attempt to prevent a producer from claiming small acreages within a unit for prevented planting or from claiming small acreages within a "field'' to a crop, type and practice different from any crop already planted in a "field.'' They believe the provision contains qualifiers that are burdensome and complicated to administer, when in reality, the provision can be easily circumvented by the producer. Therefore, they feel the

provision is of little benefit. A commenter recommended the section be removed because they believe it is confusing and impossible to administer. They believe the objective of the removed language could be simply accomplished by revising this section of the proposal to provide that any per-acre liability for prevented planting would not exceed the per-acre liability of the planted portion of the field.

Response: The proposed change is incorporated into the final rule because it is necessary to protect program integrity. There has to be means to determine the crop considered prevented from being planted when acreage in the field has been planted without penalizing producers for their normal planting practice, which may include planting separate crops within the field. Further, without this change, it is possible for prevented planting payments to be made for crops on acreage that would otherwise not be insurable because of rotation requirements or processor contract requirements. However, FCIC will look for ways to reduce the complexity while still maintaining program integrity. FCIC will consider the recommended change to add language to limit liability to that of the planted crop or the crop reported from being prevented planting. To be consistent with ARPA, FCIC also added provisions to handle those situations where the producer was prevented from planting a first insured crop and plants a second crop on the acreage. FCIC realizes there may be ways to circumvent the requirements and is working diligently to resolve this problem.

Comment: A commenter stated that as written, section 17(f)(1) is confusing and contains ambiguities that render the subsection amenable to different, reasonable interpretations. They believe this confusion is exacerbated by the parenthetical, which they suggest be subdivided into additional subsections.

Response: FCIC has subdivided the parenthetical into different sections to make it more easily read and understood.

Comment: A commenter suggested putting a period after the word "unit'' which would thereby eliminate rolling acreage from one crop to another. The commenter believes this recommendation would greatly simplify the provisions.

Response: Ending the provision at "unit'' would not solve the problem of rolling acreage from one crop to another because eligible acreage for a crop is still limited in section 17(e) and there must be a determination of the basis on which the remaining prevented planting acreage would be paid. FCIC is looking at other ways to simplify these provisions. No change has been made in response to this comment.

Comment: One commenter suggested the word "is'' be changed to the word "acreage'' in section 17(f)(3).

Response: FCIC agrees the word "is'' is not necessary in the provision and has revised the provision accordingly. However, FCIC does not believe the word should be replaced with the word "acreage'' because the term "acreage'' is already stated in the lead-in sentence in section 17(f) and would apply to this provision.

Comment: Regarding provisions proposed in section 17(f)(4), a commenter questioned how they will know if another person has received a prevented planting payment, because one grower could get a fall prevented planting payment while another grower may have the land for spring. The commenter suggested that the word "insured'' be added in the third line in front of "crop.''

Response: FCIC incorporated the proposed change into the final rule published on June 25, 2003. However, it inadvertently omitted this comment. ARPA only permits multiple prevented planting payments on the same acreage if the double cropping requirements are met. Therefore, this determination must be made and it is the producer that would be in the best position to have access to the information since the producer will either be the landowner or lessee. In either case, the producer would know who to contact to determine whether the acreage was previously prevented from planting. FCIC has revised the provision to clarify that it is the insured's responsibility to determine whether a prevented planting payment had previously been made for the acreage before receiving a payment. It is not necessary to add the word "insured'' before the word "crop'' in the third line because it would not be possible to receive a prevented planting payment for the crop if the crop was not insured. No change has been made.

Comment: Some comments were received indicating the provisions in section 17(f)(5) were unclear.

Response: FCIC originally responded in the June 25, 2003, final rule that the section was revised to improve clarity and remove any conflict with other provisions. However, FCIC subsequently discovered that it failed to incorporate provisions that would allow a crop from which no benefit was derived to be planted without consequence to the prevented planting payment, just as is allowed for a cover crop. The provision has been revised to allow a crop to be planted prior to first insured crop that is prevented from being planted, provided no insurance or other benefit is derived from the crop.

Comment: A few commenters believe the language proposed in redesignated section 17(f)(6) would seem to be helpful.

Response: FCIC has incorporated the proposed change into the final rule to protect program integrity. Without this change, it would be possible for producers to claim they were prevented from planting even though they never intended to destroy the forage crop and plant another crop.

Comment: A few commenters recommended that a comma be inserted after the word "practices'' in the parenthetical sentence in section 17(f)(9), and that the word "or'' be deleted and the words "or FSA farm plan'' be inserted after the word "requirements.''

Response: Since no changes to section 17(f)(9) were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter suggested the provision contained in section 17(f)(9), which requires producers to have inputs available to plant, needs to be clarified. They stated that while prevented planting was addressed in the proposed rule, this one important subsection is in need of clarification and was not addressed. The commenter stated that as modes of farming and farm financing change, many limited resource producers in particular, buy inputs at the moment they are needed. They stated that often times, this purchasing pattern is made necessary by lack of dry storage for the inputs. The commenter recommended this subsection be revised to clarify that producers must have inputs available to plant, which may include having sufficient financing, including lines of credit, available to purchase inputs when needed.

Response: Since no changes to section 17(f)(9) were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

A few comments were received regarding provisions proposed in section 17(f)(12). The comments are as follows:

Comment: A few commenters believe the term "could'' is vague. They believe the provision will be difficult to enforce. A commenter believes the word "could'' is far too broad in the context of the provision and should be revised to state " * * * a cause of loss has occurred that should reasonably be expected to prevent planting.''

Response: FCIC has incorporated the proposed change into the final rule to protect program integrity. Without this change, it would be possible for producers to lease or buy acreage on which a cause of loss has already occurred in order to obtain a prevented planting payment. This would violate the basic tenets of insurance. FCIC has revised the provision to specify a cause of loss that has occurred that would prevent planting. This change should make the provision more enforceable.

Comment: Commenters also believe the phrase "or you request insurance for the acreage'' is confusing. They stated that prevented planting is reported via the acreage report and it is unclear if the application and the sales closing date were intended to serve as the time by which insurance providers are to be notified. A commenter suggested the words "request insurance'' be changed to "apply for insurance'' because "request'' could be construed to mean when the prevented planting acres are listed on the acreage report, the insured is in the process of requesting coverage from the insurance provider. The commenter noted that at acreage reporting, a loss has already occurred.

Response: FCIC has revised the provision to clarify that the request for insurance only applies to requests for written agreements to provide insurance. The date the request for written agreement is submitted would be the date to determine whether a cause of loss that would prevent planting had occurred, not the acreage reporting date or the sales closing date.

Comment: A commenter believes the provision is subjective and questioned how the provider or agent is supposed to know that a cause of loss has occurred that will or could prevent planting. The commenter stated that if RMA believes conditions exist in an area that warrant withdrawal of the insurance offer, it should publicize and make known that the offer is withdrawn.

Response: Section 17(f)(12) is necessary to allow insurance providers to deny coverage in those situations where it is clear the acreage could never have been planted. Most agents and loss adjusters are located far closer to their insureds than FCIC and would be in the best position to know the local weather conditions and whether significant events had occurred that would preclude the ability to plant the acreage. The provision has been revised to make the standard less subjective and only require denial when there is a cause of loss that would prevent planting.

Comment: A commenter suggested that the language be replaced entirely with wording similar to that used at the end of section 17(e)(1)(i)(A). The commenter believes the reference to "otherwise acquire'' should surely be removed to prevent the situation of a grower operating land a year ago, leasing it last year, getting it back this year and calling it added land.

Response: FCIC has revised section 17(f)(12) and section 17(e)(1)(i)(A) to make them consistent to the maximum extent practical and has restructured section 17(f)(12) to make it easier to read and understand. However, there must be language to cover those situations such as inheritance or gifts of land. FCIC has revised the language to clarify that it is referring to other means of acquiring acreage beside lease or purchase. FCIC has also clarified the language to make it clear that producers who have leased the acreage in successive years will be eligible for prevented planting coverage. It is unnecessary to make other changes to address the commenter's hypothetical situation. If the producer owned the acreage, leased it to another person and the lease expired and the producer regains the acreage, the producer is not "acquiring'' the acreage. The producer had already acquired it when the acreage was first purchased and it is simply being returned. In this situation, the acreage would be eligible for prevented planting coverage. In those situations where the producer leased the acreage from a landlord, the landlord subsequently leases the acreage to another person, and the producer was able to lease the acreage again from the landlord, the provisions regarding leased acreage would apply, not the "otherwise acquired'' provisions.

Comment: A commenter suggested the phrase "during the normal planting period'' be inserted at the end of the sentence.

Response: The recommended language does not need to be added because the prevented planting coverage begins on the current or previous sales closing date, which falls outside the time the crop is normally planted, and the cause of loss that prevented planting could occur at any time during this period. No change has been made in response to this comment.

Comment: A few commenters recommended that language be added in section 17(f)(13) to specifically state that for acreage to be eligible for prevented planting, it must have been insurable if it had been planted.

Response: Since the suggested language was not proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Several comments were received regarding provisions contained in section 17(h). The comments are as follows:

Comment: A commenter suggested that sections 17(h), 17(h)(1) and 17(h)(2) be deleted. A commenter recommended that when switching acres, only allow those crops of equal or lesser value and only if both crops are insured with the same insurance provider. A commenter believes the practice of "rolling'' of crops creates an unacceptable moral hazard in connection with prevented planting and that serious consideration should be given to its elimination. They stated that if however, the practice of "rolling'' is retained, an insured should not be permitted to roll up to a higher paying crop. They do not believe any prevented planting payment should exceed that which would have been paid on the crop originally reported as prevented planting. The commenter also believes that "rolling'' should only be allowed when both crops are insured by the same insurance provider. A commenter suggested the total elimination of subsection 17(h) because they believe it is complex, burdensome and hard for insureds to understand. They believe the added language will be very difficult to track, both for insurance providers and RMA. The commenter stated that changing insurance providers is possible, therefore the "rolling'' of acres should somehow be limited to "rolling'' of acres to another crop to the same insurance provider, otherwise it becomes impossible to track. A few commenters believe the language that introduces the "rolling'' concept should be removed. They believe these provisions that attempt to restrict the number of payable prevented planting acres by crop are complicated and difficult to understand by the insured, the insured's agent, and insurance provider personnel. They added that once understood, the procedural process required to determine, by crop, the maximum eligible acres and subsequent payable crop acres, once the maximum has been reached, is excessively arduous and expensive to administer. A commenter recommended that section 17(h) be revised to read as follows: "If

we determine you are eligible for a prevented planting payment for a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 17(e)(1), your prevented planting guarantee or amount of insurance, premium and prevented planting will be paid as reported if you have other insured crops with eligible prevented planting acres up to the amount of liability originally reported for the crop you were prevented from planting. The prevented planting liability established for the other insured crops in the county will be applied on a dollar amount of liability per acre basis until you no longer have other crops with eligible prevented planting acres or you have been paid for the full amount of the prevented planting liability for the crop you reported as prevented planting.''

Response: FCIC understands there may be concerns regarding section 17(h). However, FCIC has been unable to determine whether the recommendations regarding "rolling'' acreages, limiting "rolling'' acreages to a lesser value crop or original liability, limiting "rolling'' acreages to when both crops are insured by the same insurance provider, and total elimination of the "rolling'' acreage provisions would fully address the concerns or add other program vulnerabilities. Until FCIC can make such a determination, it would be premature to include such changes in this final rule. FCIC will review alternatives, including those recommended, to find one that will simplify these provisions and still protect program integrity. Since FCIC is considering alternatives, it has elected to defer the changes proposed in section 17(h);

Comment: A commenter suggested the word "insured'' be added between the words "a'' and "crop.''

Response: FCIC agrees with the commenters that it may improve clarity to add the word "insured'' before the word "crop.'' However, it has elected to defer the proposed change until a more thorough review of prevented planting provisions is completed.

Comment: A commenter believes the issue of switching to a crop that results in the most similar prevented planting payment creates considerable uncertainty as to the ultimate monetary impact to the insurance provider. They stated this provision provides switching of crops that use different plans of insurance that have different Basic, Crop, and Special Provisions. They also added it impacts the premium, amount of administrative and operating reimbursement caused by switching of plans and crops, and fund designations (for example, by switching from the Assigned Risk Fund for Crop A to the Commercial Fund for Crop B). They also noted that if crops are insured with different insurance providers, insurance provider B can be responsible for payment of prevented planting acres reported to insurance provider A. They believe this provision is confusing for auditors since you are switching crops to different databases that are in different legal descriptions from where the prevented planting loss occurred. The commenter stated this provision does not address how to handle situations in revenue plans of insurance when the harvest price is higher than the base price and the liability per acre increases, and asked if they should roll to the approved yield database using the base or harvest price.

Response: FCIC also does not believe it is necessary to incorporate language in the provisions that address how to handle situations in revenue plans of insurance when the harvest price is higher than the base price. This would be an issue for any prevented planting payment made under such plans of insurance. Therefore, nothing in this provision increases or decreases the delay that may arise while waiting for the harvest price to be established. However, as stated above, FCIC is looking at alternatives to the "rolling'' acreage provisions.

Comment: With respect to section 17(h)(2), a commenter recommended the words "no prevented planting payment will be made for the acreage'' be deleted and replaced with the words "a prevented planting payment will be made based on a guarantee equal to or less than the guarantee for the originally reported non-irrigated crop.'' Another commenter stated this language could lead to the conclusion that eligible prevented planting acres are tied to practice and asked if that is the intent of the language.

Response: FCIC has incorporated the change in the proposed rule into the final rule to protect program integrity. Without this change, it would be possible for producers to receive prevented planting payments based on irrigated crops even though the acreage that was prevented from being planted was not irrigated and there was no equipment to irrigate such acreage. FCIC is unable to adopt the recommended change because FCIC has been unable to determine whether the recommendation would fully address the concerns or add other program vulnerabilities. Until FCIC can make such a determination, it would be premature to include such changes in this final rule. FCIC will review alternatives, including those recommended, to find one that will simplify these provisions and still protect program integrity. Eligible acreage may be tied to a practice only with respect to irrigated practice. Current provisions contained in section 17(f)(10) prohibit prevented planting coverage based on an irrigated practice unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage. Since the provisions only reference irrigated and non-irrigated, eligible acreage is not tied to other practices, such as summerfallow or continuous cropping.

Comment: A commenter stated the proposed revisions in section 17 do little to clarify what they believe is the most baffling portion of the Basic Provisions. They question whether or not an insured is actually prevented from planting if the insured is able to plant a substitute crop. They stated that an insured either plants or does not, and that in the former instance the insured insures the crop, and in the latter instance the insured files a claim for prevented planting.

Response: ARPA specifically provides for a prevented planting payment to be made if the insured is prevented from planting a first crop even though a second crop is planted on the same acreage in the same crop year. No change can be made.

Clarifications to the Written Agreement Provisions—Section 18

Comment: Several commenters recommended clarifying the situations in which price elections can be included in a written agreement, and asked if the new language was intended to allow RMA Regional Offices to offer higher price elections for organic crops.

Response: The reason the definition of "price election'' references written agreements is because written agreements are often requested when the actuarial documents do not contain the provisions necessary to insure the crop. In such cases, the price election used is generally the price election established by FCIC for the crop where it is insured and it is just transferred from an existing Special Provisions or addendum thereto. This is to prevent over-insurance of the crop. FCIC did not intend to provide authority to increase the price election by written agreement from those that have been announced by FCIC. The reference to written agreement in the definition of "price election'' may be misleading and FCIC has removed the reference. FCIC has also revised section 18 to clarify that price elections cannot be revised by written agreement. If price elections are

established by FCIC for organic crops, they will be included with all the other price elections on the Special Provisions or addendum thereto.

Comment: Several commenters recommended deleting the language contained in section 18(d) that allows a written agreement to be in effect for a maximum of 4 years. Another commenter agreed with the four-year period. Several commenters stated the RMA-Regional Office should approve agreements for the length they want to, if they want less than 4 years.

Response: The maximum number of years a written agreement should remain in effect is dependent on the type of agreement, the propensity for terms defined within the agreement to change, and pending changes to actuarial documents in effect for the crop and county. Some agreements may be reasonable and prudent for only one year. Others may have terms that should apply for many years. To provide flexibility and reduce unnecessary paperwork, FCIC agrees with the comments recommending deletion of the four-year maximum duration for a written agreement. The duration of a written agreement will be stated in the written agreement. FCIC has revised section 18(d) accordingly. Because written agreements can now be extended for many years, FCIC has also revised and clarified the provisions to specify that even though the written agreement may be for multiple years, it will only be in effect for a particular crop year if the conditions under which it was requested exist for that year. If conditions change, the written agreement is not cancelled, it is just not considered in effect for that crop year. FCIC has also removed the consequences of a denial of liability for failure to report a changed condition to be consistent with the removal of such consequences elsewhere in the policy in response to other comments.

Comment: A few commenters recommended deleting the word "printed'' in the last sentence in section 18(d). A commenter stated "policy'' is already defined and asked for clarification if the definition for it is the same as in the rest of the provisions. Another commenter asked that "immediately'' be defined, and suggested "promptly'' may be more appropriate.

Response: FCIC agrees the word "printed'' should be deleted and the provisions have been revised to specify the policy without regard to the written agreement. Since the notice provisions have been removed, the term "immediately'' is no longer applicable.

Comment: Several comments were received regarding the provision proposed in section 18(e) that states certain written agreements may be accepted after the sales closing date. The commenters asked that this issue be handled in the Crop Insurance Handbook as it is now. A commenter asked for clarification of placing a Web site address in the regulation regarding if this would lock down the procedures and make them unchangeable without republication in the **Federal Register** as a proposed rule. Another commenter asked that "physical inability'' be defined while another commenter asked who "may'' approve the policy.

Response: Producers do not receive copies of the handbook and must be provided the date by which written agreements must be requested. Therefore, FCIC has revised the provisions in section 18(e) to specifically state the exceptions to the sales closing date deadline and removed the reference to the procedures and Web site. FCIC also agrees the term "physical inability'' is unclear and has revised the provision to add an example. Only FCIC can offer written agreements and section 18 has been revised accordingly. Once offered, the producer and the insurance provider can elect whether to accept the written agreement as offered. Neither the insurance provider nor producer can elect to accept some terms of the written agreement and reject others.

Many commenters commented on the provisions proposed in section 18(f). The comments are as follows:

Comment: Commenter disagreed with the proposed language that requires producers to have a four year history of the same crop in order to qualify for a written agreement. They noted that peas, lentils and chickpeas are expanding in the Midwest because producers are finding the value in pulse crops through rotation and market value. The commenter stated that depending on demand and profitability, producers will plant and rotate peas, lentils and chickpeas in a 3 to 5-year rotation. They added that pulse crops break cereal disease cycles, improve soil organic matter, fix nitrogen and improve farm profitability. Commenters believe this requirement would also have a detrimental effect on specialty and alternative crop producers who quite often would have less than 4 years of production history for the crop. They stated that producers often rotate crambe and canola in a 2 to 4 year rotation, which would take 8 to 16 years to establish the history to qualify for the proposed crop insurance requirement. They believe this is an unrealistic and unreasonable expectation that would close the door for risk management protection for numerous producers. A commenter stated by the time an insured has four years of history with a new crop, considering recent weather patterns, he could easily experience a couple of bad years. Thus, he is out of business before he is even eligible for crop insurance. A commenter stated the current rule of a three year crop history requirement for insurability is onerous already and that extending this to four years is simply unrealistic and will have a muffling affect on innovative agriculture. Many commenters stated the federal requirement for organic certification is 3 years, and requiring 4 years costs organic producers another year without coverage. A few commenters asked why two years would not suffice. Several commenters asked that records for similar crops, types, varieties, and practices, as well as agronomic research done at regionally relevant land grant research stations, be accepted for consideration when approving a written agreement.

Response: The Act provides the authority for the FCIC to enter into a written agreement with an individual producer if the producer in the area has actuarially sound data relating to the production by the producer of the commodity that is acceptable to FCIC. This means that there has to be sufficient data to be able to make an insurance offer and such data must be specific to the crop in the area. It would be a violation of the Act to rely on similar crops or to rely on data on a crop that was not produced in the area. Based on comments received, FCIC agrees that requiring four or more years of data related to the production of a commodity by a producer may be too restrictive. However, the suggestion to use two years of data cannot be accepted because the ability to determine actuarially sound coverage on zero to two years of production experience of a single producer is questionable when insurance has not been available in the county. Therefore, FCIC will retain the current three year requirement for a crop for which there are no actuarial documents because there may not be any other data upon which to base insurance.

Comment: The commenter added that the proposal would create an artificial impediment to the expansion of minor oilseed crop acres in the United States (for example, in South Dakota and Montana where there are some canola written agreements, because there is no standard coverage available in many of the counties) since producers would have to grow canola 4 years before RMA could provide the insurance offer. The

commenter stated that because the proposed language is practice, type, and variety specific, a grower in North Dakota who wanted insurance on high erucic rapeseed would need to provide four years of production evidence for high erucic rapeseed (regardless of the number of years they grew canola) before RMA could provide an insurance offer. The commenter believes since canola and rapeseed are very similar, this requirement would be unduly restrictive to growers. They added that any growers wishing to rotate into canola in other states that show promising growth, such as Wisconsin, Michigan and the Pacific Northwest, would face the same overly restrictive requirements.

Response: In those cases where the crop has previously been insured and the producer is only changing the type, variety or practice, there is data in the county that can be used to establish insurance and, therefore, only one year of records is required. FCIC has revised the provisions accordingly.

Comment: A commenter stated that the provision seems to run contrary to Congressional intent in the farm bill to encourage planting flexibility. The commenter added that producers in some states are growing program crops (*i.e.*, cotton in Kansas) that may not have been grown traditionally. The commenter stated the intent of planting flexibility is to allow producers to respond to market signals and promote conservation practices. The commenter believes the proposed provisions would discourage producers from pursuing planting flexibility and may discourage planting based on new technologies and possible value added opportunities.

Response: Notwithstanding the added flexibility in the Farm Bill, FCIC is bound by the language in the Act. Therefore, even though it may impose a hardship to those producers who rotate crops and new producers, to comply with the Act, FCIC must set a minimum standard of how much production evidence is acceptable for determining an appropriate premium rate and coverage in these circumstances.

Comment: A commenter recommended the provisions be revised to allow a minimum of 65 percent coverage if sound farming practices are adhered to when producers do not have 4 years of production records.

Response: The Act's requirement for actuarially sound data applies to all coverage levels. Therefore, simply setting a maximum coverage level for producers without actuarially sufficient data would not be sufficient to meet this requirement. FCIC has also revised the provisions to inform the producer of the other requirements for requesting a written agreement. Such requirements were previously located in the procedures, which the producer did not receive.

Comment: Several comments were received regarding the provision proposed in section 18(g) that states any written agreement will be denied if FCIC determines the risk is excessive. They stated that clarification is needed regarding the roles of the RMA Regional Offices and the insurance providers as to who decides. The commenters asked if the proposed provision would affect written agreements already in effect and asked what the definition of "excessive risk'' is.

Response: This provision has now been incorporated into sections 18(d) and 18(h), which includes the basis for which written agreement requests can be denied. FCIC also added standards for which requests could be rejected and written agreements denied. Such standards were previously included in the procedures and FCIC determined that producers should know these standards. The Act provides FCIC with the authority to limit insurance on the basis of risk. Consistent with the Act, the provision clearly states FCIC will determine when the risk is excessive. The insurance providers have no role in making these determinations of excessive risk. Such determinations can affect requests for written agreements or written agreements already in effect but if the determination is made during the crop year, the written agreement will not be canceled until the subsequent crop year. Currently the excessive risk is determined by loss ratio and loss frequency. However, FCIC is exploring other possible methodologies to determine whether other methodologies may more accurately assess the risk.

Elimination of the Arbitration Provisions—Section 20

There were a large number of comments regarding the proposed elimination of the current arbitration provisions. For the purpose of addressing these comments, FCIC has grouped them into the following 3 categories: (a) Comments agreeing with the proposed elimination; (b) comments disagreeing with the proposed elimination; and (c) comments recommending alternative methods of dispute resolution.

Many commenters stated they support the proposal to eliminate the arbitration provisions. Their additional comments are as follows:

Comment: Many of the commenters believe that mandatory arbitration can be quite costly to the producer and that it eliminates access to any other form of dispute resolution. Some of the commenters agree with the rationale provided in the abstract to the rule and believe mandatory arbitration has proven to be ineffective in many instances and has overreached its original objectives. A commenter agreed with the rationale for the change provided in the preamble of the proposed rule. They applaud the elimination of the arbitration requirement, and the retention of the reconsideration, mediation, and appeal procedures for disputes with the government. The commenter added if arbitration is ultimately removed, references to arbitration in other areas of the policy should be removed, and they believe it should be replaced with alternative dispute resolution. One commenter believes the proposal to delete the provisions regarding arbitration and to permit producers to resolve disputes through the judicial process is a good one. The commenter believes that by deleting the provision, it is clear that the only avenue is through the judicial process.

Response: As a result of all the comments, FCIC has determined it would not be in the best interest of the producer or insurance provider to eliminate the arbitration provisions. However, it is clear that the current arbitration provisions need to be revised to address the issues identified with arbitration. As explained more fully below, FCIC has revised the arbitration provisions to address these issues.

Comment: A commenter recommends that FCIC should require insurance providers, as a condition of the reinsurance contract, to offer and participate in alternative dispute resolution similar to that offered in contracts with the government, *i.e.*, reconsideration, mediation, and appeal to the National Appeals Division insofar as disputes involve interpretation of FCIC regulations. They do not believe this requirement would be unduly burdensome for insurance providers. A commenter stated their experience with mandatory farmer-lender mediation has been positive on the whole for both debtors and creditors. A commenter also believes FCIC should consider adding provisions which will simplify and quicken the dispute resolution process. They recommended the policy specifically provide that the parties may mediate any dispute, provided there is a clear requirement that whoever attends the mediation conference has the authority to settle the claim and that insurance providers be given some assurance their decision to settle will not be later questioned by FCIC, which

they believe is a crucial requirement. The commenter believes insurance providers are reluctant to settle any claims because it is easier for them to fight the insured and lose, than to settle with the insured and fight FCIC if FCIC later disagrees with the settlement. They do not believe mediation will work or that settlements will occur even in the judicial process, if there is a disincentive for the insurance providers to settle. The commenter recommended the rule be clarified to state that any settlement entered into between a producer and insurance provider related directly or indirectly to the payment of premium will constitute full payment of the premium so the producer will not be considered ineligible for benefits for non-payment of premium. They believe if the purpose of these new regulations is to "better meet the needs of the insured,'' then it seems obvious to them such needs will be better served if the dispute resolution process is simplified and settlements are encouraged.

Response: The commenters also suggested that FCIC require the insurance providers to offer alternative dispute mechanisms similar to the governmental dispute resolution mechanisms such as mediation, reconsideration or appeal to the National Appeals Division (NAD). Mediation is always an option available to resolve disputes between producers and insurance providers and FCIC will revise the provisions to clarify that this option is available and how mediation will operate within the policy provisions. Further, a revised arbitration process will still be available to resolve disputes. But there is no basis to impose additional burdens on the insurance providers to create formal reconsideration or appeals processes because it would impose a significant monetary burden to set up such formal processes. The insurance providers are always free to adopt informal reconsideration or appeals processes. Further, such informal processes must be in addition to, not instead of, the arbitration process stated in the policy. FCIC does not believe it should establish formal rules for mediation. Mediation works best when both parties are in agreement as to the process. However, FCIC agrees that producer and insurance provider representatives who participate in the mediation must have authority to settle the case or the process is rendered meaningless and will incorporate this requirement into the provisions. While insurance providers are free to mediate and settle disputes, FCIC cannot abdicate its responsibilities to ensure that taxpayer dollars are properly spent. However, FCIC agrees that it should take into consideration litigative risk and the reasonableness of settlement. If the insurance provider and producer settle a dispute regarding premium, the producer no longer owes a debt to the insurance provider once the agreed to amount has been paid and should no longer be ineligible. However, as stated above, if such settlement occurred after the termination date, the producer would still be ineligible for the following crop year. Notwithstanding any such settlement, the insurance provider would still be required to pay FCIC all premium owed under the policy unless the insurance provider can demonstrate that the amount of premium billed was in error.

Comment: Commenters stated it appears that determinations made by FCIC will be subject to appeal provisions under 7 CFR part 11, but it is not clear as to whether the policyholder will be offered these same appeal rights for determinations made by insurance providers. One of the commenters commended FCIC for having already established the offering of appeal rights through the provisions of 7 CFR part 11. However, they believe it is imperative for policyholders to also be provided a system of dispute resolution with insurance providers. The commenter stated many of the potential disputes between insurance providers and policyholders involve sums of money that make legal action on the part of the policyholders cost prohibitive, thereby leaving them with no grievance procedure or recourse. The commenter urged that insurance providers be included in appeal procedures under 7 CFR part 11 or a similar dispute resolution/appeals system and suggested the following language for section 20(a), "Except as provided in section 20(d), you may appeal any determination made by FCIC or insurance providers in accordance with appeal provisions published at 7 CFR part 11.'' The commenter believes that in addition to providing low cost dispute resolution for both the insurance providers and policyholders, informal appeals and mediation serve to foster good will and communications between disputing parties.

Response: FCIC agrees that it would be in the best interests of all parties if there were a low cost dispute resolution mechanism available to the insurance provider and producer. However, disputes between the producer and the insurance provider can never be appealed to NAD under 7 CFR part 11. Under 7 U.S.C. 6994, only "adverse decisions'' are appealable to NAD and under 7 U.S.C. 6991(1), "adverse decisions'' can only be rendered by a USDA agency, such as FCIC. FCIC has clarified the provisions to specify when disputes may be brought to NAD. As stated above, FCIC has also revised the provisions to allow mediation as a low cost means to resolve disputes. However, disputes not resolved through mediation must be resolved through arbitration.

Comment: One of the commenters questioned whether determinations made by insurance providers would leave the policyholder with no dispute resolution options other than legal action, or if it is intended that policyholders disputing insurance provider determinations will be able to appeal adverse insurance provider determinations to FCIC.

Response: FCIC does not have the resources to hear disputes between producers and insurance providers at this time.

Comment: A commenter added that many states have USDA certified agricultural mediation programs that are quite capable of participating in a dispute resolution/appeals system for insurance providers. Nationwide, the number of USDA certified state agricultural mediation programs has increased to 29 due to the ongoing success of the program and most USDA agencies that deal with agricultural producers have implemented dispute resolution/appeals of adverse determinations under 7 CFR part 11. The commenter stated that as part of the appeals process, mediation is offered through USDA certified mediation programs, if available in the state and that if elected by producers in states without USDA certified programs, mediation is provided through other non-USDA certified mediation providers. The commenter added if mediation is unsuccessful in resolving the dispute, the producer can file a request to have the dispute heard by the National Appeals Division. The commenter stated in fiscal year 2002, the dispute resolution rate for one state's Agricultural Mediation Service cases was 89 percent, including those where adverse determinations are reversed or modified. Also included are those where the producer, through mediation, gains understanding, accepts the determination, and foregoes further administrative appeals even though the adverse determination remains unchanged. The commenter believes disputes resolved through mediation save the participants further time, effort, and money spent on formal appeals or litigation. In the commenter's state, average mediation costs for insurance

providers would typically range from around twenty-five to seventy-five dollars per case.

Response: There is nothing in the policy that would preclude producers and insurance providers from utilizing the USDA certified state mediation programs, if such programs are amenable to hearing such disputes.

Comment: A commenter stated it appears FCIC has decided that the American Arbitration Association (AAA) arbitration was not an effective or desirable dispute resolution method, and has therefore decided to use the administrative appeals process exclusively, which they agree with. The commenter stated the current language in section 20 caused considerable confusion over the meaning and the exact requirements of arbitration. They stated that the apparent requirement for the AAA oversight and administration was disregarded by a federal district court when the parties could not reach agreement on an arbitrator or initiation of arbitration.

Response: FCIC has not decided to use the administrative appeals process exclusively. Under the proposed rule, the only dispute resolution mechanism available was litigation. Further, FCIC determined that elimination of arbitration was not in the best interests of the producer or the insurance provider and has elected to revise the arbitration provisions to reduce the problems identified by the commenters and FCIC in its preamble to the proposed rule. FCIC has not determined that the American Arbitration Association (AAA) arbitration was not an effective or desirable dispute resolution method. FCIC is simply unable to endorse or require a producer or insurance provider to use a specific organization to settle disputes. Such action would be a violation of the competitive process.

Many commenters opposed elimination of arbitration from the policy. Their additional comments are as follows:

Comment: Many commenters stated arbitration is effective and resolves disputes quicker and cheaper than litigating in court. A commenter stated lengthy court battles cause substantial delays of crop insurance indemnity payments which many producers cannot afford. If producers go to court, they may incur more expenses and delays than they would through arbitration. The commenter stated crop insurance involves complex evidence, testimony and documents and that experienced arbitrators' quick understanding of the issues saves time and money. They stated incorporation of an arbitration clause in the crop insurance policy enables producers, at the time they sign the contract, to know what their potential costs will be in terms of time and money if a dispute arises. A few commenters stated that while the arbitration process may have its flaws, it provides an interim process through which the insurance provider, agents and insured may make their case to an arbitrator whose expertise lends itself to quick resolution of the issue. A commenter states the case statistics from all Federal district courts for the year ending 2001 compiled by the Department of Justice indicate the median time to bring a civil case to trial in the Federal district courts is 21.6 months. An additional 10.9 months from the filing of a notice of appeal is required to dispose of any appeal. The number of cases pending in the Federal district courts for more than three years is at an all-time high of 35,303 cases, more than doubling since 1999. By comparison, the International Centre for Dispute Resolution, a division of the AAA, and the largest international commercial arbitral institution in the world, had an average resolution time for claims of less than ten months from filing to award.

Response: FCIC is unable to dispute the statistics provided and has elected to retain the arbitration provisions.

Comment: Commenters stated although the AAA, which administers the majority of arbitration cases, assesses filing fees, the fees vary according to the size of the case. They stated only a case in excess of $1 million would incur the filing fee described in the proposed rule, while by contrast, cases valued at $75,000.00 and at $150,000.00, which are more indicative of the average dispute, result in filing fees of only $750 and $1,250 respectively. The commenter stated that in analyzing costs, FCIC has examined only the infrequent high value cases, and from those made erroneous conclusion as to the cost of arbitration. The commenter questioned whether FCIC has, in fact, analyzed crop insurance arbitration cases to determine both the median and mean claim amounts demanded by insureds. They stated if FCIC has made such a determination, they request FCIC publish the number of cases reviewed and the median and mean claim amounts. The commenter stated that in an effort to make arbitration costs reasonable for consumers, the AAA has a separate fee schedule for consumer-related disputes and the commenter provided a listing of the fee schedule. The commenter stated a nonrefundable initial filing fee is payable in full by a filing party when a claim, counterclaim or additional claim is filed and a case service fee will be incurred for all cases that proceed to their first hearing, which is payable in advance at the time the first hearing is scheduled. They noted this fee is refunded at the conclusion of the case if no hearings have occurred, however, if the Association is not notified at least 24 hours before the time of the scheduled hearing, the case service fee will remain due and will not be refunded.

Response: FCIC had previously received significant anecdotal evidence that the cost of arbitration was rivaling that of litigation and based on the requests for litigation expenses incurred in arbitration, FCIC had to agree. However, FCIC accepts that these cases may have been the exception and not the rule and has elected to retain the arbitration provisions as amended as stated below.

Comment: The commenter believes that in assessing the cost of arbitration, FCIC apparently ignored the costs associated with retaining counsel, an option in arbitration but a necessity in litigation. The commenter stated that more specifically, in disputes involving nominal amounts of money, insurance providers and, to a greater degree, insureds chose to proceed without counsel. They stated however, if litigation is required, both insurance providers and insureds will be compelled to retain counsel to navigate through the specialized waters of litigation, which they believe will be more of a burden on insureds than on insurance providers. Therefore, they believe any cost-savings associated with the elimination of the filing fee will be more than offset by the imposition of legal fees. The commenter stated that moreover, for claims under $75,000, the AAA offers expedited procedures that streamline arbitration, thereby reducing the time and expenses incurred by insurance providers and insureds. They added that similarly, for claims under $10,000, the AAA permits cases to be decided based on documents only. The commenter stated that by eliminating the oral hearing, insurance providers and insureds are not compelled to spend more money than the amount in dispute. They added that unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.

Response: See response to first comment under this subsection.

Comment: The commenters recognize that some arbitrators have exceeded the scope of their authority and, therefore, they urged FCIC to incorporate an

explicit list of issues subject to arbitration into the Common Crop Insurance Regulations. That some arbitrators or arbitration panels may have rendered interpretations of the policy should not be a basis for rejecting arbitration as an approach. Any deviation by an arbitrator from the scope of authority conferred by contract is a ground for vacating the arbitrator's decisions. Thus, to the extent an arbitrator goes beyond resolving factual disputes, the arbitrator's determination is subject to being vacated and reversed. This is the appropriate method for dealing with an errant arbitrator rather than the one chosen of proposing total elimination of the process. The commenter stated the proposed rule laments the instances in which arbitrators have interpreted the crop insurance policy and, in doing so, applied state law even though preempted. They stated contrary to FCIC's understanding or expectation, even purely factual disputes between insurance providers and insureds often necessitate the interpretation of an insurance policy that neither party wrote. They stated whether these disputes are resolved through arbitration or litigation, an arbitrator or a jury or a judge ultimately will decide the meaning and effect of the insurance policy and the various handbooks issued by FCIC. The commenter believes unless FCIC establishes a framework in which it alone has the authority to settle disputes involving policy interpretations, FCIC must accept the reality that a third party will fulfill that function. The commenter stated it is their overwhelming experience that most arbitrators apply the applicable policy provisions and the law, and do not engage in policy interpretation. They believe this is the direct result of briefing arbitrators on the history and role of the federal crop insurance program, the Act, the relationship between the FCIC and the insurance provider, the pertinent legal authority regarding preemption, and cases involving the specific policy terms and conditions at issue in the arbitration.

Response: FCIC accepts that arbitration may be a valuable tool and has elected to retain it. However, there appears to be little dispute that arbitrators have exceeded the scope of their authority in the past and made policy or procedure interpretations. Since many arbitrators failed to state the reasons for their decision, it would be impossible to get such decisions vacated. Therefore, another means had to be developed to ensure that arbitrators were not interpreting the policies or procedures. FCIC agrees that factual disputes and policy and procedure interpretations can be intertwined and that this should not preclude arbitrators from hearing the dispute. FCIC also agrees that the only way to avoid the possibility of having third parties interpret the policy or procedure is to develop a framework in which FCIC is the only one who can render interpretations. There have been instances in the past where arbitrators' decisions have resulted in disparate treatment, whereby one producer could win an award and a neighbor with the same crop and conditions may not based on who the arbitrator was. This is contrary to the goals of the crop insurance program. Federal crop insurance is a national program with all producers receiving the same policy for the same crop and insurance providers are required to use procedures issued by FCIC in the service and adjustment of such policies to ensure that all producers are treated alike and none receive special benefits or treatment because of the crop they produce, the insurance provider that insures them, or who hears their disputes. Therefore, consistent with section 506(r) of the Act and 7 CFR part 400, subpart X, FCIC has revised the policy to create this framework and specify that such interpretations must be sought from FCIC in mediations, arbitrations or litigations, such interpretations will be binding, and failure to obtain an interpretation will result in nullification of any settlement or award. This will ensure that all producers and insurance providers are treated alike.

Comment: Commenters also stated they believe that local court decisions may cause more variance in policy decisions than through arbitration and thus, FCIC's goals for proposing to eliminate arbitration would not be met and would be even further undermined.

Response: FCIC is not sure that local court decisions will have more variance than arbitrators' decisions. However, FCIC sees the other benefits of arbitration and has elected to retain the arbitration process.

Comment: One of the commenters believes if there are problems with the arbitration system, the arbitration process should be improved rather than abandoned. They believe the arbitration process as enacted in 1925 provides such contracts be arbitrated and this provision is irrevocable.

Response: FCIC does not agree that it is required to include arbitration in its policies. However, FCIC has elected to improve, rather than abandon the system.

Comment: Commenters also stated they believe arbitration alleviates unnecessary parties from being named in litigation.

Response: Regardless of whether arbitration or litigation is offered, unnecessary parties may be named. Further, there are instances where the necessary parties have not been joined in the arbitration, such as when the producer is alleging agent error. However, as stated above, FCIC has agreed to retain the arbitration provisions as revised.

Comment: Commenters stated FCIC has historically been hesitant to provide financial and testimonial assistance to insurance providers defending FCIC policy and procedures. Commenters stated that while RMA may believe its direct participation in the arbitration of individual disputes would enhance the program, in their experience, RMA employees typically have declined requests to testify as either fact or expert witnesses, or have elected not to provide any information material to the dispute. They believe nevertheless, a system could be devised through which the approved providers would notify RMA of pending arbitrations and scheduled hearing dates, and upon RMA's request, would call an employee designated by RMA as a witness. The commenter believes the essential standard for any such system would be that RMA participation did not delay resolution of the dispute between producer and approved provider. They believe centralizing the notice receipt and RMA participation decision in a single RMA office should easily allow this standard to be met.

Response: As stated above, FCIC agrees that it needs to provide interpretations to ensure that the provisions are administered in a uniform manner for all insureds. Therefore, it has revised the provisions to require policy and procedure interpretations be obtained from FCIC and such interpretations will be binding in any mediation, arbitration or litigation. FCIC has procedures in place to seek policy interpretations through 7 CFR part 400, subpart X. Further, the department has procedures to request witnesses or documents and FCIC will permit witness testimony or provide documents if the standards in such procedures have been met. Further, the administrative and operating expense subsidy paid to insurance providers includes an amount for litigation expenses. Such subsidy is paid for all policies, regardless of whether the policy is ever litigated, and is intended to cover the costs associated with those policies where litigation occurs.

Comment: A commenter recommended the section heading be changed to read "Arbitration, Appeals and Administrative Review.''

Response: FCIC agrees that the heading should be changed and has revised it to read "Mediation, Arbitration, Appeals, Reconsideration and Administrative and Judicial Review'' to encompass all the provisions contained in that section.

Comment: Commenters suggested that all issues should be arbitrated. Another commenter recommended the current provisions be retained with a definition of "factual determination'' added or explain in another subsection what can and cannot be arbitrated. A commenter recommended FCIC establish guidelines regarding how arbitration cases are to be handled, how various types of issues are to be addressed and provide producers with information when they sign contracts as to what their options are under arbitration clauses. A commenter stated their experience with the arbitration process has been the arbitrators' lack of knowledge or understanding of the policy and procedures and specifically the insurance providers' lack of authority to negotiate settlements without doing so outside of FCIC procedure and jeopardizing FCIC reinsurance on the policy. The commenter believes most of the problems cited in the proposed rule relating to the use of arbitration may arise from insufficient guidance from the Department of Agriculture. They stated if a contract arbitration clause is intended to only direct certain types of disputes to arbitration, the clause should explicitly set out the appropriate parameters (*i.e.* "Any disputes involving acreage determinations, approved yield calculations, determinations of production to count, or other similar factual determinations shall be resolved in accordance with the rules of the American Arbitration Association. Arbitration shall not be used to resolve other policy disputes or disputes regarding the interpretation of policy.''). They added that specific provisions of an arbitration clause in effect modify the standard framework embodied in the Commercial Arbitration Rules.

Response: FCIC agrees that all disputes should be subject to arbitration and has revised the provisions accordingly. FCIC considered listing the factual disputes but realized that it was impossible to list all possible factual disputes and that even factual disputes may involve some policy interpretations. Further, as commenters and FCIC have realized, it may be difficult to distinguish factual disputes from other types of disputes. Therefore, FCIC has elected to revise the provisions to allow all disputes to go to arbitration but require policy and procedure interpretations be made by FCIC and provide guidelines such as requiring arbitrators issue written decisions, timing of arbitrations, the binding effect of arbitrations, etc. Since producers should receive the policy upon application, which contains the rights and responsibilities of the parties regarding arbitration, there is no need to provide additional information regarding their options. Insurance providers have the authority to negotiate any settlement. However, FCIC must have the ability to determine whether its policies and procedures have been adhered to. If an insurance provider and its agent and loss adjuster have followed FCIC's policy and procedures in handling the policy, there is no basis to deny reinsurance, which includes the defense of cases where there is little or no litigative risk. It is only where the insurance provider, agent or loss adjuster committed an error or omission that reinsurance is at risk. Insurance providers always have the option to discuss settlement of a case with FCIC to determine whether the settlement would be reinsured. FCIC is unsure what the commenter is referring to when it states that the arbitration clause in effect modifies the standard framework of the Commercial Arbitration Rules and, therefore, cannot respond to this comment.

Comment: A few commenters recommended retaining the first sentence of current subsection (a) to address arbitration between policyholder and insurance provider, and that the appeal details be incorporated in a separate subsection (b). The commenter views the process of arbitration and the process of appeals and administrative review as two distinct processes, and both may be appropriate for inclusion in the policy. The commenter believes arbitration should apply to disputes between the insurance provider and the insured, and appeals and administrative review should apply to decisions made by FCIC. A commenter added that the proposed language (only a "determination made by FCIC'') severely limits the situations that would be subject to the process identified in the proposal.

Response: FCIC has restructured the entire section and has attempted to distinguish between resolution of disputes with insurance providers and those with FCIC. However, since some processes and provisions are applicable to both, it would be impossible to totally separate these provisions. FCIC agrees that the appeals process available in 7 CFR part 11 is extremely limited. However, there is no statutory authority to permit disputes between insurance providers and producers to be resolved through this process. Arbitration and mediation are now available for determinations not made by FCIC.

Comment: Commenters stated the AAA should administer all arbitrations. The commenter stated based on their experience, alternative dispute resolution organizations other than the AAA are either unable or unwilling to administer arbitration in accordance with the AAA's rules. Other commenters felt it would work if reputable arbitrators were used that both parties agreed to. A commenter states the existing provisions of section 20 only require use of the AAA rules, not the AAA itself. It states that this approach is appropriate because there are various reputable and less expensive arbitration providers available. Because of the increasing acceptance of arbitration as a preferred alternative to the judicial process, competition amongst the providers of arbitration services enables parties to the process to negotiate cost savings arrangements. A commenter believes the AAA should still be an option for any appeals process. Other commenters expressed concern that local influences need to be discouraged. They suggested that perhaps this should go to the Federal system to resolve the lawsuit and, as with any other Federal program, lawsuits should pre-empt State laws. The commenter suggested the Law Committee's input be sought. A commenter referred to the RMA's FAD–007 (issued in 2001), stating RMA interpreted the arbitration requirement of section 20(a) of the Basic Provisions to allow for any alternative dispute resolution organization to administer these proceedings. The commenter also referenced their previous letter in which they brought to RMA's attention that Rule R–2 of the specific rules required by the Basic Provisions states "When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they hereby authorize the AAA to administer the arbitration.'' They stated that the American Arbitration Association cannot vouch for the integrity, quality, or fairness of any proceedings carried out by other organizations. A commenter stated creating federal jurisdiction over federally-reinsured crop policies will assist insurance providers in those few instances when arbitrators intend to

exceed the role as fact finder and that declaratory relief could be sought. The commenter does not believe creating federal jurisdiction will require any statutory change. They believe rather, by completely preempting the field of crop insurance with improved regulatory language (in conjunction with the existing statutory language set forth in the Act at 7 U.S.C. 1506(1)), Federal courts will have jurisdiction over all federal crop insurance claims as a matter of law and complete preemption will also promote uniformity in the payment of claims.

Response: FCIC cannot require all arbitrations be filed with AAA. This would violate the government requirement to compete for contracts or services if it were to limit arbitrations to AAA. However, FCIC needs a uniform standard for administering arbitrations and the AAA rules provide a standard that is widely accepted. FCIC is not precluding the use of AAA. However, if any other organization offering arbitration services wants to participate, it must use the AAA rules except that to the extent the AAA rules may conflict with the laws regarding competition, such rules cannot apply. FCIC has attempted to obtain legislative authority to limit litigations to the Federal courts several times in the past and such authority has not been provided. Therefore, even if, as the commenter states, FCIC has the authority to limit litigations to the Federal courts through the regulatory process, it is unlikely that Congress would permit the exercising of such authority. FCIC does not have the resources to completely preempt state law. Further, Congress did not intend for complete preemption or it would have preempted all state laws, not just those in conflict with contracts, agreements or regulations of FCIC. FCIC has revised the provisions to clarify its preemptive effects by making the policy provisions binding and limiting the imposition of certain costs and damages. FCIC is unsure of what the commenter is suggesting regarding the Law Committee. Arbitration is an issue that involves all program participants and they all should have an opportunity to comment on any proposals.

Comment: A commenter stated that the proposed language does not address insurance provider determinations at all, and specifically, it does not provide any protection to the insurance provider from punitive or extra contractual damages because it only applies to appeal or administrative reconsiderations, not "legal actions'' against insurance providers.

Response: FCIC agrees that insurance providers may have been at risk for punitive or extra contractual damages in litigations even though they may not have violated FCIC's policies or procedures. This risk poses a considerable program integrity issue since it can affect the manner in which insurance providers manage their litigations and could result in increased costs to taxpayers. Therefore, FCIC has revised section 20, and made conforming amendments to 7 CFR 400.176(b) and 400.352(b)(4), to limit the imposition of punitive and other extra contractual damages, attorneys fees and other costs to those situations where FCIC has determined the insurance provider violated its policies and procedures and such violation had a monetary impact on the payment of the claim. FCIC will be making the determinations because, as authors of the policy or procedure, FCIC is in the best position to know whether an action constitutes a violation and to ensure the uniform application of the policies and procedures.

Comment: Commenters suggested FCIC first consider alternative appeals systems, including an internal dispute settlement division within the RMA. A commenter suggested that perhaps requiring approved providers to institute some form of internal process for independent review of provider actions challenged by producers, and requiring producers to utilize that process as a prerequisite to arbitration, also would be helpful. They stated that certainly has proved to be the case in their insurance provider, even though the original insurance provider decision is affirmed far more often than the producer's request for relief is granted.

Response: FCIC does not currently have the resources to implement an internal dispute resolution division within FCIC. Insurance providers are free to implement their own internal review mechanisms. However, there is no basis to require them to provide such a mechanism. It would impose a considerable administrative burden on the insurance providers and FCIC does not have the authority to compensate them for this burden.

Comment: A commenter believes removing arbitration will add to the uncertainty of dispute resolution and, ultimately, discourage farmer participation in crop insurance.

Response: As stated above, FCIC has elected to retain the arbitration process.

Comment: A commenter stated arbitration is one of the longstanding, accepted forms of alternative dispute resolution, and the Federal Arbitration Act encourages its utilization as a mechanism for resolving disputes. The commenter believes the proposed regulation appears to directly violate this Act. They stated all 50 states and the Federal Government have adopted contract arbitration statutes that provide for dispute settlement by arbitration, and that most contracts with the Federal Government include a provision that all disputes be settled by arbitration. They do not see any justification for removing this option from the crop insurance program.

Response: FCIC agrees that arbitration may be a longstanding form of alternative dispute resolution. However, this does not mean it is appropriate in every situation. In the existing rule, the arbitration provisions were subject to abuse and disparate treatment of program participants. This is not acceptable of a national program that relies significantly on taxpayer dollars. However, instead of eliminating arbitration, FCIC has elected to directly address the situation through the revisions stated above and below.

Comment: A commenter stated arbitration should be retained as a binding obligation of the parties to the crop insurance policy. To do otherwise is totally inconsistent with this salutary change previously made to and embodied in the current Basic Provisions. A commenter stated arbitration can also bring finality to the dispute because the arbitration award can only be appealed or overturned upon a showing of extraordinary circumstances (for example, fraud, bias or other inappropriate actions on the part of the arbitrator), once the decision is rendered the controversy is resolved. A commenter also states that FCIC's complaint that binding arbitration is inconsistent with the producer's right to file judicial appeals within one year of the denial of the claim ignores the probable benefit to the producer of achieving through arbitration a final resolution of any disputed claim within the first year following its denial. A commenter stated FCIC's reliance on section 508(j) of the Federal Crop Insurance Act, 7 U.S.C. 1508(j), to state that "[b]inding arbitration is inconsistent with * * * the Act'' is not supported by the text of the Act. They stated section 508(j)(2)(A), the only subsection that mentions litigation or the courts, vests the federal district courts with exclusive jurisdiction over the actions against FCIC or the Secretary of Agriculture. They added that the statute does not address an action by an insured against an insurance provider. They also believe the legislative history of the Act also is devoid of language supporting FCIC's interpretation of section 508(j). They stated, moreover and more significantly, none of the

federal courts that have discussed the crop insurance policy's arbitration clause have intimated the Act precludes or limits FCIC's authority to require disputes to be submitted to binding arbitration. They believe FCIC's contention directly contradicts its present interpretation of this exact issue as referenced in FAD–013. The commenter also believes FCIC's position also contradicts numerous arguments made by RMA to the federal district courts and the Agriculture Board of Contract Appeals, namely, that the right of judicial appeal is not inconsistent with the exhaustion of contractual remedies. They believe if FCIC intends for arbitration to be non-binding, it may insert into the crop insurance policy an arbitration clause that mirrors the arbitration clause contained in both the Livestock Gross Margin Insurance Policy and the Livestock Risk Protection Insurance policy. The commenter stated that a decision by a trial or an appellate court has precedential effect, albeit in varying degrees, on other courts, both federal and state. They believe a verdict in litigation that is adverse to an insurance provider may be more detrimental to the crop insurance program than a multitude of adverse decisions rendered in arbitration. The commenter stated that under the AAA's Commercial Rules, arbitration provisions are binding, and that generally, arbitration is by nature a binding process. They stated the issue of the appealability of an arbitration decision should not be confused with the binding nature of that decision. They believe inclusion of a statement in an arbitration clause that the decision is appealable within one year of the denial of claim would override the standard rules and allow the decision to be appealed in a manner consistent with section 508(j).

Response: There apparently has been confusion regarding the binding effect of arbitration decisions. FCIC agrees that arbitration must be binding on the parties. However, the producer has a statutory right to appeal a denial of a claim. Arbitration cannot take away that right even if there may be some benefits to finality. FCIC had been informed that the AAA rules precluded appeal of the arbitrator's decision. Because of this inconsistency, FCIC proposed to eliminate arbitration. As stated above, instead of eliminating arbitration, FCIC has elected to revise the provisions to make arbitration binding unless it is appealed. Any AAA rules restricting such an appeal are not applicable. The commenter is incorrect that section 508(j)(2)(A) of the Act is the only subsection that mentions litigations or the courts. Section 508(j)(2)(B) of the Act states that a suit on the claim must be appealed within one year of denial of the claim. Suit refers to litigations. Further, the courts have held that section 508(j)(2)(A) of the Act does not limit all actions for denial of claims to suits against FCIC. The courts have held that producers can still sue the insurance providers in state or federal court. In such cases, the one year statute of limitation applies. No court has discussed whether FCIC has the authority to require binding arbitration because FCIC has never asserted such authority. The intent of arbitration was to provide a more informal appeals process as a prelude to litigation similar to the administrative process that was available to producers who insured with FCIC. There was never any intent to take away the producers right to litigate disputes. Further, the commenters misunderstand FAD–013. FAD–013 does not make arbitration binding. It specifically states that the producer must complete the arbitration process before bringing any suit to court. Therefore, FCIC is unsure of how the FAD–013 is inconsistent with the proposed rule because, in the proposed rule, FCIC was expressing concern that arbitration under the AAA rules precluded appeal to the courts. Under the final rule, the producer will still be required to complete the arbitration process before any appeal to the courts may be brought. Even though court decisions may have precedential effects, the Act specifically gives the right to appeal to the courts within one year of denial of a claim and FCIC does not have the authority to take away that right.

Comment: A commenter stated that arbitration that provides producers flexibility in the timing and location of the hearing itself may be of utmost importance. Further, unlike litigation, when many matters become a matter of public record, disputes decided by arbitration can remain private and confidential if agreed to by the parties.

Response: FCIC agrees that the flexibility offered by the arbitration process is beneficial and has retained arbitration. While arbitration disputes may not be public, FCIC, as the regulator of the program, has the right to examine all records relating to the policy, which includes documents relating to any mediations, arbitrations, or litigations. FCIC has revised section 21 to specify that FCIC has the right to obtain documents relating to mediations, arbitrations or litigations at any time.

Comment: A commenter stated that because the parties have input into the selection of the arbitrators, persons of particularized knowledge to the subject matter of the dispute can be utilized. The arbitrator's experience in the subject matter of the dispute allows for a quick understanding of the issues which in turn may save time and expense. The parties are less vulnerable to unexpected rulings by less knowledgeable jurists or juries.

Response: FCIC agrees that arbitrators with particularized knowledge can be useful and has retained the arbitration process. However, to alleviate any problems associated with disparate policy or procedure interpretations, only FCIC will now be able to make such interpretations. Arbitrators roles will be limited to factual determinations.

Comment: A commenter stated that section 20 as now written is clear and comprehensive. It consistently has been upheld and enforced by all courts presented with the issue, most recently a decision of the United States District Court for the District of Minnesota entered September 26, 2002, in the Minnesota sugar beet litigation (in re. 2000 Sugar Beet Crop Insurance Litigation, 01–CV–1629–1637—D. MN September 26, 2002).

Response: FCIC disagrees that the current section 20 is clear and comprehensive. FCIC intended arbitration to be limited to factual disputes. However, even the commenters admit that arbitrators have made policy interpretations. Therefore, it is not clear what matters are subject to arbitration and there has been no consistency as to the interpretations made. As stated above, FCIC has revised the provisions to allow arbitration of all matters. However, all policy and procedure interpretations will be done by FCIC. FCIC also disagrees that all courts have upheld arbitration. There have been courts that have failed to require producers to arbitrate disputes prior to filing suit. FCIC has clarified that completion of arbitration is a prerequisite to filing suit.

Comment: Some commenters state because of the ability to structure the procedures associated with arbitration, parties enjoy increased opportunity to shape resolution of their disputes based on their own business circumstances and objectives. Parties that actively participate directly in creating agreements by which their disputes will be resolved are generally more satisfied with the outcome than those who become subject to the terms of a jury verdict.

Response: FCIC has elected to retain the arbitration process and the flexibility of the AAA rules, as revised.

Comment: A commenter states that although the preamble to the proposed rule portrays existing section 20 as a source of problems, no empirical, verifiable bases have been provided for the statements made at pages 58918–19 of volume 67 at the **Federal Register**. The commenter stated that its members are unanimous in desiring to retain arbitration. The commenter stated that while there certainly may be anecdotal reports of isolated complaints, there is no sentiment to abandon use of arbitration. In this context, it certainly is remarkable that data supposedly evidencing a reason for changing section 20 was provided in introductory material when RMA explicitly had terminated efforts last spring to gather objective data. They refer to inquiries by RMA initially soliciting the experience of insurance providers with respect to section 20 and then terminating its inquiries to them. In short, the commenter states RMA never has made any concerted effort to determine the actual experiences of members and their satisfaction level with arbitration. A commenter stated RMA has never communicated any concerns about the arbitration process, and no empirical data indicates the process is failing to meet the needs of the federal crop insurance program. Commenters stated that in support of elimination of arbitration, FCIC proffers several justifications, none of which they believe are credible.

Response: While FCIC had received numerous complaints regarding the arbitration process, FCIC agrees that there is a lot of support for arbitration and has retained the arbitration process, as revised.

Comment: A commenter states that subsection (c), as proposed, should be eliminated and its subject matter is more appropriately addressed under section 31.

Response: FCIC has revised the provision to cross reference section 31. However, the provisions stating that the Act, regulations and policy provisions are binding are still needed in section 20 to provide notice to mediators, arbitrators and the courts that the policy provisions must be followed.

Comment: Commenters believe the proposed prohibition on the ability to arbitrate is an overreaching act by the federal government that interferes with the contracting process between the producer and the crop insurance provider.

Response: Since FCIC drafted the contract, FCIC has the right to determine its terms. However, as a result of the many comments received, FCIC has elected to retain the arbitration process, as revised.

Comment: Commenters stated they believe that arbitration has increased confidence and participation in the federal crop insurance program and has contributed materially to achievement of the program's objectives. They stated while they would not catalog the advantages of arbitration that have fueled the migration of disputes away from traditional courts, they felt however, it is important to note why this mechanism is so particularly appropriate for resolving factual disputes between producers and approved providers arising in the context of the federal crop insurance program. They provided the following five reasons: (a) First, the program is highly technical, involving a wide variety of farming practices and unique crops. In addition, and unlike virtually all other forms of insurance, actions taken under a federally reinsured crop policy with respect to one crop year directly affect the rights and obligations of the parties with respect to the following crop year. These program characteristics demand a dispute resolution forum that allows parties to educate the fact finder about the program and the unique relationship between the insured, the approved provider, the Agency, and the myriad of documents and requirements incorporated into the policy by law and the Basic Provisions. The fact finder also must learn details of the insured crop and good farming practices with respect to that crop. Moreover, this education must be completed, and a resolution obtained, quickly enough for producer and approved provider alike to apply the dispute's result to the following year's crop and insurance coverage. Universal experience with civil litigation demonstrates beyond reasonable dispute that America's courts are incapable of regularly meeting these challenges. Approved providers and producers likely would be nearly unanimous, however, in their view that arbitration under the existing section 20, in fact, does exactly that in virtually all cases; (b) Second, crop insurance is a federal program that must be administered consistently throughout the country. The proposal would empower every court in every state to interpret and apply the policy, including the countless Agency documents and materials incorporated into this contract of insurance. Adopting the proposal therefore is certain to prevent any semblance of uniform, national administration and delivery of the program. Approved insurance providers necessarily would be required to choose whether to follow Agency directives and procedures in states whose courts have severely penalized approved providers for doing exactly that. The resulting and inevitable differentiation in program delivery among states would constitute discrimination intolerable for a federal program. The Act preempted state law in the first instance for just these reasons. They continue to make program survival dependent upon that preemption not being eviscerated as the proposal seeks; (c) Third, in contrast to court decisions, arbitration decisions are confidential and have no value whatsoever as precedent. Each decision affects only the specific parties to that decision and their very specific facts. While if single misinterpretation or erroneous judgment by an arbitrator can defeat program intentions in one dispute, an identical misinterpretation or erroneous judgment by a court will defeat program intentions in an infinite number of disputes. The private nature of arbitration, therefore, fosters and enhances consistent, nondiscriminatory administration of the program; (d) Fourth, the federal crop insurance program is very technical and many aspects of the policy and required Agency procedures are wholly inflexible. As a result, in certain situations rigid application of the policy's technical requirements leads to outcomes for producers that are grossly inequitable by many common standards. Elected judges and juries of the producer's friends and neighbors are extraordinarily ill-suited to perform even the most clear duty to enforce such provisions and it is absurd to expect them to bring about the harsh outcomes adherence sometimes requires. A disinterested arbitrator, often an attorney, is far less likely to ignore the policy and its technical requirements simply to achieve a more favorable result for a needy insured; and (e) Fifth, notwithstanding the filing fee, arbitration is materially less expensive for both producers and approved providers than litigation. Even though the direct cost approved providers pay to defend program integrity is very substantial, to mount that defense in courts rather than in arbitration would be more expensive by several multiples. Moreover, arbitrators virtually always enforce the policy's limitations on recovery, thereby minimizing losses and costs while still providing the insured with the benefits of their bargain. From the insureds perspective, arbitration

virtually never exacts the typical civil litigation toll of one-third of whatever the insured might be awarded.

Response: While FCIC disagrees that arbitration provides more consistent results than litigation or that courts are incapable of developing the knowledge base necessary to handle these disputes, FCIC agrees that arbitration can provide a valuable dispute resolution tool and has elected to retain the arbitration process.

Comment: Commenters stated whatever concerns prompted section 20 of the proposal can be addressed through dialogue and consultation. They believe the only certain result is a better alternative than section 20 of the proposal easily will be found. A commenter stated if FCIC believes specific aspects of the arbitration process can be improved to better effectuate program intent, it should initiate a dialogue with approved providers, producers and other interested parties to consider possible enhancements of the arbitration process.

Response: FCIC agrees that arbitration can provide a valuable dispute resolution tool and has elected to retain the arbitration process. However, FCIC has revised the provisions to address the concerns expressed in the proposed rule. If interested parties have additional suggestions, they should provide them to FCIC.

Comment: Commenters stated that the regulation providing for the issuance of a Final Agency Determination ("FAD") is not the solution. They stated first, the parties often are not aware of the need for an interpretation until after a loss occurs or arbitration or litigation commences. They believe accordingly, any FAD issued by FCIC post-dates the insurance period, if not the crop year. They stated based on their experience, arbitrators and juries take a dim view of *ex post facto* policy interpretations. They stated secondly, FCIC may take up to three months to issue a FAD. They believe while 90 days may be expeditious in Government time, it is an eternity in the world of agriculture.

Response: FCIC agrees that the FAD process does not work in all situations. There will be instances where witness testimony will be more appropriate. However, whether the policy interpretation is provided prior to the start of the crop year, at the time of loss or after a dispute has arisen, the policy interpretation will be the same. Policy interpretations will be rendered by unbiased persons within RMA. The benefits of the FAD process is that such interpretations provide consistent interpretations and are available to all interested parties on RMA's Web site.

Comment: Commenters asked on what basis FCIC expects that a state court jury or judge will be less likely to apply state law than an arbitrator. They believe a county judge that faces an election every two years will apply a pro-farmer meaning to disputed policy terms or facts or will be removed from the bench. In their view, a state court jury, consisting of the insured's neighbors, is more likely to disregard the legal principle of preemption than a neutral arbitrator. They added that even the regulation preempting state taxation of federal crop insurance premium has not stopped the various state departments of insurance from attempting to impose premium taxes on their insurance provider. A commenter stated changing arbitration to appeals and administrative review does not solve any issue that may be perceived with arbitration without total state preemption and any final appeal being limited to the federal court for this federal program.

Response: FCIC agrees that state preemption has been an issue and has clarified that the terms of the policy are binding and that state law is preempted to the extent it is in conflict with the policy. There has been a presumption that the ability to appeal a decision allowed courts to correct errors that may have been made by lower courts. FCIC had been informed that arbitrations were not appealable and, therefore, there was no further opportunity to review the decision to determine whether it complied with the preemption provisions. Now that arbitration can be appealed, the presumption again exists that any error of the arbitrator can be corrected by the court. However, FCIC cannot restrict appeals to the federal courts for the reasons stated above.

Comment: A commenter stated because FCIC is not a party to the Basic Provisions or the current arbitration clause, FCIC may not be joined as a party to the arbitration. They believe FCIC's misconceptions concerning arbitration result from the fact that it sits on the sidelines and passes judgment but does not play. The commenter stated by contrast, FCIC is amenable to joinder in litigation, regardless of whether filed in state or federal court. They added the joinder of FCIC in state court action will necessitate the removal of the matter to federal court. They stated if FCIC mandates insurance providers and insureds litigate their disputes, FCIC should anticipate being involved in litigation. A commenter believes, at a minimum, FCIC should authorize the insurance providers to, at their discretion, enter into arbitration agreements with their respective insureds. They believe under these agreements, which FCIC would have the opportunity to review to ensure compliance with the applicable law, the parties would arbitrate cases in which the amount in controversy does not exceed a certain level. The commenter provided three reasons for their suggested $150,000 threshold amount: first, the filing fee for such a case is de minimus, only $1,250; second, the majority of disputes involve lesser amounts; and, third, assuming that insureds will commence litigation in state court, which is likely to be more hostile to the insurance providers and FCIC, the $150,000 benchmark will enable them to remove the litigation to federal court under the principle of diversity jurisdiction.

Response: FCIC agrees that arbitration can provide a valuable dispute resolution tool and has elected to retain the arbitration process, as revised. FCIC cannot determine whether issues are subject to arbitration based on the dollar amount in dispute because it would result in disparate treatment. Two farmers could be disputing the same issue and one would be able to arbitrate the dispute while the other may not, solely based on the size of their loss. Such standards would be arbitrary and capricious. Further, the dollar limitation would not enable insurance providers to remove cases to federal court because producers frequently defeat diversity by filing suit against the local agent.

Comment: A commenter recommended section 25 be incorporated into a more comprehensive section 20 to read as follows:

"20. Arbitration, Damages and Limitation of Actions.

(a) If you disagree with any determination that we reach, the disagreement will be resolved before the American Arbitration Association and in accordance with its Commercial Dispute Resolution Procedures. Your failure to agree with any determination made by FCIC must be resolved through the FCIC appeal provisions published at 7 CFR part 11.

(b) You may not bring legal action against us unless you have complied with all terms and conditions of the policy.

(c) You must commence arbitration against us, as provided in subsection (a), within twelve (12) months of the date on which we denied your claim or rendered the determination with which you disagree.

(d) No award determined by arbitration or appeal shall exceed the amount of liability established or which

should have been established under the policy.

(e) You may not recover and we will not be liable for any attorney's fees, charges or costs, or any punitive, compensatory or any other damages other than contractual damages except as authorized by 7 CFR 400.351 and 400.352.''

Response: FCIC agrees that the provisions in section 25 should be incorporated into section 20 and made such other changes as necessary in response to these comments and due to the need to restructure the provisions for clarity.

Comment: A commenter believes that instead of deleting policy provisions requiring arbitration, the federal crop insurance industry would be better served by RMA submitting standard amicus briefs to arbitrators on the issues outlined above. They believe amicus briefing will likely assist and assure the arbitrator's role to one of fact finder.

Response: FCIC does not have the authority to submit amicus briefs. Such briefs are done by the Department of Justice and submitted on behalf of the Federal government. Obtaining such briefs is a time consuming process and often cannot be provided in the time frame needed by the insurance provider or producer. To assist the arbitrator, FCIC has revised the provisions to require that all policy and procedure interpretations be provided by FCIC. This should assist the parties to the dispute by providing an objective interpretation.

Comment: A commenter noted that several states currently require arbitration or mediation to be done before going to court. They stated that mediation, however, is not restricted to the policy liability limits as the current arbitration is in the policy now.

Response: FCIC has revised the provisions to limit liability under arbitration, mediation and litigation to the policy liability.

Comment: A commenter believes a reasonable requirement could be made as to the knowledge an arbitrator hearing a dispute would have and that the arbitrator must withdraw himself or herself if there is any conflict of interest.

Response: FCIC does not have the resources to check the knowledge and skills of all arbitrators. Arbitrators are mutually agreed to by the insurance provider and producer and they have the ability to determine whether the arbitrator has the requisite knowledge to resolve the dispute. However, FCIC has added a provision stating that arbitrators or mediators with a familial, financial or other business relationship to the producer or insurance provider are disqualified.

Comment: A commenter believes since most disputes, if not all, involve denying coverage not intended to be provided under the policy or a claim payment not entitled to under the policy, FCIC should be supportive to settle these disputes in the fastest, and least expensive manner for all parties concerned. They stated this would be beneficial for the policyholder, insurance provider, FCIC and the American taxpayer.

Response: The goal of the program is to ensure that producers receive those benefits to which they are entitled. FCIC has agreed to retain arbitration because commenters have claimed this is the fastest and least expensive manner to accomplish this goal. However, as stated above, FCIC has revised the provision to ensure that any payments are made in accordance with the policy terms.

A few commenters recommended a mediation process or appeal rights to settle disputes. Their additional comments are as follows:

Comment: One commenter stated section 20(a) implies adverse determinations made by insurance providers could leave the policyholder with no means of dispute resolution other than legal action. They stated that while the offering of appeal rights to insurance providers is certainly commendable, it provides no provision for potential disputes between the policyholder and the insurance provider. They strongly recommended the policyholder be offered appeal rights under the provisions of 7 CFR part 11. A commenter recommended using the existing USDA–National Appeals Division (NAD) system of hearing officers located around the country, which may require an expansion of NAD's authority and resources, therefore a legal opinion may be required. The commenter stated NAD hearing officers already hear some RMA cases and have basic program knowledge and that some of the present NAD hearing officers spent many years as FCIC hearing officers. The commenter stated that for RMA to move in this direction, support from NAD and any statutory changes as would be necessary to hear and decide RMA producer-insurance provider dispute cases would be required. They believe this alternative takes advantage of existing infrastructure and a seasoned appeals operation. The commenter believes the potential for disputes between insurance providers and policyholder is high and could involve sums of money that make legal action on the part of policyholders cost prohibitive. They stated that without appeal rights, the policyholders only grievance process would be the court system. The commenter added that most USDA agencies that deal with agricultural producers have implemented dispute resolution/appeals of adverse determinations rules under 7 CFR part 11 and carry out the mediation process with USDA certified programs in states where available. They added that if elected in states without USDA certified programs, mediation is provided through other non-USDA certified mediation providers. The commenter stated if mediation is unsuccessful in resolving the dispute, the producer maintains the right to file a request to have the dispute heard by the National Appeals Division. The commenter stated their programs consistently have agreement rates in the 90 percent range. They believe mediation provides a fast and efficient alternative to the formal appeals process and litigation, and therefore, they strongly urged that insurance providers be included in appeal procedures under 7 CFR part 11 or a similar dispute resolution/appeals system. The commenter believes without question, and by definition of adverse decision (7 CFR 11.1), the proposed rule could very easily generate a multitude of determinations and decisions that could be interpreted as adverse, individually to the producer, to the insurance provider, and among government agency representatives, or in any combination.

Response: As stated above, FCIC has elected to retain the arbitration process. Therefore, the producer's recourse will not be limited to the courts. However, FCIC cannot permit producers to appeal their disputes with insurance providers to NAD. As stated above, statutorily, only disputes between producers and agencies within USDA can be appealed to NAD. Further, since FCIC has elected to retain the arbitration process, it is not necessary to seek legislative authority for NAD to hear disputes between producers and insurance providers. However, as stated above, FCIC agrees that mediation could be a valuable dispute resolution tool and has revised the provisions to permit its use when both parties agree. There is nothing in the provisions that would preclude the use of the USDA certified mediation programs if they are willing to hear such disputes.

Comment: A commenter stated as proposed, the changes in the Basic Provisions would seem to allow using the litigation route in a jurisdiction that encourages or requires alternate dispute resolution (ADR) and might open up that opportunity for quick, relatively

low cost correction. The commenter believes that would be a good thing, but it leaves the disposition methods applied to cases to happenstance. They believe both producers and insurance providers deserve a better approach. The commenter stated that leaving the producers and the insurance providers adrift without a structured, low cost, high settlement rate oriented dispute resolution system is not necessary.

Response: FCIC agrees that producers and insurance providers need an alternative dispute resolution tool. As stated above, FCIC has elected to retain the arbitration process, as revised, and has added provisions that permit mediation. It is hoped that these will provide the low cost, high settlement rate alternatives as suggested by the commenters.

Comment: A commenter recommended designing and bringing into existence an RMA based appeals division made up of one or more hearing officers employed by the agency for the purpose of hearing and deciding disagreements between producers and insurance providers. The commenter believes such a system could be ordered after the appeals process existing prior to NAD (1994). They stated a legal opinion will likely be required to determine the jurisdiction. The commenter stated that authorizing regulations and procedures would have to be developed to determine the areas to be covered by an RMA producer-insurance provider disputes appeals system. They stated there are former FCIC hearing officers with the requisite experience and training available in RMA who could be pressed into service full or part time as required by the case workload. They stated that impacts on the USDA National Appeals Division should be sorted out in a legal opinion before a final decision is made on this alternative. The commenter stated that since an RMA hearing officer is the decision maker, the agency is assured a direct say in the case disposition with reasonable assurance that government rules and regulations are followed. They added that in the former FCIC Appeals process, hearings were generally held by phone and supported by mailed or faxed documents, keeping cost low and accessibility high, which is a major advantage over more costly alternatives.

Response: As stated above, FCIC has determined that it does not have the resources to implement an internal appeals division. However, FCIC agrees it should be involved to ensure that government rules and regulations are followed and FCIC has revised the provisions to require that all policy and procedure interpretations be obtained from FCIC.

Comment: A commenter recommended using the existing USDA–FSA certified mediation system located in some 29 key agricultural states. The commenter stated this would rest on a proven infrastructure and cover the most important agriculture states for RMA purposes. They believe this approach is consistent with USDA Departmental Regulation Number 4710–001, July 20, 2001, which already allows for the use of FSA certified mediators in crop insurance cases. Commenters believe alleviation of this expense issue can only be reached by requiring departments to utilize the state programs certified by USDA, and without such a designation as to which mediation service to use, the proposed rule has the potential of being self-defeating. A commenter stated that costs vary from state to state but would always be a fraction of either litigation or arbitration costs. They stated cases would be settled quickly and close to home for both parties. The commenter stated settlement rates in the states are uniformly high. They believe since the parties, insurance provider and producer, decide the issues and reach voluntary agreement, long term working relationships can be enhanced. The commenter noted one significant draw back to this alternative, that is, what to do in the states without certified programs. The commenter stated one of the important advantages of mediation is that it helps to clarify and focus issues keeping the parties on track with their discussions. The commenter added that in FSA farm program mediation cases, a representative from FSA is always a part of the mediation. They stated this mediation model avoids the possibility of the parties going beyond their authority because the FSA representative is there to give guidance and clarify rules. They stated that for example, whenever they do mediation where the FSA county committee is the decision maker, the FSA CED or a representative from the State FSA office is present to advise on the rules and options available to resolve the dispute. They stated this would eliminate the problem of the parties going beyond the limits of what the agency feels is appropriate.

Response: FCIC agrees that mediation is a valuable alternative dispute resolution tool and has revised the provision to allow for mediation if both parties agree. FCIC has elected not to direct who can provide such services because it recognizes that not all states have USDA certified mediation programs and there are other valuable organizations that can provide such services. This choice of mediator is best left to the participants. There is nothing in the provision that precludes the use of a USDA certified mediator if such person is willing to mediate the dispute. FCIC cannot direct such mediators to handle these disputes. FCIC's only participation in the mediation process would be to provide policy or procedure interpretations for matters in dispute and it will be able to review all settlements. This should provide sufficient restraints to ensure that settlements are made in accordance with FCIC approved policy and procedure.

Comment: A commenter recommended making a hybrid of mediation and an RMA appeals division. They stated that in the 29 states where the USDA–FSA certified mediation system operates, use it as the first level of dispute resolution, and in those cases that could not be resolved could be appealed to an RMA hearing officer. The commenter recommended states without the USDA–FSA certified mediation system would use the RMA hearing officer as the primary appeal. They believe this solves the problem of what to do in the non-mediation states and puts RMA in control of the appeal process. They recommended that after the pilot, RMA should review the results and develop a permanent system. One commenter stated it hopes FCIC will consider applying ADR methods as alternatives to litigation and they are available to assist in that regard.

Response: As stated above, FCIC does not have the resources to create an internal appeals division even if such appeals were limited to those cases where mediation failed. Instead, FCIC has elected to retain the arbitration process and if the mediation fails, the parties can have the dispute heard by an arbitrator.

Comment: A commenter stated that in terms of public-sector ADR, dispute resolution activities involving USDA caseload began in 1989 within "credit'' issues arising from Farmers Home Administration (FmHA) activities. The commenter stated the Agricultural Credit Act of 1987 created a mediation component offered through the public sector to provide an alternative for both FmHA customers and the agency in order to save time and money, and somehow mend lender and borrower relationships during a time of harsh transition in production agriculture. They stated resultant mediation activities were generated by agency actions associated with loan servicing, loan delinquency, and "distressed

borrower'' scenarios. The commenter noted that today, those same kinds of cases continue to be serviced, in addition to other caseload activities associated with issues arising from the USDA Reorganization Act of 1994, the Grain Standards Improvement Act of 2000, and a host of other federal dispute resolution regulations, orders, guidelines, and interpretations. The commenter added that the use of ADR processes (mediation) in their state in USDA-related crop insurance issues involving USDA agency administrators and staff (FSA, NRCS, *etc.*) insurance providers and their agents, producers and their attorneys, Native American Indian landowners, and others, is part of that service experience. In their view, the proposed rule for crop insurance issues moves considerably from what must have been a generally negative experience with binding arbitration, toward something that is identified in several parts as "the judicial process.'' The commenter stated although no definition of this process is offered in the proposed rule, but again similar to the intent of the Agricultural Credit Act of 1987, it appears that USDA is once again seeking to improve, streamline, and simplify its methods of addressing the kinds of conflicts found within federal crop insurance matters. The commenter believes the agency is seeking a less-costly method of resolving disputes, settling claims, and building good working relationships within very complex scenarios of federal regulation, business, and production agriculture. The commenter stated for public-sector mediation and facilitation practitioners, it is easy to understand USDA's move away from the relatively expensive, legalistic, non-problem-solving process of binding arbitration. The commenter believes however, the "the judicial process'' referenced in the proposed rule seems unlikely to improve the situation. They believe in fact, a judicial process provided by federal or state court activities involving such triangulated issues would be more expensive, more time consuming, and less of a model to build relationships among stakeholders than binding arbitration. They stated that clearly, the trend in conflict management and dispute resolution is moving the other direction, toward mediation, facilitation, collaboration, consensus building, and neutrally negotiated dialogue. The commenter stated that the new USDA Departmental Regulation on ADR substantiates this trend, as do many other federal documents, orders, and initiatives that have been researched and reviewed over the last decade. They stated that collectively, these clearly suggest that "the judicial process'' should be the method of last resort, after administrative remedies of ADR (mediation, facilitation, *etc.*) have been exhausted. The commenter believes from a practical perspective, moving decision making away from binding arbitration and toward "the judicial process'' may help deter certain arbitration costs in the short term, but seems most likely to only add time delays, administrative costs, and peripheral complexity to cases, and shift issue management further away from the very stakeholders and participants who need to understand, interact, and take ownership in the facts and issues involved in crop insurance. They stated those are precisely the stakeholders and participants that should resolve complaints and conflicts in these matters, and the very people who should take ownership in, and be accountable for, the decisions or outcome. They believe as such, agency personnel, insurance representatives, and producers would not only more directly manage their issues, they would be responsible and accountable for remedies. They believe arbitration and judicial processes have no way of offering these kinds of issue management incentives, and therefore are falling out of favor. They suggested tapping into the resources of those programs, providing additional support and revenues for services, providing the necessary training and administration from stakeholders' perspectives, and putting the theory of conflict resolution into practice via mediation and facilitation. Their experience with mediating crop insurance issues has been that cases seem to arise because such matters are not managed with a collective approach among these stakeholder populations. They believe that now, with both new federal crop insurance initiatives and a new Farm Bill to manage, it would seem that a more user-friendly method (like mediation or facilitated dialogue) would make sense in these triangulated, complex situations. The commenter believes whether or not mediation (or facilitated dialogue) would be mandatory, accessed on a voluntary basis, performed for a fee or sliding scale for participants, *etc.*, would require consideration over and above the content of the proposed rule. They stated however, in terms of providing better outcomes for participants, reaching appropriate outcomes for less money, saving time, and generally building viable business and regulatory relationships among stakeholders, the processes of mediation and facilitation are far superior to either arbitration or "the judicial process.'' They suggested that new applications of mediation and facilitation among stakeholder groups in federal crop insurance issues be convened on a pilot study basis, beginning in one state.

Response: FCIC agrees the historical trend is to provide for alternative dispute resolution. FCIC accepts the commenters statements that mediation is less expensive, less time consuming, and more of a model to build relationships between producers and insurance providers. Therefore, FCIC has retained arbitration, as revised, as a form of alternative dispute resolution and added mediation. Judicial review is the last resort if a party receives an unsatisfactory result in mediation or arbitration. FCIC agrees that better outcomes may be reached when both parties agree to the dispute resolution method.

Comment: A commenter cited a third reason given by FCIC for eliminating arbitration was that "* * * Binding arbitration is inconsistent with section 508(j) of the Act, which gives producers the right to file judicial appeals within one year of the denial of the claim.'' The commenter stated the USDA model of agricultural mediation provides mediation as an alternative to the formal appeal process. They stated whether an agreement is reached to resolve the dispute is totally up to the parties. The commenter added if an agreement is not reached at mediation, then the producer has further rights of appeal through the system. They believe that even if an agreement is not reached, mediation often helps the parties to better define the issues to be presented on appeal. The commenter stated the "binding'' nature of arbitration is totally avoided. The commenter believes another advantage to mediation is that it would lend itself to crop loss claim disputes where there is some subjectivity involved in the adjustment of the claim. They stated it has been their experience that even in cases where the regulations do not allow the local USDA FSA decision makers the flexibility or discretion to negotiate their decision, mediation has still been valuable in explaining the decision and establishing better lines of communication. The commenter stated another advantage to mediation is that it gives parties an informal opportunity to resolve disputes on their own without having a judge or arbitrator take that power out of their hands. They stated that over the years, the USDA agencies have recognized the importance of being able to resolve a

dispute in a non-adversarial setting that nurtures and restores the business relationship they have with the producer. The commenter believes crop insurance providers may have a similar concern that they be able to keep a satisfied customer. They believe handling a loss claim can be a difficult time emotionally, especially when so much is at stake with the current drought conditions, along with the struggling agricultural economy. The commenter stated mediation helps deal with those difficult emotional issues and personality conflicts that can otherwise impede a good business decision and an ongoing business relationship.

Response: FCIC agrees that mediation would avoid the problems associated with binding arbitration and has added provisions to allow for mediation. However, FCIC has also elected to retain the arbitration process although it has revised it to make arbitration decisions appealable. FCIC agrees that mediation can help to define issues even when no resolution is reached. FCIC also agrees mediation may provide a less stressful means of resolving disputes.

Comment: A few commenters thought if the insured prevailed in court, the insured should not be responsible for attorney fees, court costs, etc., and the award in section 20(b) should include those costs. A commenter believes this appears to be a deterrent to producers from challenging FCIC or the insurance provider for any wrong treatment related to their claim. A commenter stated that to do otherwise would eliminate the possibility of appeal for all but the biggest claims and most financially stable producers.

Response: FCIC disagrees that the provisions contained in section 20 should specify that the insured should not be responsible for attorney fees, court costs, etc., if the insured prevails in court, because to do so would conflict with the provisions contained in 7 CFR 400.352 regarding preemption of state laws and regulations. Further, FCIC does not want to punish insurance providers when there is a genuine dispute regarding policy coverage. In addition, it would be arbitrary and capricious to require insurance providers to pay the producer's expenses when the producer prevails and not require the producer to pay the insurance provider's expenses when the insurance provider prevails. However, as stated above, FCIC has clarified the provisions to specify the circumstances under which attorney fees, court costs, etc., can be awarded to the insured.

Clarification of Access to Insured Crop and Records, and Record Retention—Section 21

Comment: Several commenters opposed the provisions proposed in section 21(a), which would allow any USDA employee access to an insured crop and related records. They state that only those USDA employees involved with the insurance program should have access to the farm or records. They also claim producers have a right to privacy and right of notice if anyone is to enter their property or obtain related records. The commenters state that the insurance contract is between the insurance provider and the producer, not between FCIC and the producer. They state that access to crops and records should be only that necessary to investigate reasonable suspicions of fraud. The commenters also claim that employees having such access should be required to provide identification and notice before visiting, and provide notice of ARPA, section 122, which protects producers from disclosure of the information to the public. This would help alleviate problems related to unknown persons seeking entrance on a farmer's land. One commenter agreed with the change stating this is consistent with the effort envisioned by Congress and contained in ARPA legislation.

Response: FCIC agrees only those employees of USDA authorized to conduct reviews or investigations of crop insurance matters should have access to the farm or records. FCIC has revised section 21(a) accordingly. FCIC agrees the insurance contract is between the insurance provider and the insured. However, FCIC is also a Federal regulator of a government program and must have the ability to determine whether the program is being carried out in a proper manner. Therefore, FCIC must have access to the farm and records to make this determination. Further, the Act specifically provides for appropriate oversight and compliance functions to be carried out, through agencies besides FCIC, such as FSA. The Office of Inspector General also has oversight responsibilities over the program. In order to perform their functions, these persons may need to access the farm or farm records. FCIC disagrees that access should be limited to fraud cases because it is necessary to review a certain number of cases to ensure policy provisions and procedures are properly applied. To the extent possible, USDA employees will provide notice to the insurance provider or producer when entering the farm or obtaining records. However, there are cases, such as fraud investigations or other instances, where it is not practical to provide notice. Further, such employees may be asked to provide identification upon request. There is no violation of section 502(c) of the Act when an employee of USDA requests records. USDA employees are not considered the public for the purposes of section 502(c) of the Act. In addition, it is not the practice of USDA to tell farmers of the use of their documents. However, all such employees will be required to comply with the requirements of section 502(c) of the Act.

Comment: Several commenters were against the change in section 21(b), where producers who are now required to keep their records for 3½ years would now be required to retain their production records for approximately 8½ years. They stated it is retroactive and may deny coverage to a producer who has had coverage with three years of records and now needs previous years. A few of the commenters asked that the provision be clarified (including an example) to require records be kept for three years after the end of the crop year for which they were initially certified (as in the Crop Insurance Handbook).

Response: The record keeping requirements in section 21 have not changed. Producers were required to keep records for three years and the proposed rule simply clarified that this requirement also applied to the records used to establish the APH. However, FCIC realized there was perceived a difference in the procedures and policy and revised the provision to clarify that production records must be retained for 3 crop years following the crop year in which the record was certified, which is the current requirement in the procedures. Further, as stated above, FCIC removed the requirement that producers must provide all records for all years in the APH database when they file a claim. Therefore, there is no retroactive effect that would cause the denial of coverage. This means that if the producer certified five years of records for the 2003 crop year, the producer will be required to maintain those records for the 2004 through 2006 crop years and at the end of the 2006 crop year, the records are no longer required to be retained unless the producer has been otherwise notified by the insurance provider or USDA. The provision has been revised to be consistent with section 21(a), which permits USDA employees to obtain records from the farmer. An example is added to improve clarity.

Many commenters stated the penalty proposed in section 21(e) was too harsh for the following reasons:

Comment: A few commenters believe it is harsh to deny a claim because an insured fails to provide previous years' production records. A commenter added that the current procedure penalizes the insured by assigning 75 percent of the producer's prior approved yield and the producer loses any optional units. Another commenter believes only a modest administrative fee is warranted. Several commenters stated lack of previous years' records does not affect the ability to appraise the crop in the field. They added the proposed language overlooks whether or not the loss could be accurately determined. A commenter stated the proposed penalty is grossly excessive and should not be adopted. A commenter stated the penalty is extreme with no apparent alternatives available for corrective action. A commenter stated the penalty will result in many insured's being added to the ineligible list because the full premium would be due even though no claim is paid.

Response: While failure to provide a previous year's production records does not affect the ability to adjust a current loss, the omission may affect the amount of the claim because the guarantee must not have been correctly calculated. However, as stated in FCIC's response to comments received regarding the provisions proposed in section 3(d), the proposed requirement that failure to provide APH records will result in denial of a claim will not be incorporated in the final rule. FCIC has revised the provisions to specify that if a producer fails to provide the previous years' production records, the producer will receive an assigned yield for all such years that required records were not provided. Further, FCIC has revised the provisions to clarify all possible consequences for failure to provide reports or provide access to the insured crop or third party records and added that the consequences also apply for failure to provide access to the farm to be consistent with section 21(a), which required the producer provide access to the farm, not just the insured crop.

Comment: Several commenters stated the penalty raises a legal question of charging premium and not offering coverage or service. They stated they were not clear why the full premium is due in some cases and only 20 percent is due in others.

Response: FCIC has elected not to retain the provisions regarding the denial of coverage and the payment of premium.

Comment: A few commenters questioned if this was unit by unit or for the whole policy.

Response: The consequences have been revised to specify whether they are on a unit or policy basis.

Comment: Several commenters asked that the current provisions contained in section 21(b) that state, "Your failure to keep and maintain such records will, *at our option*, result in: [(1)–(4)]'' be retained.

Response: FCIC determined that the current language needed clarification and has revised the provisions to specify more precisely when each consequence applies. However, the imposition of such consequences is not optional. If the circumstance exists, the consequence will apply.

Clarification Regarding Other Insurance—Section 22

Several comments were received regarding the provisions proposed in section 22(a). The comments are as follows:

Comment: A few commenters stated that intent is considered here (as it should be) while it is not in other proposed sections dealing with what is reported versus what is correct.

Response: Obtaining duplicate policies is a much more obvious error than misreporting. Because of this, the presumption is that the producer intended to obtain two policies unless the producer can prove otherwise. FCIC did not want to create such a presumption with respect to misreporting, where it could be very difficult to establish no intent existed and would adversely affect program integrity.

Comment: Several commenters stated the provisions should be clarified as to what is necessary to demonstrate that the insured did not intend to have other like insurance, because one could interpret the language to mean that a transfer may not be a sufficient explanation. The commenters also asked to whom must the demonstration be made and to whose satisfaction. They asked what standards would be applied and who would make the decision. The commenters stated demonstration of intention is a subjective issue, and thus will be difficult to administer on an equitable basis.

Response: A transfer would be sufficient evidence that the producer did not intend to have duplicate policies. Written notification to an insurance provider that states the producer wants to purchase or transfer insurance and eliminate the other policy could also be acceptable. These have been added to section 22 as an example. However, it would be impossible to identify all the situations and including some situations and omitting others may cause confusion. It is up to the judgment of the insurance provider to evaluate the evidence presented by the producer that the duplication was inadvertent. If no such evidence is provided, the duplication is assumed to be intentional. FCIC agrees that an evaluation of the evidence may be subjective. However, the circumstances may be so different that an objective standard cannot be determined that would encompass all the possibilities.

Comment: A commenter stated the proposal assumes the existence of "other crop insurance issued under the authority of the Act'' is known or can be ascertained accurately at all times. The commenter believes that assumption is not correct with respect to duplicate policies or transferred policies. The commenter stated the proposal should be revised to reflect insurance provider's inability to determine at a certain time whether other insurance under the program is in effect.

Response: Since SSNs must be provided for all individuals, FCIC can compare the SSNs in the database and duplicate policies can be identified. If duplicate policies are identified, FCIC will notify the insurance providers. There is nothing in the policy that states when such determination must be made and FCIC agrees that it may be difficult for the insurance providers to discover all instances without FCIC's assistance. No change has been made.

Comment: A few commenters suggested the provisions contained in section 22(b) be clarified regarding how the provisions may apply to tobacco. The commenters stated the provisions contained in section 22(b) regarding other insurance against fire may now be inconsistent with the provisions proposed in section 12 that clarify all causes of loss must be due to the occurrence of a "natural disaster.'' The commenters stated that other fire coverage may be for reasons other than natural disasters.

Response: FCIC has incorporated the change proposed in section 12 in the final rule that clarifies all insurable causes of loss must be due to a naturally occurring event, except when the policy specifically covers loss of revenue due to reduced prices in the marketplace. This means that fire damage can only be paid if the fire is caused by a naturally occurring event. FCIC has clarified that section 22(b) only applies for fires due to naturally occurring events.

Clarification of the Amounts Due Us Provisions—Section 24

Comment: A commenter said it was unclear in section 24(a) when interest would be applied on administrative fees and if insurance providers would be responsible for collecting this amount prior to the termination date. A few commenters questioned FCIC collecting the amount due for fees and interest. A commenter suggested adding "due to us'' after "amounts'', after "fees due'' adding "to FCIC'', deleting "us'', and adding after the word "and'' the words "after the termination date.''

Response: The second sentence of section 24(a) [Reinsured Policies] makes it clear that interest on administrative fees accrues on the first day of the month following the premium billing date. Insurance providers will initially bill the producer for both premium and administrative fees and be responsible for collecting both. However, since administrative fees are ultimately due to FCIC, it will be FCIC's responsibility to collect the fees and related interest after the termination date for the applicable crop. FCIC agrees that clarification is needed regarding when amounts were owed to insurance providers and when amounts were owed to FCIC and has revised the provisions accordingly.

Comment: A few commenters recommended deleting "in part'' in section 24(e) because it could mean different things.

Response: FCIC can only collect through administrative offset that part of any overpaid indemnity FCIC paid or the premium owed to FCIC through its reinsurance agreement. FCIC cannot collect on that share of the indemnity or premium retained by the insurance provider. FCIC will be able to collect all administrative fees and interest owed to it through administrative offset. FCIC has revised the provision to clarify that the portion of the amount owed by the producer under the policy that is owed to FCIC can be administratively offset and to specify what such amounts may include.

Limitation of the Right to Collect Extra Contractual Damages—Section 25

A few comments were received regarding section 25(c). The comments are as follows:

Comment: A commenter suggested section 25 be combined in its entirety with section 20. Thus preventing confusion and clarifying FCIC's intent.

Response: Section 25 has been incorporated into section 20 to eliminate duplication and ambiguity.

Comment: A few of the commenters suggested that "may'' be changed to "will'' for clarification. A commenter requested clarification of "denial of a claim'' and "legal action.'' This was stated as important because of the disallowance of arbitration in section 20 of the proposed rule. A commenter suggested "legal action'' be changed to "litigation or arbitration'' since these terms are un-ambiguous. A commenter suggested section 25(c) be revised as follows "You are not entitled to recover any attorneys'' fees and expenses (or other similar charges) or any punitive, exemplary, compensatory, incidental, or consequential damages, unless you are able to establish that an action or inaction by the insurance provider, an employee of the insurance provider, or an agent was not authorized, required, or permitted under the Act, the regulations issued thereunder, or your insurance policy. This limitation means, therefore, that you will not recover any damages other than contractual damages unless you can establish the existence of one of the exceptions indicated herein.''

Response: FCIC has revised the applicable provisions in section 20 to specify that producers cannot recover attorneys fees or other expenses, or any punitive, compensatory or any other damages from insurance providers unless the producer obtains a determination from FCIC that the insurance provider, its agent or loss adjuster failed to comply with the terms of the policy or procedures issued by FCIC and such failure resulted in the producer receiving an indemnity, prevented planting payment or replant payment in an amount that is less than the amount to which the producer was entitled. FCIC has revised the provisions to clarify how the one year statute of limitations applies to arbitrations and litigations. FCIC has also clarified that the statute of limitations applies to denial of a claim and any other determination with which the producer disagrees.

Comment: A few commenters stated section 25 should further be amended to make clear that the Act and the attendant regulations likewise have a binding and preemptive effect in litigation. Some of the commenters stated the proposal should be amended to provide that no award rendered in litigation may exceed the amount of liability established or which should have been established under the policy. Some commenters stated the proposed amendment should not be implemented, as it will increase costs to insurance providers.

Response: Section 20 was revised to clarify that the Act, regulations and the policy have binding and preemptive effect. In addition, as stated above, section 20 now states no award in litigation can exceed contractual damages unless FCIC determines the insurance provider, agent, or loss adjusters failed to follow FCIC approved policy or procedure. FCIC is unsure of how the limitation on punitive damages will increase costs to insurance providers. If the commenter is referring to the removal of the arbitration process from the policy, FCIC has elected to retain the arbitration process, with revisions as stated above.

Comment: A commenter stated the rule states that language proposed in section 25(c) is intended to clarify that a producer may not recover attorney fees, punitive damages, compensatory damages or other extra-contractual damages except as authorized by 7 CFR § 400.352(b)(4). The commenter stated the policy language should be clear that these types of damages are "preempted.'' They stated that preemption should be complete. A commenter agreed section 25(c) should be revised, but asked the reference to 7 CFR 400.352(b)(4) be amended to 7 CFR 400.351 and 400.352, thereby incorporating the entire preemption regulation.

Response: FCIC has clarified that such damages, fees and costs are preempted unless FCIC determines the insurance provider, agent, or loss adjusters failed to follow FCIC approved policy or procedure. As stated above, FCIC elected not to completely preempt the imposition of punitive or compensatory damages. There may be instances where the circumstances are so egregious that such damages are warranted and FCIC does not want to take the authority away from the states to regulate conduct through the imposition of such damages. However, FCIC has eliminated the possibility that such damages may be imposed when the insurance provider follows FCIC's policy and procedures. FCIC has also revised section 20 to specifically reference 7 CFR part 400, subpart P as binding.

Comment: Some commenters stated suits should only be brought in federal court. A commenter stated the legal authority FCIC has in these matters and cited several cases. The commenter stated they understand there may be a belief among some employees of the United States Department of Agriculture that FCIC lacks the legal authority to require adjudication of disputes arising under the MPCI program to take place in Federal District Courts to the exclusion of state courts. They find any such belief to be erroneous. They also stated that any such understanding is not supported even by the analysis offered by those courts that have ruled against jurisdictional arguments

advanced by their members in their litigated disputes with agricultural producers. A commenter stated that complete preemption of state laws and remedies will have the effect of vesting federal courts with jurisdiction to hear claims involving federal crop insurance policies, which in turn, will ensure that a body of uniform federal, and not disparate state, law will develop regarding the application, construction and interpretation of federally-reinsured crop policies. The commenter added it will also prevent insureds from avoiding the terms and conditions of their federal crop insurance policies by filing claims in state courts and relying upon state remedies inconsistent with the federal crop insurance program. The commenter stated their position, of course, is supported by decisions of courts ruling in favor of their members' jurisdictional arguments, including *Owen* v. *Crop Hail Management*, 841 F.Supp. 297 (W.D. Mo. 1994), and *Brown* v. *Crop Hail Management*, 813 F.Supp. 519 (S.D. Tex. 1993). The commenter added that The Tenth Circuit in *Meyer* held: State law applies to FCIC contracts, with two exceptions: (a) When FCIC contracts provides that state law does not apply; and (b) when state law is inconsistent with FCIC contracts. 162 F.3d. at 1268. The commenter stated that relying on this explicit judicial authority, FCIC can revise sections 25 and 31 of the Basic Provisions to meet this test. Section 25 can and should be revised to state that legal actions against crop insurers, when producers are seeking to adjudicate claims of liability under any federally reinsured crop insurance contract, must be brought in the Federal District Courts of the United States. This approach would not preempt the bringing of state law claims for relief. Such claims easily could be alleged by producers' counsel as alternative or additional claims for relief to those which are brought under the MPCI policy in question.

Response: There is a difference between preempting state law and removing jurisdiction to hear cases from the state courts. The cases cited operate on the premise that FCIC can completely preempt state law. FCIC agrees it has the authority to completely preempt state law but as stated above, complete state preemption is not an option at this time. Further, the courts, including the Eleventh Circuit, have affirmed that state courts have jurisdiction to hear disputes between producers and insurance providers. FCIC has attempted to obtain legislative authority to limit litigations to the Federal courts several times in the past and such authority has not been provided. Therefore, even if, as the commenters state, FCIC has the authority to limit litigations to the Federal courts through the regulatory process, it is unlikely that Congress would permit the exercise of such authority. However, to mitigate the problems in the state courts, FCIC has revised section 20 to significantly limit the ability of the state courts to impose extra-contractual damages.

Clarification of the Interest Provisions—Section 26

Comment: A few commenters suggested combining section 26 with section 24(a) since (a) was deleted from section 26. A commenter stated the proposed amendment will increase the exposure to insurance providers and should not be implemented.

Response: Section 24 refers to amounts the insured owes, while the provisions contained in section 26 refer to interest payments the insured may receive. Combining the sections could cause confusion as to which interest provisions apply. Additionally, FCIC fails to see why the proposed change would increase exposure to insurance providers. The interest provisions have not been changed and removing the damages section was to remove the conflict with other existing policy provisions. The limitation on extra contractual damages has been moved to section 20. No additional change has been made.

Policy Voidance Provisions—Section 27

Comment: A commenter suggested section 27 should state whether the standard of proof required to void the policy in a disputed situation under this paragraph is a preponderance of the evidence or, clear and convincing evidence.

Response: Since no changes to section 27 were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Transfer of Coverage and Right to an Indemnity Provisions—Section 28

Comment: A few commenters requested that "Coverage and'' in section 28 be deleted to match the title with the form which is called "Transfer of Right to an Indemnity.''

Response: Although headings do not affect the meaning of the terms, this change would be misleading because the provisions refer to the producer transferring his or her share during the crop year, then being allowed to transfer the coverage rights, and subsequently the transferee being eligible to receive any indemnity payment. FCIC believes the current title is more descriptive of the section. No change has been made.

Clarification of the Subrogation Provisions—Section 30

Several comments were received regarding changes proposed in section 30. The comments are as follows:

Comment: Some commenters asked the second sentence be revised to replace the word "receive any funds'' with the words "recover any compensation for your loss * * * '' Response: FCIC agrees and has revised the provision accordingly.

Comment: A few commenters asked if compensation included hail insurance. A few commenters suggested hail insurance be excluded.

Response: FCIC has revised the provision to specify that compensation does not include private hail insurance payments.

Comment: A commenter suggested changing "If you recover any funds as compensation for your loss * * * '' by adding "except as provided in section 35 of this policy,'' otherwise subrogation could apply to other USDA payments (such as disaster payments).

Response: FCIC agrees that funds the producer receives as payment for the loss under other USDA payments allowed in section 35 should not be covered by subrogation. Additionally, if a producer receives a payment under a private insurance policy that indemnifies the producer for the amount of the crop insurance deductible, that payment also should be excluded. FCIC has revised the provision to limit its use to situations when the crop insurance indemnity plus the other payment exceed the amount of the insured's actual loss, without regard to any payment made under a private hail policy. Since any indemnity and other USDA farm program benefit cannot exceed the total amount of the loss, subrogation will never occur against the USDA farm program benefit. This would only be an issue if the producer also received a benefit for the same loss from another person. Once paid to the producer, the funds lose their identity and the producer would be required to repay to the insurance provider any money received in excess of the total loss.

Comment: A few commenters asked for examples of a situation to help with clarification.

Response: Since the provision has been revised for clarification, examples are no longer necessary.

Comment: A commenter stated if the producer returns the money their premium should be refunded.

Response: FCIC does not agree that if the producer repays any amount of the indemnity paid by the insurance provider the premium should be refunded. The premium is earned and payable because the coverage under the policy was provided. The policy is only intended to cover the producer's loss and if the producer receives compensation from another party, the amount of loss is reduced. Therefore, the producer is still receiving the benefit for which the premium was paid. No further change has been made.

Applicability of State and Local Statutes—Section 31

Comment: A few commenters suggested strengthening the language and clarifications in section 31 even though it was not proposed. They suggested clarifying that no state or local statutes are applicable to the interpretation of any federal crop insurance policy. A commenter asked if any of the Federal crop insurance definitions supercede state regulations such as California's. The following revision was suggested by one commenter, "If the provisions of this policy conflict with or cover the same subjects or matters as the statutes of the State or locality in which this policy is issued, the policy provisions will prevail. State and local laws and regulations either in conflict with federal statutes, this policy, and the applicable regulations, or covering the same subjects or matters as federal statutes, this policy, and the applicable federal regulations, do not apply to this policy, and they are preempted.''

Response: Since no changes to section 31 were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Notice Provisions—Section 33

A few comments were received regarding section 33. The comments are as follows:

Comment: A few commenters stated this section now conflicts with the proposed section regarding prevented planting.

Response: FCIC fails to see how the provisions contained in section 33 conflict with the provisions in section 14. Section 33 requires written notice within the time frame specified unless the notice provisions state otherwise. Section 14(g) allows a telephone notice for all notices required to be made within 72 hours, which would include the prevented planting notice. No change has been made.

Comment: A few commenters recommended changing "crop insurance agent'' to "us.'' A commenter suggested changing the current language regarding the insureds address to "your last known address.''

Response: Since no changes to this section was proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Clarification of the Unit Division Provisions

Comment: A commenter recommended using one spelling of the term "discernible'', either "discernable'' or "discernible.''

Response: FCIC agrees the word "discernible'' should be spelled the same way throughout the provisions. The term was used in provisions proposed in section 34(b)(1) and (c)(2) but the terms were spelled differently in each subsection. Since, in its response to the comments received regarding the proposed definition of the term "border,'' FCIC has decided not to adopt the proposed changes in section 34 that allowed a "border'' to qualify as a separation of optional units. Therefore, there are no longer multiple spellings of "discernible.''

Comment: A commenter stated growers in the Southeast are penalized by the fact that optional units are by farm serial number (FSN). The commenter stated a grower can farm in multiple locations in a county, growing thousands of acres, and only have one FSN, and recommended offering optional units by section, tracts, or section equivalents, and by non-contiguous land. The commenter further stated rules and administration are ambiguous because the Texas region allows growers further division, while the Southeast region does not.

Response: FCIC understands that unit division requirements vary between regions and crops. This variance is generally because there are many areas where there are not discernible section lines. Without a clear delineation between units, it would be very difficult to accurately track production, which creates the possibility of program abuse. Therefore, it would adversely affect program integrity to adopt this change. No policy allows optional units by tract. Before any other optional unit structures could be adopted, actuarial studies would have to be completed to determine the impact of such changes and any such changes must be adopted through the rulemaking process. No change has been made.

Comment: A few commenters suggested section 34(a)(1) add "For example, the enterprise unit selection may NOT remain in effect from year to year if there is only one underlying basic or optional unit with planted acreage one year.''

Response: Since no changes to section 34(a)(1) were proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few commenters suggested section 34(a)(2) be revised to read: "For an enterprise unit'' since there is only one crop per county.

Response: FCIC agrees there can only be one enterprise unit per policy. However, there could be several different insured crops per county with an enterprise unit. The provision has been revised to state that the provisions apply to any individual enterprise unit.

Comment: A few commenters suggested section 34(a)(2)(ii) probably requires revision because of the revised definition of "enterprise unit'' referring to "planted insurable acreage.''

Response: FCIC agrees and has revised the provision accordingly.

Comment: A few commenters stated section 34(a)(2)(iii) overlooks the possibility of discovery happening after reporting.

Response: FCIC agrees and has revised section 34(a)(2)(vi) to clarify that if at any time the discovery is made that the producer does not qualify for an enterprise unit, the basic unit structure will be assigned. The same change has been made to section 34(a)(3)(iii).

Comment: A few commenters stated section 34(a)(2)(v) refers to "production reporting provisions.* * *'' and should be clarified.

Response: FCIC agrees that the provision should specifically reference the production reporting provisions and has revised the provision accordingly.

Comment: A few commenters suggested FCIC should consider if any changes are needed in section 34(a)(3) to match the revised whole-farm unit definition, or at least to refer to that definition.

Response: FCIC does not believe any changes are necessary because the use of the term "whole farm'' would require reference to the definition to determine the meaning of the term. No change has been made.

Comment: A few commenters suggested section 34(a)(3)(iii) may be improved by deleting the proposed language following the comma and inserting "we will assign the most similar eligible unit structure.'' A few commenters asked if FCIC should consider the possibility of assigning an enterprise unit if the plan allows for it instead of basic units in section 34(a)(3)(iii).

Response: FCIC is not sure what is the "most similar eligible unit structure.'' Therefore, it would be very difficult to determine such structure. Further, the producer must select enterprise units. If such a selection is not made, FCIC cannot require the producer to receive enterprise units. Basic units are the default if no other unit structure is selected and, therefore, the most appropriate unit structure when reverting back. No change has been made.

Comment: A few commenters disagreed with the changes in section 34(b) regarding having discernible borders. A few commenters agreed with the changes. A commenter requested clarification. A commenter asked the break be unplanted and not plowed or tilled. A few commenters found it too subjective. A couple of commenters were concerned regarding optional units for non-irrigated corners of a field in which a center-pivot irrigation system is used. A few commenters felt the proposed change would be a workable solution to the long standing problem of same row direction planting in irrigation systems.

Response: As stated in FCIC's response to the comments regarding the definition of "border,'' FCIC is withdrawing its proposal to allow a border created by different plant densities to qualify for unit division.

Clarification of the Multiple Benefits Provisions—Section 35

Comment: One commenter stated section 35 should specify that other USDA programs are not subject to being subrogated.

Response: FCIC agrees that funds the producer receives as payment for the loss under other USDA payments allowed in section 35 should not be covered by subrogation and has revised section 30 accordingly.

Clarification of the Substitution of Yields Provisions—Section 36

Comment: Some comments were received regarding section 36(b). Most were addressed in the final rule published prior to this rule (Vol. 68, No. 122/Wednesday, June 25, 2003) but one in particular suggested that yield substitutions should be allowed on a database basis at the production reporting time.

Response: FCIC failed to discover the suggestion to allow the election to be made at the time of production reporting and subsequently received inquiries suggesting it was not possible for producers to make appropriate elections by the sales closing date. Therefore, FCIC issued a bulletin allowing the election to be made by the production reporting date and has revised section 36(b) accordingly.

New Provisions for Beginning and New Producers

Comment: One commenter stated that a new section 38 should be added to address beginning farmers and new producers. They stated the proposed revisions to the Basic Provisions fail to address the special needs of beginning farmers with respect to insurance. The commenter believes the wide variety of regulations related to production history and records make it difficult for new producers to choose appropriate risk management tools. They believe to be consistent with widespread public support for addressing the crisis of an aging farm population, declining economic opportunity in agriculture, and depopulation of farming communities, the agency should not only make insurance more accessible to beginning farmers through clearer rules related to history and records, but should also offer special incentives to new producers of limited means. The commenter recommended the agency immediately develop a new section of the Basic Provisions to deal specifically with the unique needs of beginning farmers. They also urged the agency to develop proposals for special incentives for beginning farmers, and to utilize the USDA Advisory Committee on Beginning Farmers and Ranchers in developing this initiative.

Response: Since the recommended changes were not proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

In addition to the changes described above, FCIC has made the following changes:

1. Revise the definition of "acreage report'' to change the word "paragraph'' to "section'' and the definition of "price election'' to change "to be used for computing'' to "that is'' to clarify that the price election is the value of the crop;

2. The "Contract change'' section has been changed to allow correction of clear errors in policy and actuarial materials such as when dates have been transposed or there are typographical errors such as transitional yields reported as 1000 pounds when it should have been 100 pounds;

3. Revise the provisions in section 9(a)(8) regarding the election to not insure second crop acreage to clarify the election can be made when it is uncertain whether or not the first insured crop will have an indemnity (Such cases may occur when only a portion of the acreage in the first insured crop unit is released to be planted to a second crop) and that the election is made for all acreage in the first insured crop unit, and to add provisions indicating when the election can be made when there is no release of first insured crop acreage;

4. Revise the written agreement provisions proposed to clarify the reference to "guarantee'' because it may not always be possible to know the guarantee (for example, in cases where the agreement authorizes coverage to be established according to standard actual production history rules or for adjustments in the premium rate only). In addition, the guarantee cannot be quoted for multi-year written agreements, because additional years of production cause the guarantee to change from year to year. Accordingly, the provisions have been revised to clarify that guarantees may not be required for written agreements in effect for more than one year. The provisions are also revised to clarify that if a written agreement is requested after the sales closing date, an inspection must be made only when the written agreement is needed to establish insurability and determine the condition of the acreage or crop, for example for an unrated practice, type or variety, or for a crop in a county where insurance is not currently offered for the crop. Add provisions to section 18 that were previously contained in procedures that imposed some requirement or burden on the producer so that the producer would know the process for filing a request for a written agreement, the contents of such request, the applicable deadlines, and the grounds for not

accepting or rejecting requests for written agreements. This change is intended to ensure that all program participants are aware of the requirements regarding written agreements. The provisions were also revised to clarify that any request for a written agreement will be denied if FCIC determines the risk is excessive. The proposed provisions specify the "written agreement'' would be denied; however, the written agreement will not be denied since the request for a written agreement will not be accepted;

5. In the Group Risk Plan, FCIC has moved the provisions previously contained in section 14 to section 16 to eliminate redundancies;

6. In the Group Risk Plan, FCIC has added a provision to section 15 to clarify when interest starts to accrue for amounts that may be due to the producer; and

7. FCIC has made technical revisions to other provisions in this rule for the purpose of clarity and such revisions are not intended to, and do not, make substantive changes to the provisions. FCIC has also revised the Group Risk Plan provisions to be consistent with the Basic Provisions.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register**. Good cause to make the rule effective less than 30 days after publication exists when the 30-day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

It is in the public interest to implement changes in this rule because they will improve the integrity and reduce costs of the crop insurance program. These changes include: (1) The requirement to collect additional identification numbers (social security numbers or employer identification numbers) to prevent ineligible persons from receiving program benefits; (2) New provisions providing authority to reduce excessively high insurance guarantees, thereby eliminating over-insurance; (3) New penalties for producers who misreport information necessary to establish insurance protection, which should increase the incentive to provide accurate information which will reduce costs associated with misreporting; (4) A requirement to destroy grain containing substances injurious to human or animal health before an insurance claim is paid to ensure that such grain does not enter the food stream; (5) New provisions to prohibit prevented planting payments where pasture or other forage crop is in place at the time planting should occur to prevent payments for acreage where it is possible that planting was never intended; (6) New provisions that require that policy and procedure interpretations be provided by FCIC in the settlement of any dispute, which should reduce instances in which policies and procedures are misinterpreted during arbitration or litigation resulting in improper payments; and (7) Clarification of several policy provisions that should result in more consistent administration of the crop insurance program.

Due to the larger number of comments and the scope and complexity of this rule, it was not possible for FCIC to complete this rule before now. Additional time was needed to ensure that all comments were considered and properly addressed. If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the next crop year for those crops having a contract change date of August 31, 2004. This would mean the benefits described above would not be available for an additional year.

For the reasons stated above, good cause exists to make these policy changes effective less than 30 days after publication in the **Federal Register**.

The amendments in this rule are applicable for the 2005 and succeeding crop years for all crops with a contract change date on or after the effective date of this rule, and for the 2006 and succeeding crop years for all crops with a contract change date prior to the effective date of this rule.

List of Subjects in 7 CFR Parts 400, 402, 407 and 457

Administrative practice and procedure, Claims, Crop insurance, Fraud, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the interim rule amending 7 CFR parts 402, 407, and 457, published in the **Federal Register** on June 30, 2000, at 65 FR 40483–40486 is adopted as final. In addition, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR parts 400, 402, 407 and 457 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years

■ 2. In § 400.176, revise paragraph (b) to read as follows:

§ 400.176 State action preemptions.

* * * * *

(b) No policy of insurance reinsured by the Corporation and no claim, settlement, or adjustment action with respect to any such policy shall provide a basis for a claim of punitive or compensatory damages or an award of attorney fees or other costs against the Company issuing such policy, unless a determination is obtained from the Corporation that the Company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by the Corporation and such failure resulted in the insured receiving a payment in an amount that is less than the amount to which the insured was entitled.

Subpart P—Preemption of State Laws and Regulations

■ 3. Amend § 400.352, paragraph (b)(4) by revising the parenthetical text to read as follows:

§ 400.352 State and local laws and regulations preempted.

* * * * *

(b) * * *

(4) * * * (Nothing herein precludes such damages being imposed against the company if a determination is obtained from FCIC that the company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by FCIC and such failure resulted in the insured receiving a payment in an amount that is less than the amount to which the insured was entitled) * * *

* * * * *

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT

■ 4. The authority citation for 7 CFR part 402 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

§ 402.3 [Amended]

■ 5. Amend § 402.3 by revising the OMB control number to read "0563–0053'';

■ 6. Amend § 402.4, as follows:

■ a. Revise the introductory text of the section to read as follows;

■ b. Amend section 1 by adding in alphabetical order the definitions of "Household'' and "Limited resource farmer''; and

■ c. Revise section 6(c).

The revised and added text reads as follows:

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

The Catastrophic Risk Protection Endorsement Provisions for the 2005 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Household. A domestic establishment including the members of a family (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to be family members) and others who live under the same roof.

* * * * *

Limited resource farmer. A person with:

(1) Direct or indirect gross farm sales not more than $100,000.00 in each of the previous two years (to be increased starting in fiscal year 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)); and

(2) A total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

* * * * *

■ 6. Annual Premium and Administrative Fees.

* * * * *

(c) The administrative fee provisions of paragraph (b) of this section do not apply if you meet the definition of a limited resource farmer (see section 1). The administrative fee will be waived if you request it and:

(1) You qualify as a limited resource farmer; or

(2) You were insured prior to the 2005 crop year or for the 2005 crop year and your administrative fee was waived for one or more of those crop years because you qualified as a limited resource farmer under a policy definition previously in effect, and you remain qualified as a limited resource farmer under the definition that was in effect at the time the administrative fee was waived.

* * * * *

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS FOR THE 2005 AND SUCCEEDING CROP YEARS

■ 7. The authority citation for 7 CFR part 407 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

PART 407—[AMENDED]

■ 8. In part 407 revise the part heading to read as set forth above.

■ 9. Amend § 407.2 by:
■ a. Revising paragraph (d), removing paragraph (e) and redesignating paragraphs (f) through (h) as paragraphs (e) through (g) respectively; and
■ b. Amending newly designated paragraph (e) by removing the phrase "§ 407.8, paragraph 21'' and adding the phrase "§ 407.9, section 15'' in its place.

The revision reads as follows:

§ 407.2 Availability of Federal crop insurance.

* * * * *

(d) Except as specified in paragraph (c) of this section, if a person has more than one contract authorized under the Act that provides coverage for the same loss on the same crop for the same crop year in the same county, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the Corporation that the multiple contracts of insurance were without the fault of the person.

(1) If the multiple contracts of insurance are shown to be without the fault of the person and:

(i) One contract is an additional coverage policy and the other contract is a Catastrophic Risk Protection policy, the additional coverage policy will apply if both policies are with the same insurance provider, or if not, both insurance providers agree, and the Catastrophic Risk Protection policy will be canceled (If the insurance providers do not agree, the policy with the earliest date of application will be in force and the other contract will be canceled); or

(ii) Both contracts are additional coverage policies or both are Catastrophic Risk Protection policies, the contract with the earliest signature date on the application will be valid and the other contract on that crop in the county for that crop year will be canceled, unless both policies are with the same insurance provider and the insurance provider agrees otherwise or both policies are with different insurance providers and both insurance providers agree otherwise.

(2) No liability for indemnity or premium will attach to the contracts canceled as specified in paragraphs (d)(1)(i) and (ii) of this section.

* * * * *

§ 407.6 [Removed and reserved]

■ 10. Remove and reserve § 407.6;

§ 407.7 [Amended]

■ 11. Amend § 407.7 in the fourth sentence by removing the words "Except as may be allowed under § 407.6, and at the sole discretion of the Corporation,'' and capitalizing the first letter in the word "no'';

■ 12. Amend § 407.9, as follows:
■ a. Revise the introductory text;
■ b1. Following the second appearance of the heading "FCIC policies'', revise the first paragraph and add a new third paragraph "Agreement to Insure'';
■ b2. Following the second appearance of the heading "Reinsured Policies'', revise the first and second paragraphs and add a new fourth paragraph "Agreement to Insure'';
■ c. Amend the third paragraph under the heading "Both policies'' by removing the number "55'' and adding the number "45'' in its place;
■ d. Revise the last sentence of the seventh paragraph under the heading "Both policies'' and remove the paragraph "Agreement to Insure'' preceding the "Terms and Conditions'';
■ e. Amend section 1 by adding definitions for "Agricultural commodity,'' "Code of Federal Regulations (CFR),'' "Contract change date,'' "Delinquent debt,'' "Household,'' "Insurable loss,'' "Limited resource farmer,'' "Offset,'' and "Substantial beneficial interest'';
■ f. Amend section 1 by revising the definition of "Actuarial documents'';
■ g. Amend the definition of "Catastrophic risk protection'' by removing the number "55'' and adding the number "45'' in its place;
■ h. Amend the definition of "Second crop'' by revising the third sentence;
■ i. Revise section 3(c)(2);
■ j. Revise the introductory text in section 3(c)(3) and section 3(c)(3)(i);
■ k. Amend section 4(a) by removing the number "55'' and adding the number "45'' in its place;
■ l. Amend section 7 by revising sections 7(c), (d) and (e), redesignating section 7(f) as section 7(i), and adding new sections 7(f), (g) and (h);
■ m. Revise section 8(c);
■ n. Amend section 8(f) by removing the word "by'' in the second sentence and adding the words "not earlier than'' in its place;
■ o. Amend section 8 by revising section 8(g) and removing section 8(h);
■ p. Revise sections 9(a), (c) and (d) and add new sections (e) through (l);

■ q. Revise section 10;
■ r. Revise section 13;
■ s. Remove and reserve section 14;
■ t. Amend section 15(c) in both the FCIC and the Reinsured policy versions by removing the second sentences;
■ u. Amend section 15 in the Reinsured Policy version by adding a new section 15(i);
■ v. Revise section 16 in both the FCIC and the Reinsured policy versions;
■ w. Amend section 18 by redesignating sections 18(f) through (h) as sections 18(g) through (i), respectively, revising sections 18(b) and (e), and adding a new section 18(f);
■ x. Revise newly redesignated section 18(h) by replacing "terminate'' with "cancel'';
■ y. Revise sections 19(b) and (c); and
■ z. Revise section 21(a)(2)(ii).

The revised and added sections read as follows:

§ 407.9 Group risk plan common policy.

The provisions of the Group Risk Plan Common Policy for the 2005 and succeeding crop years are as follows:

* * * * *

This insurance policy establishes a risk management program developed by the Federal Crop Insurance Corporation (FCIC), an agency of the United States Government, under the authority of the Federal Crop Insurance Act (Act), as amended (7 U.S.C. 1501 *et seq.*). All terms of the policy and rights and responsibilities of the parties thereto are subject to the Act and all regulations under the Act published in 7 CFR chapter IV. The provisions of this policy may not be waived or modified in any way by us, your insurance agent or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. Procedures (handbooks, manuals, memoranda, and bulletins), issued by us and published on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site will be used in the administration of this policy. All provisions of state and local laws in conflict with the provisions of this policy as published at 7 CFR part 407 are preempted and the provisions of this policy control.

* * * * *

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures issued by us, the order of priority is as follows: (1) The Act; (2) the regulations; and (3) the procedures issued by us, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. If a conflict exists among the policy provisions, the order of priority is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), *etc.*

[Reinsured policies]

This insurance policy establishes a risk management program developed by the Federal Crop Insurance Corporation (FCIC), an agency of the United States Government, under the authority of the Federal Crop Insurance Act (Act), as amended (7 U.S.C. 1501 *et seq.*).

This insurance policy is reinsured by FCIC under the provisions of the Act. All terms of the policy and rights and responsibilities of the parties are subject to the Act and all regulations under the Act published in 7 CFR chapter IV. The provisions of this policy may not be waived or modified in any way by us, our insurance agent or any other contractor or employee of ours or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. We will use the procedures (handbooks, manuals, memoranda, and bulletins), as issued by FCIC and published on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site, in the administration of this policy. All provisions of state and local laws in conflict with the provisions of this policy as published at 7 CFR part 407 are preempted and the provisions of this policy will control. In the event that we cannot pay your loss because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, your claim will be settled in accordance with the provisions of this policy and FCIC will be responsible for any amounts owed. No state guarantee fund will be liable for your loss.

* * * * *

AGREEMENT TO INSURE: In return for the payment of premium and subject to all of the provisions of this policy, we agree with you to provide risk protection as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is as follows: (1) The Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. If a conflict exists among the policy provisions, the order of priority is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), *etc.*

[Both policies]

* * * * *

* * * The policy will consist of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable amendments, endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each agricultural commodity in each county will constitute a separate policy.

* * * * *

1. Definitions.

* * * * *

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office and published on RMA's Web site at *http://www.rma.usda.gov/* or a successor Web site, and which shows the maximum protection per acre, expected county yield, coverage levels, information needed to determine the premium rates, practices, program dates, and other related information regarding crop insurance in the county.

* * * * *

Agricultural commodity. Any crop or other commodity produced, regardless of whether or not it is insurable.

* * * * *

Code of Federal Regulations (CFR). The codification of general and permanent rules published in the **Federal Register** by the Executive departments and agencies of the Federal Government. Rules published in the **Federal Register** by FCIC are contained in 7 CFR chapter IV. The full text of the CFR is available in electronic format at *http://www.access.gpo.gov/* or a successor Web site.

Contract change date. The calendar date by which changes to the policy, if any, will be made available in accordance with section 19 of these Basic Provisions.

* * * * *

Delinquent debt. Any administrative fees or premiums for insurance issued under the authority of the Act, and the

interest on those amounts, if applicable, that are not postmarked or received by us or our agent on or before the termination date unless you have entered into an agreement acceptable to us to pay such amounts or have filed for bankruptcy on or before the termination date; any other amounts due us for insurance issued under the authority of the Act (including, but not limited to, indemnities found not to have been earned or that were overpaid), and the interest on such amounts, if applicable, which are not postmarked or received by us or our agent by the due date specified in the notice to you of the amount due; or any amounts due under an agreement with you to pay the debt, which are not postmarked or received by us or our agent by the due dates specified in such agreement.

* * * * *

Household. A domestic establishment including the members of a family (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to be family members) and others who live under the same roof.

Insurable loss. Damage for which coverage is provided under the terms of your policy, and for which you accept an indemnity payment.

* * * * *

Limited resource farmer. A person with:

(1) Direct or indirect gross farm sales not more than $100,000.00 in each of the previous two years (to be increased starting in fiscal year 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by NASS); and

(2) A total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

* * * * *

Offset. The act of deducting one amount from another amount.

* * * * *

Second crop. * * * A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed or grazed during the crop year, or that is otherwise harvested is considered to be a second crop. * * *

* * * * *

Substantial beneficial interest. An interest held by any person of at least 10 percent in you. The spouse of any individual applicant or individual insured will be considered to have a substantial beneficial interest in the applicant or insured unless the spouses can prove they are legally separated or otherwise legally separate under state law. Any child of an individual applicant or individual insured will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person. For example, there are two partnerships that each have a 50 percent interest in you and each partnership is made up of two individuals, each with a 50 percent share in the partnership. In this case, each individual would be considered to have a 25 percent interest in you, and both the partnerships and the individuals would have a substantial beneficial interest in you (The spouses of the individuals would not be considered to have a substantial beneficial interest unless the spouse was one of the individuals that made up the partnership). However, if each partnership is made up of six individuals with equal interests, then each would only have an 8.33 percent interest in you and although the partnership would still have a substantial beneficial interest in you, the individuals would not for the purposes of reporting in section 18.

* * * * *

3. Insured and Insurable Acreage.

* * * * *

(c) * * *

(1) * * *

(2) Where you have failed to follow good farming practices for the insured crop; or

(i) Planted to a type, class or variety not generally recognized for the area; or

(ii) Where the conditions under which the crop is planted are not generally recognized for the area (For example, where agricultural experts determine that planting a non-irrigated corn crop after a failed small grain crop on the same acreage in the same crop year is not appropriate for the area);

(3) Of a second crop, if you elect not to insure such acreage when an indemnity for a first insured crop may be subject to reduction in accordance with the provisions of section 21 and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage. This election must be made for all first insured crop acreage that may be subject to an indemnity reduction if the first insured crop is insured under this policy, or on a first insured crop unit basis if the first insured crop is not insured under this policy. For example, if the first insured crop under this policy consists of 40 acres, or the first insured crop unit insured under another policy contains 40 planted acres, then no second crop can be insured on any of the 40 acres. In this case:

(i) If the first insured crop is insured under this policy, you must provide written notice to us of your election not to insure acreage of a second crop by the acreage reporting date for the second crop if it is insured under this policy, or before planting the second crop if it is insured under any other policy, or, if the first insured crop is not insured under this policy, at the time the first insured crop acreage is released by us (if no acreage in the first insured crop unit is released, this election must be made by the earlier of the acreage reporting date for the second crop or when you sign the claim for the first insured crop), and if you fail to provide such notice, the second crop acreage will be insured in accordance with applicable policy provisions and you must repay any overpaid indemnity for the first insured crop;

* * * * *

7. Report of Acreage and Share.

* * * * *

(c) The premium amount and payment of an indemnity will be based on your insurable acreage on the acreage reporting date subject to section 7(d).

(d) You must provide all required reports and you are responsible for the accuracy of all information contained in those reports. You should verify the information on all such reports prior to submitting them to us.

(1) If you submit information on any report that is different than what is determined to be correct and such information results in:

(i) A lower amount of policy protection than the correct amount, the amount of policy protection will be reduced to an amount consistent with the reported information; or

(ii) A higher amount of policy protection than the correct amount, the information contained in the acreage report will be revised to be consistent with the correct information.

(2) In addition to the other adjustments specified in section 7(d)(1), if you misreport any information that results in an amount of policy protection greater than 110.0 percent or lower than 90.0 percent of the correct amount of policy protection, any indemnity will be based on the amount of policy protection determined in accordance with section 7(d)(1)(i) or (ii) and will be reduced in an amount proportionate with the amount of policy protection that is misreported in excess

of the tolerances stated in this paragraph (For example, if the correct amount of policy protection is determined to be $100.00, but you reported a policy protection amount of $120.00, any indemnity will be reduced by 10.0 percent ($120.00 / $100.00 = 1.20, and 1.20 − 1.10 = 0.10)).

(e) If you request an acreage measurement prior to the acreage reporting date and submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date, you must provide the measurement to us, we will revise your acreage report if there is a discrepancy, and no indemnity will be paid until the acreage measurement has been received by us (Failure to provide the measurement to us will result in the application of section 7(d) if the estimated acreage is not correct, and estimated acreage under this paragraph will no longer be accepted for any subsequent acreage report).

(f) If there is an irreconcilable difference between:

(1) The acreage measured by FSA or a measuring service and our on-farm measurement, our on-farm measurement will be used; or

(2) The acreage measured by a measuring service, other than our on-farm measurement, and FSA, the FSA measurement will be used.

(g) Information on the initial acreage report will not be considered misreported for the purposes of section 7(d) if the acreage report is revised:

(1) In accordance with section 7(e) or (f);

(2) Because information is clearly transposed;

(3) When you provide adequate evidence that we or someone from USDA have committed an error regarding the information; or

(4) As expressly permitted by the policy.

(h) If we discover you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years substantiating your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense. If the correction of any misreported information would affect an indemnity that was paid in a prior crop year, such claim will be adjusted and you will be required to repay any overpaid amounts.

* * * * *

8. Administrative Fees and Annual Premium.

* * * * *

(c) The administrative fee will be waived if you request it and:

(1) You qualify as a limited resource farmer; or

(2) You were insured prior to the 2005 crop year or for the 2005 crop year and your administrative fee was waived for one or more of those crop years because you qualified as a limited resource farmer under a policy definition previously in effect, and you remain qualified as a limited resource farmer under the definition that was in effect at the time the administrative fee was waived.

* * * * *

(g) If the amount of premium (gross premium less premium subsidy paid on your behalf by FCIC) and administrative fee you are required to pay for any acreage exceeds the amount of protection for the acreage, coverage for those acres will not be provided (no premium or administrative fee will be due and no indemnity will be paid for such acreage).

9. Written Agreements.

* * * * *

(a) You must apply in writing for each written agreement or for renewal of any written agreement no later than the sales closing date, unless you demonstrate your physical inability to submit the request prior to the sales closing date (For example, you have been hospitalized or a blizzard has made it impossible to submit the written agreement request in person or by mail);

* * * * *

(c) If approved by FCIC, the written agreement will include all variable terms of the contract, including, but not limited to, crop practice, and type or variety;

(d) Each written agreement will only be valid for the number of crop years specified in the written agreement and a multi-year written agreement:

(1) Will only apply for any particular crop year designated in the written agreement if all terms and conditions in the written agreement are still applicable for the crop year and the conditions under which the written agreement has been provided have not changed prior to the beginning of the crop year (If conditions change during or prior to a crop year, the written agreement will not be effective for that crop year but may still be effective for a subsequent crop year if conditions under which the written agreement has been provided exist for such year);

(2) May be canceled in writing by:

(i) FCIC not less than 30 days before the cancellation date if it discovers that any term or condition of the written agreement, including the premium rate, is not appropriate for the crop; or

(ii) You or us on or before the cancellation date;

(3) That is not renewed in writing after it expires, is not applicable for a crop year, or is canceled, then insurance coverage will be in accordance with the terms and conditions stated in this policy, without regard to the written agreement; and

(4) Will be automatically cancelled if you transfer your policy to another insurance provider (No notice will be provided to you and for any subsequent crop year, for a written agreement to be effective, you must timely request renewal of the written agreement in accordance with this section);

(e) A request for any written agreement must contain:

(1) A completed "Request for Actuarial Change'' form;

(2) Evidence from agricultural experts or the organic agricultural industry, as applicable, that the crop can be produced in the area if the request is to provide insurance for practices, types, or varieties that are not insurable, unless we are notified in writing by FCIC that such evidence is not required;

(3) The legal description of the land (in areas where legal descriptions are available), FSA Farm Serial Number including tract number, and a FSA aerial photograph, acceptable Geographic Information System or Global Positioning System maps, or other legible maps delineating field boundaries where you intend to plant the crop for which insurance is requested; and

(4) Such other information as specified in the Special Provisions or required by FCIC;

(f) A request for written agreement will not be accepted if:

(1) The request is submitted to us after the deadline contained in section 9(a);

(2) All the information required in section 9(e) is not submitted to us with the request for a written agreement (The request for a written agreement may be accepted if any missing information is available from other acceptable sources); or

(3) The request is to add land or crops to an existing written agreement or to add land or crops to a request for a written agreement and the request is not submitted by the deadlines specified in section 9(a);

(g) A request for a written agreement will be denied if:

(1) FCIC determines the risk is excessive;

(2) There is not adequate information available to establish an actuarially sound premium rate and insurance coverage for the crop and acreage; or

(3) Agricultural experts or the organic agricultural industry determines the

crop practices, types, or varieties are not generally recognized for the county;

(h) A written agreement will be denied unless FCIC approves the written agreement and the original written agreement is signed by you and sent to us not later than the expiration date;

(i) With respect to your and our ability to reject an offer for a written agreement:

(1) When a single Request for Actuarial Change form is submitted, regardless of how many requests for changes are contained on the form, you and we can only accept or reject the written agreement in its entirety (you cannot reject specific terms of the written agreement and accept others);

(2) When multiple Request for Actuarial Change forms are submitted, regardless of when the forms are submitted, for the same condition, all these forms may be treated as one request and you and we will only have the option of accepting or rejecting the written agreement in its entirety (you cannot reject specific terms of the written agreement and accept others);

(3) When multiple Request for Actuarial Change forms are submitted, regardless of when the forms are submitted, for the different conditions or for different crops, separate agreements may be issued and you and we will have the option to accept or reject each written agreement; and

(4) If we reject an offer for a written agreement approved by FCIC, you may seek arbitration or mediation of our decision to reject the offer in accordance with section 16;

(j) Any information that is submitted by you after the applicable deadlines in section 9(a) will not be considered, unless such information is specifically requested in accordance with section 9(e)(4);

(k) If the written agreement or the policy is canceled for any reason, or the period for which an existing written agreement is in effect ends, a request for renewal of the written agreement must contain all the information required by this section and be submitted in accordance with section 9(a), unless otherwise specified by FCIC; and

(l) If a request for a written agreement is not approved by FCIC, a request for a written agreement for any subsequent crop year that fails to address the stated basis for the denial will not be accepted (If the request for a written agreement contains the same information that was previously rejected or denied, you will not have any right to arbitrate, mediate or appeal the non-acceptance of your request).

10. Access to Insured Crop and Record Retention.

(a) We, and any employee of USDA authorized to investigate or review any matter relating to crop insurance, have the right to examine the insured crop, any records relating to the crop and this insurance, and any records regarding mediation, arbitration or litigation involving the insured crop, at any location where such crop or records may be found or maintained, as often as reasonably required during the record retention period.

(b) You must retain, and provide upon our request, or the request of any employee of USDA authorized to investigate or review any matter relating to crop insurance, complete records pertaining to the planting of the insured crop and your net acres for a period of three years after the end of the crop year or three years after the date of final payment of the indemnity, whichever is later. This requirement also applies to all such records for acreage that is not insured.

(c) We, or any employee of USDA authorized to investigate or review any matter relating to crop insurance, may extend the record retention period beyond three years by notifying you of such extension in writing.

(d) By signing the application for insurance authorized under the Act or by continuing insurance for which you have previously applied, you authorize us or USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to crop insurance, to obtain records relating to the planting, replanting, inputs, production, harvesting, and disposition of the insured crop from any person who may have custody of such records, including but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist in obtaining all records we or any employee of USDA authorized to investigate or review any matter relating to crop insurance request from third parties.

(e) Failure to provide access to the insured crop or the farm, maintain or provide any required records, authorize access to the records maintained by third parties, or assist in obtaining all such records will result in a determination that no indemnity is due for the crop year in which such failure occurred.

* * * * *

13. Other Insurance.

Nothing in this section prevents you from obtaining other insurance not authorized under the Act. However, unless specifically required by policy provisions, you must not obtain any other crop insurance authorized under the Act on your share of the insured crop. If you cannot demonstrate that you did not intend to have more than one policy in effect, you may be subject to the consequences authorized under this policy, the Act, or any other applicable statute. If you can demonstrate that you did not intend to have more than one policy in effect (For example, an application to transfer your policy or written notification to an insurance provider that states you want to purchase, or transfer, insurance and you want any other policies for the crop canceled would demonstrate you did not intend to have duplicate policies), and:

(a) One is an additional coverage policy and the other is a Catastrophic Risk Protection policy:

(1) The additional coverage policy will apply if both policies are with the same insurance provider or, if not, both insurance providers agree; or

(2) The policy with the earliest date of application will be in force if both insurance providers do not agree; or

(b) Both are additional coverage policies or both are Catastrophic Risk Protection policies, the policy with the earliest date of application will be in force and the other policy will be void, unless both policies are with:

(1) The same insurance provider and the insurance provider agrees otherwise; or

(2) Different insurance providers and both insurance providers agree otherwise.

* * * * *

[Reinsured policy]

15. Restrictions, Limitations, and Amounts Due Us.

* * * * *

(i) We will pay simple interest computed on the net indemnity ultimately found to be due by us or determined by a final judgment of a court of competent jurisdiction or a final administrative determination from, and including, the 61st day after the date we receive the NASS county yield estimates for the insured crop year. Interest will be paid only if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611 *et seq.*), and published in the **Federal Register**.

[FCIC policy]

16. Appeals, Administrative and Judicial Review.

(a) All determinations required by the policy will be made by us.

(b) If you disagree with our determinations, you may:

(1) Except for determinations specified in section 16(b)(2), obtain an administrative review in accordance with 7 CFR part 400, subpart J or appeal in accordance with 7 CFR part 11; or

(2) For determinations regarding whether you have used good farming practices, request reconsideration in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J.

(c) If you fail to exhaust your administrative remedies under 7 CFR part 11 or the reconsideration process for determinations of good farming practices described in section 16(b)(2), as applicable, you will not be able to resolve the dispute through judicial review.

(d) If reconsideration for good farming practices under 7 CFR part 400, subpart J or appeal under 7 CFR part 11 has been initiated within the time frames specified in those sections and judicial review is sought, any suit against us must be:

(1) Filed not later than one year after the date of the decision rendered in the reconsideration process for good farming practices or administrative review process under 7 CFR part 11; and

(2) Brought in the United States district court for the district in which the insured farm involved in the decision is located.

(e) You may only recover contractual damages from us. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from us in administrative review, appeal or litigation.

[Reinsured policy]

16. Mediation, Arbitration, Appeals, and Administrative and Judicial Review.

(a) If you and we fail to agree on any determination made by us except those specified in section 16(d), the disagreement may be resolved through mediation in accordance with section 16(g). If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 16(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

(1) All disputes involving determinations made by us, except those specified in section 16(d), are subject to mediation or arbitration. However, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.

(i) Any interpretation by FCIC will be binding in any mediation or arbitration.

(ii) Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.

(iii) An interpretation by FCIC of a policy provision is considered a rule of general applicability and is not appealable. If you disagree with an interpretation of a policy provision by FCIC, you must obtain a Director's review from the National Appeals Division in accordance with 7 CFR 11.6 before obtaining judicial review in accordance with subsection (e).

(iv) An interpretation by FCIC of a procedure may be appealed to the National Appeals Division in accordance with 7 CFR part 11.

(2) Unless the dispute is resolved through mediation, the arbitrator must provide to you and us a written statement describing the issues in dispute, the factual findings, the determinations and the amount and basis for any award and breakdown by claim for any award. The statement must also include any amounts awarded for interest. Failure of the arbitrator to provide such written statement will result in the nullification of all determinations of the arbitrator. All agreements reached through settlement, including those resulting from mediation, must be in writing and contain at a minimum a statement of the issues in dispute and the amount of the settlement.

(b) Regardless of whether mediation is elected:

(1) The initiation of arbitration proceedings must occur within one year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;

(2) If you fail to initiate arbitration in accordance with section 16(b)(1) and complete the process, you will not be able to resolve the dispute through judicial review;

(3) If arbitration has been initiated in accordance with section 16(b)(1) and completed, and judicial review is sought, suit must be filed not later than one year after the date the arbitration decision was rendered; and

(4) In any suit, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, an interpretation must be obtained from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC. Such interpretation will be binding.

(c) Any decision rendered in arbitration is binding on you and us unless judicial review is sought in accordance with section 16(b)(3). Notwithstanding any provision in the rules of the AAA, you and we have the right to judicial review of any decision rendered in arbitration.

(d) If you do not agree with any determination made by us or FCIC regarding whether you have used a good farming practice, you may request reconsideration by FCIC of this determination in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J (reconsideration).

(1) You must complete reconsideration before filing suit against FCIC and any such suit must be brought in the United States district court for the district in which the insured farm is located.

(2) Suit must be filed not later than one year after the date of the decision rendered in the reconsideration.

(3) You cannot sue us for determinations of whether good farming practices were used by you.

(e) Except as provided in section 16(d), if you disagree with any other determination made by FCIC, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal). If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.

(f) In any mediation, arbitration, appeal, administrative review, reconsideration or judicial process, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV, including the provisions of 7 CFR part 400, subpart P, are binding. Conflicts between this policy and any state or local laws will be resolved in

accordance with section 31. If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control.

(g) To resolve any dispute through mediation, you and we must both:

(1) Agree to mediate the dispute;

(2) Agree on a mediator; and

(3) Be present, or have a designated representative who has authority to settle the case present, at the mediation.

(h) Except as provided in section 16(i), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of liability established or which should have been established under the policy, except for interest awarded in accordance with section 15(i).

(i) In a judicial review only, you may recover attorneys fees or other expenses, or any punitive, compensatory or any other damages from us only if you obtain a determination from FCIC that we, our agent or loss adjuster failed to comply with the terms of this policy or procedures issued by FCIC and such failure resulted in you receiving a payment in an amount that is less than the amount to which you were entitled. Requests for such a determination should be addressed to the following: USDA/RMA/Deputy Administrator of Compliance/Stop 0806, 1400 Independence Avenue, SW., Washington, DC 20250–0806.

(j) If FCIC elects to participate in the adjustment of your claim, or modifies, revises or corrects your claim, prior to payment, you may not bring an arbitration, mediation or litigation action against us. You must request administrative review or appeal in accordance with section 16(e).

* * * * *

18. Life of Policy, Cancellation, and Termination.

* * * * *

(b) Your application for insurance must contain your social security number (SSN) if you are an individual or employer identification number (EIN) if you are a person other than an individual, and all SSNs and EINs, as applicable, of all persons with a substantial beneficial interest in you, the coverage level, price election, crop, type, variety, or class, plan of insurance, and any other material information required on the application to insure the crop. If you or someone with a substantial beneficial interest is not legally required to have a SSN or EIN, you must request and receive an identification number for the purposes of this policy from us or the Internal Revenue Service (IRS) if such identification number is available from the IRS. If any of the information regarding persons with a substantial beneficial interest changes during the crop year, you must revise your application by the next sales closing date applicable under your policy to reflect the correct information.

(1) Applications that do not contain your SSN, EIN or identification number, or any of the other information required in section 18(b) are not acceptable and insurance will not be provided (Except if you fail to report the SSNs, EINs or identification numbers of persons with a substantial beneficial interest in you, the provisions in section 18(b)(2) will apply);

(2) If the application does not contain the SSNs, EINs or identification numbers of all persons with a substantial beneficial interest in you, you fail to revise your application in accordance with section 18(b), or the reported SSNs, EINs or identification numbers are incorrect and the incorrect SSN, EIN or identification number has not been corrected by the acreage reporting date, and:

(i) Such persons are eligible for insurance, the amount of coverage for all crops included on this application will be reduced proportionately by the percentage interest in you of such persons, you must repay the amount of indemnity that is proportionate to the interest of the persons whose SSN, EIN or identification number was unreported or incorrect for such crops, and your premium will be reduced commensurately; or

(ii) Such persons are not eligible for insurance, except as provided in section 18(b)(3), the policy is void and no indemnity will be owed for any crop included on this application, and you must repay any indemnity that may have been paid for such crops. If previously paid, the balance of any premium and any administrative fees will be returned to you, less twenty percent of the premium that would otherwise be due from you for such crops. If not previously paid, no premium or administrative fees will be due for such crops.

(3) The consequences described in section 18(b)(2)(ii) will not apply if you have included an ineligible person's SSN, EIN or identification number on your application and do not include the ineligible person's share on the acreage report.

* * * * *

(e) Any amount due to us for any policy authorized under the Act will be offset from any indemnity due you for this or any other crop insured with us.

(1) Even if your claim has not yet been paid, you must still pay the premium and administrative fee on or before the termination date for you to remain eligible for insurance.

(2) If we offset any amount due us from an indemnity owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be the date FCIC publishes the payment yield for the applicable crop year.

(f) A delinquent debt for any policy will make you ineligible to obtain crop insurance authorized under the Act for any subsequent crop year and result in termination of all policies in accordance with section 18(f)(2).

(1) With respect to ineligibility:

(i) Ineligibility for crop insurance will be effective on:

(A) The date that a policy was terminated in accordance with section 18(f)(2) for the crop for which you failed to pay premium, an administrative fee, or any related interest owed, as applicable;

(B) The payment due date contained in any notification of indebtedness for any overpaid indemnity, if you fail to pay the amount owed, including any related interest owed, as applicable, by such due date;

(C) The termination date for the crop year prior to the crop year in which a scheduled payment is due under a payment agreement if you fail to pay the amount owed by any payment date in any agreement to pay the debt; or

(D) The termination date the policy was or would have been terminated under sections 18(f)(2)(i)(A), (B) or (C) if your bankruptcy petition is dismissed before discharge.

(ii) If you are ineligible and a policy has been terminated in accordance with section 18(f)(2), you will not receive any indemnity, and such ineligibility and termination of the policy may affect your eligibility for benefits under other USDA programs. Any indemnity that may be owed for the policy before it has been terminated will remain owed to you, but may be offset in accordance with section 18(e), unless your policy was terminated in accordance with sections 18(f)(2)(i)(D) or (E).

(2) With respect to termination:

(i) Termination will be effective on:

(A) For a policy with unpaid administrative fees or premiums, the termination date immediately subsequent to the billing date for the crop year;

(B) For a policy with other amounts due, the termination date immediately following the date you have a delinquent debt;

(C) For each policy for which the termination date has passed before you become ineligible, the termination date immediately following the date you become ineligible;

(D) For execution of an agreement to pay any amounts owed and failure to make any scheduled payment, the termination date for the crop year prior to the crop year in which you failed to make the scheduled payment; or

(E) For dismissal of a bankruptcy petition before discharge, the termination date the policy was or would have been terminated under sections 18(f)(2)(i)(A), (B) or (C).

(ii) For all policies terminated under sections 18(f)(2)(i)(D) and (E), any indemnities paid subsequent to the termination date must be repaid.

(iii) Once the policy is terminated, it cannot be reinstated for the current crop year unless the termination was in error. Failure to timely pay because of illness, bad weather, or other such extenuating circumstances is not grounds for reinstatement in the current crop year.

(3) To regain eligibility, you must:

(i) Repay the delinquent debt in full;

(ii) Execute an agreement to pay any amounts owed and make payments in accordance with the agreement (We will not enter into an agreement with you to pay the amounts owed if you have previously failed to make a scheduled payment under the terms of any other agreement to pay with us or any other insurance provider); or

(iii) File a petition to have your debts discharged in bankruptcy (Dismissal of the bankruptcy petition before discharge will terminate all policies in effect retroactive to the date your policy would have been terminated in accordance with section 18(f)(2)(i));

(4) After you become eligible for crop insurance, if you want to obtain coverage for your crops, you must submit a new application on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year);

(5) For example, for the 2003 crop year, if crop A, with a termination date of October 31, 2003, and crop B, with a termination date of March 15, 2004, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2003, and crop A's policy is terminated as of that date. Crop B's policy does not terminate until March 15, 2004, and an indemnity for the 2003 crop year may still be owed. If you enter an agreement to repay amounts owed on September 25, 2004, the earliest date by which you can obtain crop insurance for crop A is to apply for crop insurance by the October 31, 2004, sales closing date and for crop B is to apply for crop insurance by the March 15, 2005, sales closing date. If you fail to make a payment that was scheduled to be made on April 1, 2005, your policy will terminate as of October 31, 2004, for crop A, and March 15, 2005, for crop B, and no indemnity will be due for that crop year for either crop. You will not be eligible to apply for crop insurance for any crop until after the amounts owed are paid in full or you file a petition to discharge the debt in bankruptcy.

(6) If you are determined to be ineligible under section 18(f), persons with a substantial beneficial interest in you may also be ineligible until you become eligible again.

* * * * *

19. Contract Changes.

* * * * *

(b) Any changes in policy provisions, expected county yields, maximum amounts of protection, premium rates, and program dates (except as allowed herein) can be viewed on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site not later than the contract change date contained in the Crop Provisions. We may only revise this information after the contract change date to correct clear errors (For example, the maximum amount of protection was announced at $2500.00 per acre instead of $250.00 per acre).

(c) After the contract change date, all changes specified in section 19(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions and Crop Provisions and a copy of the Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

* * * * *

21. Indemnity and Premium Limitations.

(a) * * *

(1) * * *

(2) * * *

(i) * * *

(ii) Be responsible for a premium that is 35 percent of the premium that you would otherwise owe for the first insured crop; and

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 13. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 14. Revise § 457.2(d) to read as follows:

§ 457.2 Availability of Federal crop insurance.

* * * * *

(d) Except as specified in paragraph (c) of this section, if a person has more than one contract authorized under the Act that provides coverage for the same loss on the same crop for the same crop year in the same county, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the Corporation that the multiple contracts of insurance were without the fault of the person.

(1) If the multiple contracts of insurance are shown to be without the fault of the person and:

(i) One contract is an additional coverage policy and the other contract is a Catastrophic Risk Protection policy, the additional coverage policy will apply if both policies are with the same insurance provider, or if not, both insurance providers agree, and the Catastrophic Risk Protection policy will be canceled (If the insurance providers do not agree, the policy with the earliest date of application will be in force and the other contract will be canceled); or

(ii) Both contracts are additional coverage policies or both are Catastrophic Risk Protection policies, the contract with the earliest signature date on the application will be valid and the other contract on that crop in the county for that crop year will be canceled, unless both policies are with the same insurance provider and the insurance provider agrees otherwise or both policies are with different insurance providers and both insurance providers agree otherwise.

(2) No liability for any indemnity, prevented planting payment, replanting payment or premium will attach to the contracts canceled as specified in paragraphs (d)(1)(i) and (ii) of this section.

* * * * *

§ 457.6 [Removed and reserved]

■ 15. Remove and reserve § 457.6.

§ 457.7 [Amended]

■ 16. Amend § 457.7 by removing the second sentence and adding ", except as

provided in the policy'' at the end of the new third sentence.

■ 17. Amend § 457.8, Common Crop Insurance Policy Basic Provisions, as follows:

■ a. Throughout § 457.8, where it appears, remove the words "crop policy'' and add the word "policy'' in its place;

■ b. Revise the first paragraph of the "FCIC Policies'' section that precedes the Basic Provisions Terms and Conditions;

■ c. Add an "Agreement to insure'' section after the second paragraph of the "FCIC Policies'' section that precedes the Basic Provisions Terms and Conditions;

■ d. Revise the first paragraph of the "Reinsured Policies'' section that precedes the Basic Provisions Terms and Conditions;

■ e. Revise the "Agreement To Insure'' section after the second paragraph of the "Reinsured Policies'' section that precedes the Basic Provisions Terms and Conditions;

■ f. Amend section 1 by adding definitions for "annual crop,'' "Code of Federal Regulations,'' "delinquent debt,'' "disinterested third party,'' "household,'' "insurable loss,'' "liability,'' "offset,'' "perennial crop,'' revising the definitions of "actuarial documents,'' "agricultural commodity,'' "contract change date,'' "crop year,'' "earliest planting date,'' "enterprise unit,'' "field,'' "insured crop,'' "limited resource farmer,'' "non-contiguous,'' "policy,'' "practical to replant,'' "price election,'' "replanting,'' "substantial beneficial interest,'' "whole farm unit,'' and removing the definitions of "another use, notice of,'' "damage, notice of,'' "delinquent account'' and "loss, notice of'';

■ g. Amend the definition of "acreage report'' by removing the words "paragraph 6'' and adding "section 6'' in their place;

■ h. Amend the definitions of "Approved yield'' and "Average yield'' by removing the phrase "section 3(d) or (e)'' and adding "section 3'' in its place;

■ i. Amend the definition of "Second crop'' by revising the third sentence;

■ j. Amend section 2 by revising sections 2(b) and (e), redesignating sections 2(f), (g), (h), and (i) as sections 2(g), (h), (i), and (j) respectively, and adding a new section 2(f);

■ k. Amend newly redesignated section 2(h) by removing "terminate'' and adding "cancel'' in its place;

■ l. Redesignate section 3(i) as section 2(k) and add a new sentence at the end;

■ m. Revise section 3;

■ n. Revise sections 4(b) and (c);

■ o. Remove and reserve section 5;

■ p. Revise section 6(d);

■ q. Revise section 6(g);

■ r. Redesignate section 6(h) as section 6(i) and add a new section 6(h);

■ s. Amend section 7 by revising sections 7(a), (b), (d) and (e)(4), and adding a new section (f);

■ t. Amend section 8 by revising sections (b)(1), (2) and (4), and adding a new (c);

■ u. Revise section 9(a)(1);

■ v. Amend section 9(a) by redesignating sections 9(a)(3) through 9(a)(8) as sections 9(a)(4) through 9(a)(9), respectively, and adding a new section 9(a)(3);

■ w. Revise the introductory text of newly redesignated section 9(a)(8) and revise newly redesignated section 9(a)(8)(i);

■ x. Amend redesignated section 9(a)(9)(ii) by removing "(8)'' and adding "(9)'' in its place;

■ y. Amend section 9(c) by removing "(1)'' and adding "(2)'' in its place;

■ z. Amend section 10(a)(2) by adding two new sentences at the end;

■ aa. Amend section 12 by revising the introductory text and sections 12(c) and (d) and adding a new section 12(f);

■ bb. Amend section 12(e) by removing the period at the end and adding "; or'' in its place;

■ cc. In section 14 revise the heading;

■ dd. Amend section 14 (Your Duties) in (a)(2) by removing the phrase "(we may accept a notice of loss provided later than 72 hours after your initial discovery if we still have the ability to accurately adjust the loss)'', revising sections 14(a)(3), 14(c), and 14(d)(2) and adding section14(h);

■ ee. Amend section 14(d)(1) (Your Duties) by removing the following phrase from the end of the section "or, if you fail to provide the records necessary to allow allocation, the reduction specified in section 15 will apply'';

■ ff. Amend section 14 (Our Duties) by removing the word "or'' at the end of section 14(a)(2), redesignating section 14(a)(3) as 14(a)(4), and adding a new section 14(a)(3);

■ gg. Revise sections 15(b), (e)(2)(ii), (f)(2)(ii) and (g)(3)(i);

■ hh. Revise section 15(j);

■ ii. Amend section 16(b)(3) by adding the word "insured'' between the words "from'' and "acreage'';

■ jj. Revise the introductory text in section 17(a)(1);

■ kk. Amend section 17(d)(1) by removing the word "and'' in the first sentence and adding the word "or'' in its place;

■ ll. Revise section 17(d)(2);

■ mm. Amend section 17(e)(1)(i)(A) by revising the first and second sentences;

■ nn. Revise section 17(e)(1)(ii)(A);

■ oo. Revise sections 17(f)(1) through (4);

■ pp. Revise section 17(f)(5)(i) and 17(f)(6);

■ qq. Amend section 17(f)(10) by removing the word "or'' at the end of that section;

■ rr. Amend section 17(f)(11) by removing the period at the end of that section and adding "; or'' in its place;

■ ss. Amend section 17(f) by adding a new section 17(f)(12);

■ tt. Amend section 17(h)(2) by adding a sentence at the end of the text;

■ uu. Amend section 18 by revising sections18(c) through (e) and adding sections 18(f) through (n);

■ vv. Revise section 20 (For FCIC policies);

■ ww. Revise section 20 (For reinsured policies);

■ xx. Revise section 21;

■ yy. Revise section 22(a);

■ zz. Amend section 22(b) introductory text by adding the phrase "caused by a naturally occurring event'' between "due to fire'' and "only'';

■ aaa. Revise section 24(b) (For FCIC policies);

■ bbb. Revise sections 24(a) and (e) (For reinsured policies);

■ ccc. Remove and reserve section 25;

■ ddd. Amend section 26 by removing the words "Payment and'' in the section heading, removing section 26(a) and removing the section (b) designation;

■ eee. Revise section 30;

■ fff. Revise section 34(a)(2);

■ ggg. Amend section 34(a)(2)(ii) by inserting the term "planted'' between the words "insurable'' and "acreage'';

■ hhh. Revise section 34(a)(2)(iii);

■ iii. Amend section 34(a)(2)(v) by adding the term "production'' between the words "the'' and "reporting'', removing "(c)'' and adding "(e)'' in its place, and removing the word "and'' at the end of the section;

■ jjj. Amend section 34(a)(2)(vi) by removing "If'' and adding "At any time we discover'' in its place, removing the phrase "when the acreage is reported'', and removing the period at the end of the section and adding "; and'' in its place;

■ kkk. Add a new section 34(a)(2)(vii);

■ lll. Amend section 34(a)(3)(i) by removing " and'' at the end of the text;

■ mmm. Amend section 34(a)(3)(ii) by removing the period at the end of the text and adding "; and'' in its place;

■ nnn. Add section 34(a)(3)(iii);

■ ooo. Revise section 34(b)(3);

■ ppp. Amend section 36(b) by removing the phrases "sales closing date'' and "applicable cancellation date'' and adding the phrase "production reporting date'' in their place; and

■ qqq. Amend section 37(a) by removing "(1)'' and adding "(2)'' in its place.

The revised and added text reads as follows:

§ 457.8 The application and policy.

* * * * *

[FCIC Policies]

This is an insurance policy issued by the Federal Crop Insurance Corporation (FCIC), a United States government agency. The provisions of the policy may not be waived or modified in any way by us, your insurance agent or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. Procedures (handbooks, manuals, memoranda, and bulletins), issued by us and published on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site will be used in the administration of this policy, including the adjustment of any loss or claim submitted hereunder.

* * * * *

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures issued by us, the order of priority is as follows: (1) The Act; (2) the regulations; and (3) the procedures issued by us, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of priority is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), *etc.*

[Reinsured Policies]

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act (Act) (7 U.S.C. 1501 *et seq.*). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or varied in any way by us, our insurance agent or any other contractor or employee of ours or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. We will use the procedures (handbooks, manuals, memoranda and bulletins), as issued by FCIC and published on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site, in the administration of this policy, including the adjustment of any loss or claim submitted hereunder. In the event that we cannot pay your loss because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, your claim will be settled in accordance with the provisions of this policy and FCIC will be responsible for any amounts owed. No state guarantee fund will be liable for your loss.

* * * * *

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is as follows: (1) The Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), *etc.* If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of priority is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), etc.

Terms and Conditions

Basic Provisions

1. Definitions.

* * * * *

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office and published on RMA's Web site at *http://www.rma.usda.gov/* or a successor Web site, and which shows available coverage levels, information needed to determine amounts of insurance, premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop, insurable acreage, and other related information regarding crop insurance in the county.

* * * * *

Agricultural commodity. Any crop or other commodity produced, regardless of whether or not it is insurable.

* * * * *

Annual crop. An agricultural commodity that normally must be planted each year.

* * * * *

Code of Federal Regulations (CFR). The codification of general and permanent rules published in the **Federal Register** by the Executive departments and agencies of the Federal Government. Rules published in the **Federal Register** by FCIC are contained in 7 CFR chapter IV. The full text of the CFR is available in electronic format at *http://www.access.gpo.gov/* or a successor Web site.

* * * * *

Contract change date. The calendar date by which changes to the policy, if any, will be made available in accordance with section 4 of these Basic Provisions.

* * * * *

Crop year. The period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested, unless otherwise specified in the Crop Provisions.

* * * * *

Delinquent debt. Any administrative fees or premiums for insurance issued under the authority of the Act, and the interest on those amounts, if applicable, that are not postmarked or received by us or our agent on or before the termination date unless you have entered into an agreement acceptable to us to pay such amounts or have filed for bankruptcy on or before the termination date; any other amounts due us for insurance issued under the authority of the Act (including, but not limited to, indemnities, prevented planting payments or replanting payments found not to have been earned or that were overpaid), and the interest on such amounts, if applicable, which are not postmarked or received by us or our agent by the due date specified in the notice to you of the amount due; or any amounts due under an agreement with you to pay the debt, which are not postmarked or received by us or our agent by the due dates specified in such agreement.

Disinterested third party. A person that does not have any familial relationship (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to have a familial relationship) with you or who will not benefit financially from the sale of the insured crop. Persons who are authorized to conduct quality analysis in accordance with the Crop Provisions are considered disinterested third parties unless there is a familial relationship.

* * * * *

Earliest planting date. The initial planting date contained in the Special Provisions, which is the earliest date you may plant an insured agricultural commodity and qualify for a replanting payment if such payments are authorized by the Crop Provisions.

* * * * *

Enterprise unit. All insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. To qualify, an enterprise unit must contain all of the insurable acreage of the same insured crop in:

(1) One or more basic units that are located in two or more separate sections, section equivalents, FSA farm serial numbers, or units established by written agreement, with at least some planted acreage in two or more separate sections, section equivalents, FSA farm serial numbers, or two or more separate units as established by written agreement; or

(2) Two or more optional units established by separate sections, section equivalents, FSA farm serial numbers, or as established by written agreement, with at least two optional units containing some planted acreage.

Field. All acreage of tillable land within a natural or artificial boundary (*e.g.*, roads, waterways, fences, *etc.*). Different planting patterns or planting different crops do not create separate fields.

* * * * *

Household. A domestic establishment including the members of a family (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to be family members) and others who live under the same roof.

Insurable loss. Damage for which coverage is provided under the terms of your policy, and for which you accept an indemnity payment.

* * * * *

Insured crop. The crop in the county for which coverage is available under your policy as shown on the application accepted by us.

* * * * *

Liability. The dollar amount of insurance coverage used in the premium computation for the insured agricultural commodity.

Limited resource farmer. A person with:

(1) Direct or indirect gross farm sales not more than $100,000.00 in each of the previous two years (to be increased starting in fiscal year 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)); and

(2) A total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

* * * * *

Non-contiguous. Acreage of an insured crop that is separated from other acreage of the same insured crop by land that is neither owned by you nor rented by you for cash or a crop share. However, acreage separated by only a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Offset. The act of deducting one amount from another amount.

* * * * *

Perennial crop. A plant, bush, tree or vine crop that has a life span of more than one year.

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Policy. The agreement between you and us to insure an agricultural commodity and consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each agricultural commodity in each county will constitute a separate policy.

Practical to replant. Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will be considered to be practical to replant regardless of availability of seed or plants, or the input costs necessary to produce the insured crop such as those that would be incurred for seed or plants, irrigation water, etc.

* * * * *

Price election. The amounts contained in the Special Provisions, or an addendum thereto, that is the value per pound, bushel, ton, carton, or other applicable unit of measure for the purposes of determining premium and indemnity under the policy.

* * * * *

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed insured crop and then replacing the seed or plants of the same crop in the same insured acreage. The same crop does not necessarily mean the same type or variety of the crop unless different types or varieties constitute separate crops or it is otherwise specified in the policy.

* * * * *

Second crop. * * * A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed or grazed during the crop year, or that is otherwise harvested is considered to be a second crop. * * *

* * * * *

Substantial beneficial interest. An interest held by any person of at least 10 percent in you. The spouse of any individual applicant or individual insured will be considered to have a substantial beneficial interest in the applicant or insured unless the spouses can prove they are legally separated or otherwise legally separate under state law. Any child of an individual applicant or individual insured will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person. For example, there are two partnerships that each have a 50 percent interest in you and each partnership is made up of two individuals, each with a 50 percent share in the partnership. In this case, each individual would be considered to have a 25 percent interest in you, and both the partnerships and the individuals would have a substantial beneficial interest in you (The spouses of the individuals would not be considered to have a substantial beneficial interest unless the spouse was one of the individuals that made up the partnership). However, if each partnership is made up of six individuals with equal interests, then each would only have an 8.33 percent interest in you and although the partnership would still have a substantial beneficial interest in you, the individuals would not for the purposes of reporting in section 2.

* * * * *

Whole farm unit. All insurable acreage of two or more insured crops planted in the county in which you have a share on the date coverage begins for each crop for the crop year. All crops for which the whole farm unit structure is available must be included in the whole farm unit. At least two of the

insured crops must each constitute at least 10 percent of the total liability of all insured crops in the whole farm unit, and all crops in the unit must be insured under the same plan of insurance and with the same insurance provider.

* * * * *

2. Life of Policy, Cancellation, and Termination.

* * * * *

(b) Your application for insurance must contain your social security number (SSN) if you are an individual or employer identification number (EIN) if you are a person other than an individual, and all SSNs and EINs, as applicable, of all persons with a substantial beneficial interest in you, the coverage level, price election, crop, type, variety, or class, plan of insurance, and any other material information required on the application to insure the crop. If you or someone with a substantial beneficial interest is not legally required to have a SSN or EIN, you must request and receive an identification number for the purposes of this policy from us or the Internal Revenue Service (IRS) if such identification number is available from the IRS. If any of the information regarding persons with a substantial beneficial interest changes during the crop year, you must revise your application by the next sales closing date applicable under your policy to reflect the correct information.

(1) Applications that do not contain your SSN, EIN or identification number, or any of the other information required in section 2(b) are not acceptable and insurance will not be provided (Except if you fail to report the SSNs, EINs or identification numbers of persons with a substantial beneficial interest in you, the provisions in section 2(b)(2) will apply);

(2) If the application does not contain the SSNs, EINs or identification numbers of all persons with a substantial beneficial interest in you, you fail to revise your application in accordance with section 2(b), or the reported SSNs, EINs or identification numbers are incorrect and the incorrect SSN, EIN or identification number has not been corrected by the acreage reporting date, and:

(i) Such persons are eligible for insurance, the amount of coverage for all crops included on this application will be reduced proportionately by the percentage interest in you of such persons, you must repay the amount of indemnity, prevented planting payment or replanting payment that is proportionate to the interest of the persons whose SSN, EIN or identification number was unreported or incorrect for such crops, and your premium will be reduced commensurately; or

(ii) Such persons are not eligible for insurance, except as provided in section 2(b)(3), the policy is void and no indemnity, prevented planting payment or replanting payment will be owed for any crop included on this application, and you must repay any indemnity, prevented planting payment or replanting payment that may have been paid for such crops. If previously paid, the balance of any premium and any administrative fees will be returned to you, less twenty percent of the premium that would otherwise be due from you for such crops. If not previously paid, no premium or administrative fees will be due for such crops.

(3) The consequences described in section 2(b)(2)(ii) will not apply if you have included an ineligible person's SSN, EIN or identification number on your application and do not include the ineligible person's share on the acreage report.

* * * * *

(e) Any amount due to us for any policy authorized under the Act will be offset from any indemnity or prevented planting payment due you for this or any other crop insured with us under the authority of the Act.

(1) Even if your claim has not yet been paid, you must still pay the premium and administrative fee on or before the termination date for you to remain eligible for insurance.

(2) If we offset any amount due us from an indemnity or prevented planting payment owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be the date that you submit the claim for indemnity in accordance with section 14(c) (Your Duties).

(f) A delinquent debt for any policy will make you ineligible to obtain crop insurance authorized under the Act for any subsequent crop year and result in termination of all policies in accordance with section 2(f)(2).

(1) With respect to ineligibility:

(i) Ineligibility for crop insurance will be effective on:

(A) The date that a policy was terminated in accordance with section 2(f)(2) for the crop for which you failed to pay premium, an administrative fee, or any related interest owed, as applicable;

(B) The payment due date contained in any notification of indebtedness for any overpaid indemnity, prevented planting payment or replanting payment, if you fail to pay the amount owed, including any related interest owed, as applicable, by such due date;

(C) The termination date for the crop year prior to the crop year in which a scheduled payment is due under a payment agreement if you fail to pay the amount owed by any payment date in any agreement to pay the debt; or

(D) The termination date the policy was or would have been terminated under sections 2(f)(2)(i)(A), (B) or (C) if your bankruptcy petition is dismissed before discharge.

(ii) If you are ineligible and a policy has been terminated in accordance with section 2(f)(2), you will not receive any indemnity, prevented planting payment or replanting payment, if applicable, and such ineligibility and termination of the policy may affect your eligibility for benefits under other USDA programs. Any indemnity, prevented planting payment or replanting payment that may be owed for the policy before it has been terminated will remain owed to you, but may be offset in accordance with section 2(e), unless your policy was terminated in accordance with sections 2(f)(2)(i)(D) or (E).

(2) With respect to termination:

(i) Termination will be effective on:

(A) For a policy with unpaid administrative fees or premiums, the termination date immediately subsequent to the billing date for the crop year;

(B) For a policy with other amounts due, the termination date immediately following the date you have a delinquent debt;

(C) For each policy for which insurance has attached before you become ineligible, the termination date immediately following the date you become ineligible;

(D) For execution of an agreement to pay any amounts owed and failure to make any scheduled payment, the termination date for the crop year prior to the crop year in which you failed to make the scheduled payment; or

(E) For dismissal of a bankruptcy petition before discharge, the termination date the policy was or would have been terminated under sections 2(f)(2)(i)(A), (B) or (C).

(ii) For all policies terminated under sections 2(f)(2)(i)(D) and (E), any indemnities, prevented planting payments or replanting payments paid subsequent to the termination date must be repaid.

(iii) Once the policy is terminated, it cannot be reinstated for the current crop year unless the termination was in error. Failure to timely pay because of illness, bad weather, or other such extenuating

circumstances is not grounds for reinstatement in the current year.

(3) To regain eligibility, you must:

(i) Repay the delinquent debt in full;

(ii) Execute an agreement to pay any amounts owed and make payments in accordance with the agreement (We will not enter into an agreement with you to pay the amounts owed if you have previously failed to make a scheduled payment under the terms of any other agreement to pay with us or any other insurance provider); or

(iii) File a petition to have your debts discharged in bankruptcy (Dismissal of the bankruptcy petition before discharge will terminate all policies in effect retroactive to the date your policy would have been terminated in accordance with section 2(f)(2)(i));

(4) After you become eligible for crop insurance, if you want to obtain coverage for your crops, you must submit a new application on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year);

(5) For example, for the 2003 crop year, if crop A, with a termination date of October 31, 2003, and crop B, with a termination date of March 15, 2004, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2003, and crop A's policy is terminated as of that date. Crop B's policy does not terminate until March 15, 2004, and an indemnity for the 2003 crop year may still be owed. If you enter an agreement to repay amounts owed on September 25, 2004, the earliest date by which you can obtain crop insurance for crop A is to apply for crop insurance by the October 31, 2004, sales closing date and for crop B is to apply for crop insurance by the March 15, 2005, sales closing date. If you fail to make a payment that was scheduled to be made on April 1, 2005, your policy will terminate as of October 31, 2004, for crop A, and March 15, 2005, for crop B, and no indemnity, prevented planting payment or replanting payment will be due for that crop year for either crop. You will not be eligible to apply for crop insurance for any crop until after the amounts owed are paid in full or you file a petition to discharge the debt in bankruptcy.

(6) If you are determined to be ineligible under section 2(f), persons with a substantial beneficial interest in you may also be ineligible until you become eligible again.

* * * * *

(k) * * * You are still responsible for the accuracy of all information provided on your behalf and may be subject to the consequences in section 6(g), and any applicable consequences, if any information has been misreported.

3. Insurance Guarantees, Coverage Levels, and Prices.

(a) Unless adjusted or limited in accordance with your policy, the production guarantee or amount of insurance, coverage level, and price at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage for each crop year.

(b) You must select the same coverage, catastrophic risk protection or additional coverage, and select one level of additional coverage for all acreage of the crop in the county unless one of the following applies:

(1) The applicable Crop Provisions allow you the option to separately insure individual crop types or varieties. In this case, each individual type or variety insured by you will be subject to separate administrative fees. For example, if two grape varieties in California are insured under the Catastrophic Risk Protection Endorsement and two varieties are insured under an additional coverage policy, a separate administrative fee will be charged for each of the four varieties. Although insurance may be elected by type or variety in these instances, failure to insure a type or variety that is of economic significance may result in the denial of other farm program benefits unless you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(2) If you have additional coverage for the crop in the county and the acreage has been designated as "high risk" by FCIC, you will be able to obtain a High Risk Land Exclusion Option for the high risk land under the additional coverage policy and insure the high risk acreage under a separate Catastrophic Risk Protection Endorsement, provided that the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the additional coverage was obtained.

(c) In addition to the price election or amount of insurance available on the contract change date, we may provide an additional price election or amount of insurance no later than 15 days prior to the sales closing date. You must select the additional price election or amount of insurance on or before the sales closing date for the insured crop. These additional price elections or amounts of insurance will not be less than those available on the contract change date. If you elect the additional price election or amount of insurance, any claim settlement and amount of premium will be based on this amount.

(d) You may change the coverage level, price election, or amount of insurance for the following crop year by giving written notice to us not later than the sales closing date for the insured crop. Since the price election or amount of insurance may change each year, if you do not select a new price election or amount of insurance on or before the sales closing date, we will assign a price election or amount of insurance which bears the same relationship to the price election schedule as the price election or amount of insurance that was in effect for the preceding year. (For example: If you selected 100 percent of the market price for the previous crop year and you do not select a new price election for the current crop year, we will assign 100 percent of the market price for the current crop year.)

(e) You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date unless otherwise stated in the Special Provisions:

(1) If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year. The production report or assigned yield will be used to compute your approved yield for the purpose of determining your coverage for the current crop year.

(2) If you have filed a claim for any crop year, the documents signed by you which state the amount of production used to complete the claim for indemnity will be the production report for that year unless otherwise specified by FCIC.

(3) Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date. If you do not provide the information stated above, the optional units will be combined into the basic unit.

(4) Appraisals obtained from only a portion of the acreage in a field that remains unharvested after the remainder of the crop within the field has been destroyed or put to another use will not be used to establish your actual yield unless representative samples are required to be left by you in accordance with the Crop Provisions.

(f) It is your responsibility to accurately report all information that is used to determine your approved yield. You must certify to the accuracy of this information on your production report.

(1) If you do not have written verifiable records to support the information on your production report, you will receive an assigned yield in accordance with section 3(e)(1) and 7 CFR part 400, subpart G for those crop years for which you do not have such records.

(2) If you misreport any material information used to determine your approved yield:

(i) We will correct the unit structure, if necessary; and

(ii) You will be subject to the provisions regarding misreporting contained in section 6(g), unless we correct the information because the incorrect information was the result of our error or the error of someone from USDA.

(g) In addition to any consequences in section 3(f), at any time the circumstances described below are discovered, your approved yield will be adjusted:

(1) By including an assigned yield determined in accordance with section 3(e)(1) and 7 CFR part 400, subpart G, if the actual yield reported in the database is excessive for any crop year, as determined by FCIC under its procedures, and you do not provide verifiable records to support the yield in the database (If there are verifiable records for the yield in your database, the yield is significantly different from the other yields in the county or your other yields for the crop and you cannot prove there is a valid basis to support the differences in the yields, the yield will be the average of the yields for the crop or the applicable county transitional yield if you have no other yields for the crop, and you may be subject to the provisions of section 27);

(2) By reducing it to an amount consistent with the average of the approved yields for other databases for your farming operation with the same crop, type, and practice or the county transitional yield, as applicable, if:

(i) The approved APH yield is greater than 115 percent of the average of the approved yields of all applicable databases for your farming operation that have actual yields in them or it is greater than 115 percent of the county transitional yield if no applicable databases exist for comparison; and

(ii) The current year's insured acreage (including applicable prevented planting acreage) is greater than 400 percent of the average number of acres in the database or the acres contained in two or more individual years in the database are each less than 10 percent of the current year's insurable acreage in the unit (including applicable prevented planting acreage); or

(3) To an amount consistent with the production methods actually carried out for the crop year if you use a different production method than was previously used and the production method actually carried out is likely to result in a yield lower than the average of your previous actual yields. The yield will be adjusted based on your other units where such production methods were carried out or to the applicable county transitional yield for the production methods if other such units do not exist. You must notify us of changes in your production methods by the acreage reporting date. If you fail to notify us, in addition to the reduction of your approved yield described herein, you will be considered to have misreported information and you will be subject to the consequences in section 6(g). For example, for a non-irrigated unit, your yield is based upon acreage of the crop that is watered once prior to planting, and the crop is not watered prior to planting for the current crop year. Your approved APH yield will be reduced to an amount consistent with the actual production history of your other non-irrigated units where the crop has not been watered prior to planting or limited to the non-irrigated transitional yield for the unit if other such units do not exist.

(h) Unless you meet the double cropping requirements contained in section 17(f)(4), if you elect to plant a second crop on acreage where the first insured crop was prevented from being planted, you will receive a yield equal to 60 percent of the approved yield for the first insured crop to calculate your average yield for subsequent crop years (Not applicable to crops if the APH is not the basis for the insurance guarantee). If the unit contains both prevented planting and planted acreage of the same crop, the yield for such acreage will be determined by:

(1) Multiplying the number of insured prevented planting acres by 60 percent of the approved yield for the first insured crop;

(2) Adding the totals from section 3(h)(1) to the amount of appraised or harvested production for all of the insured planted acreage; and

(3) Dividing the total in section 3(h)(2) by the total number of acres in the unit.

(i) Hail and fire coverage may be excluded from the covered causes of loss for an insured crop only if you select additional coverage of not less than 65 percent of the approved yield indemnified at the 100 percent price election, or an equivalent coverage as established by FCIC, and you have purchased the same or a higher dollar amount of coverage for hail and fire from us or any other source.

(j) The applicable premium rate, or formula to calculate the premium rate, and transitional yield will be those contained in the actuarial documents except, in the case of high risk land, a written agreement may be requested to change such transitional yield or premium rate.

4. Contract Changes.

* * * * *

(b) Any changes in policy provisions, amounts of insurance, premium rates, program dates, and price elections (except as allowed herein or as specified in section 3) can be viewed on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site not later than the contract change date contained in the Crop Provisions. We may only revise this information after the contract change date to correct clear errors (For example, the price election for corn was announced at $25.00 per bushel instead of $2.50 per bushel or the final planting date should be May 10 but the final planting date in the Special Provisions states August 10).

(c) After the contract change date, all changes specified in section 4(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions and Crop Provisions and a copy of the Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

* * * * *

5. [Reserved]

6. Report of Acreage.

* * * * *

(d) Regarding the ability to revise an acreage report you have submitted to us:

(1) For planted acreage, you cannot revise any information pertaining to the planted acreage after the acreage reporting date without our consent (Consent may only be provided when no cause of loss has occurred; our appraisal has determined that the insured crop will produce at least 90 percent of the yield used to determine your guarantee or the amount of insurance for the unit (including reported and unreported acreage), except when there are unreported units (see section 6(f)); the information on the acreage report is clearly transposed; you provide adequate evidence that we or someone from USDA have committed an error regarding the information on your

acreage report; or if expressly permitted by the policy);

(2) For prevented planting acreage reported on the acreage report, you cannot revise any information pertaining to the prevented planting acreage after the report is initially submitted to us without our consent (Consent may only be provided when information on the acreage report is clearly transposed or you provide adequate evidence that we or someone from USDA have committed an error regarding the information on your acreage report);

(3) For prevented planting acreage not reported on the acreage report, you cannot revise your acreage report to add prevented planting acreage;

(4) If you request an acreage measurement prior to the acreage reporting date and submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date, you must provide the measurement to us, we will revise your acreage report if there is a discrepancy, and no indemnity, prevented planting payment or replant payment will be paid until the acreage measurement has been received by us (Failure to provide the measurement to us will result in the application of section 6(g) if the estimated acreage is not correct and estimated acreage under this section will no longer be accepted for any subsequent acreage report);

(5) If there is an irreconcilable difference between:

(i) The acreage measured by FSA or a measuring service and our on-farm measurement, our on-farm measurement will be used; or

(ii) The acreage measured by a measuring service, other than our on-farm measurement, and FSA, the FSA measurement will be used; and

(6) If the acreage report has been revised in accordance with section 6(d)(1), (2), (4), or (5), the information on the initial acreage report will not be considered misreported for the purposes of section 6(g).

* * * * *

(g) You must provide all required reports and you are responsible for the accuracy of all information contained in those reports. You should verify the information on all such reports prior to submitting them to us.

(1) If you submit information on any report that is different than what is determined to be correct and such information results in:

(i) A lower liability than the actual liability determined, the production guarantee or amount of insurance on the unit will be reduced to an amount consistent with the reported information (In the event the insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity); or

(ii) A higher liability than the actual liability determined, the information contained in the acreage report will be revised to be consistent with the correct information.

(2) In addition to the other adjustments specified in section 6(g)(1), if you misreport any information that results in liability greater than 110.0 percent or lower than 90.0 percent of the actual liability determined for the unit, any indemnity, prevented planting payment, or replanting payment will be based on the amount of liability determined in accordance with section 6(g)(1)(i) or (ii) and will be reduced in an amount proportionate with the amount of liability that is misreported in excess of the tolerances stated in this section (For example, if the actual liability is determined to be $100.00, but you reported liability of $120.00, any indemnity, prevented planting payment or replanting payment will be reduced by 10.0 percent ($120.00 / $100.00 = 1.20, and 1.20 − 1.10 = 0.10)).

(h) If we discover you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years substantiating your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense. If the correction of any misreported information would affect an indemnity, prevented planting payment or replant payment that was paid in a prior crop year, such claim will be adjusted and you will be required to repay any overpaid amounts.

* * * * *

7. Annual Premium and Administrative Fees.

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for the premium and administrative fee not earlier than the premium billing date specified in the Special Provisions.

(b) Premium or administrative fees owed by you will be offset from an indemnity or prevented planting payment due you in accordance with section 2(e).

* * * * *

(d) The premium will be computed using the price election or amount of insurance you elect or that we assign in accordance with section 3(d). The information needed to determine the premium rate and any premium adjustment percentages that may apply are contained in the actuarial documents or an approved written agreement.

(e) * * *

(1) * * *

(2) * * *

(3) * * *

(4) The administrative fee will be waived if you request it and:

(i) You qualify as a limited resource farmer; or

(ii) You were insured prior to the 2005 crop year or for the 2005 crop year and your administrative fee was waived for one or more of those crop years because you qualified as a limited resource farmer under a policy definition previously in effect, and you remain qualified as a limited resource farmer under the definition that was in effect at the time the administrative fee was waived.

* * * * *

(f) If the amount of premium (gross premium less premium subsidy paid on your behalf by FCIC) and administrative fee you are required to pay for any acreage exceeds the liability for the acreage, coverage for those acres will not be provided (no premium or administrative fee will be due and no indemnity will be paid for such acreage).

8. Insured Crop.

* * * * *

(b) * * *

(1) That is not grown on planted acreage (except for the purposes of prevented planting coverage), or that is a type, class or variety or where the conditions under which the crop is planted are not generally recognized for the area (For example, where agricultural experts determine that planting a non-irrigated corn crop after a failed small grain crop on the same acreage in the same crop year is not appropriate for the area);

(2) For which the information necessary for insurance (price election, premium rate, *etc.*) is not included in the actuarial documents, unless such information is provided by a written agreement;

(3) * * *

(4) Planted following the same crop on the same acreage and the first planting of the crop has been harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions (For example, the second planting of grain sorghum would not be insurable if grain sorghum had already been planted and harvested on the same acreage during the crop year);

* * * * *

(c) Although certain policy documents may state that a crop type, class, variety or practice is not insurable, it does not mean all other crop types, classes, varieties or practices are insurable. To be insurable the crop type, class, variety or practice must meet all the conditions in this section.

9. Insurable Acreage.

(a) * * *

(1) That has not been planted and harvested or insured (including insured acreage that was prevented from being planted) in at least one of the three previous crop years unless you can show that:

(i) Such acreage was not planted:

(A) In at least two of the previous three crop years to comply with any other USDA program;

(B) Because of crop rotation, (*e.g.*, corn, soybeans, alfalfa; and the alfalfa remained for four years before the acreage was planted to corn again); or

(C) Because a perennial tree, vine, or bush crop was grown on the acreage;

(ii) The Crop Provisions or a written agreement specifically allow insurance for such acreage; or

(iii) Such acreage constitutes five percent or less of the insured planted acreage in the unit;

* * * * *

(3) For which the actuarial documents do not provide the information necessary to determine the premium rate, unless insurance is allowed by a written agreement;

* * * * *

(8) Of a second crop, if you elect not to insure such acreage when an indemnity for a first insured crop may be subject to reduction in accordance with the provisions of section 15 and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage. This election must be made on a first insured crop unit basis. For example, if the first insured crop unit contains 40 planted acres that may be subject to an indemnity reduction, then no second crop can be insured on any of the 40 acres. In this case:

(i) If the first insured crop is insured under this policy, you must provide written notice to us of your election not to insure acreage of a second crop at the time the first insured crop acreage is released by us (if no acreage in the first insured crop unit is released, this election must be made by the earlier of the acreage reporting date for the second crop or when you sign the claim for indemnity for the first insured crop) or, if the first insured crop is insured under the Group Risk Protection Plan of Insurance (7 CFR part 407), this election must be made before the second crop insured under this policy is planted, and if you fail to provide such notice, the second crop acreage will be insured in accordance with the applicable policy provisions and you must repay any overpaid indemnity for the first insured crop;

* * * * *

10. Share Insured.

(a) * * *

(1) * * *

(2) * * * For each landlord or tenant that is an individual, you must report the landlord's or tenant's social security number. For each landlord or tenant that is a person other than an individual or for a trust administered by the Bureau of Indian Affairs, you must report each landlord's or tenant's social security number, employer identification number, or other identification number assigned for the purposes of this policy.

* * * * *

12. Causes of Loss.

The insurance provided is against only unavoidable loss directly caused by specific causes of loss contained in the Crop Provisions. All specified causes of loss, except where the Crop Provisions specifically cover loss of revenue due to a reduced price in the marketplace, must be due to a naturally occurring event. All other causes of loss, including but not limited to the following, are NOT covered:

* * * * *

(c) Water that is contained by or within structures that are designed to contain a specific amount of water, such as dams, locks or reservoir projects, etc., on any acreage when such water stays within the designed limits (For example, a dam is designed to contain water to an elevation of 1,200 feet but you plant a crop on acreage at an elevation of 1,100 feet. A storm causes the water behind the dam to rise to an elevation of 1,200 feet. Under such circumstances, the resulting damage would not be caused by an insurable cause of loss. However, if you planted on acreage that was above 1,200 feet elevation, any damage caused by water that exceeded that elevation would be caused by an insurable cause of loss);

(d) Failure or breakdown of the irrigation equipment or facilities unless the failure or breakdown is due to a cause of loss specified in the Crop Provisions (If damage is due to an insured cause, you must make all reasonable efforts to restore the equipment or facilities to proper working order within a reasonable amount of time unless we determine it is not practical to do so. Cost will not be considered when determining whether it is practical to restore the equipment or facilities);

* * * * *

(f) Any cause of loss that results in damage that is not evident or would not have been evident during the insurance period, including, but not limited to, damage that only becomes evident after the end of the insurance period unless expressly authorized in the Crop Provisions. Even though we may not inspect the damaged crop until after the end of the insurance period, damage due to insured causes that would have been evident during the insurance period will be covered.

* * * * *

14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage.

Your Duties—

(a) * * *

(3) If representative samples are required by the Crop Provisions, leave representative samples intact of the unharvested crop if you report damage less than 15 days before the time you begin harvest or during harvest of the damaged unit (The samples must be left intact until we inspect them or until 15 days after completion of harvest on the unit, whichever is earlier. Unless otherwise specified in the Crop Provisions or Special Provisions, the samples of the crop in each field in the unit must be 10 feet wide and extend the entire length of the row, if the crop is planted in rows, or if the crop is not planted in rows, the longest dimension of the field. The period to retain representative samples may be extended if it is necessary to accurately determine the loss. You will be notified in writing of any such extension); and

* * * * *

(c) In addition to complying with the notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the end of the insurance period unless you request an extension in writing and we agree to such extension. Extensions will only be granted if the amount of the loss cannot be determined within such time period because the information needed to determine the amount of the loss is not available. The claim for indemnity must include all information we require to settle the claim. Failure to submit a claim or provide the required information will result in no indemnity, prevented planting payment or replant payment (Even though no indemnity or other payment is due, you will still be required to pay the premium due under the policy for the unit).

(d) * * *

(2) Upon our request, or that of any USDA employee authorized to conduct investigations of the crop insurance program, submit to an examination under oath.

* * * * *

(h) It is your duty to prove you have complied with all provisions of this policy.

(1) Failure to comply with the requirements of section 14(c) (Your Duties) will result in denial of your claim for indemnity or prevented planting or replant payment for the acreage for which the failure occurred. Failure to comply with all other requirements of this section will result in denial of your claim for indemnity or prevented planting or replant payment for the acreage for which the failure occurred, unless we still have the ability to accurately adjust the loss (Even though no indemnity or other payment is due, you will still be required to pay the premium due under the policy for the unit); and

(2) Failure to comply with other sections of the policy will subject you to the consequences specified in those sections.

Our Duties—

(a) * * *

* * * * *

(3) Completion of any investigation by USDA, if applicable, of your current or any past claim for indemnity if no evidence of wrongdoing has been found (If any evidence of wrongdoing has been discovered, the amount of any indemnity, prevented planting or replant overpayment as a result of such wrongdoing may be offset from any indemnity or prevented planting payment owed to you); or

* * * * *

15. Production Included in Determining an Indemnity and Payment Reductions.

* * * * *

(b) Appraised production will be used to calculate your claim if you are not going to harvest your acreage. Such appraisals may be conducted after the end of the insurance period. If you harvest the crop after the crop has been appraised:

(1) You must provide us with the amount of harvested production; and

(2) If the harvested production exceeds the appraised production, claims will be adjusted using the harvested production, and you will be required to repay any overpaid indemnity; or

(3) If the harvested production is less than the appraised production, and:

(i) You harvest after the end of the insurance period, your appraised production will be used to adjust the loss unless you can prove that no additional causes of loss or deterioration of the crop occurred after the end of the insurance period; or

(ii) You harvest before the end of the insurance period, your harvested production will be used to adjust the loss.

* * * * *

(e) * * *

(1) * * *

(2) * * *

(i) * * *

(ii) Be responsible for premium that is 35 percent of the premium that you would otherwise owe for the first insured crop; and

* * * * *

(f) * * *

(1) * * *

(2) * * *

(i) * * *

(ii) Be responsible for premium that is 35 percent of the premium that you would otherwise owe for the first insured crop.

(g) * * *

(1) * * *

(2) * * *

(3) * * *

(i) If a volunteer crop or cover crop is hayed or grazed from the same acreage, after the late planting period (or after the final planting date if a late planting period is not applicable) for the first insured crop in the same crop year, or is otherwise harvested anytime after the late planting period (or after the final planting date if a late planting period is not applicable); or

* * * * *

(j) If any Federal or State agency requires destruction of any insured crop or crop production, as applicable, because it contains levels of a substance, or has a condition, that is injurious to human or animal health in excess of the maximum amounts allowed by the Food and Drug Administration, other public health organizations of the United States or an agency of the applicable State, you must destroy the insured crop or crop production, as applicable, and certify that such insured crop or crop production has been destroyed prior to receiving an indemnity payment. Failure to destroy the insured crop or crop production, as applicable, will result in you having to repay any indemnity paid and you may be subject to administrative sanctions in accordance with section 515(h) of the Act and 7 CFR part 400, subpart R, and any applicable civil or criminal sanctions.

* * * * *

17. Prevented Planting.

(a) * * *

(1) You were prevented from planting the insured crop (Failure to plant when other producers in the area were planting will result in the denial of the prevented planting claim) by an insured cause that occurs:

* * * * *

(d) * * *

(1) * * *

(2) For irrigated acreage, there is not a reasonable expectation of having adequate water to carry out an irrigated practice. If you knew or had reason to know that your water is reduced before the final planting date, no reasonable expectation existed.

(e) * * *

(1) * * *

(i) * * *

(A) The maximum number of acres certified for APH purposes, or insured acres reported, for the crop in any one of the 4 most recent crop years (not including reported prevented planting acreage that was planted to a second crop unless you meet the double cropping requirements in section 17(f)(4)). * * * No cause of loss that would prevent planting may be evident at the time you lease the acreage (except acreage you leased the previous year and continue to lease in the current crop year); you buy the acreage; the acreage is released from a USDA program which prohibits harvest of a crop; you request a written agreement to insure the acreage; or you otherwise acquire the acreage (such as inherited or gifted acreage).

* * * * *

(ii) * * *

(A) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year; or the result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted. If a minimum number of acres or amount of production is specified in the processor contract, this amount will be used to determine the eligible acres. If a processor cancels or does not provide contracts, or reduces the contracted acreage or production from what would have otherwise been allowed, solely because the acreage was prevented from being planted due to an insured cause of loss, we may elect to determine the number of acres eligible based on the number of acres or amount of production you had contracted in the county in the previous crop year. If you did not have a processor contract in place for the previous crop year, you

will not have any eligible prevented planting acreage for the applicable processor crop. The total eligible prevented planting acres in all counties cannot exceed the total number of acres or amount of production contracted in all counties in the previous crop year. If the applicable crop provisions require that the price election be based on a contract price, and a contract is not in force for the current year, the price election may be based on the contract price in place for the previous crop year.

* * * * *

(f) * * *

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less, and any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field except that the prevented planting acreage may be considered to be acreage of a crop, type, and practice other than that which is planted in the field if:

(i) The acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any one of the four most recent crop years;

(ii) You were prevented from planting a first insured crop and you planted a second crop in the field (There can only be one first insured crop in a field unless the requirements in section 17(f)(1)(i) or (iii) are met); or

(iii) The insured crop planted in the field would not have been planted on the remaining prevented planting acreage (For example, where rotation requirements would not be met or you already planted the total number of acres specified in the processor contract);

(2) For which the actuarial documents do not provide the information needed to determine a premium rate unless a written agreement designates such premium rate;

(3) Used for conservation purposes, intended to be left unplanted under any program administered by the USDA or other government agency, or required to be left unharvested under the terms of the lease or any other agreement (The number of acres eligible for prevented planting will be limited to the number of acres specified in the lease for which you are required to pay either cash or share rent);

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year (It is your responsibility to determine whether a prevented planting payment had previously been made for the crop year on the acreage for which you are now claiming a prevented planting payment and report such information to us before any prevented planting payment can be made), excluding share arrangements, unless:

* * * * *

(5) * * *

(i) Any crop is planted within or prior to the late planting period or on or prior to the final planting date if no late planting period is applicable, unless:

(A) You meet the double cropping requirements in section 17(f)(4);

(B) The crop planted was a cover crop; or

(C) No benefit, including any benefit under any USDA program, was derived from the crop; or

* * * * *

(6) For which planting history or conservation plans indicate that the acreage would remain fallow for crop rotation purposes or on which any pasture or other forage crop is in place on the acreage during the time that planting of the insured crop generally occurs in the area;

* * * * *

(12) If a cause of loss has occurred that would prevent planting at the time:

(i) You lease the acreage (except acreage you leased the previous crop year and continue to lease in the current crop year);

(ii) You buy the acreage;

(iii) The acreage is released from a USDA program which prohibits harvest of a crop;

(iv) You request a written agreement to insure the acreage; or

(v) You acquire the acreage through means other than lease or purchase (such as inherited or gifted acreage).

* * * * *

(h) * * *

(1) * * *

(2) * * * However, if you were prevented from planting any non-irrigated crop acreage and you do not have any remaining eligible acreage for that crop and you do not have any other crop remaining with eligible acres under a non-irrigated practice, no prevented planting payment will be made for the acreage.

* * * * *

18. Written Agreements.

* * * * *

(c) If approved by FCIC, the written agreement will include all variable terms of the contract, including, but not limited to, crop practice, type or variety, the guarantee (except for a written agreement in effect for more than one year) and premium rate or information needed to determine the guarantee and premium rate, and price election (Price elections will not exceed the price election contained in the Special Provisions, or an addendum thereto, for the county that is used to establish the other terms of the written agreement. If no price election can be provided, the written agreement will not be approved by FCIC);

(d) Each written agreement will only be valid for the number of crop years specified in the written agreement, and a multi-year written agreement:

(1) Will only apply for any particular crop year designated in the written agreement if all terms and conditions in the written agreement are still applicable for the crop year and the conditions under which the written agreement has been provided have not changed prior to the beginning of the insurance period (If conditions change during or prior to the crop year, the written agreement will not be effective for that crop year but may still be effective for a subsequent crop year if conditions under which the written agreement has been provided exist for such year);

(2) May be canceled in writing by:

(i) FCIC not less than 30 days before the cancellation date if it discovers that any term or condition of the written agreement, including the premium rate, is not appropriate for the crop; or

(ii) You or us on or before the cancellation date;

(3) That is not renewed in writing after it expires, is not applicable for a crop year, or is canceled, then insurance coverage will be in accordance with the terms and conditions stated in this policy, without regard to the written agreement; and

(4) Will be automatically cancelled if you transfer your policy to another insurance provider (No notice will be provided to you and for any subsequent crop year, for a written agreement to be effective, you must timely request renewal of the written agreement in accordance with this section);

(e) A request for a written agreement may be submitted:

(1) After the sales closing date, but on or before the acreage reporting date, if you demonstrate your physical inability to submit the request prior to the sales closing date (For example, you have been hospitalized or a blizzard has made it impossible to submit the written agreement request in person or by mail);

(2) For the first year the written agreement will be in effect only:

(i) On or before the acreage reporting date, to:

(A) Insure unrated land, or an unrated practice, type or variety of a crop (Such written agreements may be approved only after inspection of the acreage by us and the written agreement may only be approved by FCIC if the crop's potential is equal to or exceeds 90 percent of the yield used to determine the production guarantee or the amount of insurance and you sign the agreement on the same day the appraisal is made); or

(B) Establish optional units in accordance with FCIC procedures that otherwise would not be allowed, change the premium rate or transitional yield for designated high risk land, change a tobacco classification, or insure acreage that is greater than five percent of the planted acreage in the unit where the acreage has not been planted and harvested or insured in any of the three previous crop years; or

(ii) On or before the cancellation date, to insure a crop in a county that does not have actuarial documents for the crop (If the Crop Provisions do not provide a cancellation date for the county, the cancellation date for other insurable crops in the same state that have similar final planting and harvesting dates will be applicable); or

(iii) On or before the date specified in the Crop Provisions or Special Provisions;

(3) On or before the sales closing date, for all requests for renewal of written agreements, except as provided in section 18(e)(1);

(4) To add land or a crop to an existing written agreement or to add land or a crop to a request for a written agreement provided the request is submitted by the deadlines specified in this subsection;

(f) A request for a written agreement must contain:

(1) For all written agreement requests:

(i) A completed "Request for Actuarial Change'' form;

(ii) An APH form (except for policies that do not require APH) containing all the information needed to determine the approved yield for the current crop year (completed APH form), signed by you, or an unsigned, completed APH form with the applicable production reports signed and dated by you that are based on verifiable records of actual yields for the crop and county for which the written agreement is being requested (the actual yields do not necessarily have to be from the same physical acreage for which you are requesting a written agreement) for at least the most recent crop year during the base period and verifiable records of actual yields if required by FCIC;

(iii) Evidence from agricultural experts or the organic agricultural industry, as applicable, that the crop can be produced in the area if the request is to provide insurance for practices, types, or varieties that are not insurable, unless we are notified in writing by FCIC that such evidence is not required by FCIC;

(iv) The legal description of the land (in areas where legal descriptions are available), FSA Farm Serial Number including tract number, and a FSA aerial photograph, acceptable Geographic Information System or Global Positioning System maps, or other legible maps delineating field boundaries where you intend to plant the crop for which insurance is requested;

(v) For any perennial crop, an inspection report completed by us; and

(vi) All other information that supports your request for a written agreement (including but not limited to records pertaining to levees, drainage systems, flood frequency data, soil types, elevation, *etc.*);

(2) For written agreement requests for counties without actuarial documents for the crop, the requirements in section 18(f)(1) (except section 18(f)(1)(ii)) and:

(i) A completed APH form (except for policies that do not require APH) based on verifiable records of actual yields for the crop and county for which the written agreement is being requested (the actual yields do not necessarily have to be from the same physical acreage for which you are requesting a written agreement) for at least the most recent three consecutive crop years during the base period;

(ii) Acceptable production records for at least the most recent three consecutive crop years;

(iii) The dates you and other growers in the area normally plant and harvest the crop, if applicable;

(iv) The name, location of, and approximate distance to the place the crop will be sold or used by you;

(v) For any irrigated practice, the water source, method of irrigation, and the amount of water needed for an irrigated practice for the crop; and

(vi) All other information that supports your request for a written agreement (such as publications regarding yields, practices, risks, climatic data, *etc.*); and

(3) Such other information as specified in the Special Provisions or required by FCIC;

(g) A request for a written agreement will not be accepted if:

(1) The request is submitted to us after the deadline contained in sections 18(a) or (e);

(2) All the information required in section 18(f) is not submitted to us with the request for a written agreement (The request for a written agreement may be accepted if any missing information is available from other acceptable sources); or

(3) The request is to add land to an existing written agreement or to add land to a request for a written agreement and the request to add the land is not submitted by the deadlines specified in sections (a) or (e);

(h) A request for a written agreement will be denied if:

(1) FCIC determines the risk is excessive;

(2) Your APH history demonstrates you have not produced at least 50 percent of the transitional yield for the crop, type, and practice obtained from a county with similar agronomic conditions and risk exposure;

(3) There is not adequate information available to establish an actuarially sound premium rate and insurance coverage for the crop and acreage;

(4) The crop was not previously grown in the county or there is no evidence of a market for the crop based on sales receipts, contemporaneous feeding records or a contract for the crop (applicable only for counties without actuarial documents); or

(5) Agricultural experts or the organic agricultural industry determines the crop is not adapted to the county;

(i) A written agreement will be denied unless:

(1) FCIC approves the written agreement;

(2) The original written agreement is signed by you and sent to us not later than the expiration date; and

(3) The crop meets the minimum appraisal amount specified in section 18(e)(2)(i)(A), if applicable;

(j) Multiyear written agreements may be canceled and requests for renewal may be rejected if the severity or frequency of your loss experience under the written agreement is significantly worse than expected based on the information provided by you or used to establish your premium rate and the loss experience of other crops with similar risks in the area;

(k) With respect to your and our ability to reject an offer for a written agreement:

(1) When a single Request for Actuarial Change form is submitted, regardless of how many requests for changes are contained on the form, you and we can only accept or reject the written agreement in its entirety (you

cannot reject specific terms of the written agreement and accept others);

(2) When multiple Request for Actuarial Change forms are submitted, regardless of when the forms are submitted, for the same condition or for the same crop (*i.e.*, to insure corn on ten legal descriptions where there are no actuarial documents in the county or the request is to change the premium rates from the high risk rates) all these forms may be treated as one request and you and we will only have the option of accepting or rejecting the written agreement in its entirety (you cannot reject specific terms of the written agreement and accept others);

(3) When multiple Request for Actuarial Change forms are submitted, regardless of when the forms are submitted, for the different conditions or for different crops, separate agreements may be issued and you and we will have the option to accept or reject each written agreement; and

(4) If we reject an offer for a written agreement approved by FCIC, you may seek arbitration or mediation of our decision to reject the offer in accordance with section 20;

(l) Any information that is submitted by you after the applicable deadlines in sections 18(a) and (e) will not be considered, unless such information is specifically requested in accordance with section 18(f)(3);

(m) If the written agreement or the policy is canceled for any reason, or the period for which an existing written agreement is in effect ends, a request for renewal of the written agreement must contain all the information required by this section and be submitted in accordance with section 18(e), unless otherwise specified by FCIC; and

(n) If a request for a written agreement is not approved by FCIC, a request for a written agreement for any subsequent crop year that fails to address the stated basis for the denial will not be accepted (If the request for a written agreement contains the same information that was previously rejected or denied, you will not have any right to arbitrate, mediate or appeal the non-acceptance of your request).

* * * * *

[For FCIC Policies]

20. Appeal, Reconsideration, Administrative and Judicial Review.

(a) All determinations required by the policy will be made by us.

(b) If you disagree with our determinations, you may:

(1) Except for determinations specified in section 20(b)(2), obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal); or

(2) For determinations regarding whether you have used good farming practices (excluding determinations of the amount of assigned production for uninsured causes for your failure to use good farming practices), request reconsideration in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J (reconsideration). To appeal or request administrative review of determinations of the amount of assigned production, you must use the appeal or administrative review process.

(c) If you fail to exhaust your right to appeal or for reconsideration, as applicable, you will not be able to resolve the dispute through judicial review.

(d) If reconsideration or appeal has been initiated within the time frames specified in those sections and judicial review is sought, any suit against us must be:

(1) Filed not later than one year after the date of the decision rendered in the reconsideration or appeal; and

(2) Brought in the United States district court for the district in which the insured farm involved in the decision is located.

(e) You may only recover contractual damages from us. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from us in administrative review, appeal, reconsideration or litigation.

[For Reinsured Policies]

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.

(a) If you and we fail to agree on any determination made by us except those specified in section 20(d), the disagreement may be resolved through mediation in accordance with section 20(g). If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 20(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

(1) All disputes involving determinations made by us, except those specified in section 20(d), are subject to mediation or arbitration. However, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.

(i) Any interpretation by FCIC will be binding in any mediation or arbitration.

(ii) Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.

(iii) An interpretation by FCIC of a policy provision is considered a rule of general applicability and is not appealable. If you disagree with an interpretation of a policy provision by FCIC, you must obtain a Director's review from the National Appeals Division in accordance with 7 CFR 11.6 before obtaining judicial review in accordance with subsection (e).

(iv) An interpretation by FCIC of a procedure may be appealed to the National Appeals Division in accordance with 7 CFR part 11.

(2) Unless the dispute is resolved through mediation, the arbitrator must provide to you and us a written statement describing the issues in dispute, the factual findings, the determinations and the amount and basis for any award and breakdown by claim for any award. The statement must also include any amounts awarded for interest. Failure of the arbitrator to provide such written statement will result in the nullification of all determinations of the arbitrator. All agreements reached through settlement, including those resulting from mediation, must be in writing and contain at a minimum a statement of the issues in dispute and the amount of the settlement.

(b) Regardless of whether mediation is elected:

(1) The initiation of arbitration proceedings must occur within one year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;

(2) If you fail to initiate arbitration in accordance with section 20(b)(1) and complete the process, you will not be able to resolve the dispute through judicial review;

(3) If arbitration has been initiated in accordance with section 20(b)(1) and completed, and judicial review is sought, suit must be filed not later than one year after the date the arbitration decision was rendered; and

(4) In any suit, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, an interpretation must be obtained from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC. Such interpretation will be binding.

(c) Any decision rendered in arbitration is binding on you and us unless judicial review is sought in accordance with section 20(b)(3). Notwithstanding any provision in the rules of the AAA, you and we have the right to judicial review of any decision rendered in arbitration.

(d) If you do not agree with any determination made by us or FCIC regarding whether you have used a good farming practice (excluding determinations by us of the amount of assigned production for uninsured causes for your failure to use good farming practices), you may request reconsideration by FCIC of this determination in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J (reconsideration). To resolve disputes regarding determinations of the amount of assigned production, you must use the arbitration or mediation process contained in this section.

(1) You must complete reconsideration before filing suit against FCIC and any such suit must be brought in the United States district court for the district in which the insured farm is located.

(2) Suit must be filed not later than one year after the date of the decision rendered in the reconsideration.

(3) You cannot sue us for determinations of whether good farming practices were used by you.

(e) Except as provided in section 20(d), if you disagree with any other determination made by FCIC, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal). If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.

(f) In any mediation, arbitration, appeal, administrative review, reconsideration or judicial process, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV, including the provisions of 7 CFR part 400, subpart P, are binding. Conflicts between this policy and any state or local laws will be resolved in accordance with section 31. If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control.

(g) To resolve any dispute through mediation, you and we must both:

(1) Agree to mediate the dispute;

(2) Agree on a mediator; and

(3) Be present, or have a designated representative who has authority to settle the case present, at the mediation.

(h) Except as provided in section 20(i), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of liability established or which should have been established under the policy, except for interest awarded in accordance with section 26.

(i) In a judicial review only, you may recover attorneys fees or other expenses, or any punitive, compensatory or any other damages from us only if you obtain a determination from FCIC that we, our agent or loss adjuster failed to comply with the terms of this policy or procedures issued by FCIC and such failure resulted in you receiving a payment in an amount that is less than the amount to which you were entitled. Requests for such a determination should be addressed to the following: USDA/RMA/Deputy Administrator of Compliance/Stop 0806, 1400 Independence Avenue, SW., Washington, DC 20250–0806.

(j) If FCIC elects to participate in the adjustment of your claim, or modifies, revises or corrects your claim, prior to payment, you may not bring an arbitration, mediation or litigation action against us. You must request administrative review or appeal in accordance with section 20(e).

21. Access to Insured Crop and Records, and Record Retention.

(a) We, and any employee of USDA authorized to investigate or review any matter relating to crop insurance, have the right to examine the insured crop and all records related to the insured crop and any mediation, arbitration or litigation involving the insured crop as often as reasonably required during the record retention period.

(b) You must retain, and provide upon our request, or the request of any employee of USDA authorized to investigate or review any matter relating to crop insurance:

(1) Complete records of the planting, replanting, inputs, production, harvesting, and disposition of the insured crop on each unit for three years after the end of the crop year (This requirement also applies to all such records for acreage that is not insured); and

(2) All records used to establish the amount of production you certified on your production reports used to compute your approved yield for three years after the end of the crop year for which you initially certified such records, unless such records have already been provided to us (For example, if your approved yield for the 2003 crop year was based on production records you certified for the 1997 through 2002 crop years, you must retain all such records through the 2006 crop year, unless such records have already been provided to us).

(c) We, or any employee of USDA authorized to investigate or review any matter relating to crop insurance, may extend the record retention period beyond three years by notifying you of such extension in writing.

(d) By signing the application for insurance authorized under the Act or by continuing insurance for which you have previously applied, you authorize us or USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to crop insurance, to obtain records relating to the planting, replanting, inputs, production, harvesting, and disposition of the insured crop from any person who may have custody of such records, including but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist in obtaining all records we or any employee of USDA authorized to investigate or review any matter relating to crop insurance request from third parties.

(e) Failure to provide access to the insured crop or the farm, authorize access to the records maintained by third parties or assist in obtaining such records will result in a determination that no indemnity is due for the crop year in which such failure occurred.

(f) Failure to maintain or provide records will result in:

(1) The imposition of an assigned yield in accordance with section 3(e)(1) and 7 CFR part 400, subpart G for those crop years for which you do not have the required production records to support a certified yield;

(2) A determination that no indemnity is due if you fail to provide records necessary to determine your loss;

(3) Combination of the optional units into the applicable basic unit;

(4) Assignment of production to the units by us if you fail to maintain separate records:

(i) For your basic units; or

(ii) For any uninsurable acreage; and

(5) The imposition of consequences specified in section 6(g), as applicable.

(g) If the imposition of an assigned yield under section 21(f)(1) would affect an indemnity, prevented planting payment or replant payment that was paid in a prior crop year, such claim will be adjusted and you will be required to repay any overpaid amounts.

22. Other Insurance.

(a) Other Like Insurance—Nothing in this section prevents you from obtaining other insurance not authorized under the Act. However, unless specifically required by policy provisions, you must not obtain any other crop insurance authorized under the Act on your share of the insured crop. If you cannot demonstrate that you did not intend to have more than one policy in effect, you may be subject to the consequences authorized under this policy, the Act, or any other applicable statute. If you can demonstrate that you did not intend to have more than one policy in effect (For example, an application to transfer your policy or written notification to an insurance provider that states you want to purchase, or transfer, insurance and you want any other policies for the crop canceled would demonstrate you did not intend to have duplicate policies), and:

(1) One is an additional coverage policy and the other is a Catastrophic Risk Protection policy:

(i) The additional coverage policy will apply if both policies are with the same insurance provider or, if not, both insurance providers agree; or

(ii) The policy with the earliest date of application will be in force if both insurance providers do not agree; or

(2) Both are additional coverage policies or both are Catastrophic Risk Protection policies, the policy with the earliest date of application will be in force and the other policy will be void, unless both policies are with:

(i) The same insurance provider and the insurance provider agrees otherwise; or

(ii) Different insurance providers and both insurance providers agree otherwise.

* * * * *

[For FCIC policies]

24. Amounts Due Us.

* * * * *

(b) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium amount or administrative fee due us. With respect to any premiums or administrative fees owed, interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

* * * * *

[For reinsured policies]

24. Amounts Due Us.

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount owed to us or on any unpaid administrative fees owed to FCIC. For the purpose of premium amounts owed to us or administrative fees owed to FCIC, interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions. We will collect any unpaid amounts owed to us and any interest owed thereon and, prior to the termination date, we will collect any administrative fees and interest owed thereon to FCIC. After the termination date, FCIC will collect any unpaid administrative fees and any interest owed thereon.

* * * * *

(e) The portion of the amounts owed by you for a policy authorized under the Act that are owed to FCIC may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37. Such amounts include all administrative fees, and the share of the overpaid indemnities and premiums retained by FCIC plus any interest owed thereon.

* * * * *

25. [Reserved.]

* * * * *

30. Subrogation (Recovery of Loss From a Third Party)

Since you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve this right. If you receive any compensation for your loss, excluding private hail insurance payments and payments covered by section 35, and the indemnity due under this policy plus the amount you receive from the person exceeds the amount of your actual loss, the indemnity will be reduced by the excess amount, or if the indemnity has already been paid, you will be required to repay the excess amount, not to exceed the amount of the indemnity. The total amount of the actual loss is the difference between the value of the insured crop before and after the loss, based on your production records and the highest price election or amount of insurance available for the crop. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus or expenses, the excess will be paid to you.

* * * * *

34. Unit Division.

(a) * * *

(1) * * *

(2) For an enterprise unit:

(i) * * *

(ii) * * *

(iii) You must comply with all reporting requirements for the enterprise unit (While separate records of acreage and production for basic or optional units must be maintained, if you want to change your unit structure in subsequent crop years, it is not required to qualify for an enterprise unit);

* * * * *

(vii) The discount contained in the actuarial documents will only apply to acreage in the enterprise unit that has been planted.

(3) * * *

(i) * * *

(ii) * * *

(iii) At any time we discover you do not qualify for a whole farm unit, we will assign the basic unit structure.

* * * * *

(b) * * *

* * * * *

(3) You have records, that are acceptable to us, for at least the previous crop year for all optional units that you will report in the current crop year (You may be required to produce the records for all optional units for the previous crop year);

* * * * *

Signed in Washington, DC, on August 3, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–18056 Filed 8–4–04; 4:24 pm]

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Federal Register

Tuesday,
August 10, 2004

Part IV

Department of Labor

Occupational Safety and Health Administration

Alberici Mid-Atlantic, LLC, Commonwealth Dynamics, Inc., and R and P Industrial Chimney Co., Inc., Application for Permanent Variance and Interim Order, Grant of Interim Order, and Request for Comments; Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V–04–1]

Alberici Mid-Atlantic, LLC, Commonwealth Dynamics, Inc., and R and P Industrial Chimney Co., Inc., Application for Permanent Variance and Interim Order, Grant of Interim Order, and Request for Comments

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of an application for a permanent variance and interim order; grant of interim order; and request for comments.

SUMMARY: Alberici Mid-Atlantic, LLC, Commonwealth Dynamics, Inc., and R and P Industrial Chimney Co., Inc. ("the applicants'') have applied for a permanent variance from the provisions of the OSHA standards that regulate the use of boatswains' chairs and hoist platforms, specifically paragraph (o)(3) of § 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552. In addition, the applicants have requested an interim order based on the alternative conditions specified by the variance application. Since these conditions are the same as the conditions specified in the most recent permanent variance granted by the Agency for these boatswains'-chair and hoist-platform provisions, OSHA is granting the applicants' request for an interim order.

DATES: Submit comments and requests for a hearing by September 9, 2004.

ADDRESSES: *Electronic.* OSHA also permits electronic submission of comments (but not attachments) and hearing requests through its Web site at *http://ecomments.osha.gov.* If a commenter would like to submit additional materials to be associated with a comment that was submitted electronically, these materials should be sent, in triplicate hard copy, to the OSHA Docket Office at the above address. These materials must clearly identify the sender's name, date, subject, and docket number to enable the Agency to attach them to the appropriate comments.

Facsimile. OSHA allows facsimile transmission of comments that are 10 pages or fewer in length (including attachments), as well as hearing requests. Send these comments, identified with the docket number (*i.e.*, V–04–1), to the OSHA Docket Office at (202) 693–1648; hard copies of these comments are not required. Commenters may submit attachments to their comments, such as studies and journal articles, in triplicate hard copy, to the OSHA Docket Office at the above address instead of transmitting facsimile copies of these materials. These materials must clearly identify the sender's name, date, subject, and docket number so that the Agency can attach them to the appropriate comments.

Regular mail, express delivery, hand delivery, and messenger service. Submit three copies of comments (including attachments), as well as hearing requests, to the OSHA Docket Office, Docket No. V–04–1, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2350. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office and Department of Labor are 8:15 a.m. to 4:45 p.m., e.t.

FOR FURTHER INFORMATION CONTACT: For information about this notice contact Ms. Maryann S. Garrahan, Director, Office of Technical Programs and Coordination Activities, Room N–3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2110; fax (202) 693–1644. For additional copies of this **Federal Register** notice, contact the Office of Publications, Room N–3103, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210 (telephone (202) 693–1888). Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web site on the Internet at *http://www.osha.gov/.*

Additional information about this variance application also is available from the following OSHA Regional Offices:

- U.S. Department of Labor, OSHA, JFK Federal Building, Room E340, Boston, MA 02203, telephone (617) 565–9860, and fax (617) 565–9827.
- U.S. Department of Labor, OSHA, 201 Varick St., Room 670, New York, NY 10014, telephone (212) 337–2378, and fax (212) 337–2371.
- U.S. Department of Labor, OSHA, Curtis Building, Suite 740 West, 170 South Independence Mall West, Philadelphia, PA 19106, telephone (215) 861–4900, and fax (215) 861–4904.
- U.S. Department of Labor, OSHA, Sam Nunn Atlanta Federal Center, 61 Forsyth St., SW., Room 6T50, Atlanta, GA 30303, telephone (404) 562–2300, and fax (404) 562-2295.
- U.S. Department of Labor, OSHA, 230 South Dearborn St., Room 3244, Chicago, IL 60604, telephone (312) 353–2220, and fax (312) 353–7774.
- U.S. Department of Labor, OSHA, 525 Griffin St., Room 602, Dallas, TX 75202, telephone (214) 767–4736, and fax (214) 767–4693.
- U.S. Department of Labor, OSHA, City Center Square, 1100 Main St., Suite 800, Kansas City, MO 64105, telephone (816) 426–5861, and fax (816) 426–2750.
- U.S. Department of Labor, OSHA, 1999 Broadway, Suite 1690, Denver, CO 80202–5716 (overnight), P.O. Box 46550, Denver, CO 80201–6550 (mail), telephone (303) 844–1600, and fax (303) 844–1616.
- U.S. Department of Labor, OSHA, 71 Stevenson St., Room 420, San Francisco, CA 94105, telephone (415) 975–4310, and fax (415) 975–4319.
- U.S. Department of Labor, OSHA, 1111 Third Ave., Suite 715, Seattle, WA 98101-3212, telephone (206) 553–5930, and fax (206) 553–6499.

I. Notice of Application

The following companies ("the applicants'') have submitted requests for a permanent variance under section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11: (1) Alberici Mid-Atlantic, LLC, 4300 First Avenue, P.O. Box 9, Nitro, West Virginia 25143 (Ex. 1); (2) Commonwealth Dynamics, Inc., 95 Court Street, Portsmouth, New Hampshire 03801 (Ex. 2); and (3) R and P Industrial Chimney Co., Inc., 244 Industry Parkway, Nicholasville, Kentucky 40356 (Ex. 3). The applicants seek a permanent variance from § 1926.452(o)(3), which provides the tackle requirements for boatswains' chairs. The applicants also request a variance from paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552. These latter paragraphs specify the following requirements:

- (c)(1)—Construction requirements for hoist towers outside a structure;
- (c)(2)—Construction requirements for hoist towers inside a structure;
- (c)(3)—Anchoring a hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates to the hoistway and cars;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum hoisting; and
- (c)(16)—Material and component requirements for construction of personnel hoists.

The applicants contend that the permanent variance would provide their employees with a place of employment that is at least as safe and healthful as they would obtain under the existing provisions.

The places of employment affected by this variance application are the present and future projects where the applicants construct chimneys, including states under federal jurisdiction, as well as states having safety and health plans approved by OSHA under section 18 of the OSH Act (29 U.S.C. 667) and 29 CFR part 1952 ("Approved State Plans for Enforcement of State Standards'') ("State-plan states''). The applicants certify that they have provided each current employee that would be affected by the permanent variance, as well as employee representatives, with a copy of their variance requests, and also have posted a copy of these requests in a prominent location in their corporate offices and at each job site where they normally post notices. In addition, the applicants have informed employees and their representatives of their right to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on this variance application.

II. Multi-State Variance

The applicants perform chimney work in a number of geographic locations in the United States; these locations are likely to include one or more locations in State-plan states. Consequently, any permanent variance granted as a result of this variance application would be subject to the requirements specified by 29 CFR 1952.9 ("Variances affecting multi-state employers'') and 29 CFR 1905.14(b)(3) ("Action on applications''). Under these regulations, a permanent variance granted by the Agency would become effective in State-plan states to the extent that the relevant state standards are the same as the federal OSHA standards from which the applicants are seeking the permanent variance, and the state has jurisdiction over both private- and public-sector employers and employees.[1] The permanent variance granted previously to American Boiler and Chimney Co. and Oak Park Chimney Corp. became effective in nine State-plan states, including Alaska, Arizona, Kentucky, Maryland, New Mexico, North Carolina, Oregon, South Carolina (under specified conditions), and Tennessee (*see* 68 FR 52964).

III. Supplementary Information

A. Overview

The applicants construct, remodel, repair, maintain, inspect, and demolish tall chimneys made of reinforced concrete, brick, and steel. This work, which occurs throughout the United States, requires the applicants to transport employees and construction material to and from elevated work platforms and scaffolds located, respectively, inside and outside tapered chimneys. While tapering contributes to the stability of a chimney, it requires frequent relocation of, and adjustments to, the work platforms and scaffolds so that they will fit the decreasing circumference of the chimney as construction progresses upwards.

To transport employees to various heights inside and outside a chimney, the applicants propose to use a hoist system that would lift and lower personnel-transport devices that include personnel cages, personnel platforms, or boatswains' chairs. The applicants would also attach a hopper or concrete bucket to the hoist system to raise or lower material inside or outside a chimney. The applicants would use personnel cages, personnel platforms, or boatswains' chairs solely to transport employees with the tools and materials necessary to do their work, and not to transport only materials or tools in the absence of employees.

The applicants would use a hoist engine located and controlled outside the chimney, to power the hoist system. The system would also consist of a wire rope that: Spools off the hoist drum into the interior of the chimney; passes to a footblock that redirects the rope from the horizontal to the vertical planes; goes from the footblock through the overhead sheaves above the elevated platform; and finally drops to the bottom landing of the chimney where it connects to the personnel or material transport. The cathead, which is a superstructure at the top of a derrick, supports the overhead sheaves. The overhead sheaves (and the vertical span of the hoist system) move upward with the derrick as chimney construction progresses. Two guide cables, suspended from the cathead, eliminate swaying and rotation of the load. If the hoist rope breaks, safety clamps activate and grip the guide cables to prevent the load from falling. The applicants would use a headache ball, located on the hoist rope directly above the load, to counterbalance the rope's weight between the cathead sheaves and the footblock.

The applicants would implement additional conditions to improve employee safety, including:

- Attaching the wire rope to the personnel cage using a keyed-screwpin shackle or positive-locking link;
- Adding limit switches to the hoist system to prevent overtravel by the personnel- or material-transport devices;
- Providing the safety factors and other precautions required for personnel hoists specified by the pertinent provisions of § 1926.552(c), including canopies and shields to protect employees located in a personnel cage from material that may fall during hoisting and other overhead activities;
- Providing falling-object protection for scaffold platforms as specified by § 1926.451(h)(1);
- Conducting tests and inspections of the hoist system as required by §§ 1926.20(b)(2) and 1926.552(c)(15);
- Establishing an accident-prevention program that conforms to § 1926.20(b)(3);
- Ensuring that employees who use a personnel platform or boatswain's chair wear full body harnesses and lanyard; and
- Securing the lifelines (used with a personnel platform or boatswain's chair) to the rigging at the top of the chimney and to a weight at the bottom of the chimney to maximum stability to the lifeline.

B. Previous Variances From §§ 1926.452(o)(3) and 1926.552(c)

Since 1973, ten chimney-construction companies have demonstrated to OSHA that several of the hoist-tower requirements of § 1926.552(c) present access problems that pose a serious danger to their employees. These companies have received permanent variances from these hoist-tower and boatswains'-chair requirements, and they have used essentially the same alternate apparatus and procedures that the applicants are now proposing to use in this variance application. The Agency published the permanent variances for these companies at 38 FR 8545 (April 3, 1973), 44 FR 51352 (August 31, 1979), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), and 68 FR 52961 (September 8, 2003) (*see* Exs. 4 to 8).[2]

[1] Three State-plan states (*i.e.,* Connecticut, New Jersey, and New York) and one territory (*i.e.,* Virgin Islands) do not have jurisdiction over private-sector employees (*i.e.,* they limit their occupational safety and health jurisdiction to public-sector employees only). State-plan states and territories that have jurisdiction over both public- and private-sector employers and employees are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

[2] Zurn Industries, Inc. received two permanent variances from OSHA. The first variance, granted on May 14, 1985 (50 FR 20145), addressed the boatswains'-chair provision (then in paragraph (l)(5) of § 1926.451), as well as the hoist-platform

Continued

In 1980, the Agency evaluated the alternative conditions specified in the permanent variances that it had granted to chimney-construction companies as of that date. In doing so, OSHA observed hoisting operations conducted by these companies at various construction sites. These evaluations found that, while the alternative conditions generally were safe, compliance with the conditions among the companies was uneven (*see* Exs. 9 and 10). Additionally, the National Chimney Construction Safety and Health Advisory Committee, an industry-affiliated organization, conducted evaluations of the hoist systems that provided useful information regarding safety and efficacy of the alternative conditions (*see, e.g.,* Ex. 11).

The permanent variance granted most recently by OSHA to American Boiler and Chimney Co. and Oak Park Chimney Corp. (*see* 68 FR 52961; September 8, 2003) updated the permanent variances granted by the Agency in the 1970s and 1980s by clarifying the alternative conditions and citing the most recent consensus standards and other references. On the basis of this experience and knowledge, the Agency finds that the applicants' requests for a permanent variance are consistent with the permanent variances that OSHA has granted previously to other employers in the chimney-construction industry. Therefore, the Agency believes that the conditions specified in these variance applications will provide the employees of the applicants with at least the same level of safety that they would receive from § 1926.452(o)(3) and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552.

C. Requested Variance From § 1926.452(o)(3)

The applicants state that it is necessary, on occasion, to use a boatswains' chair to transport employees to and from a bracket scaffold on the outside of an existing chimney during flue installation or repair work, or to and from an elevated scaffold located inside a chimney that has a small or tapering diameter. Paragraph (o)(3) of § 1926.452, which regulates the tackle used to rig a boatswains' chair, states that this tackle must "consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum five-eighth (5/8″) inch diameter first-grade manila rope [or equivalent rope].''

The primary purpose of this paragraph is to allow an employee to safely control the ascent, descent, and stopping locations of the boatswains' chair. However, the applicants note that the required tackle is difficult or impossible to operate on some chimneys that are over 200 feet tall because of space limitations. Therefore, as an alternative to complying with the tackle requirements specified by § 1926.452(o)(3), the applicants propose to use the hoisting system described in paragraph III.A ("Overview'') of this notice, both inside and outside a chimney, to raise or lower employees in a personnel cage to work locations. The applicants would use a personnel cage for this purpose to the extent that adequate space is available; they would use a personnel platform whenever a personnel cage is infeasible because of limited space. However, when limited space also makes a personnel platform infeasible, the applicants would then use a boatswains' chair to lift employees to work locations. The applicants would limit use of the boatswains' chair to elevations above the highest work location that the personnel cage and personnel platform can reach; under these conditions, they would attach the boatswains' chair directly to the hoisting cable only when the structural arrangement precludes the safe use of the block and tackle required by § 1926.452(o)(3).

D. Requested Variance From § 1926.552(c)

Paragraph (c) of § 1926.552 specifies the requirements for enclosed hoisting systems used to transport personnel from one elevation to another. This paragraph ensures that employers transport employees safely to and from elevated work platforms by mechanical means during the construction, alteration, repair, maintenance, or demolition of structures such as chimneys. However, this standard does not provide specific safety requirements for hoisting personnel to and from elevated work platforms and scaffolds in tapered chimneys; the tapered design requires frequent relocation of, and adjustment to, the work platforms and scaffolds. The space in a small-diameter or tapered chimney is not large enough or configured so that it can accommodate an enclosed hoist tower. Moreover, using an enclosed hoist tower for outside operations exposes employees to additional fall hazards because they need to install extra bridging and bracing to support a walkway between the hoist tower and the tapered chimney.

Paragraph (c)(1) of § 1926.552 requires employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the chimney; these enclosures must extend the full height of the hoist tower. The applicants assert that it is impractical and hazardous to locate a hoist tower outside tapered chimneys because it becomes increasingly difficult, as a chimney rises, to erect, guy, and brace a hoist tower; under these conditions, access from the hoist tower to the chimney or to the movable scaffolds used in constructing the chimney exposes employees to a serious fall hazard. Additionally, the applicants note that the requirement to extend the enclosures 10 feet above the outside scaffolds often exposes the employees involved in building these extensions to dangerous wind conditions.

Paragraph (c)(2) of § 1926.552 requires that employers enclose all four sides of a hoist tower even when the tower is located inside a chimney; the enclosure must extend the full height of the tower. The applicants contend that it is hazardous for employees to erect and brace a hoist tower inside a chimney, especially small-diameter or tapered chimneys, or chimneys with sublevels, because these structures have limited space and cannot accommodate hoist towers; space limitations result from chimney design (*e.g.,* tapering), as well as reinforced steel projecting into the chimney from formwork that is near the work location.

As an alternative to complying with the hoist-tower requirements of § 1926.552(c)(1) and (c)(2), the applicants propose to use the rope-guided hoist system proposed above in section III.A ("Overview'') of this application to transport employees to and from work locations inside and outside chimneys. Use of the proposed hoist system would eliminate the need for the applicants to comply with other provisions of § 1926.552(c) that specify requirements for hoist towers. Therefore, they are requesting a permanent variance from several other closely-related provisions, as follows:

- (c)(3)—Anchoring the hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates that prevent hoist movement when the doors or gates are open;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum-type hoisting; and

requirements of paragraphs (c)(1), (c)(2), (c)(3), and (c)(14)(i) of § 1926.552. The second variance, granted on June 12, 1987 (52 FR 22552), includes these same paragraphs, as well as paragraphs (c)(4), (c)(8), (c)(13), and (c)(16) of § 1926.552.

• (c)(16)—Construction specifications for personnel hoists, including materials, assembly, structural integrity, and safety devices.

The applicants assert that the proposed hoisting system would protect their employees at least as effectively as the hoist-tower requirements of § 1926.552(c).

IV. Grant of Interim Order

In addition to requesting a permanent variance, the applicants also requested an interim order that would remain in effect until the Agency makes a decision on their application for a permanent variance. In doing so, the applicants acknowledge that during this period they will comply fully with the conditions of the interim order as an alternative to complying with the tackle requirements provided for boatswains' chairs by § 1926.452(o)(3) and the requirements for personnel hoists specified by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i) and (c)(16) of § 1926.552.

Based on its previous experience with permanent variances from these provisions granted to other companies, OSHA believes that an interim order is justified in this case. As noted above in section III.A ("Previous Variances * * *"), the Agency has granted four permanent variances from these provisions to eight companies since 1973. Over this period, the affected companies have used effectively the alternative conditions specified in the variances. Moreover, the conditions of the interim order requested by the applicants duplicate exactly the conditions approved in the permanent variance granted recently to American Boiler and Chimney Co. and Oak Park Chimney Corp. (*see* 68 FR 52961). In granting this permanent variance to American Boiler and Chimney Co. and Oak Park Chimney Corp., the Agency stated, "[W]hen the employers comply with the conditions of the following order, their employees will be exposed to working conditions that are at least as safe and healthful as they would be if the employers complied with paragraph (o)(3) of § 1926.452, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552.'' (*See* 68 FR 52967.)

Having determined previously that the alternative conditions proposed by the applicants will protect employees at least as effectively as the requirements of paragraph (o)(3) of § 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552, OSHA has decided to grant an interim order to the applicants pursuant to the provisions of paragraph (c) of § 1905.11. Accordingly, in lieu of complying with paragraph (o)(3) of § 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552, the applicants will: (1) Provide notice of this grant of interim order to the employees affected by the conditions of the interim order using the same means they used to inform these employees of their application for a permanent variance; and (2) comply with the specific conditions listed below in section V ("Conditions of the Interim Order * * *'') of this application for the period between the date of this **Federal Register** notice and the date the Agency publishes its final decision on the application in the **Federal Register**; the interim order will remain in effect during this period unless OSHA modifies or revokes it in accordance with the requirements of § 1905.13.

With regard to chimney-construction operations conducted in State-plan states, the applicants are invited to submit a request to the appropriate occupational safety and health authorities in those states where such operations are planned or are ongoing to determine whether they will honor this interim order. (For a list of State-plan states, *see* footnote 1 above.)

V. Specific Conditions of the Interim Order and the Application for a Permanent Variance

The following conditions apply to the interim order being granted by OSHA to Alberici Mid-Atlantic, LLC, Commonwealth Dynamic, Inc., and R and P Industrial Chimney Co., Inc. as part of their application for a permanent variance described in this **Federal Register** notice. In addition, these conditions specify the alternatives to the requirements of paragraph (o)(3) of § 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552 that the applicants are proposing in their application for a permanent variance. These conditions include: [3]

1. Scope

(a) The interim order/permanent variance applies/would apply only when the applicants use a rope-guided hoist system during inside or outside chimney construction to raise or lower their employees between the bottom landing of a chimney and an elevated work location on the inside or outside surface of the chimney.

(b) Except for the requirements specified by § 1926.452 (o)(3) and § 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16), the applicants must/would comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.

2. Replacing a Personnel Cage With a Personnel Platform or a Boatswains' Chair

(a) *Personnel platform.* When the applicants demonstrate that available space makes a personnel cage for transporting employees infeasible, they may replace the personnel cage with a personnel platform when they limit use of the personnel platform to elevations above the last work location that the personnel cage can reach.

(b) *Boatswains' chair.* When the applicants demonstrate that available space makes a personnel platform for transporting employees infeasible, they may:

(i) Replace the personnel platform with a boatswains' chair when they limit use of the boatswains' chair to elevations that are above the highest work location that the personnel platform can reach; and

(ii) When doing so, they must/would attach the boatswains' chair directly to the hoisting cable only when the structural arrangement precludes the safe use of the block and tackle required by § 1926.452(o)(3).

3. Qualified Competent Person

(a) The applicants must/would:

(i) Provide a qualified competent person, as specified in paragraphs (f) and (m) of § 1926.32, who is responsible for ensuring that the design, maintenance, and inspection of the hoist system comply with the conditions of this grant and with the appropriate requirements of 29 CFR part 1926 ("Safety and Health Regulations for Construction''); and

(ii) Ensure that the qualified competent person is present at ground level to assist in an emergency whenever the hoist system is raising or lowering employees.

(b) The applicants must/would use a qualified competent person to design and maintain the cathead described under Condition 8 ("Cathead and Sheave'') below.

4. Hoist Machine

(a) *Type of hoist.* The applicants must/would designate the hoist machine as a portable personnel hoist.

(b) *Raising or lowering a transport.* The applicants must/would ensure that:

[3] In these conditions, the verb "must'' applies to the interim order, while the verb "would'' pertains to the application for a permanent variance.

(i) The hoist machine includes a base-mounted drum hoist designed to control line speed; and

(ii) Whenever they raise or lower a personnel or material hoist (*e.g.*, a personnel cage, personnel platform, boatswains' chair, hopper, concrete bucket) using the hoist system:

(A) The drive components are engaged continuously when an empty or occupied transport is being lowered (*i.e.*, no "freewheeling'');

(B) The drive system is interconnected, on a continuous basis, through a torque converter, mechanical coupling, or an equivalent coupling (*e.g.*, electronic controller, fluid clutches, hydraulic drives).

(C) The braking mechanism is applied automatically when the transmission is in the neutral position and a forward-reverse coupling or shifting transmission is being used; and

(D) No belts are used between the power source and the winding drum.

(c) *Power source.* The applicants must/would power the hoist machine by an air, electric, hydraulic, or internal-combustion drive mechanism.

(d) *Constant pressure control switch.* The applicants must/would:

(i) Equip the hoist machine with a hand-or foot-operated constant-pressure control switch (*i.e.*, a "deadman control switch'') that stops the hoist immediately upon release; and

(ii) Protect the control switch to prevent it from activating if the hoist machine is struck by a falling or moving object.

(e) *Line-speed indicator.* The applicants must/would:

(i) Equip the hoist machine with an operating line-speed indicator maintained in good working order; and

(ii) Ensure that the line-speed indicator is in clear view of the hoist operator during hoisting operations.

(f) *Braking systems.* The applicants must/would equip the hoist machine with two (2) independent braking systems (*i.e.*, one automatic and one manual) located on the winding side of the clutch or couplings, with each braking system being capable of stopping and holding 150 percent of the maximum rated load.

(g) *Slack-rope switch.* The applicants must/would equip the hoist machine with a slack-rope switch to prevent rotation of the winding drum under slack-rope conditions.

(h) *Frame.* The applicants must/would ensure that the frame of the hoist machine is a self-supporting, rigid, welded-steel structure, and that holding brackets for anchor lines and legs for anchor bolts are integral components of the frame.

(i) *Stability.* The applicants must/would secure hoist machines in position to prevent movement, shifting, or dislodgement.

(j) *Location.* The applicants must/would:

(i) Locate the hoist machine far enough from the footblock to obtain the correct fleet angle for proper spooling of the cable on the drum; and

(ii) Ensure that the fleet angle remains between one-half degree (½E) and one and one-half degrees (1½E) for smooth drums, and between one-half degree (½E) and two degrees (2E) for grooved drums, with the lead sheave centered on the drum.[4]

(k) *Drum and flange diameter.* The applicants must/would:

(i) Provide a winding drum for the hoist that is at least 30 times the diameter of the rope used for hoisting; and

(ii) Ensure that the winding drum has a flange diameter that is at least one and one-half (1½) times the winding-drum diameter.

(l) *Spooling of the rope.* The applicants must/would never spool the rope closer than two (2) inches (5.1 cm) from the outer edge of the winding-drum flange.

(m) *Electrical system.* The applicants must/would ensure that all electrical equipment is weatherproof.

(n) *Limit switches.* The applicants must/would equip the hoist system with limit switches and related equipment that automatically prevent overtravel of a personnel cage, personnel platform, boatswains' chair, or material-transport device at the top of the supporting structure and at the bottom of the hoistway or lowest landing level.

5. Methods of Operation

(a) *Employee qualifications and training.* The applicants must/would:

(i) Ensure that only trained and experienced employees, who are knowledgeable of hoist-system operations, control the hoist machine; and

(ii) Provide instruction, periodically and as necessary, on how to operate the hoist system, to each employee who uses a personnel cage for transportation.

(b) *Speed limitations.* The applicants must/would *not* operate the hoist at a speed in excess of:

(i) Two hundred and fifty (250) feet (76.9 m) per minute when a personnel cage is being used to transport employees;

(ii) One hundred (100) feet (30.5 m) per minute when a personnel platform or boatswains' chair is being used to transport employees; or

(iii) A line speed that is consistent with the design limitations of the system when only material is being hoisted.

(c) *Communication.* The applicants must/would:

(i) Use a voice-mediated intercommunication system to maintain communication between the hoist operator and the employees located in or on a moving personnel cage, personnel platform, or boatswains' chair;

(ii) Stop hoisting if, for any reason, the communication system fails to operate effectively; and

(iii) Resume hoisting only when the site superintendent determines that it is safe to do so.

6. Hoist Rope

(a) *Grade.* The applicants must/would use a wire rope for the hoist system (*i.e.*, "hoist rope'') that consists of extra-improved plow steel, an equivalent grade of non-rotating rope, or a regular lay rope with a suitable swivel mechanism.

(b) *Safety factor.* The applicants must/would maintain a safety factor of at least eight (8) times the safe workload throughout the entire length of hoist rope.

(c) *Size.* The applicants must/would use a hoist rope that is at least one-half (½) inch (1.3 cm) in diameter.

(d) *Inspection, removal, and replacement.* The applicants must/would:

(i) Thoroughly inspect the hoist rope before the start of each job and on completing a new setup;

(ii) Maintain the proper diameter-to-diameter ratios between the hoist rope and the footblock and the sheave by inspecting the wire rope regularly (*see* Conditions 7(c) and 8(d) below); and

(iii) Remove and replace the wire rope with new wire rope when any of the conditions specified by § 1926.552(a)(3) occurs.

(e) *Attachments.* The applicants must/would attach the rope to a personnel cage, personnel platform, or boatswains' chair with a keyed-screwpin shackle or positive-locking link.

(f) *Wire-rope fastenings.* When the applicants use clip fastenings (*e.g.*, U-bolt wire-rope clips) with wire ropes, they must/would:

(i) Use Table H–20 of § 1926.251 to determine the number and spacing of clips;

[4] Taken from the definition of, and specifications for, the term "fleet angle'' from *Cranes and Derricks,* H. I. Shapiro, *et al,* (eds.); New York: McGraw-Hill, 2000. Accordingly, the fleet angle is "[t]he angle the rope leading onto a [winding] drum makes with the line perpendicular to the drum rotating axis when the lead rope is making a wrap against the flange.''

(ii) Use at least three (3) drop-forged clips at each fastening;

(iii) Install the clips with the "U'' of the clips on the dead end of the rope; and

(iv) Space the clips so that the distance between them is six (6) times the diameter of the rope.

7. Footblock

(a) *Type of block.* The applicants must/would use a footblock:

(i) Consisting of construction-type blocks of solid single-piece bail with a safety factor that is at least four (4) times the safe workload, or an equivalent block with roller bearings;

(ii) Designed for the applied loading, size, and type of wire rope used for hoisting;

(iii) Designed with a guard that contains the wire rope within the sheave groove;

(iv) Bolted rigidly to the base; and

(v) Designed and installed so that it turns the moving wire rope to and from the horizontal or vertical as required by the direction of rope travel.

(b) *Directional change.* The applicants must/would ensure that the angle of change in the hoist rope from the horizontal to the vertical direction at the footblock is approximately 90°.

(c) *Diameter.* The applicants must/would ensure that the line diameter of the footblock is at least 24 times the diameter of the hoist rope.

8. Cathead and Sheave

(a) *Support.* The applicants must/would use a cathead (*i.e.*, "overhead support'') that consists of a wide-flange beam or two (2) steel-channel sections securely bolted back-to-back to prevent spreading.

(b) *Installation.* The applicants must/would ensure that:

(i) All sheaves revolve on shafts that rotate on bearings; and

(ii) The bearings are mounted securely to maintain the proper bearing position at all times.

(c) *Rope guides.* The applicants must/would provide each sheave with appropriate rope guides to prevent the hoist rope from leaving the sheave grooves when the rope vibrates or swings abnormally.

(d) *Diameter.* The applicants must/would use a sheave with a diameter that is at least 24 times the diameter of the hoist rope.

9. Guide Ropes

(a) *Number and construction.* The applicants must/would affix two (2) guide ropes by swivels to the cathead. The guide ropes must/would:

(i) Consist of steel safety cables not less than one-half (½) inch (1.3 cm) in diameter; and

(ii) Be free of damage or defect at all times.

(b) *Guide rope fastening and alignment tension.* The applicants must/would fasten one end of each guide rope securely to the overhead support, with appropriate tension applied at the foundation.

(c) *Height.* The applicants must/would rig the guide ropes along the entire height of the hoist-machine structure.

10. Personnel Cage

(a) *Construction.* A personnel cage must/would be of steel-frame construction and capable of supporting a load that is four (4) times its maximum rated load capacity. The applicants also must/would ensure that the personnel cage has:

(i) A top and sides that are permanently enclosed (except for the entrance and exit);

(ii) A floor securely fastened in place;

(iii) Walls that consist of 14-gauge, one-half (½) inch (1.3 cm) expanded metal mesh, or an equivalent material;

(iv) Walls that cover the full height of the personnel cage between the floor and the overhead covering;

(v) A sloped roof constructed of one-eighth (⅛) inch (0.3 cm) aluminum, or an equivalent material; and

(vi) Safe handholds (*e.g.*, rope grips—but *not* rails or hard protrusions [5]) that accommodate each occupant.

(b) *Overhead weight.* A personnel cage must/would have an overhead weight (*e.g.*, a headache ball of appropriate weight) to compensate for the weight of the hoist rope between the cathead and footblock. In addition, the applicants must/would:

(i) Ensure that the overhead weight is capable of preventing line run; and

(ii) Use a means to restrain the movement of the overhead weight so that the weight does *not* interfere with safe personnel hoisting.

(c) *Gate.* The personnel cage must/would have a gate that:

(i) Guards the full height of the entrance opening; and

(ii) Has a functioning mechanical lock that prevents accidental opening.

(d) *Operating procedures.* The applicants must/would post the procedures for operating the personnel cage conspicuously at the hoist operator's station.

(e) *Capacity.* The applicants must/would:

(i) Hoist no more than four (4) occupants in the cage at any one time; and

(ii) Ensure that the rated load capacity of the cage is at least 250 pounds (113.4 kg) for each occupant so hoisted.

(f) *Employee notification.* The applicants must/would post a sign in each personnel cage notifying employees of the following conditions:

(i) The standard rated load, as determined by the initial static drop test specified by Condition 10(g) ("Static drop tests'') below; and

(ii) The reduced rated load for the specific job.

(g) *Static drop tests.* The applicants must/would:

(i) Conduct static drop tests of each personnel cage, and these tests must/would comply with the definition of "static drop test'' specified by section 3 ("Definitions'') and the static drop-test procedures provided in section 13 ("Inspections and Tests'') of American National Standards Institute (ANSI) standard A10.22–1990 (R1998) ("American National Standard for Rope-Guided and Nonguided Worker's Hoists—Safety Requirements'');

(ii) Perform the initial static drop test at 125 percent of the maximum rated load of the personnel cage, and subsequent drop tests at no less than 100 percent of its maximum rated load; and

(iii) Use a personnel cage for raising or lowering employees only when no damage occurred to the components of the cage as a result of the static drop tests.

11. Safety Clamps

(a) *Fit to the guide ropes.* The applicants must/would:

(i) Fit appropriately designed and constructed safety clamps to the guide ropes; and

(ii) Ensure that the safety clamps do not damage the guide ropes when in use.

(b) *Attach to the personnel cage.* The applicants must/would attach safety clamps to each personnel cage for gripping the guide ropes.

(c) *Operation.* The safety clamps attached to the personnel cage must/would:

(i) Operate on the "broken rope principle'' defined in section 3 ("Definitions'') of ANSI standard A10.22–1990 (R1998);

(ii) Be capable of stopping and holding a personnel cage that is carrying 100 percent of its maximum rated load and traveling at its maximum allowable speed if the hoist rope breaks at the footblock; and

(iii) Use a pre-determined and pre-set clamping force (*i.e.*, the "spring

[5] To reduce impact hazards should employees lose their balance because of cage movement.

compression force'') for each hoist system.

(d) *Maintenance.* The applicants must/would keep the safety-clamp assemblies clean and functional at all times.

12. Overhead Protection

(a) The applicants must/would install a canopy or shield over the top of the personnel cage that is made of steel plate at least three-sixteenth (3/16) of an inch (4.763 mm) thick, or material of equivalent strength and impact resistance, to protect employees (*i.e.*, both inside and outside the chimney) from material and debris that may fall from above.

(b) The applicants must/would ensure that the canopy or shield slopes to the outside of the personnel cage.[6]

13. Emergency-Escape Device

(a) *Location.* The applicants must/would provide an emergency-escape device in at least one of the following locations:

(i) In the personnel cage, provided that the device is long enough to reach the bottom landing from the highest possible escape point; or

(ii) At the bottom landing, provided that a means is available in the personnel cage for the occupants to raise the device to the highest possible escape point.

(b) *Operating instructions.* The applicants must/would ensure that written instructions for operating the emergency-escape device are attached to the device.

(c) *Training.* The applicants must/would instruct each employee who uses a personnel cage for transportation on how to operate the emergency-escape device:

(i) Before the employee uses a personnel cage for transportation; and

(ii) Periodically, and as necessary, thereafter.

14. Personnel Platforms and Boatswains' Chairs

(a) *Personnel platforms.* When the applicants elect to replace the personnel cage with a personnel platform in accordance with Condition 2(a) of this variance, they must/would:

(i) Ensure that an enclosure surrounds the platform, and that this enclosure is at least 42 inches (106.7 cm) above the platform's floor;

(ii) Provide overhead protection when an overhead hazard is, or could be, present; and

(iii) Comply with the applicable scaffolding strength requirements specified by § 1926.451(a)(1).

(b) *Boatswains' chairs.* When the applicants elect to replace the personnel platform with a boatswains' chair in accordance with Condition 2(b) ("Boatswains'' chair'') of this variance, they may attach the boatswains' chair directly to the hoisting cable only when they demonstrate that the spatial arrangement makes it infeasible to safely use the block and tackle required by § 1926.452(o)(3).

(c) *Fall-protection equipment.* Before employees use work platforms or boatswains' chairs, the applicants must/would equip the employees with, and ensure that they use, body harnesses and lifelines as specified by § 1926.104 and the applicable requirements of § 1926.502(d).

15. Inspections, Tests, and Accident Prevention

(a) The applicants must/would:

(i) Conduct inspections of the hoist system as required by § 1926.20(b)(2);

(ii) Ensure that a competent person conducts daily visual inspections of the hoist system; and

(iii) Inspect and test the hoist system as specified by § 1926.552(c)(15).

(b) The applicants must/would comply with the accident-prevention requirements of § 1926.20(b)(3).

16. Welding

(a) The applicants must/would use only qualified welders to weld components of the hoisting system.

(b) The applicants must/would ensure that the qualified welders:

(i) Are familiar with the weld grades, types, and materials specified in the design of the system; and

(ii) Perform the welding tasks in accordance with 29 CFR part 1926, subpart J ("Welding and Cutting'').

VII. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC directed the preparation of this notice. This notice is issued under the authority specified by section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR part 1905.

Signed in Washington, DC on July 28, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–18227 Filed 8–9–04; 8:45 am]

BILLING CODE 4510–26–P

[6] Paragraphs (a) and (b) have been adapted from the personnel-cage provisions of OSHA's Underground Construction Standard (§ 1926.800(t)(4)(iv)).

Federal Register

Tuesday,
August 10, 2004

Part V

The President

Notice of August 6, 2004—Continuation of Emergency Regarding Export Control Regulations

Federal Register
Vol. 69, No. 153
Tuesday, August 10, 2004

Presidential Documents

Title 3—

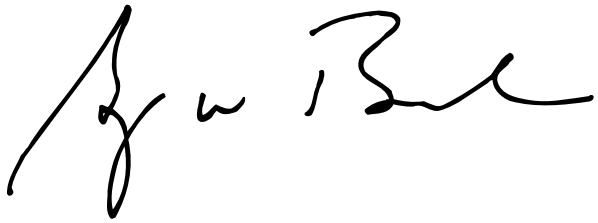
The President

Notice of August 6, 2004

Continuation of Emergency Regarding Export Control Regulations

On August 17, 2001, consistent with the authority provided me under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), I issued Executive Order 13222. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 17, 2001, and renewed on August 14, 2002, and on August 7, 2003, must continue in effect beyond August 17, 2004. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
Washington, August 6, 2004.

[FR Doc. 04–18430
Filed 8–9–04; 9:07 am]
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