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Washington, DC 20002

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

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1201 and 1207

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to clarify a number of matters: That the date of receipt of an agency decision is date on which the petitioner receives it; that a witness who is not a federal employee may obtain an order requiring the payment of witness fees; that the time for filing a petition for review begins on the date the initial decision is first received by either the appellant or the representative; and that complaints of discrimination must be clearly marked as raising such an issue. The Board also amends its mixed case procedures to make clear that any case older than 120 days is subject to the 30 day filing requirement once the appellant receives the agency's final decision. The Board also deletes an outdated reference to Appendix 1.

DATES: *Effective Date:* February 6, 2008.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov*.

SUPPLEMENTARY INFORMATION: The Board is amending its rules of practice and procedure in 5 CFR part 1201 and 5 CFR Part 1207 as follows:

Section 1201.22(b)(1) is amended to make clear that the date of receipt of the agency's decision is the date on which the petitioner receives the decision;

Section 1201.37(d) and (e) and 1201.182(c) are amended to state that a witness who is not a federal employee may obtain an order requiring the payment of witness fees and may file a petition for enforcement of such an order.

Section 1201.114(d) is amended to make clear that the time for filing a petition for review begins to run from the date of receipt of the initial decision by either the appellant or the representative, whichever comes first. The rule is consistent with that followed by the Federal Circuit with respect to petitions for judicial review. *See Monzo* v. *Department of Transportation*, 735 F.2d 1335 (Fed. Cir. 1984);

1201.154(a) & (d) are amended to make clear that the date of receipt of the agency's decision is the date on which the petitioner receives the decision;

1201.154(b)(2) is amended to make clear that an agency case older than 120 days is subject to the 30 day filing requirement once the appellant receives the agency's final decision. This amendment addresses an issue that arose in *Paine* v. *MSPB*, 467 F.3d 1344 (2006).

1207.170(b)(2) & (4) are amended to ensure that MSPB administrative judges and the Board are aware that a party is raising a complaint of discrimination in the adjudication of a Board case.

List of Subjects

5 CFR Part 1201

Administrative practice and procedure, Government employees.

5 CFR Part 1207

Administrative practice and procedure, Government employees.

■ Accordingly, the Board amends 5 CFR parts 1201 and 1207 as follows:

PART 1201—[AMENDED]

■ 1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. Revise § 1201.22(b)(1) to read as follows:

§ 1201.22 Filing an appeal and responses to appeals.

* * * * *

(b) * * *

(1) Except as provided in paragraph (b)(2) of this section, an appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of the appellant's receipt of the agency's decision, whichever is later. Where an appellant and an agency mutually agree in writing to attempt to resolve their dispute through an alternative dispute resolution process prior to the timely filing of an appeal, however, the time limit for filing the appeal is extended by an additional 30 days—for a total of 60 days. A response to an appeal must be filed within 20 days of the date of the Board's acknowledgment order. The time for filing a submission under this section is computed in accordance with § 1201.23 of this part.

* * * * *

■ 3. In § 1201.37, add paragraphs (d) and (e) as follows:

§ 1201.37 Witness fees.

* * * * *

(d) A witness who is denied the witness fees and travel costs required by paragraphs (b) and (c) of this section may file a written request that the judge order the party who requested the presence of the witness to provide such fees and travel costs. The judge will act on such a request promptly and, where warranted, will order the party to comply with the requirements of paragraphs (b) and (c) of this section.

(e) An order obtained under paragraph (d) of this section may be enforced as provided under subpart F of this part.

■ 4. Revise § 1201.114(d) to read as follows:

§ 1201.114 Filing petition and cross petition for review.

* * * * *

(d) Time for filing. Any petition for review must be filed within 35 days after the date of issuance of the initial decision or, if the petitioner shows that the initial decision was received more than 5 days after the date of issuance, within 30 days after the date the petitioner received the initial decision. If the petitioner is represented, the 30-day time period begins to run upon receipt of the initial decision by either the representative or the petitioner, whichever comes first. A cross petition for review must be filed within 25 days of the date of service of the petition for review. Any response to a petition for review or to a cross petition for review must be filed within 25 days after the

date of service of the petition or cross petition.

* * * * *

■ 5. Amend § 1201.154 by revising paragraphs (a), (b)(2), and (d) to read as follows:

§ 1201.154 Time for filing appeal; closing record in cases involving grievance decisions.

* * * * *

(a) Where the appellant has been subject to an action appealable to the Board, he or she may either file a timely complaint of discrimination with the agency or file an appeal with the Board no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of the appellant's receipt of the agency's decision on the appealable action, whichever is later.

(b) * * *

(2) If the agency has not resolved the matter or issued a final decision on the formal complaint within 120 days, the appellant may appeal the matter directly to the Board at any time after the expiration of 120 calendar days. Once the agency resolves the matter or issues a final decision on the formal complaint, an appeal must be filed within 30 days after the appellant receives the agency resolution or final decision on the discrimination issue.

* * * * *

(d) This paragraph does not apply to employees of the Postal Service or to other employees excluded from the coverage of the federal labor-management relations laws at chapter 71 of title 5, United States Code. If the appellant has filed a grievance with the agency under a negotiated grievance procedure, he may ask the Board to review the final decision on the grievance if he alleges before the Board that he is the victim of prohibited discrimination. Usually, the final decision on a grievance is the decision of an arbitrator. A full description of an individual's right to pursue a grievance and to request Board review of a final decision on the grievance is found at 5 U.S.C. 7121 and 7702. The appellant's request for Board review must be filed within 35 days after the date of issuance of the decision or, if the appellant shows that he or she received the decision more than 5 days after the date of issuance, within 30 days after the date the appellant received the decision. The appellant must file the request with the Clerk of the Board, Merit Systems Protection Board, Washington, DC 20419. The request for review must contain:

(1) A statement of the grounds on which review is requested;

(2) References to evidence of record or rulings related to the issues before the Board;

(3) Arguments in support of the stated grounds that refer specifically to relevant documents, and that include relevant citations of authority; and

(4) Legible copies of the final grievance or arbitration decision, the agency decision to take the action, and other relevant documents. Those documents may include a transcript or tape recording of the hearing.

* * * * *

■ 6. Amend § 1201.182 as follows:

■ a. Redesignate paragraphs (c)(3) and (c)(4) as paragraphs (c)(4) and (c)(5) respectively.

■ b. Add new paragraph (c)(3) and revise newly redesignated paragraph (c)(5) to read as follows:

§ 1201.182 Petition for enforcement.

* * * * *

(c) * * *

(3) Under § 1201.37(e) of this part, a nonparty witness who has obtained an order requiring the payment of witness fees and travel costs may petition the Board for enforcement of the order.

* * * * *

(5) A petition for enforcement under paragraph (c)(1), (c)(2), (c)(3) or (c)(4) of this section must be filed promptly with the regional or field office that issued the order or, if the order was issued by the Board, with the Clerk of the Board. The petitioner must serve a copy of the petition on each party or the party's representative. If the petition is filed under paragraph (c)(1) of this section, the motion to intervene must be filed and served with the petition.

PART 1207—[AMENDED]

■ 7. The authority citation for part 1207 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 8. Amend § 1207.170 by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1207.170 Compliance procedures.

* * * * *

(b) * * *

(2) An allegation of discrimination in the adjudication of a Board case must be raised within 10 days of the alleged act of discrimination or within 10 days from the date the complainant should reasonably have known of the alleged discrimination. If the complainant does not submit a complaint within that time period, it will be dismissed as untimely filed unless a good reason for the delay is shown. The pleading must be clearly marked ''5 CFR part 1207 allegation of discrimination in the adjudication of a Board case.''

* * * * *

(4) If the judge to whom the case was assigned has issued the initial decision, recommended decision, or recommendation by the time the party learns of the alleged discrimination, the party may raise the allegation in a petition for review, cross petition for review, or response to the petition or cross petition. The petition for review, cross petition for review or response to the petition or cross petition must be clearly marked ''5 CFR part 1207 allegation of discrimination in the adjudication of a Board case.''

* * * * *

Dated: January 31, 2008.

William D. Spencer,

Clerk of the Board.

[FR Doc. E8–2104 Filed 2–5–08; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. AO–254–A10; AMS–FV–06–0220; FV06–915–2]

Avocados Grown in South Florida; Order Amending Marketing Order No. 915

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 915 (order), which regulates the handling of avocados grown in South Florida. The amendments are based on those proposed by the Florida Avocado Administrative Committee (committee), which is responsible for local administration of the order. The amendments will: Add authority for the committee to borrow funds; revise voting requirements for changing the assessment rate; allow for District 1 nominations to be conducted by mail; and, add authority for the committee to accept voluntary contributions. All of the proposals were favored by avocado growers in a mail referendum, held July 23 through August 6, 2007. The amendments are intended to improve the operation and functioning of the marketing order program.

DATES: This rule is effective February 7, 2008.

FOR FURTHER INFORMATION CONTACT: Marc McFetridge or Melissa

Schmaedick, Marketing Specialists, Fruit and Vegetable Programs, Marketing Order Administration Branch (MOAB), AMS, USDA, 1400 Independence Ave., SW., Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Marc.McFetridge@usda.gov* or *Melissa.Schmaedick@usda.gov.*

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on July 18, 2006, and published in the July 24, 2006 issue of the **Federal Register** (71 FR 41740); Recommended Decision issued on March 23, 2007 and published in the March 30, 2007 issue of the **Federal Register** (72 FR 15056); and, a Secretary's Decision and Referendum Order issued on July 9, 2007, and published in the **Federal Register** on July 12, 2007 (72 FR 38027).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held in Homestead, Florida on August 16, 2006. Notice of this hearing was issued on July 18, 2006, and published in the July 24, 2006 issue of the **Federal Register** (71 FR 41740). The hearing was held to consider the proposed amendment of Marketing Order No. 915, hereinafter collectively referred to as the ''order.''

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The Notice of Hearing contained four proposals submitted by the Avocado Administrative Committee (committee), which is responsible for local administration of the order.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on March 23, 2007, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by April 30, 2007. None were filed.

That document also announced AMS's intent to request approval of new information collection requirements to implement the program. Written exceptions on the proposed information collection requirements were due by May 29, 2007. None were filed.

A Secretary's Decision and Referendum Order was issued on July 9, 2007, directing that a referendum be conducted during the period of July 23, 2007 to August 6, 2007, among growers of avocados in South Florida to determine whether they favored the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of those growers voting, or by voters representing at least two-thirds of the volume of avocados represented by voters voting in the referendum. Voters voting in the referendum favored all of the proposed amendments.

The amendments favored by voters and included in this order will: Add authority for the committee to borrow funds; revise voting requirements for changing the assessment rate; allow for District 1 nominations to be conducted by mail; and, add authority for the committee to accept voluntary contributions.

USDA also made such changes as were necessary to the order so that all of the order's provisions conform to the effectuated amendments.

The amended marketing agreement was subsequently mailed to all avocado handlers in the production area for their approval. The marketing agreement was not approved by handlers representing more than 50 percent of the volume of avocados handled by all handlers during the representative period of April 1, 2006, through March 31, 2007.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $6,500,000.

Avocado Industry Background and Overview

The record indicates that there are an estimated 352 growers of avocados in the production area and 32 handlers subject to regulation under the order.

According to the National Agricultural Statistics Service (NASS) and committee data, the average price for Florida avocados during the 2005–06 season was around $46.75 per 55-pound bushel container, and total shipments were near 470,000 55-pound bushel equivalent. Using this average price and shipment information, the majority of avocado handlers could be considered small businesses under the SBA definition. In addition, based on avocado production, grower prices, and the total number of Florida avocado growers, the average annual grower revenue is less than $750,000. Thus, the majority of Florida avocado growers may also be classified as small entities.

The NASS reported that in 2005, total Florida avocado bearing acres were 5,300 and the average yield per acre was 2.26 tons. The total Florida production reported in 2005 was 12,000 tons, with growers receiving an average (farm gate) price of $940/ton. The estimated total value of 2005 Florida avocado production was $11.28 million.

Over the past 30 years, the U.S. avocado industry has seen many changes. According to NASS, the total U.S. production acres for avocados have decreased by 13 percent, from 78,000 acres in 1982 to 67,600 acres in 2005. Prices have trended upward from 1959 to 2005, although there has been significant variability in prices from year to year. The average grower price for the U.S. in 1959 was $109 per ton and in 2005 the average grower price was $1,280 per ton. The total value of U.S. avocado production has increased dramatically since 1959, reaching a peak of $394 million in 2003. The per capital consumption of fresh avocados has risen significantly since 1970. Between 1970 and 2004, per capital consumption increased almost five-fold to 2.9 pounds per person in 2004. According to the hearing record, one of the factors that may be contributing to this increase is the new year-round availability of avocados due to the volume of imported avocados in addition to domestically produced avocados.

Comparatively, Florida's avocado industry has seen similar trends.

According to NASS, the production acreage has decreased by 53 percent over the last three decades. According to record evidence, the rapid decrease in Florida production acreage compared to that of U.S. acreage can be directly associated with crop damage resulting from hurricanes. Florida's production trended upward to 34,700 tons in the early 1980's and has shown great variability since. Production in 2005 was at a 10 year low of 12,000 tons. Prices for Florida avocados have also trended upward from 1959 to 2005. The average grower price for Florida avocados in 1959 was $88 per ton and in 2005 the average grower price was $940 per ton, which was the highest average grower price over the time span. The total value of Florida avocado production was $620,000 in 1959. After Hurricane Andrew, which affected the value of production in 1992 and 1993, the value of Florida's production has ranged from a high of $17.2 million in 2003 to a low of $11.3 million in 2005.

Material Issues

This action amends the order to: Add authority for the committee to borrow funds; revise voting requirements for changing the assessment rate; allow for District 1 nominations to be conducted by mail; and, add authority for the committee to accept voluntary contributions.

These amendments will streamline program organization, but are not expected to result in a significant change in industry production, handling or distribution activities. In discussing the impacts of the amendments on growers and handlers, record evidence indicates that the changes are expected to be positive because the administration of the programs would be more efficient, and therefore more effective, in executing committee duties and responsibilities. There would be no significant cost impact on either small or large growers or handlers.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence shows that the amendments are designed to increase efficiency in the functioning of the order.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the order to the benefit of the Florida avocado industry.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection continued in this action was submitted to the Office of Management and Budget (OMB) and has been approved under OMB No. 0581–0243, Avocados Grown in South Florida. The burden and associated forms in this collection were also included in the renewal submission of OMB No. 0581–0189, Generic OMB Fruit Crops, currently at OMB for review. Upon approval of OMB No. 0581–0189, a discontinuation notice will be submitted to OMB to retire OMB No. 0581–0243.

The amendment authorizing mail nominations for District 1 requires a nomination form and ballot to conduct mail nominations. It is estimated that there are 384 growers and handlers who will be entitled to vote by mail ballot once every two years. The estimated burden to each grower and handler is 0.083 hour per response.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

Civil Justice Reform

The amendments to Marketing Order No. 915 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United Sates in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

Order Amending the Order Regulating the Handling of Avocados Grown in Florida

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Order No. 915 (7 CFR part 915), regulating the handling of avocados grown in Florida.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of avocados grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of avocados grown in the production area; and,

(5) All handling of avocados grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.*

It is necessary and in the public interest to make these amendments to the order effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the amendments for the new crop year. These amendments should be in place as soon as possible as the new crop year begins April 1. Therefore, making the effective date one day after publication in the Federal Register will allow the amendments, which are expected to be beneficial to the industry, to be implemented as soon as possible.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping avocados covered by the order as hereby amended) who, during the period April 1, 2006, through March 31, 2007, handled 50 percent or more of the volume of such avocados covered by said order, as hereby amended, have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the growers who participated in a referendum on the question of approval and who, during the period of April 1, 2006, through March 31, 2007 (which has been deemed to be a representative period), have been engaged within the production area in the production of such avocados, such growers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of growers of avocados in the production area.

Order Relative to Handling of Avocados Grown in South Florida

It is therefore ordered, That on and after the effective date hereof, all handling of avocados grown in Florida, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and order further amending the order contained in the Secretary's Decision issued by the Administrator on July 9, 2007, and published in the **Federal Register** on July 12, 2007, shall be and are the terms and provision of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ For the reasons set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended by amending part 915 as follows:

■ 1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 915.11, paragraphs (a) and (b) are revised to read as follows:

§ 915.11 District.

* * * * *

(a) *District 1* shall include Miami-Dade County.

(b) *District 2* shall include all of the production area except Miami-Dade County.

■ 3. In § 915.22, paragraph (b)(1) is revised to read as follows:

§ 915.22 Nomination.

* * * * *

(b) *Successor members.* (1) The committee shall hold or cause to be held a meeting or meetings of growers and handlers in each district to designate nominees for successor members and alternate members of the committee; or the committee may conduct nominations in Districts 1 and 2 by mail in a manner recommended by the committee and approved by the Secretary. Such nominations shall be submitted to the Secretary by the committee not later than March 1 of each year. The committee shall prescribe procedural rules, not inconsistent with the provisions of this section, for the conduct of nomination.

* * * * *

■ 4. In § 915.30, paragraph (c) is revised to read as follows:

§ 915.30 Procedure.

* * * * *

(c) For any recommendation of the committee for an assessment rate change, a quorum of seven committee members and a two-thirds majority vote of approval of those in attendance is required.

■ 5. In § 915.41, paragraph (b) is revised to read as follows:

§ 915.41 Assessments.

* * * * *

(b) The Secretary shall fix the rate of assessment per 55-pounds of fruit or equivalent in any container or in bulk, to be paid by each such handler. At any time during or after a fiscal year, the Secretary may increase the rate of assessment, in order to secure sufficient funds to cover any later finding by the Secretary relative to the expense which may be incurred. Such increase shall be applied to all fruit handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance, or borrow money on an emergency short-term basis. The authority of the committee to borrow money is subject to approval of the Secretary and may be used only to meet financial obligations as the obligations occur or to allow the committee to adjust its reserve funds to meet such obligations.

■ 6. Add a new § 915.43 to read as follows:

§ 915.43 Contributions.

The committee may accept voluntary contributions. Such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

■ 7. Revise § 915.45 to read as follows:

§ 915.45 Production research, marketing research and development.

The committee may, with the approval of the Secretary, establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve or promote the marketing, distribution, and consumption or efficient production of avocados. Such products may provide for any form of marketing promotion, including paid advertising. The expenses of such projects shall be paid from funds collected pursuant to the applicable provisions of § 915.41, or from such other funds as approved by the USDA.

Dated: February 1, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–536 Filed 2–4–08; 9:46 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27824; Directorate Identifier 2003–NE–12–AD; Amendment 39–15364; AD 2006–11–05R2]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–22B series, RB211–524B, –524C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines with high pressure compressor (HPC) stage 3 disc assemblies, part numbers (P/Ns) LK46210, LK58278, LK67634, LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 installed. That AD currently requires removing from service certain disc assemblies before they reach their full published life if not modified with anticorrosion protection. This AD requires the same actions but relaxes the removal compliance time for certain disc assemblies that have a record of detailed inspection. This AD results from the FAA allowing certain affected disc assemblies that have a record of a detailed inspection, to remain in service for a longer period than the previous AD allowed. We are issuing this AD to relax the compliance time for disc assemblies manufactured both ''before and after 1990'' by providing an option to track the disc life based on a record of a detailed inspection rather than by its entry into service date, while continuing to prevent corrosion-induced uncontained disc assembly failure, resulting in damage to the airplane.

DATES: Effective February 21, 2008. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of February 24, 2004 (69 FR 2661, January 20, 2004).

We must receive any comments on this AD by April 7, 2008.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Docket Management Facility, Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245–418, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; e-mail: *ian.dargin@faa.gov*; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On May 15, 2006, the FAA issued AD 2006–11–05, Amendment 39–14609 (71 FR 29586, May 23, 2006). We also issued a correction to that AD on September 26, 2006 (71 FR 58254, October 3, 2006) and a revision to that AD on April 9, 2007 (72 FR 18862, April 16, 2007). That AD revision requires removing from service certain disc assemblies before they reach their full published life if not modified with anticorrosion protection. That AD was the result of the manufacturer's reassessment of the corrosion risk on HPC stage 3 disc assemblies that have not yet been modified with sufficient application of anticorrosion protection. That condition, if not corrected, could result in corrosion-induced uncontained disc assembly failure, resulting in damage to the airplane.

Actions Since AD 2006–11–05R1 Was Issued

Since AD 2006–11–05R1 was issued, we discovered that the population of affected disc assemblies identified in that AD was incorrect. That AD allowed affected disc assemblies that entered into service ''before 1990'' that have a record of a detailed inspection, to remain in service for a longer period than the previous AD, AD 2006–11–05, allowed. This revised AD allows disc assemblies manufactured both ''before and after 1990'' that have a record of a detailed inspection, to remain in service for 17 years from last overhaul inspection date. But the discs are not to exceed the manufacturer's published cyclic limit in the time limits section of the manual. We are issuing this AD to relax the compliance time for certain disc assemblies by providing an option to track the disk life based on a record of a detailed inspection rather than by its entry into service date, while continuing to prevent corrosion-induced uncontained disc assembly failure, resulting in damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of RR MSB No. RB.211–72–9661, Revision 5, dated December 22, 2006. That MSB allows affected disc assemblies and that have a record of detailed inspection:

- To remain in service for 17 years from last overhaul inspection date; but
- Not to exceed the manufacturer's published cyclic limit in the time limits section of the manual.

We do not incorporate by reference this MSB, but we list it in the Related Information section.

Bilateral Airworthiness Agreement

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

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other RR RB211–22B series, RB211–524B, –524C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines of the same type design. We are issuing this AD to relax the compliance time for certain disc assemblies by providing an option to track the disk life based on a record of a detailed inspection rather than by its entry into service date, while continuing to prevent corrosion-induced uncontained disc assembly failure, resulting in damage to the airplane. This AD requires the following for affected HPC stage 3 rotor disc assemblies:

• Removing affected disc assemblies from service; and
• Re-machining, inspecting, and applying anticorrosion protection; and
• Re-marking, and returning disc assemblies into service; and
• Allowing affected disc assemblies that have a record of a detailed inspection, to remain in service for 17 years from last overhaul inspection date but not to exceed the manufacturer's published cyclic limit in the time limits section of the manual.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable. Good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2007–27824; Directorate Identifier 2003–NE–12–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, 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 may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15026 (72 FR 18862, April 16, 2007) and by adding a new airworthiness directive, Amendment 39–15364, to read as follows:

2006–11–05R2 Rolls-Royce plc: Amendment 39–15364. Docket No. FAA–2007–27824; Directorate Identifier 2003–NE–12–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 21, 2008.

Affected ADs

(b) This AD revises AD 2006–11–05R1, Amendment 39–15026.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211–22B series, RB211–524B, –524C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines with high pressure compressor (HPC) stage 3 disc assemblies, part numbers (P/Ns) LK46210, LK58278, LK67634, LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 installed. These engines are installed on, but not limited to, Boeing 747, Boeing 757, Boeing 767, Lockheed L–1011, and Tupolev Tu204 series airplanes.

Unsafe Condition

(d) This AD results from the FAA allowing certain affected disc assemblies that have a record of a detailed inspection, to remain in service for a longer period than the previous AD allowed. We are issuing this AD to relax the compliance time for disc assemblies manufactured both '' before and after 1990'' by providing an option to track the disc life based on a record of a detailed inspection rather than by its entry into service date, while continuing to prevent corrosion-induced uncontained disc assembly failure, resulting in damage to 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.

Removal of HPC Stage 3 Disc Assemblies

(f) Remove from service affected HPC stage 3 disc assemblies identified in the following Table 1, using one of the following criteria:

TABLE 1.—AFFECTED HPC STAGE 3 DISC ASSEMBLIES

Engine model	Rework band for cyclic life accumulated on disc assemblies P/Ns LK46210 and LK58278 (pre RR Service Bulletin (SB) No. RB.211–72–5420)	Rework band for cyclic life accumulated on disc assembly P/N LK67634 (pre RR SB No. RB.211–72–5420)	Rework band for cyclic life accumulated on disc assemblies P/Ns LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 (pre RR SB No. RB.211–72–9434)
–22B series	4,000–6,200	7,000–10,000	11,500–14,000
–535E4 series	N/A	N/A	9,000–15,000
–524B–02, B–B–02, B3–02, and B4 series, Pre and Post accomplishment of SB No. 72–7730	4,000–6,000	7,000–9,000	11,500–14,000
–524B2 and C2 series, Pre SB No. 72–7730	4,000–6,000	7,000–9,000	11,500–14,000
–524B2–B–19 and C2–B–19 series, SB No. 72–7730	4,000–6,000	7,000–9,000	8,500–11,000
–524D4 series, Pre SB No. 72–7730	4,000–6,000	7,000–9,000	11,500–14,000
–524D4–B series, SB No. 72–7730	4,000–6,000	7,000–9,000	8,500–11,000
–524G2, G3, H, and H2 series	4,000–6,000	7,000–9,000	8,500–11,000

(1) For disc assemblies that entered into service before 1990, remove disc assembly and rework as specified in paragraph (g)(2) of this AD, on or before January 4, 2007, but not to exceed the upper cyclic limit in Table 1 of this AD before rework. Disc assemblies reworked may not exceed the manufacturer's published cyclic limit in the time limits section of the manual.

(2) For disc assemblies that entered into service in 1990 or later, remove disc assembly within the cyclic life rework bands in Table 1 of this AD, or within 17 years after the date of the disc assembly entering into service, whichever is sooner, but not to exceed the upper cyclic limit of Table 1 of this AD before rework. Disc assemblies reworked may not exceed the manufacturer's published cyclic limit in the time limits section of the manual.

(3) For disc assemblies that when new, were modified with an application of anticorrosion protection and re-marked to P/N LK76036 (not previously machined) as specified by part 1 of the original issue of RR SB No. RB.211–72–5420, dated April 20, 1979, remove RB211–22B series disc assemblies before accumulating 10,000 cycles-in-service (CIS), and remove RB211–524 series disc assemblies before accumulating 9,000 CIS.

(4) If the disc assembly date of entry into service cannot be determined, the date of disc assembly manufacture may be obtained from RR and used instead.

(5) Disc assemblies in RB211–535C series operation are unaffected by the interim rework cyclic band limits in Table 1 of this AD, but must meet the calendar life requirements of either paragraph (f)(1) or (f)(2) of this AD, as applicable.

Optional Rework of HPC Stage 3 Disc Assemblies

(g) Rework HPC stage 3 disc assemblies that were removed in paragraph (f) of this AD as follows:

(1) For disc assemblies that when new, were modified with an application of anticorrosion protection and re-marked to P/N LK76036 (not previously machined) as specified by Part 1 of the original issue of RR SB RB.211–72–5420, dated April 20, 1979, rework disc assemblies and re-mark to either P/N LK76034 or P/N LK78814 using paragraph 2.B. of the Accomplishment Instructions of RR SB No. RB.211–72–5420, Revision 4, dated February 29, 1980. This rework constitutes terminating action to the removal requirements in paragraph (f) of this AD.

(2) For all other disc assemblies, rework using Paragraph 3.B. of the Accomplishment Instructions of RR SB No. RB.211–72–9434, Revision 4, dated January 12, 2000. This rework constitutes terminating action to the removal requirements in paragraph (f) of this AD.

(3) If rework is done on disc assemblies that are removed before the disc assembly reaches the lower life of the cyclic life rework band in Table 1 of this AD, artificial aging of the disc assembly to the lower life of the rework band, at time of rework, is required.

(4) Disc assemblies that have a record of detailed inspection, regardless of the date of entry into service, are allowed to remain in service for 17 years from last overhaul inspection date but not to exceed the manufacturer's published cyclic limit in the time limits section of the manual.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Civil Aviation Authority AD 004–01–94, dated January 4, 2002, and RR Mandatory Service Bulletin No. RB.211–72–9661, Revision 5, dated December 22, 2006, pertain to the subject of this AD.

Material Incorporated by Reference

(j) You must use Rolls-Royce plc Service Bulletin No. RB.211–72–5420, Revision 4, dated February 29, 1980, and Rolls-Royce plc Service Bulletin No. RB.211–72–9434, Revision 4, dated January 12, 2000, to perform the rework required by this AD. The Director of the Federal Register previously approved the incorporation by reference of these service bulletins in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of February 24, 2004 (69 FR 2661, January 20, 2004). You can get copies from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245–418. You can review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; 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/cfr/ibr-locations.html.*

(k) Contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; e-mail: *ian.dargin@faa.gov;* telephone (781) 238–7178; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on January 25, 2008.

Peter A. White,

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

[FR Doc. E8–2028 Filed 2–5–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30592; Amdt. No. 3255]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes in the National Airspace System, such as the commissioning of new navigational facilities, adding of new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 6, 2008. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2008.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P-NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore-(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on January 25, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; 97.29 ILS, ILS/DME,ISMLS, MLS/DME, MSL/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
01/18/08	AL	REFORM	NORTH PICKENS	8/1712	RNAV (GPS) RWY 19, ORIG.

[FR Doc. E8–2005 Filed 2–5–08; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1633

Final Rule: Standard for the Flammability (Open Flame) of Mattress Sets; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Correcting amendment.

SUMMARY: The Consumer Product Safety Commission (''Commission'') is making corrections to the flammability standard for mattress sets that was published in the **Federal Register** of March 15, 2006, (71 FR 13472). The corrections rectify typographical errors, clarify technical aspects of running the flammability test required by the standard, and clarify that the certification statement on the mattress set label may appear in another language in addition to English.

DATES: The corrections become effective on February 6, 2008.

FOR FURTHER INFORMATION CONTACT: Heather Sonabend, Office of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7615; e-mail *hsonabend@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On March 15, 2006, the Commission issued a final rule specifying a flammability standard to reduce deaths and injuries related to mattress fires. The standard contains requirements for a test procedure, recordkeeping and labeling. Other than the correction that allows translation of the certification statement, the corrections occur in section 1633.7, the provisions describing the technical details of running the flammability test. The changes are described below.

In § 1633.7(a)(4), the term ''bed frame'' is changed to ''test frame'' to clarify that this refers to the frame used in the test, not a regular bed frame. This change is made in other paragraphs as well. Language also is added to this section to clarify that the angle iron should be positioned to angle down rather than up.

In § 1633.7(a)(6), a new paragraph (v) is created to clarify that the second half of existing paragraph (iv) relates to the burner inlet line. The remaining subparagraphs are redesignated. A technical error in footnote 1 is corrected to provide the correct measurements for the plastic tubing attaching the metal arms to the gas control. In the paragraph on the flow control system, there was a technical error in the propane pressure value. 70 kPa should be 140 kPa, and 140kPa (20 psig) should be 140 ± 5 kPa (20 ± 1 psig). These measurements and an erroneous reference to a figure 8 are corrected.

In § 1633.7(b)(1)(ii) the range used for the propane tank is corrected from 20 ± .5 psig to 20 ± 1 psig.

In § 1633.7(d) concerning test preparation a typographical error is corrected to state that the horizontal air flow velocity adjacent to the test specimen shall be no more than 0.5 m/s. A few sentences in subparagraph (2) are changed to clarify placement of the mattress and foundation specimen on the test frame.

In § 1633.7(e) a reference is corrected to correspond to the appropriate redesignated paragraph in § 1633.7(a)(6).

In § 1633.7(f) the sentence concerning the general layout for the room configuration is moved to the beginning of the paragraph to make the paragraph easier to follow.

In § 1633.7(h) an erroneous reference to figure 8 in subparagraph (1)(iv) is removed. Language is also added in that subparagraph to permit use of a platen that is another dimension than specified if it meets the requirements for a specific sample. In subparagraph (2)(i) rather than specifying an 8 inch length of duct tape to hold the platen in position, the language is changed to clarify that the duct tape be of sufficient length to assure that the platen stays firmly against the mattress surfaces. In subparagraph (2)(iv) language is added to clarify the use of flat stock to assure that the burner is parallel to the mattress surface. In subparagraph (2)(viii) the change clarifies that the stand off foot referred to is that of the vertical burner. The placement of footnote 9 is moved to the last sentence of this subparagraph for clarification.

In § 1633.7(i) the abbreviation ''ca.'' is changed to the word ''approximately'' for clarification.

In § 1633.12 concerning labeling, paragraph (a)(6)(iii) is corrected to make that paragraph concerning mattresses intended to be sold both alone and with a foundation consistent with paragraph (a)(6)(ii) concerning mattresses intended to be sold with a foundation. Also in § 1633.12, paragraph (d) is corrected to make clear that translation of the certification statement into another language on the reverse side of the required label is permitted.

Because these are technical corrections rather than substantive changes, notice and comment is not necessary. See 5 U.S.C. 553(b)(3)(B). The corrections clarify technical aspects of the flammability testing and labeling provisions. They do not change the substantive obligations of mattress manufacturers and importers. For the same reason, there is no need to delay the effective date for these corrections. Id. 553(d)(3).

List of Subjects in 16 CFR Part 1633

Consumer protection, Flammable materials, Labeling, Mattresses and mattress pads, Records, Textiles, Warranties.

■ Accordingly, 16 CFR part 1633 is corrected by making the following correcting amendment:

PART 1633—STANDARD FOR THE FLAMMABILITY (OPEN FLAME) OF MATTRESS SETS

■ 1. The authority for part 1633 continues to read as follows:

Authority: 15 U.S.C. 1193, 1194.

■ 2. Section 1633.7 is amended as follows:

■ a. In paragraph (a)(4)(i) at the end of the first sentence add the words ''with a flat surface and no edges extending up from the surface (i.e., the angle is configured down)''; in the second sentence remove the word ''bed'' and add the word ''test''.

■ b. In paragraph (a)(4)(ii), second sentence, before the word ''frame'' add the word ''test''.

■ c. In paragraph (a)(4)(iii) at the beginning and at the end of the first

sentence add the word ''test'' before the word ''frame''.

■ d. Redesignate paragraphs (a)(6)(v) through (a)(6)(ix) as paragraphs (a)(6)(vi) through (a)(6)(x) respectively; redesignate the fourth through the last sentence of paragraph (a)6)(iv) as paragraph (a)(6)(v); and add the heading ''*Burner inlet lines.*'' to newly designated paragraph (a)(6)(v).

■ e. In redesignated paragraph (a)(6)(vi) before the word ''*Frame*'' in the heading of the paragraph add the word ''*Burner*''.

■ f. In redesignated paragraph (a)(6)(vii) in footnote 1 remove the phrase ''3 inch ID by inch OD'' and add in its place the phrase ''0.25 inch ID by 0.4 inch OD''.

■ g. In redesignated paragraph (a)(6)(ix), second sentence, remove the number ''70'' and in its place add ''140 ± 5''; after the number ''20'' add ''± 1''; after the word ''Figure'' remove the number ''8'' and add the number ''7'' in its place.

■ h. In paragraph (b)(1)(ii), the last sentence, remove ''20 ± .5'' and in its place add ''20 ± 1''.

■ i. In paragraph (d)(1), first sentence, before ''0.5 m/s'' add the words ''no more than''.

■ j. In paragraph (d)(2), third sentence, remove the word ''bed'' and add in its place the word ''test''; remove the fourth sentence and add in its place ''Carefully center the foundation on top of the test frame to eliminate any gaps between the bottom periphery of the foundation and the inside edges of the test frame. If the mattress is to be tested alone, place it similarly. A mattress tested with its foundation should be centered longitudinally and laterally on the foundation.''.

■ k. In paragraph (e) remove the number ''(ix)'' and add in its place the number ''(x)''.

■ l. In paragraph (f) move the third sentence so that it becomes the first sentence of the paragraph.

■ m. In paragraph (h)(1)(iv) add at the end of the first sentence the words ''or another dimension that meets the requirements for a specific sample''; remove the last sentence of the paragraph.

■ n. In paragraph (h)(2)(i) remove the last sentence and add it in its place the words ''Use a sufficient length of duct tape (platen to mattress top) to assure that the platen stays firmly against the surfaces of the mattress.''.

■ o. In paragraph (h)(2)(iv) remove the first sentence and add in its place the sentence ''Make the horizontal burner parallel to the top of the platen (within 3 mm (⅛ inch) over the burner tube length); when properly parallel, it should not be possible to insert the 3 mm flat stock under either burner end by bending the copper tube section appropriately.''.

■ p. In paragraph (h)(2)(viii), first sentence, remove the word ''its'' and add in its place the words ''the vertical burner''; move the reference to footnote 9 to the end of the second to last sentence in the paragraph.

■ q. In paragraph (i)(2)(i) in the second to last sentence remove the abbreviation ''ca.'' and add in its place the word ''approximately''.

■ 3. Section 1633.12 is amended as follows:

■ a. In paragraph (a)(6)(iii) before ''; and'' add the sentence ''Such foundation(s) shall be clearly identified by a simple and distinct name and/or number on the mattress label''.

■ b. In paragraph (d) after the word ''paragraphs'' remove the phrase ''(a)(7)(i) and (a)(7)(ii), and (a)(7)(iii)'' and add in their place the phrase ''(a)(6)(i) through (iii) and (a)(7)(i) through (iii)''.

Dated: January 30, 2008.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E8–2027 Filed 2–5–08; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1312

[Docket No. DEA–282F]

RIN 1117–AB03

Authorized Sources of Narcotic Raw Materials

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is amending the list of non-traditional countries authorized to export narcotic raw materials (NRM) to the United States by removing Yugoslavia and adding Spain. This rule provides DEA registered importers with another potential source from which to purchase NRM that are used in the production of controlled substances for medical purposes in the United States.

DATES: *Effective Date:* This rule is effective March 7, 2008.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

DEA enforces the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (21 U.S.C. 801, *et seq.*), as amended. DEA regulations implementing these statutes are published in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to 1316. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical, scientific, research, and industrial purposes and to deter the diversion of controlled substances to illegal purposes. The CSA and its implementing regulations are consistent with United States treaty obligations that, among other things, address the production, import, and export of controlled substances.

Controlled Substances

Controlled substances are drugs that have a potential for abuse and psychological and physical dependence, including opiates, stimulants, depressants, hallucinogens, anabolic steroids, and drugs that are immediate precursors of these classes of substances. DEA lists controlled substances in 21 CFR Part 1308. The substances are divided into five schedules. Schedule I substances have a high potential for abuse and have no accepted medical use in treatment in the United States. These substances may only be used for research, chemical analysis, or manufacture of other drugs. Substances listed in schedules II—V have accepted medical uses but also have potential for abuse and psychological and physical dependence. Narcotic raw materials (opium, poppy straw, and concentrate of poppy straw (CPS)) are in schedule II and are the materials from which morphine, codeine, thebaine and oripavine are extracted for purposes of manufacturing a number of schedule II and III controlled substances.

Sources of Narcotic Raw Materials

In May 1979, the United Nations' Economic and Social Council (ECOSOC) adopted Resolution 471, which called on importing countries such as the United States to support traditional suppliers of NRM and to limit imports from non-traditional supplying countries. The resolution, which was reaffirmed by ECOSOC in 1981, was

adopted to limit overproduction of NRM, to restore a balance between supply and demand, and to prevent diversion to illicit channels. The United States, based on long-standing policy, does not cultivate or produce NRM, but relies solely on opium, poppy straw, and CPS produced in other countries for the NRM necessary to meet the legitimate medical needs of the United States. In response to Resolution 471, on August 18, 1981, DEA published a final rule specifying certain source countries of NRM (46 FR 41775); the rule is frequently referred to as the 80/20 rule. Under the final rule, currently codified at 21 CFR 1312.13(f) and (g), NRM can be imported from only seven countries. Traditional suppliers India and Turkey must be the source of at least 80 percent of the United States' requirement for NRM. Five non-traditional supplier countries—France, Poland, Hungary, Australia, and Yugoslavia—may be the source of not more than 20 percent. The 80/20 rule is calculated based on the amount of morphine alkaloid contained in the NRM. The United States continues to reaffirm its support of the original resolution by supporting similar resolutions each year at the Commission on Narcotic Drugs.

Just as with DEA's 1979 **Federal Register** publication first proposing the 80/20 rule (44 FR 33695), it is important to recite here some of the central principles of Resolution 471, which remain crucial today:

> Noting that in recent years there has been considerable stepping up of morphine producing capacity for export, leading to a situation of substantial overproduction of opiates,
>
> * * * * *
>
> Recognizing that it is essential to bring about a proper balance between the global supply and demand,
>
> Taking note of the continued reliance placed by the world community on countries constituting the traditional sources of supply for its medical needs of opiate raw materials and the positive response of these countries in meeting the world requirements and their contribution in the maintenance of effective control systems;
>
> Bearing in mind that the treaties which establish this system are based on the concept that the number of producers of narcotic materials for export should be limited in order to facilitate effective control;
> * * *

In view of these principles underlying Resolution 471, DEA stated in proposing the 80/20 rule in 1979:

> The United States is a significant importer of narcotic raw materials. Its manufacturers account for one-third of the world morphine manufacturing capacity, most of which is consumed within the United States in the form of codeine.[1] The worldwide over-production of narcotic raw materials and [Resolution 471] make it necessary for the United States to reevaluate past and present narcotic policies.
>
> Historically, the United States has relied exclusively upon imports of opium gum to manufacture our narcotic medical supplies instead of cultivating opium poppies in the United States. The rationale behind this 57-year-old policy, which foregoes [sic] U.S. self-sufficiency, was to set an example to the world community to refrain from overproduction and to limit the number of opium-producing nations to a minimum.
> [44 FR 33696, June 12, 1979]

The foregoing principles remain central to United States drug control policy and this final rule amending the 80/20 rule.

Of the countries included in the 80/20 rule, India is the only country that cultivates poppies for production of opium. All other exporting countries use the CPS method of NRM production, a method that allows the plant to go to seed; portions of the plant are then processed into a concentrate. It is generally believed that CPS is less divertible than opium. CPS may be rich in morphine (CPS–M), rich in thebaine (CPS–T), or rich in oripavine (CPS–O). The United States imports the majority of its CPS–M from Turkey, with Australia supplying the vast majority of the balance. The vast majority of CPS–T and all CPS–O are imported from Australia.

The 80/20 rule was established based on traditional import amounts and on the United Nations resolution calling on member nations to support traditional sources that have been reliable suppliers and to take measures that curtail diversion. The United States allowed a limited number of non-traditional suppliers to have access to the United States market based on past commercial relationships and on the desirability of preserving alternative sources. This approach was consistent with the United Nations Resolution because it supported India and Turkey and ensured an adequate and uninterrupted supply of NRM while limiting the number of supplying countries. Over the last ten years, pursuant to the 80/20 rule, DEA registered importers of NRM have imported 90 percent of United States NRM requirements from traditional suppliers India and Turkey. DEA continues its support of the intent of the 80/20 rule.

On June 6, 2005, the Kingdom of Spain (hereinafter referred to as Spain) petitioned DEA seeking to be added to the list of non-traditional suppliers. Spain stated four reasons that granting its petition would be consistent with United States interests:

- The change would be consistent with the 80/20 rule because it maintains India and Turkey as the two traditional supplier countries, that is, Spain does not seek to be added to the list of traditional suppliers.
- The change would ensure adequate supplies of NRM.
- The change would not result in diversion because Spain maintains strict control and oversight over the cultivation and distribution of NRM.
- The change would allow DEA to monitor diversion and maintain cost-effective supplies.

In its petition, Spain explained that in the early 1970s, Spanish pharmaceutical firms sought authorization to cultivate opium poppies to produce NRM. In 1973, the Government of Spain authorized a single firm, Alcaliber, S.A., to cultivate, harvest, store, and prepare extracts from the opium poppy. Spain is now the fifth largest cultivator of opium poppies; Spain is the fourth largest producer of CPS and the third largest exporter of CPS–M.[2] Spain has ratified international agreements to control production and commerce in opium products. As stated in its petition, Spain has implemented a comprehensive regulatory regime for controlling the cultivation, production, and export of NRM in accordance with international treaty requirements. The petition stated that this control ensures that NRM produced in Spain are not diverted to illicit uses.

After review of the petition, DEA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 4, 2006 (71 FR 58569) to amend the list of non-traditional countries authorized to export NRM to the United States. Specifically, the proposed rule sought to revise the list of non-traditional suppliers by removing Yugoslavia and replacing it with Spain. At that time, DEA had determined that the successor states to Yugoslavia no longer produced NRM for export beyond Yugoslavia's prior border (e.g., Serbia and Montenegro reported exports to the Republic of Macedonia (hereinafter referred to as Macedonia) only). Therefore, DEA concluded that

[1] Today, the United States remains a significant importer of narcotic raw material. Its manufacturers currently account for one-fourth of the world morphine manufacturing capacity, with roughly two-thirds being utilized for the production of codeine, which is consumed as either codeine or hydrocodone.

[2] ''Narcotic Drugs: Estimated World Requirements for 2005—Statistics for 2003'', Tables II and XIII; International Narcotics Control Board (E/INCB/2004/2).

replacing Yugoslavia with Spain would continue to limit the number of non-traditional suppliers to the United States while ensuring the availability of an adequate number of sources of NRM for United States manufacturers. The proposed change would not otherwise affect the implementation of the 80/20 rule.

Comments Received

Following publication of the Notice of Proposed Rulemaking on October 4, 2006, DEA received a request for a 60-day extension to the comment period. On December 1, 2006, DEA extended the comment period of the proposed rule to January 3, 2007 (71 FR 69504).

During the comment period, DEA received 14 comments from 13 interested parties. Five comments were received from the following countries: Australia, Spain, Macedonia, and Turkey. One of the comments received from a foreign Government was a joint comment with a foreign control board. Three comments were received from three DEA-registered importers of NRM; one comment was received from a DEA-registered opiate manufacturer; one comment was received from a non-DEA registered firm; two comments were received from two foreign NRM manufacturers; and two comments were received from one individual. As part of the above-listed comments, DEA also received a request to extend the comment period, and four requests for a hearing.

After the comment period had ended, DEA received an additional comment from a foreign NRM manufacturer. This prompted two additional late comments, one from the foreign control board which previously commented on the NPRM and the other from the foreign government associated with that foreign control board. Specifically, both commenters sought clarification from DEA on the status of the late comment, which DEA had administratively added to the docket. The Administrative Procedure Act (APA) does not address the issue of late comments, and the United States courts generally defer to federal agencies in their handling of late comments. It is the policy of the DEA that comments not properly filed, e.g., comments postmarked after the close of a comment period, will not be considered by the agency in its deliberative process. Accordingly, the late comment from the foreign NRM manufacturer was not considered by DEA in this Final Rule. All comments received during the comment period are summarized here and discussed further below.

Comments in Support of DEA's NPRM

Four of the commenters supported the proposed rule. These commenters included the Government of Spain, a DEA registered NRM importer, one foreign NRM manufacturer, and a DEA-registered opiate manufacturer. One of the DEA registrants commented that the need to ensure an adequate number of sources of NRM for DEA-registered NRM importers is ''most keenly felt in CPS–T and CPS–O, for which the U.S. demand is rapidly growing and in which global supply sources to the U.S. are currently quite limited.''

Comments Raising Concerns to DEA's NPRM

Nine of the commenters raised various concerns regarding the NPRM. These commenters included the Government of Australia, the Government of Macedonia, and the Government of Turkey; a foreign NRM control board; two DEA-registered importers of NRM; one non-DEA-registered firm; one foreign NRM manufacturer; and one individual.

Four commenters claimed that the proposed rule would exacerbate current global oversupplies of NRM and therefore disrupt the balance between the supply of and demand for NRM. Three commenters claimed that the proposed rule was not consistent with the intent of the 80/20 rule or international resolutions. Three commenters claimed that the proposed rule was not necessary to assist the United States in maintaining cost effective supplies of NRM. Three commenters questioned DEA's decision to replace Yugoslavia with Spain.

The following additional concerns were raised. One commenter believed that the addition of Spain to the list of non-traditional NRM producing countries would lead to a proliferation of NRM-producing countries. The commenter, however, did not provide further information as to how this rulemaking would specifically lead to a proliferation of NRM-producing countries. Additionally, one commenter claimed that Spain has diversion occurring within its borders and that it could not be proven that the addition of Spain to the list of non-traditional countries would not lead to an increase in diversion within Spain. While the commenter provided a general statement regarding the diversion of controlled substances, the commenter did not provide any specific evidence regarding the diversion of narcotic raw material specifically cultivated for lawful purposes in Spain. Due to the lack of substantiation for the claims discussed above, these comments are not addressed further in this rulemaking.

Request for Hearing

Four commenters requested that DEA hold an administrative hearing in this matter. Two of these commenters requested a hearing prior to the issuance of the final rule. One of these commenters stated that a hearing was appropriate ''given the gravity and complexity of the issues involved.'' The other commenter stated that a hearing would ''provide interested parties with the fullest opportunity to make their views known and have their positions considered.'' These commenters did not proffer any specific information beyond that submitted in the written comments, however, that would be brought to light if their requests for a hearing were granted. DEA has determined that an oral hearing prior to the issuance of this rule is unnecessary. The amendment of the 80/20 rule to substitute one non-traditional country for another that no longer exists in the form it did at the time of the promulgation of the original rule does not represent a major change in DEA policy or procedure. Moreover, DEA has carefully considered all of the comments received in connection with the proposal, and finds that the comments fully set forth the issues relevant to this rulemaking. Based on information provided in the comments, information provided in technical reports by the International Narcotics Control Board (INCB), and information provided by U.S. importers of NRM pursuant to DEA regulations, DEA has been able fully to address the relevant issues set forth in the comments and has determined that conducting a hearing would not materially add to the administrative record. DEA has concluded, therefore, that such a hearing would be unnecessary.

Two other commenters requested a hearing following the issuance of the final rule, if it is issued. Such a request does not conform procedurally with traditional rulemaking procedures under the APA, under which—if an agency holds a hearing in connection with a proposed rule—it is held prior to the issuance of the final rule. Moreover, neither the CSA nor DEA regulations provide for an administrative hearing to ''appeal'' the promulgation of a final rule. Pursuant to 21 U.S.C. 877, exclusive jurisdiction for appeals of DEA final decisions such as this rule rests with the United States Courts of Appeals. Accordingly, the requests for a hearing if the final rule is issued are denied.

Other Comments Received

One of the commenters wrote that if the proposal sought to change the method by which the 80/20 rule was calculated, then the commenter would object to the proposed rule. As noted previously, the 80/20 rule is calculated based on the amount of morphine alkaloid contained in the NRM. Since DEA's proposed rule and this rulemaking do not affect how the 80/20 rule is calculated, this matter is not addressed further in this rulemaking.

One commenter submitted two comments. One of these comments stated, ''So we are deciding who to allow to do the exporting of substances that are used to make heroin? We allow this? And then kick down the doors of terminally ill patients who smoke marijuana just to ease their pain. * * *'' The other comment promoted the use of hallucinogens. NRM imported into the United States pursuant to this rule are used to make legitimate medicines that are used to treat pain, not to manufacture heroin. Heroin production and the use of marijuana and hallucinogens are not the subject of this rulemaking; these matters are therefore not addressed further in this rulemaking.

Support for DEA's NPRM

Adequate Supply of NRM

Three commenters addressed the need to ensure adequate supplies of NRM for United States markets. One commenter noted that the need to ensure an adequate number of sources of NRM for DEA registered NRM importers was ''most keenly felt in CPS–T and CPS–O, for which the U.S. demand is rapidly growing and in which global supply sources to the U.S. are currently quite limited.''

DEA Response: DEA agrees that United States sources of NRM are limited based on data it collects quarterly from DEA registered importers pursuant to 21 CFR 1304.31. The data collected in these reports include the relative amounts of morphine, codeine, thebaine and oripavine contained in each individual NRM import to the United States as reported by each of the five DEA registered NRM importers. In response to this comment, DEA conducted an analysis of the source of each of the primary alkaloids available in current NRM: morphine, thebaine and oripavine. DEA notes that, in 2006, imports of NRM had as their source, four of the seven countries authorized to export NRM to the United States, specifically India, Turkey, Australia and France. United States importers have not imported NRM from Poland or Yugoslavia since at least 1985, and imports from Hungary were minimal in the mid to late 1990s and have ceased altogether since 2002. No imports from Poland, Yugoslavia, or Hungary are anticipated in 2007. Since NRM contain a mixture of these alkaloids, DEA's review of the NRM import situation (below) is expressed in terms of the amount of morphine, thebaine, and oripavine contained in imported NRM.

Morphine: Morphine is the principal alkaloid in Indian opium and Turkish CPS–M and has historically been the principal alkaloid extracted from NRM in the United States. Morphine continues to be utilized in the United States for the manufacture of morphine-based pharmaceutical products; the manufacture of codeine, which is utilized to manufacture codeine-based pharmaceutical preparations and hydrocodone; and the manufacture of hydromorphone. Based on an analysis of information received for 2006, imports of NRM totaled 124,000 kg of morphine (124.0 metric tons (MT)), having the following countries as its source: Turkey (59.9 MT morphine; 48.3 percent), India (43.9 MT morphine; 35.4 percent), and Australia (20.4 MT morphine; 16.5 percent).[3] When reviewing imports of morphine over the last 10 years (1997–2006), United States importers obtained commercial quantities of morphine from India, Turkey, and Australia, with lesser amounts obtained from France and Hungary. DEA concludes as a result that the United States has at least three geographically distinct countries from which morphine is obtained, each with large production capacity on which the United States could rely if any of those countries were to experience a hardship (i.e., crop failure, labor strife, etc.). Adding Spain would provide DEA registered importers with a fourth country from which to purchase NRM.

Thebaine: Thebaine is the principal alkaloid in CPS–T. CPS–T is available to the United States market from Australia and France. Thebaine is also present in Indian opium at approximately one sixth the level of morphine, thus the amount of thebaine obtained from India is directly related to the amount of morphine that United States importers import from India. In the United States, thebaine is utilized for the manufacture of oxycodone, a schedule II controlled substance. More recently, oxycodone has been utilized for the manufacture of oxymorphone, another schedule II controlled substance.

Oxycodone use in the United States has increased tremendously over the last 10 years. For example, the aggregate production quota for oxycodone, which represents the maximum amount that may be manufactured in the United States to meet the estimated medical, industrial, scientific, and research needs of the United States; for lawful export requirements; and the maintenance of reserve stocks, has increased over the last decade from 5,275 kg in 1997 to 49,200 kg in 2006. The large increase in oxycodone use in the United States followed the approval and marketing in 1995 of a high dose, single-entity, extended-release drug formulation known as OxyContin. Although DEA remains concerned over the diversion and abuse of OxyContin and other formulations that contain high doses of potent schedule II controlled substances, the Food and Drug Administration continues to advise DEA of double-digit growth in the oxycodone market through 2008. This provides evidence that the demand for thebaine-rich NRM that must be imported into the United States for this purpose will also continue to increase.

When the same 2006 quarterly statistical import data was reviewed for thebaine, DEA noted that 78.2 MT of thebaine was imported into the United States in 2006, having as its source the following countries: Australia (66.8 MT of thebaine; 85.4 percent), India (7.1 MT of thebaine; (9.1 percent), and France (4.1 MT of thebaine; 5.2 percent).[4] Thus, Australia was the source of 85 percent of United States thebaine requirements in 2006.[5] For comparison, in 2005, 73 percent of the 65.4 MT of thebaine imported into the United States had Australia as it source, and, in 2004, 75 percent of the 66.8 MT were imported from Australia. In 2007, United States importers have reported their plans to import 92 percent of their thebaine requirements from Australia; they planned to import the remaining 8 percent solely from India.

DEA notes that Australia has a stellar record in providing thebaine-rich NRM to the United States, with little (if any) record of diversion. DEA further notes that the United States and Australia have excellent relations in this area, and contrary to comments made by some commenters to this NPRM, DEA's proposed rule and this final rule in no

[3] Percentages may not add to 100 percent due to rounding.

[4] Ibid.

[5] As discussed previously, The 80/20 rule is calculated based on the amount of morphine alkaloid contained in the NRM. As this discussion relates to the amount of thebaine alkaloid in the NRM, not morphine, the 85 percent obtained by the United States from Australia does not violate principles of the 80/20 rule.

way suggest that Australia has ''not ensured an adequate and uninterrupted supply'' of NRM to the United States. DEA remains mindful, however, of the potential impact of a hardship (i.e., crop failure, labor strife, etc.) in Australia that could lead to a temporary lack of availability of thebaine to the United States market. In this circumstance, the United States would be required to obtain much larger volumes of NRM from either India or France in order to meet thebaine demand. Although France has demonstrated the capability of exporting up to 16 MT of thebaine in a single year to the United States, India's capacity to export thebaine, as mentioned above, is directly related to the amount of morphine that importers wish to import from India consistent with the 80/20 rule. Therefore, importing vast quantities of Indian opium to meet United States thebaine demands would be impractical because it would result in the importation into the United States of excessive amounts of morphine, which could then be the subject of diversion and abuse. Thus, the amount of thebaine that could be derived from India, consistent with United States requirements for morphine contained in Indian opium, is likely to be 6–8 MT annually. DEA concludes that the United States has limited sources from which to obtain thebaine derived from NRM. The United States relies on three countries for thebaine, but two of these countries have a limited capacity to support the increasing size of the United States' market for thebaine. DEA notes that, in 2004, the Government of Spain reported for the first time commercial production of CPS–T, so Spain would represent a fourth country from which CPS–T could be imported. As a result, this rule will provide DEA registered importers with another source from which to purchase CPS–T for the production of medicines.

Oripavine: Oripavine, a schedule II controlled substance, is the principal alkaloid found in Australian CPS–O and is a minor constituent in French CPS–T. Oripavine is becoming an increasingly important intermediate in the United States for the manufacture of buprenorphine, a schedule III controlled substance, oxymorphone, and a number of controlled and non-controlled substances referred to generally as ''opiate antagonists'' (naltrexone for example, and its derivatives). Using the same import data, DEA notes that, in 2006, 9.7 MT of oripavine was imported into the United States having Australia as its source, virtually 100 percent of the United States' oripavine requirements. In 2005, 4.1 MT were imported from Australia and in 2004, 9.4 MT were imported with roughly 86 percent imported from Australia. United States importers have reported their plans to import 100 percent of the 9.7 MT of oripavine from Australia in 2007. DEA therefore concludes that the United States has limited sources from which to obtain oripavine derived from NRM.

Objections to DEA's NPRM

Global Oversupply of Narcotic Raw Materials

The Government of Australia's primary concern regarding DEA's proposed rule is that this rule would ''exacerbate global oversupply'' of NRM. In its comment, the Government of Australia pointed to statistical data published by the INCB in its report, ''Narcotic Drugs: Estimated World Requirements for 2006—Statistics for 2004,'' which the Government of Australia characterized as demonstrating that global production of both morphine-rich and thebaine-rich NRM have been in excess of global utilization since at least 2001. As a result of overproduction, the Government of Australia argued, global supplies have increased.

The DEA-registered NRM importer stated that ''Alcaliber [the sole Spanish poppy cultivator] made a significant investment in capacity, dramatically increased production contributing significantly to global overproduction and excess stocks, and now wants access to the U.S. market to allow it to increase production further to help recover its investment.'' The importer further stated that the Notice of Proposed Rulemaking sent the message that ''If a country adds production capacity, uses it aggressively and thereby contributes to the world's build up of excess stocks, the U.S. will accommodate this behavior and reward it with access to the U.S. market. The U.S. will simply delete a smaller producer from the list.'' This commenter also stated that ''Spain was arguably the primary source of this build up in excess morphine stocks.''

Finally, the foreign opiate manufacturer stated that ''Spain's rapid expansion of its domestic industry, its aggressive approach to building export markets, its building of clearly excessive stockpiles and capacity, and supply into a market already in over-supply is not * * * broadly in accordance with the obligations under the Single Convention, or the Resolutions.''

DEA Response: DEA disagrees that Spain is the ''primary'' source of any build-up of global excesses in morphine stocks. Instead, DEA concludes that all countries that produce NRM contribute to the current global excess of NRM.

Among many of the requirements of NRM-producing countries, in accordance with the Single Convention on Narcotic Drugs, 1961, is a requirement to provide annual statistics to the INCB, including estimated amounts of NRM to be cultivated and the amount of NRM to be produced therefrom. The INCB utilizes these estimates along with other statistical data it collects, in accordance with the Single Convention, to monitor and analyze the global supply of and demand for NRM. The results of this analysis are published in a technical report series, which in 2004 was entitled, ''Narcotic Drugs: Estimated World Requirements for 2006; Statistics for 2003.'' The analysis conducted by the INCB and the statistical reports published continue to be an excellent resource for governments of consumer countries such as the United States. A review of this report series for 2004 and 2005 was conducted with relevant statistical data provided in Tables 1 and 2.

Analysis for Morphine-Rich Poppies

TABLE 1.—''GLOBAL CULTIVATION OF MORPHINE-RICH POPPIES (HECTARES) FOR LICIT PURPOSES OTHER THAN PRODUCTION OF OPIUM''

Country	2003 (ha)	2004 (ha)	2005 (ha-est.)	2006 (ha-est.)
Australia	9,811	6,644	6,700	4,900
People's Republic of China	1,250	1,000	1,300	1,200
Czech Republic	21,045	16,030	25,000	38,000
France	7,919	8,312	8,500	9,100
Hungary	2,937	7,084	14,000	12,000
Slovakia	332	326	550	.....

TABLE 1.—''GLOBAL CULTIVATION OF MORPHINE-RICH POPPIES (HECTARES) FOR LICIT PURPOSES OTHER THAN PRODUCTION OF OPIUM''—Continued

Country	2003 (ha)	2004 (ha)	2005 (ha-est.)	2006 (ha-est.)
Spain	5,732	5,986	7,002	6,002
Republic of Macedonia	51	91	1,500	1,500
Turkey	99,430	30,343	70,000	70,000
United Kingdom	1,534	1,534	1,500	.....
Total	150,041	77,350	136,052	142,702

Neither DEA, nor any commenter, identified a single instance in these reports in which the INCB raised concerns over Spain's purported role in the global excess of production and the resulting oversupply of NRM presently on hand. According to this publication, Spain was one of eleven countries that cultivated morphine-rich poppies in 2003 for licit pharmaceutical purposes (i.e. non-culinary use). Spain planted 5,732 hectares of poppies and produced roughly 4.7 percent of the world's morphine-rich poppy straw. Spain's share of world production of poppy straw increased in 2004 to 10.7 percent; the increase was attributed to both an increase in 2004 acreage sown in Spain and a large decrease in acreage sown by the primary cultivator of poppies for this purpose, Turkey. Estimates for the ''area to be cultivated'' for 2005 and 2006 suggest that Spain will be responsible for 5.1 percent of the area under cultivation and had plans to decrease its area under cultivation in 2006 to 4.2 percent.

Although Spain remains one of the five largest cultivators of morphine-rich poppies in the world, DEA concludes that Spain, like all other producer and consumer countries, contributes to what the INCB qualifies as a ''high'' level of stocks of raw materials rich in morphine.

Analysis of Thebaine-Rich Poppies

TABLE 2.—''GLOBAL CULTIVATION OF THEBAINE-RICH POPPIES (HECTARES) FOR LICIT PURPOSES OTHER THAN PRODUCTION OF OPIUM''

Country	2003 (ha)	2004 (ha)	2005 (ha-est.)	2006 (ha-est.)
Australia	7,637	5,578	6,500	5,300
People's Republic of China	34		40	50
France	1,499	1,007	1,100	1,000
Spain	.....	996	500	1,000
Total	9,170	7,581	8,140	7,350

Australia is the principal cultivator of thebaine-rich poppies and is responsible for the vast majority of thebaine-rich CPS that is produced and imported into the United States. Although the INCB notes that production of thebaine-rich NRM exceeded demand substantially until 2002, DEA notes that the primary cultivators, Australia and France, began decreasing areas under cultivation in 2003 and have made significant decreases since that time in order to bring production in line with utilization. Although Spain noted cultivation of thebaine-rich poppies for the first time in 2004, it is not responsible for excess production that resulted in excess supplies before then.

Consistency With the 80/20 Rule and International Resolutions

As stated in DEA's Notice of Proposed Rulemaking, the 80/20 rule was promulgated following a resolution adopted by the United Nations' Economic and Social Council (ECOSOC) in 1979. In response to the resolution in 1979, DEA published an Advance Notice of Proposed Rulemaking (44 FR 33695, June 12, 1979) and then a Notice of Proposed Rulemaking (45 FR 9289, February 12, 1980). The comments resulting from the Notice of Proposed Rulemaking led to an administrative hearing. On August 18, 1981, DEA published a final rule promulgating the 80/20 rule (46 FR 41775).

Objections to the current Notice of Proposed Rulemaking pointed to specific comments in the 1979 resolution, the Notice of Proposed Rulemaking, the transcript of the administrative hearing, and considerations made by then-Acting Administrator Francis Mullen, Jr., in DEA's 1981 Final Rule.

The foreign opiate manufacturer stated that the 1979 ECOSOC resolution called on ''importing countries to * * * take effective steps to support their traditional supplier countries'' and urged ''major producing and manufacturing countries to which have set up [sic] additional capacity in recent years to take effective measures to restrict substantially their production levels to assure a lasting balance between supply and demand and to prevent drug diversion to illicit channels.'' The commenter believed that ''[a]llowing Spain to now enter the market directly contradicts and undermines the objective of the Current 80/20 Rule, and rewards a country for engaging in the very conduct the Current 80/20 Rule, and the Resolutions, were intended to discourage or stop.''

The DEA-registered NRM importer who filed objections to the NPRM provided a summary of the determinations of fact made by Francis Young, the Administrative Law Judge (ALJ) who presided over the hearing in 1980; these findings were adopted by then-Acting Administrator Mullen when the final rule was promulgated. The DEA-registered importer provided the following summary of ALJ Young's determinations of fact: ''(1) DEA could lawfully promulgate the regulatory amendments limiting the importation of narcotic raw materials; (2) the Administrator of DEA could lawfully

require that a major portion of the [NRM] imported into the United States be produced in India and Turkey while permitting the remainder of the U.S. needs to be imported from other countries which maintain adequate control; (3) such allocation would be in harmony with U.S. trade agreements and would not be inconsistent with Resolution 471 and 497; and (4) DEA staff should determine an allocation ratio based upon world market shares during a recent representative period.'' This commenter further noted that the 1981 final rule ''established clearly stated criteria for selecting the other countries that could supply the United States market with NRM: (a) France, Hungary, Poland, and Yugoslavia 'provided the United States with [NRM] during the period 1975 through 1979 and present alternate sources' and Australia 'was the source of material for which import permits had been requested during the time period' and (b) Each country did 'impose adequate controls over their production of narcotic raw materials in adherence to their obligations under the Single Convention'.''

DEA Response: DEA disagrees with the commenters' assessments that this rule is inconsistent with the intent of the 80/20 rule and international resolutions. DEA finds that the proposed rule is consistent with both the 1979 resolution and the 80/20 rule.

Consistency with 1979 Resolution: The text of the 1979 resolution contained separate and distinct operative language for Governments of importing countries (i.e., the United States) and Governments of producer countries. The operative paragraph for importing countries:

> ''Urge[d] the Governments of the importing countries that have not already done so to take effective steps to support the traditional supplier countries and to give those countries all the practical assistance they can in order to prevent the proliferation of sources of production of narcotic raw materials for export[.]'' [6]

Neither DEA nor the commenters disagree that the United States meets the first prong of this operative paragraph, i.e., the support of ''traditional supply countries,'' by providing India and Turkey with access to at least 80 percent of the United States market for morphine contained in NRM. As has been stated throughout this rule, DEA remains committed to this obligation through its continued support of the 80/20 rule. The commenter's objections would, therefore, fall under United States' obligations under the second prong of this operative paragraph, namely to give all practical assistance in preventing the proliferation of producing countries. Since it is not refuted that the Government of Spain has been engaged in the production of NRM since 1974, prior to international calls to prevent proliferation, DEA concludes that the Government of Spain is not a new or emerging participant in the global production of NRM. The addition of Spain to the 80/20 rule will not result in a proliferation of producer countries. DEA therefore concludes that this action is consistent with the 1979 resolution.

Consistency with the 80/20 rule: As stated in the proposed rulemaking and reaffirmed in this final rule, DEA concludes that adding Spain to the list of countries authorized to export NRM to the United States is consistent with the 80/20 rule. Specifically, adding Spain is consistent with the criteria established by then-Acting Administrator Mullen when establishing Yugoslavia, France, Poland, Hungary, and Australia as the list of non-traditional suppliers in 1981. In the 1981 Final Rule, then-Acting Administrator Mullen stated:

> However, in view of the past commercial relations with certain other countries as sources of narcotic raw material supply and the desirability of preserving alternate sources of narcotic raw materials, it is appropriate to allow certain specific countries to compete for the U.S. narcotic raw materials market on a limited basis. These countries, France, Poland, Hungary and Yugoslavia have provided the United States with supplies of narcotic raw materials during the period 1975 and 1979 and represent appropriate alternate sources. Australia is included as well since it was the source of material for which import permits had been requested during that time period. In addition, we are presently persuaded that the nations mentioned above impose adequate controls over their production of narcotic raw materials in adherence to their obligations under the Single Convention. (46 FR 41775).

Then-Acting Administrator Mullen reaffirmed DEA's obligations to preserve alternate sources of NRM for the United States market. In an effort to determine the sources from which NRM could be derived, he established the following two criteria in designating the list of alternate sources: (1) The country had to have supplied the United States with NRM for a period of five years prior to the resolution's passage in 1979 and (2) the country had to have imposed adequate controls over the production of NRM consistent with its obligations under the Single Convention. In his decision, then-Acting Administrator Mullen created an exception to the first criterion; this exception allowed the Government of Australia to be added to the list of non-traditional suppliers. Specifically, then-Acting Administrator Mullen found that, if a country was not the source of imports during the period 1975–1979, then the country had to be a source from which DEA-registered importers of NRM had requested authority to import. Although Australia did not export NRM to the United States during the period 1975–1979, it was added because DEA-registered NRM importers had expressed interest in importing from Australia and had submitted to DEA the required ''Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes'' (DEA–357) from Australia.

Based on this exception, one could conclude that Spain, despite not having been a source of NRM to the United States from 1975–1979, could qualify consistent with the 80/20 rule if a DEA-registered importer had expressed its interest in importing from Spain by filing a DEA–357, requesting authorization to do so. DEA notes, however, that the filing of such an application by a DEA-registered importer at present would be inconsistent with DEA regulations, specifically the 80/20 rule, and would therefore be impractical. Instead, interest in importing NRM from Spain arose through this rulemaking; DEA notes that one DEA-registered NRM importer expressed its interest in importing NRM from Spain during the comment period. DEA also notes that, during routine annual discussions with its five DEA-registered NRM importers before the receipt of the petition from the Government of Spain, the majority expressed some degree of interest in importing from Spain.

Neither the commenters nor DEA disagree with the statements of fact made by the Government of Spain that it has implemented a system of domestic controls for the handling of NRM that are consistent with the Single Convention; DEA concludes, as a result, that the second criterion has been satisfied.

DEA finds that adding Spain to the list of non-traditional suppliers is consistent with the criteria established in 1981 by then-Acting Administrator Mullen and is therefore consistent with the 80/20 rule.

Cost of Narcotic Raw Materials

One DEA-registered importer of NRM stated that DEA's Notice of Proposed

[6] Resolution 1979/8 of the Economic and Social Council. ''Maintenance of a world-wide balance between the supply of narcotic drugs and the legitimate demand for those drugs for medical and scientific purposes.''

Rulemaking ''will do little or nothing to improve adequacy of supply or the cost of NRMs for the U.S.'' The Government of Australia, in its comments to the DEA's proposed rule stated that ''Spain's petition presents no evidence to justify a need for change on the basis of adequacy of supply nor the cost effectiveness of that supply'' and that ''there is no real issue with cost.'' Finally, the foreign opiate manufacturer stated that there is no evidence that the proposed rule would maintain cost-effective supplies and that there is ''no suggestion that current supplies are not cost effective.''

DEA Response: DEA agrees that there is no evidence provided in the petition from Spain that the addition of Spain to the 80/20 rule would lead to more cost-effective supplies of NRM. This remains an open question. DEA does not routinely collect information relating to the cost of NRM or the opiates manufactured therefrom. Some of the commenters, however, provided data that demonstrate that the costs of NRM have steadily declined over the last five years and are presently at ''record lows.'' For example, the DEA-registered importer of NRM that objected to the NPRM stated that the price of CPS–M from Turkey was $660 per kilogram in 2001 and will be $300 per kilogram in 2007. The same commenter noted that CPS–T was $825 per kilogram in 2001 and will be $500 per kilogram in 2007. The foreign opiate manufacturer stated that, ''taking the United States supply price in 2001 as a benchmark, the 2006 average price of Thebaine to the United States has declined over 20%.'' Given the increasing demand for thebaine, the foreign opiate manufacturer contends that a decrease in price suggests a ''robust competitive environment.''

DEA disagrees with the implication made by the Government of Australia, however, in its statement that ''Spain's assertion that its inclusion would further an underlying policy objective of the 80/20 Rule by ensuring an adequate and reliable supply at a stable price is based on a premise that prices of NRM have not been stable.'' DEA concludes instead that the prices of NRM are directly related to the global stocks of these materials, which for more than the last 5 years have been in excess of global demand. For example, in the 2005 INCB publication, ''Narcotic Drugs: Estimated World Requirements for 2006—Statistics for 2004,'' the INCB reported that ''global production of opiate raw materials rich in morphine exceeded global demand considerably during the period 2002–2004.'' For opiate raw materials rich in thebaine, the INCB reported that ''the total supply (production and stocks) continued to be above global demand also for thebaine-rich raw materials * * * and that the balance between supply and demand will continue to be positive.'' DEA therefore concludes that the decrease in price noted by the commenters is more a function of excess supply rather than evidence of ''robust competition,'' for, as noted, Australia supplies the vast majority of the United States' demand for thebaine.

DEA further concludes that maintaining cost-effective supplies of NRM to the United States equates to striking a global balance between supply of and demand for NRM. For producer countries such as India, Turkey, Australia, France and Spain, this means reducing areas of cultivation in times when global supplies are in excess and increasing production (to the extent possible) if and when hardship arises in a producer country that results in global demand being in excess of supply. For consumer countries, such as the United States, this equates to: (1) Ensuring that there are an adequate number of sources from which to procure NRM during times in which supplies are not in excess, (2) communicating accurate estimates of United States requirements for NRM to authorized exporting countries, and (3) working with the international community, including the INCB, to ensure a global balance between supply and demand.

Replacing Yugoslavia With Spain

The Republic of Macedonia (Macedonia) forwarded a letter prepared by the only company licensed in Macedonia to purchase poppy straw and manufacture opiate alkaloids. The company raised concerns regarding DEA's comment in the NPRM that ''the successor states to the former Yugoslavia no longer produce NRM for export.'' The company disagreed with this observation, stating that Macedonia has been ''enjoying the rights arising out of the 80/20 rule for more than 25 years.'' The company therefore insisted that ''Yugoslavia can only be replaced on the list with its legitimate successor state Macedonia.'' A second commenter stated that DEA's proposed rule sought to ''replace Macedonia with Spain.'' Finally, a third commenter stated that DEA ignored ''the position of its [Yugoslavia's] clear successor state, namely Macedonia.''

DEA Response: DEA disagrees with those commenters that suggest that Macedonia is the de facto successor to Yugoslavia for purposes of the 80/20 rule. Macedonia became a sovereign country only after the dissolution of Yugoslavia. As a new country, Macedonia cannot automatically replace Yugoslavia in the 80/20 rule. Macedonia is but one of five countries that were created after the dissolution of Yugoslavia in the early 1990s. Any one of the five countries would be required to petition DEA if it wished to be added to the list of countries authorized to export NRM. DEA would then be required to review the merits of any such petition in a manner consistent with DEA's review of the petition filed by Spain.

DEA also disagrees with Macedonia's assessment that its manufacturers have ''enjoyed'' the rights arising from the 80/20 rule for the last 25 years. The company did not provide any statistical data to demonstrate previous sales to the United States or anticipated sales to the United States. In this regard, DEA conducted a review of import permits issued for NRM over the last five years and did not identify an occasion in which a United States importer requested authority to import NRM from Macedonia. Instead, according to the most recent statistics available from the INCB (statistics for 2004), Macedonia did not export opium, poppy straw, or concentrate of poppy straw from 2002 through 2004. Instead, Macedonia reported the exportation of small quantities of morphine and codeine, schedule II controlled substances whose importation into the United States is generally regarded as being prohibited by DEA regulations unless specifically requested in limited quantities for use exclusively in scientific research (21 CFR 1312.13).

Conclusion

Based on the comments received, statistical data on imports of NRM collected and analyzed by DEA pursuant to the Code of Federal Regulations, and reports from the INCB, DEA concludes that in order to continue to ensure an adequate supply of NRM necessary to meet the estimated medical, industrial, scientific, and research needs of the United States, for lawful export requirements, and for the maintenance of adequate stocks, it is appropriate to add Spain to the list of non-traditional countries permitted to export NRM to the United States.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), that he has reviewed this regulation, and by approving it certifies

that this regulation will not have a significant economic impact on a substantial number of small business entities. This rule imposes no new costs or burden on small entities. Rather, this rule adds Spain to the list of non-traditional countries permitted to export NRM to the United States, helping to ensure that United States importers and manufacturers will have access to, and be able to procure, supplies of NRM to meet legitimate United States medical, scientific, research, and industrial needs, to ensure maintenance of adequate reserve stocks, and to meet lawful export requirements. Additionally, this rule provides DEA registered importers with another source from which to purchase NRM which are utilized for the production of controlled substances used in the United States for medical purposes.

Executive Order 12866

The Deputy Assistant Administrator, Office of Diversion Control, further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). It has been determined that this is a significant regulatory action. Therefore, this action has been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132

This rule does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

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

List of Subjects in 21 CFR Part 1312

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR part 1312 is amended as follows:

PART 1312—IMPORTATION AND EXPORTATION OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1312 continues to read as follows:

Authority: 21 U.S.C. 952, 953, 954, 957, 958.

■ 2. Section 1312.13 is amended by revising paragraphs (f) and (g) to read as follows:

§ 1312.13 Issuance of import permit.

* * * * *

(f) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, the Administrator shall permit, pursuant to section 1002(a)(1) or 1002(a)(2)(A) of the Act (21 U.S.C. 952(a)(1) or (a)(2)(A)), the importation of approved narcotic raw material (opium, poppy straw and concentrate of poppy straw) having as its source:

(1) Turkey,

(2) India,

(3) Spain,

(4) France,

(5) Poland,

(6) Hungary, and

(7) Australia.

(g) At least eighty (80) percent of the narcotic raw material imported into the United States shall have as its original source Turkey and India. Except under conditions of insufficient supplies of narcotic raw materials, not more than twenty (20) percent of the narcotic raw material imported into the United States annually shall have as its source Spain, France, Poland, Hungary and Australia.

Dated: January 30, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. E8–2142 Filed 2–5–08; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0280; FRL–8346–9]

Clothianidin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of clothianidin in or on sugar beet roots, tops and molasses. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 6, 2008. Objections and requests for hearings must be received on or before April 7, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0280. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kable Bo Davis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:

(703) 306–0415; e-mail address: *davis.kable@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

• Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

• Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

• Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0280 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before April 7, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0280, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 30, 2007 (72 FR 21263) (FRL–8124–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7159) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.586 be amended by establishing a tolerance for residues of the insecticide clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on beet, sugar, root at 0.02 parts per million (ppm); beet, sugar, tops at 0.04 ppm; and beet, sugar, molasses at 0.06 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Upon completing review of the current clothianidin database, the Agency concluded that the appropriate tolerance levels for clothianidin residues in or on pending crops should be established as follows: Beet, sugar, roots at 0.02 ppm, beet, sugar, molasses at 0.05 ppm and beet, sugar, dried pulp at 0.03 ppm. The Agency no longer considers sugar beet tops to be a significant livestock feedstuff; therefore, a separate tolerance for tops is not required.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of clothianidin on beet, sugar, roots at 0.02 ppm, beet, sugar, molasses at 0.05 ppm and beet, sugar, dried pulp at 0.03. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information

concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by clothianidin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The risk assessment is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2007–0280 in that docket.

Clothianidin does not appear to exhibit toxicity towards a consistent specific target organ. Decreases in body weight and body weight gain were observed in rats, dogs, and mice. In single-dose studies, mice (acute toxicity category II) appear more sensitive than rats (category IV). Clinical signs of neurotoxicity were exhibited in both mice (decreased motor activity, tremors, and deep respirations at 50 milligram/kilogram (mg/kg)) and rats (transient signs of decreased arousal, motor activity, and locomotor activity at 100 mg/kg) in acute neurotoxicity studies following exposure by gavage; however, no indications of neurotoxicity were observed following dietary exposure in the subchronic neurotoxicity study in rats. In a developmental neurotoxicity study in rats, decreased body weights, body weight gains, motor activity, and acoustic startle response amplitude (females) were seen in offspring at doses lower than those resulting in maternal toxicity. Although the NOAELs were similar for the subchronic and chronic feeding studies in the rat, a greater spectrum of effects was observed in the chronic study (decreased body weight, body weight gain, and food consumption plus additional observations in the liver, ovary, and kidney) versus the subchronic study (effects only on body weight and food consumption). In the rat, administration via the oral route appears to be more toxic than via the dermal route. In longer term studies, dogs exhibited clinical signs of anemia. The only observed effects in mice following chronic dietary administration were increases in vocalization and decreases in body weight and body weight gain. Clothianidin has been classified as not likely to be carcinogenic to humans.

There was no evidence of increased quantitative or qualitative susceptibility of rat or rabbit offspring in developmental studies; however, increased quantitative susceptibility of rat pups was seen in both the reproduction and developmental neurotoxicity studies. The degree of concern for both of these studies is low because the observed effects are well characterized, and there are clear NOAELs and LOAELs. The NOAEL for the effects of concern identified in the reproduction study (decreased mean body weight gain and absolute thymus weights in pups, delayed sexual maturation, and an increase in still births) is the basis for the endpoint selected for the chronic dietary and short-term, intermediate-term and long-term non-dietary risk assessments.

In adult rats, a guideline immunotoxicity study shows no clothianidin-mediated immunotoxicity at doses lower than those resulting in generalized signs of toxicity (e.g., decreases in body weight); however, it cannot be concluded that a similar lack of effects will occur in offspring. Based on evidence of decreased absolute and adjusted organ weights of the thymus and spleen in multiple studies in the clothianidin data base and on evidence of increased quantitative susceptibility of juvenile rats, compared to adults, in the 2–generation reproduction study to these effects, a developmental immunotoxicity (DIT) study has been required.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which the NOAEL in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the LOAEL is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day–26/p30948.htm*.

A summary of the toxicological endpoints for clothianidin used for human risk assessment can be found at *http://www.regulations.gov* in document ''Clothianidin: Human Health Risk Assessment for Proposed Use on Sugar Beet'' at pages 18–20 in docket ID number EPA–HQ–OPP–2007–0280.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to clothianidin, EPA considered exposure under the petitioned-for tolerances as well as all existing clothianidin tolerances in (40 CFR 180.586). EPA assessed dietary exposures from clothianidin in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). The acute assessment is based on maximum residues of clothianidin observed in clothianidin and thiamethoxam field trials and assumes 100 percent crop treated (%CT).

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. The chronic assessment is based on average residues from clothianidin and thiamethoxam field trials and assumes 100% CT.

iii. *Cancer*. Because clothianidin is not expected to pose a cancer risk, a quantitative dietary exposure assessment for the purposes of assessing cancer risk was not conducted.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must pursuant to FFDCA section 408(f)(1) require that

data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

The Agency used PCT information as follows:

The acute assessment is based on maximum residues of clothianidin observed in clothianidin field trials and assumes 100% crop treated. The chronic assessment is based on average residues from clothianidin field trials and also assumes 100% CT.

The Agency believes that the three conditions listed in Unit III. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which clothianidin may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for clothianidin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of clothianidin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of clothianidin for acute exposures are estimated to be 7.29 parts per billion (ppb) for surface water and 5.84 ppb for ground water. The EECs for chronic exposures are estimated to be 1.35 ppb for surface water and 5.84 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 7.29 ppb was used to access the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 5.84 ppb was used to access the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clothianidin is currently registered for the following residential non-dietary sites: Turfgrass. EPA assessed residential exposure using the following assumptions: The following exposure scenarios were assessed for residential post-application risks: Toddlers playing on treated turf, adults performing yard work on treated turf, and adults and youths playing golf on treated turf.

Additional information on residential exposure assumptions can be found at *www.regulations.gov* (Docket ID EPA–HQ–OPP–2007–0280, pages 26 through 27).

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Clothianidin is a member of the neonicotinoid class of pesticides and is a metabolite of another neonicotinoid, thiamethoxam. Structural similarities or common effects do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events (EPA, 2002). Although clothianidin and thiamethoxam bind selectively to insect nicotinic acetylcholine receptors (nAChR), the specific binding site(s)/receptor(s) for clothianidin, thiamethoxam, and the other neonicotinoids are unknown at this time. Additionally, the commonality of the binding activity itself is uncertain, as preliminary evidence suggests that clothianidin operates by direct competitive inhibition, while thiamethoxam is a non-competitive inhibitor. Furthermore, even if future research shows that neonicotinoids share a common binding activity to a specific site on insect nicotinic acetylcholine receptors, there is not necessarily a relationship between this pesticidal action and a mechanism of toxicity in mammals. Structural variations between the insect and mammalian nAChRs produce quantitative differences in the binding affinity of the neonicotinoids towards these receptors, which, in turn, confers the notably greater selective toxicity of this class towards insects, including aphids and leafhoppers, compared to mammals. While the insecticidal action of the neonicotinoids is neurotoxic, the most sensitive regulatory endpoint for clothianidin is based on unrelated effects in mammals, including changes in body and thymus weights, delays in sexual maturation, and still births. Additionally, the most sensitive toxicological effect in mammals differs across the neonicotinoids (e.g., testicular tubular atrophy with thiamethoxam; mineralized particles in thyroid colloid with imidaclopid). Thus, there is currently no evidence to indicate that neonicotinoids share common mechanisms of toxicity, and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the neonicotinoids. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism released by EPA's Office of Pesticide Programs on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

Note that because clothianidin is a major metabolite of thiamethoxam, EPA has combined exposure to clothianidin resulting both from thiamethoxam use and from use of clothianidin as an active ingredient and has compared this aggregate exposure estimate to relevant endpoints for clothianidin. EPA has taken the further conservative step of assuming that, in instances where both thiamethoxam and clothianidin are

registered for use on a crop, both pesticides will, in fact, be used on that crop.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. In the developmental neurotoxicity study, toxicity in the offspring was observed at a lower dose level than the dose that caused toxicity in the maternal animals. Maternal effects included decreased body weights, body weight gains, and food consumption. Effects seen in the offspring included decreased body weights, body weight gains, motor activity, and acoustic startle response in the females. However, EPA determined that the degree of concern for the developmental neurotoxicity study is low and there are no residual uncertainties for prenatal and/or postnatal toxicity due to the results of the developmental neurotoxicity study because the observed effects are well characterized and there are clear NOAELs/LOAELs.

In the 2–generation reproduction study, offspring toxicity (decreased body weight gains, delayed sexual maturation in males, decreased absolute thymus weights in F1 pups of both sexes, and an increase in stillbirths in both generations) was seen at a lower dose than the dose that caused parental toxicity. Based on evidence of decreased absolute and adjusted organ weights of the thymus and spleen in multiple studies in the clothianidin data base and on evidence of increased quantitative susceptibility of juvenile rats, compared to adults, in the 2–generation reproduction study to these effects. EPA has required that testing be conducted to assess immune system function in adults and in young animals following exposure during the period of organogenesis. No quantitative or qualitative susceptibility was observed in either of the developmental rat or rabbit studies. In the rat, no developmental toxicity was observed at the highest dose tested, although this dose level induced decreases in body weight gain and food consumption in the dams. In the rabbit, premature deliveries, decreased gravid uterine weights, an increase in litter incidence of a missing lobe of the lung, and a decrease in the litter average for ossified sternal centra per fetus were noted at a dose level in which maternal death, a decrease in food consumption, and clinical signs (scant feces and orange urine) were observed. Since the developmental effects observed in the rabbit study were seen in the presence of maternal toxicity, they are not considered to be qualitatively more severe than the maternal effects.

3. *Conclusion*. The exposure data for clothianidin are complete or are estimated based on data that reasonably accounts for potential exposures. The acute dietary exposure assessment is based on maximum residues of clothianidin observed in clothianidin and thiamethoxam field trials and assumes 100% CT. The chronic assessment is based on average residues from clothianidin and thiamethoxam field trials and also assumes 100% CT. For water, the highest acute estimate from conservative models was used for both the acute and the chronic dietary exposure analyses. By using these conservative assessments, acute and chronic exposures/risks will not be underestimated. The residential exposure assessment utilizes residential standard operation procedures (SOPs) to assess post-application exposure to children as well as incidental oral ingestion by toddlers. The residential SOPs are based on reasonable worst-case assumptions and will not likely underestimate exposure/risk. These assessments are unlikely to underestimate the potential exposure to 74,800 infants and children resulting from the use of clothianidin.

The toxicology data base for clothianidin, however, is not complete for FQPA purposes. A complete complement of acceptable developmental, reproduction, developmental neurotoxicity, mammalian neurotoxicity and special neurotoxicity studies are available; however, due to evidence of decreased absolute and adjusted organ weights of the thymus and spleen in multiple studies in the clothianidin database, and because juvenile rats in the two–generation reproduction study appear to be more susceptible to these effects, EPA has determined that testing should be conducted to assess immune system function in adults and in young animals following developmental exposures. Given the levels at which this testing should be conducted it could result in selection of a more protective (i.e., lower) regulatory endpoint.

Due to the uncertainty with regard to potential effects on immune system function in young animals, EPA cannot conclude that there are reliable data supporting selection of a children's safety factor different from the presumptive 10X factor. Therefore, the 10X FQPA children's safety factor will be retained. This safety factor will be in the form of a database uncertainty factor to account for the lack of the testing with regard to immune system function with clothianidin.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to clothianidin will occupy 45% of the aPAD for the population group (children 1–2 years old) receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to clothianidin from food and water will utilize 16% of the cPAD for the population group (children 1–2 years old). Based on the use pattern, chronic residential exposure to residues of clothianidin is not expected.

3. *Short-term / Intermediate-term risk*. Short-term aggregate and intermediate-term aggregate exposures take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Clothianidin is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for clothianidin.

EPA has determined that, for clothianidin, the toxicological effects

are the same across oral, dermal, and inhalation routes of exposure and has selected the same endpoint and dose for short-term and intermediate-term exposure scenarios. Therefore, the exposures are simply summed (combined/aggregated) for use in risk calculations. Short- and intermediate aggregate risk estimates range from an MOE of 1,100 for toddlers (food + water + treated turf + treated soil + dermal) to 22,000 for youth golfers (food + water + post-application treated turf). The short-term and intermediate-term aggregate risks associated with the registered and proposed uses of clothianidin do not exceed the Agency's LOC for the general U.S. population or any population subgroup.

4. *Aggregate cancer risk for U.S. population*. Clothianidin has been classified as a ''not likely human carcinogen.'' It is not expected to pose a cancer risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to clothianidin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate liquid chromotography/mass spectrometry/mass spectrometry (LC/MS/MS) methods are available for both collecting data and enforcing tolerances for clothianidin residues in plant (Bayer Methods 00552 and 109240–1) and animal (Bayer Method 00624) commodities. The validated limit of quantitation (LOQ) for clothianidin in plant commodities is 0.010 ppm, except for wheat straw (0.020 ppm), and the validated LOQs are 0.010 ppm in milk and 0.020 ppm in animal tissues. All three of these methods have been reviewed by EPA's Analytical Chemistry Laboratory (ACL), approved for tolerance enforcement, and forwarded to FDA for inclusion in PAM Volume II.

B. International Residue Limits

There are no established or proposed Canadian, Mexican, or Codex maximum residue limits (MRLs) for clothianidin residues on sugar beet commodities.

V. Conclusion

Therefore, the tolerance is established for residues of (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on beet, sugar, roots at 0.02 ppm, beet, sugar, molasses at 0.05 ppm and beet, sugar, dried pulp at 0.03.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 22, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.586 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.586 Clothianidin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Beet, sugar, dried pulp ...	0.03
Beet, sugar, molasses	0.05
Beet, sugar, roots	0.02
* * *	* *

* * * * *

[FR Doc. E8–1784 Filed 2–5–08; 8:45 am]

BILLING CODE 6560–50–S

Proposed Rules

Federal Register
Vol. 73, No. 25
Wednesday, February 6, 2008

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AL18

Time-in-Grade Rule Eliminated

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes eliminating the time-in-grade restriction on advancement to competitive service positions in the General Schedule. Currently, employees in competitive service General Schedule positions at grades 5 and above must serve 52 weeks in grade before becoming eligible for promotion to the next grade level. Abolishing the restriction would eliminate the 52-week service requirement. If the requirement is eliminated, an employee must continue to meet occupational qualification standard requirements, and any additional job-related qualification requirements, established for the position.

DATES: Comments must be received on or before April 7, 2008.

ADDRESSES: You may submit comments, identified by RIN number ''3206–AL18,'' using any of the following methods:

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

E-mail: employ@opm.gov. Include ''RIN 3206–AL18, Time in Grade'' in the subject line of the message.

Fax: (202) 606–2329.

Mail: Mark Doboga, Deputy Associate Director, Center for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700.

Hand Delivery/Courier: Mark Doboga, Deputy Associate Director, Center for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Gonzales Vay by telephone (202) 606–0960; by fax (202) 606–2329; by TTY (202) 418–3134; or by e-mail *christina.vay@opm.gov.*

SUPPLEMENTARY INFORMATION: Federal employees in General Schedule (GS) competitive service positions at grades 5 and above qualify for promotions to higher grades if they meet two criteria: (1) Have at least one year of specialized experience equivalent in difficulty to the next lower grade level or (in some cases) the equivalent education; and (2) have service of at least 52 weeks at their current grade (known as ''time in grade''). We are proposing eliminating the time-in-grade restriction as a prerequisite for promotion.

The time-in-grade restriction originated in a statute called the *Whitten Amendment.* The *Whitten Amendment* was passed by Congress in 1952 during the Korean conflict. The statute was created to prevent the permanent buildup of the civil service with expanded grade levels during the Korean conflict, as had happened during World War II.

The *Whitten Amendment* consisted of a series of personnel controls. The controls included a requirement to make all promotions and appointments on a temporary basis to simplify adjusting personnel actions downward at the end of the conflict; to conduct an annual survey of positions to assure each was properly graded; and to implement the time-in-grade restrictions to prevent excessively rapid promotions of Federal employees in GS competitive and excepted service positions.

Before the *Whitten Amendment* expired, Congress sought a review by the predecessor of OPM, the Civil Service Commission (Commission), to determine whether to retain any of the provisions in the amendment. The Commission reported that the time-in-grade restriction for competitive service GS positions had been placed in regulation and would continue even if the *Whitten Amendment* expired. The law expired September 14, 1978, and time in grade continues in regulation for competitive service GS positions.

On June 14, 1995 (59 **Federal Register** (FR) 30717) and January 10, 1996 (60 FR 2546), we published proposals to eliminate time in grade. Because almost 12 years have passed since publication of the first proposal, we are providing interested individuals another opportunity to comment.

Reasons for Proposed Elimination

We propose eliminating time in grade for the following reasons:

—*Grade Control No Longer Needed.* When the *Whitten Amendment* was first enacted, no effective means existed to prevent employees from advancing quickly through the grades. Today, Governmentwide qualification standards, established by OPM, are in place for competitive service GS positions. (The OPM Operating Manual *Qualification Standards for General Schedule Positions* is available on the OPM Web site (*http://www.opm.gov*)).

Eliminating the time-in-grade restriction will not have an impact on how agencies now use qualification standards to evaluate candidates. Currently, candidates may demonstrate possession of either experience of at least one year (acquired through any paid or unpaid work or non-work setting or situation in which the experience enabled the individual to acquire the required competencies/knowledge, skills, or abilities) and/or the appropriate level of education as outlined in the OPM Operating Manual. Agencies must continue to ensure that candidates for promotion possess the required level of experience at the appropriate grade level (as defined in the classification standards) and/or meet the education requirements.

In addition to using OPM qualification standards and/or education levels, agencies also have the discretion to establish additional requirements beyond the OPM qualification standards that employees must meet for promotions. Many have done so. Examples of requirements include the specific level of performance to meet, possession of specific job-related competencies/knowledge, skills, and abilities, evidence that higher level duties exist, and/or availability of funds.

Eliminating the time-in-grade requirement will not eliminate the agency's determination on whether a candidate is qualified to perform the essential higher level duties. Rather, elimination of the 52-week time in grade waiting period reinforces the principle

that promotions are based on an individual's ability to perform the requirements of the position (i.e., merit) not longevity.

—*Performance Management Accountability Continues.* Managers are responsible for ensuring there are sound performance management criteria based on job-related factors at the appropriate levels of proficiency when considering promotions of employees to higher graded duties. Eliminating the time-in-grade requirement will help dispel the myth that promotion automatically follows a set period of time spent in a particular grade, and instead emphasizes the importance of the qualification requirements, as well as the quality and level of performance needed to succeed at the next higher grade level.

—*Safeguards Are Now in Place.* When time in grade expired in the *Whitten Amendment,* the merit systems principles (title 5, United States Code (U.S.C.), section 2301) and prohibited personnel practices (5 U.S.C 2302) had not been enacted as statutory provisions or codified in the United States Code. Alleged violations may be pursued and investigated and corrective or disciplinary actions may be warranted.

—*Inconsistencies Exist Among Federal Employees.* Time in grade applies to competitive service GS employees, but does not apply to competitive service employees under other pay plans, including employees in Wage Grade positions. Time in grade does not apply to those competitive service GS employees who apply for other competitive service positions through a competitive examination. The time-in-grade restriction does not apply to excepted service GS employees, although individual agencies can, at its discretion, require time in grade for their excepted service employees. This disparate treatment of employees under varying appointments and pay plans highlights the inequities of retaining time in grade.

Eliminating time in grade enables any Federal competitive service GS employee (regardless of current occupation or grade), who meets the qualification standards for a particular position, to become eligible for promotion to a competitive service GS position. This can be done through a competitive examination or under an agency's internal merit promotion procedures, as applicable. Elimination also gives agencies the flexibility to continue requiring employees to meet a specified amount of time in their current grade, regardless of their qualifications.

We do not believe time-in-grade elimination will lead to a large number of excessively rapid promotions Governmentwide. Over the years, many demonstration projects have waived the use of time in grade, especially when pay banding was incorporated. In these cases, agencies imposed their own internal policies regarding promotions which were similar to time in grade. In the China Lake demonstration project, for example, OPM data indicate workers progressed through the bands at a slower rate, at least initially, than people in the GS pay scale. (To illustrate, an employee in a competitive service GS position can sometimes receive a pay raise, a within-grade increase, and a promotion in the same year and do so again in consecutive years, whereas a more disciplined pay system makes movement through the band less automatic and rapid.) Moreover, we are not aware of any widespread abuses concerning those positions that do not have a time-in-grade requirement.

—*Labor Market Challenges Exist.* Competitive pressures in the labor market challenge the Federal Government's ability to recruit, select, and retain highly qualified employees. These pressures did not exist during the time of the *Whitten Amendment.* Applying time in grade sometimes results in eliminating from consideration candidates who are in fact able to successfully perform the essential duties of the position. The merit system requires determining the qualifications of individuals; identifying appropriate recruitment sources; ensuring there is representation of all segments of society in the workforce; determining that selection and advancement are based solely on relative competencies/knowledge, skills, and ability; and ensuring that all receive equal opportunity through fair and open competition. Agencies already must meet these requirements; time in grade does not enhance agency ability to recruit, select, and retain the broadest pool possible of qualified Federal employees. In fact, time in grade can limit the pool of possible qualified candidates. The proposal to eliminate time in grade is consistent with upholding merit principles, and has the added benefit of helping agencies recruit and hire in tight labor market conditions.

—*Agencies Gain Flexibility.* Eliminating the time-in-grade requirement will simplify OPM and agency operations. It will remove administrative burdens because agencies will no longer need OPM approval of training agreements that provide for consecutive accelerated promotions. Also, agencies will be able to implement flexibilities, such as pay banding or new ideas proposed in demonstration projects, without being required to obtain approval from OPM to waive time in grade.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM proposes to amend 5 CFR part 300 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. Revise the authority citation for part 300 to read as follows:

Authority: 5 U.S.C. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 1104 and 3341.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Subpart F—[Removed and Reserved]

2. Remove and reserve subpart F, consisting of §§ 300.601 through 300.606.

[FR Doc. E8–2122 Filed 2–5–08; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0031]

RIN 1625–AA08

Regattas and Marine Parades; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule proposes restrictions on vessel movement in portions of the Calumet Sag Channel and the Little Calumet River during the annual Southland Regatta. The Southland Regatta is a university rowing race that will be held annually during the first weekend of November. This proposed rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades.

DATES: Comments and related materials must reach the Coast Guard on or before May 6, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0031 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0031), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name, mailing address, and an e-mail address or other contact information in the body of your document to ensure that you can be identified as the submitter. This also allows us to contact you in the event further information is needed or if there are questions. For example, if we cannot read your submission due to technical difficulties and you cannot be contacted, your submission may not be considered. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2008–0031) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

SUPPLEMENTARY INFORMATION:

Public Meeting

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

Background and Purpose

This proposed rule will add a section to 33 CFR part 100 that will place restrictions on the portions of the Calumet Sag Channel and the Little Calumet River during the annual Southland Regatta. The Southland Regatta is a university rowing race that will be held annually during the first weekend of November.

Discussion of Proposed Rule

This proposed rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after the Southland Regatta. This proposed rule will establish restrictions upon and control the movement of vessels through a portion of the Calumet Sag Channel and the Little Calumet River immediately prior to, during, and immediately after the Southland Regatta.

This proposed rule would regulate all waters of the Calumet Sag Channel from the South Halstead Street Bridge at 41°39′27″ N, 087°38′29″ W; to the Crawford Avenue Bridge at 41°39′05″ N, 087°43′08″ W; and the Little Calumet River from the Ashland Avenue Bridge at 41°39′07″ N, 087°39′38″ W; to the junction of the Calumet Sag Channel. (DATUM: NAD 83).

The Captain of the Port will issue a notice of enforcement of the special local regulations established by this section, by all appropriate means, to the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under

section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard's use of this special local regulation will be periodic, of short duration, and designed to minimize the impact on navigable waters. This regulation will only be enforced immediately before, during, and immediately after the time the marine events occur. Furthermore, this special local regulation has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the special local regulation. The Coast Guard expects insignificant adverse impact to mariners from the activation of this special local regulation.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor on the Calumet Sag Channel and the Little Calumet River on the first Saturday of November.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule would be in effect for short periods of time and only once per year; is designed to allow traffic to pass safely around the zone whenever possible; and allows vessels to pass through the zones with the permission of the Captain of the Port.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this proposed rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15

U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this proposed rule should be categorically excluded, under figure 2–1, paragraph 34(h) of the Instruction, from further environmental documentation. This proposed rule would establish a special local regulation issued in conjunction with a regatta or marine parade, and as such is covered by this paragraph.

A preliminary ''Environmental Analysis Check List'' and a preliminary ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the proposed rule should be categorically excluded from further environmental review. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.910 to read as follows:

§ 100.910 Southland Regatta; Blue Island, IL.

(a) *Regulated Area.* A regulated area is established to include all waters of the Calumet Sag Channel from the South Halstead Street Bridge at 41°39′27″ N, 087°38′29″ W; to the Crawford Avenue Bridge at 41°39′05″ N, 087°43′08″ W; and the Little Calumet River from the Ashland Avenue Bridge at 41°39′07″ N, 087°39′38″ W; to the junction of the Calumet Sag Channel. (DATUM: NAD 83).

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective Period.* This section is effective annually on the Saturday immediately prior to the first Sunday of November, from 3 p.m. until 5 p.m.; and the first Sunday of November, from 9 a.m. until 5 p.m.

Dated: January 17, 2008.

J.R. Castillo,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. E8–2165 Filed 2–5–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2007–0143]

RIN 1625–AA00

Safety Zone; Oceanside Harbor, California

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a temporary safety zone within the navigable waters of the Pacific Ocean in Oceanside Harbor, California for the Ford Ironman 70.3 California Triathlon. This temporary safety zone is necessary to provide for the safety of the participants (swimmers), crew, spectators, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before March 3, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–0143 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Petty Officer Kristen Beer, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7233. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2007–0143), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have

questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2007–0143) in the box under ''Search'', and click ''Go''. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Public Meeting

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

Background and Purpose

The Ford Ironman 70.3 California Triathlon is sponsored by North American Sports, Inc. The proposed event would consist of twenty-two hundred (2,200) participants. The waterside swim course begins in South Oceanside Harbor, with a turn-around in the vicinity of Oceanside Channel buoy 3, thence to the Oceanside Harbor Launch Ramp for a transition to the bicycle portion of the event. The 1.2 mile swim course would require a safety zone while swimmers are on the course, thus restricting all vessel traffic within Oceanside Harbor for three (3) hours. There will be six (6) to eight (8) kayaks, two (2) to four (4) paddle boards, fifteen (15) surfboards, and two (2) motorboats provided by the sponsor to enforce the safety zone.

Discussion of Proposed Rule

The Coast Guard proposes to establish one (1) safety zone that will be enforced from 6:30 a.m. to 9:30 p.m. on Saturday, March 29, 2008 for the Ford Ironman 70.3 California Triathlon. This temporary safety zone is necessary for the safety of participant swimmers and the staff members of the race and will affect use of the waterway during the period of the event. The event will last for one day. The event is anticipated to draw fairly large crowds and the safety zone is established to ensure their safety. The limits of this temporary safety zone are the waters of Oceanside Harbor, California, including the entrance channel.

The Coast Guard will enforce the safety zone. The Coast Guard may be assisted by other federal, state, or local agencies, including the Coast Guard Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to both criminal and civil penalties.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size and location of the safety zone within the water. Commercial and recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

(1) This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the portion of the Oceanside Harbor, California and the entrance channel from 6:30 a.m. to 9:30 a.m. on March 29, 2008.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only three (3) hours early in the day when vessel traffic is low. Although the safety zone would apply to the entire width of the harbor, traffic would be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the effective period, we would publish local notice to mariners (LNM) before the safety zone is enforced.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Kristen Beer, Waterways Management, U. S. Coast Guard Sector San Diego at (619) 278–7233. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

Words of Issuance and Proposed Regulatory Text

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295; 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add new § 165.T11–002 to read as follows:

§ 165.T11–002 Safety zone; Oceanside Harbor, California.

(a) *Location.* The Coast Guard proposes establishing a temporary safety zone for the Bluewater Ford Ironman 70.3 California Triathlon. The limits of this temporary safety zone are the waters of Oceanside Harbor, California, including the entrance channel.

(b) *Effective Period.* This section is effective from 6:30 a.m. to 9:30 a.m. on March 29, 2008.

(c) *Regulations.* Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

Dated: January 25, 2008.

C.V. Strangfeld,

Captain, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. E8–2167 Filed 2–5–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2008–0006; FRL–8525–9]

Final 8-Hour Ozone National Ambient Air Quality Standards Designations for the Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to designate 13 Early Action Compact (EAC) Areas as attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The EAC areas agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) required and to demonstrate attainment with the 8-hour ozone NAAQS by December 31, 2007. The States in which these 13 areas are located have submitted quality-assured data indicating that the areas are in attainment for the 8-hour ozone NAAQS based on ambient air monitoring data from 2005, 2006 and 2007. In addition, the EPA plans to revoke the 1-hour ozone NAAQS for each of these areas one year after the effective date of the designations for the 8-hour ozone NAAQS, and we would modify the 1-hour ozone NAAQS tables in the regulations to reflect the application of the revocation.

DATES: Comments must be received on or before February 21, 2008.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–OAR–2008–0006, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: A-and-R-Docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Docket EPA–HQ–OAR–2008–0006, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, Northwest, Washington, DC 20460. Please include two copies.
- *Hand Delivery:* Deliver your comments to: Air Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room 3334, Washington, DC 20004, Attention: Docket ID No. EPA–HQ–OAR–2008–0006. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0006. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, 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 *www.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 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. For further information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Driscoll, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, NC 27711, phone number (919) 541–1051 or by e-mail at: *driscoll.barbara@epa.gov* or Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304–05, Research Triangle Park, NC 27711, phone number (919) 541–5565 or by e-mail at: *cole.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This proposed action applies only to the 13 EAC areas identified in section IV, Table 1, below that have deferred designations for the 8-hour ozone NAAQS until April 15, 2008. Additionally, this action notes that in the final rule, EPA plans to take the ministerial action of revising the CFR to reflect the effective date of the nonattainment designation for the Denver EAC area, which was designated nonattainment on November 20, 2007.

B. How Is This Document Organized?

The information presented in this preamble is organized as follows:

Outline

I. General Information
  A. Does This Action Apply to Me?
  B. How is This Document Organized?
II. What Is the Purpose of This Document?
III. What Action Has EPA Taken to Date for Early Action Compact Areas?
IV. What Is the Proposed Action for the 13 Early Action Compact Areas?
V. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer Advancement Act
  J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

II. What Is the Purpose of This Document?

The purpose of this document is to propose designating 13 EAC areas as attainment for the 8-hour ozone NAAQS, as they have met all the milestones of the EAC program and demonstrated that they were in attainment with the 8-hour ozone NAAQS by December 31, 2007. At the time we take final action on this proposal we also plan to take the ministerial action of revising Section 81.306 to reflect the nonattainment designation for the Denver EAC area. On September 21, 2007, EPA extended the deferred effective date for the Denver EAC area from September 14, 2007 to November 20, 2007, while settlement negotiations were taking place, and to

allow time for an evaluation of the Denver EAC's 8-hour ozone air quality for 2005, 2006 and the first three quarters of 2007. Evaluation of the data indicated a violation of the 8-hour ozone standard, therefore, EPA took no action to further defer the effective date of designation and Denver's nonattainment designation became effective on November 20, 2007.

In addition, the EPA plans to revoke the 1-hour ozone NAAQS for each of these EAC areas one year after the effective date of the designations for the 8-hour ozone NAAQS, and we would modify the 1-hour ozone NAAQS tables in 40 CFR part 81 to reflect the application of the revocation. This action was taken for all other areas of the country except the EACs on August 3, 2005 (70 FR 44470).

III. What Action Has EPA Taken to Date for Early Action Compact Areas?

Currently, there are 28 areas remaining in the EAC program. Of those 28 areas, 13 had their designations deferred for the ozone 8-hour NAAQ until April 15, 2008 (71 FR 69022).[1] The other 15 areas were designated attainment in April 2004, with an effective date of June 15, 2004. These areas have remained in the program in order to continue improving their local air quality. For discussions on EPA's actions to date with respect to deferring the effective date of nonattainment designations for certain areas of the country that are participating in the EAC program and Denver specifically please refer to the **Federal Register** dated June 28, 2007 (72 FR 35356) and September 21, 2007 (72 FR 53952). In addition, EPA's April 30, 2004, air quality designation rule (69 FR 23858) provides a description of the compact area approach, the requirements for areas participating in the compact and the impacts of the compact on those areas.

You may find copies of all State reports at *http://www.epa.gov/ttn/naaqs/ozone/eac/*.

IV. What Is the Proposed Action for the 13 Early Action Compact Areas?

The 13 EAC areas with deferred designations for the 8-hour NAAQS, had to meet one final milestone which was to demonstrate attainment with the 8-hour ozone NAAQS by December 31, 2007. Each of these EAC areas met all of the earlier milestones of the EAC program and the States in which the areas are located have now submitted quality-assured data demonstrating that the areas attained the 8-hour ozone NAAQS based on air quality data from 2005, 2006 and 2007. Therefore, EPA is proposing to designate these 13 areas as attainment for the 8-hour ozone standard. Table 1 provides the 8-hour ozone design values for each of the 13 EAC areas based on the 2005–2007 air quality data.

TABLE 1.—8-HOUR OZONE DESIGN VALUES FOR COMPACT AREAS PROPOSED TO BE DESIGNATED ATTAINMENT FOR 8-HOUR OZONE NAAQS EFFECTIVE APRIL 15, 2008

ote: Name of designated 8-hour ozone deferred nonattainment areas is in parentheses.

State	Compact area (designated area)	Counties proposed to be designated attainment effective April 15, 2008	8-hour ozone design value (parts per million)
EPA Region 3			
VA	Northern Shenandoah Valley Region (Frederick County, VA), adjacent to Washington, DC-MD-VA.	Winchester City, Frederick County	0.073
VA	Roanoke area (Roanoke, VA)	Roanoke County, Botetourt County, Roanoke City, Salem City.	0.076
MD	Washington County (Washington County, Hagerstown, MD), adjacent to Washington, DC-MD-VA.	Washington County	0.079
WV	The Eastern Pan Handle Region (Berkeley & Jefferson Counties, WV), Martinsburg area.	Berkeley County, Jefferson County	0.075
EPA Region 4			
NC	Unifour (Hickory-Morganton-Lenoir, NC)	Catawba County, Alexander County, Burke County (part), Caldwell County (part).	0.078
NC	Triad (Greensboro-Winston-Salem-High Point, NC)	Randolph County, Forsyth County, Davie County, Alamance County, Caswell County, Davidson County, Guilford County, Rockingham County.	0.083
NC	Cumberland County (Fayetteville, NC)	Cumberland County	0.082
SC	Appalachian—A (Greenville-Spartanburg-Anderson, SC).	Spartanburg County, Greenville County, Anderson County.	0.083
SC	Central Midlands—I Columbia area	Richland County (part), Lexington County (part)	0.082
TN/GA	Chattanooga (Chattanooga, TN-GA)	Hamilton County, TN, Meigs County, TN, Catoosa County, GA.	0.084
TN	Nashville (Nashville, TN)	Davidson County, Rutherford County, Williamson County, Wilson County, Sumner County.	0.084
TN	Johnson City-Kingsport-Bristol area (TN portion only)	Sullivan County, TN, Hawkins County, TN	0.083
EPA Region 6			
TX	San Antonio	Bexar County, Comal County, Guadalupe County	0.082

[1] As noted previously, we also initially deferred the nonattainment designation for the Denver EAC area, but the nonattainment designation for the Denver EAC area became effective November 20, 2007.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735; October 4, 1993) and is therefore not subject to review under the E.O.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* This proposed rule does not require the collection of any information.

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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, this proposed rulemaking is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because this rule does not contain Federal mandates.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the E.O. to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This proposed rule would not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, E.O. 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and confined governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have ''Tribal implications'' as specified in E.O. 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has

implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact. Thus Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comments on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The EAC program has provided cleaner air sooner than required under the CAA to these communities. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to ozone.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under E.O. 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any VCS. EPA welcomes comments on this aspect of the proposed rulemaking and specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629; Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: January 31, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–2187 Filed 2–5–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0674; FRL–8345–2]

2,4-D, Bensulide, DCPA, Desmedipham, Dimethoate, Fenamiphos, Phorate, Sethoxydim, Terbufos, and Tetrachlorvinphos; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke certain tolerances for the herbicide sethoxydim and the insecticides dimethoate, fenamiphos, terbufos, and tetrachlorvinphos. Also, EPA is proposing to modify certain tolerances for the herbicides 2,4-D, DCPA, desmedipham, and sethoxydim and the insecticides dimethoate, fenamiphos, phorate, and tetrachlorvinphos. In addition, EPA is proposing to establish new tolerances for the herbicides bensulide and sethoxydim. The regulatory actions proposed in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q).

DATES: Comments must be received on or before April 7, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0674 by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0674. EPA's policy is that all comments

received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, 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 regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f), if needed. The order would specify data needed and the timeframes for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the

final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke, modify, and establish specific tolerances for residues of the herbicides 2,4-D, bensulide, DCPA, desmedipham, and sethoxydim and the insecticides fenamiphos, phorate, dimethoate, terbufos, and tetrachlorvinphos in or on commodities listed in the regulatory text.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of FFDCA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each Reregistration Eligibility Decision (RED) and Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: 1–800–490–9198; fax number: 1–513–489–8695; Internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 1–800–553–6847 or (703) 605–6000; Internet at *http://www.ntis.gov*. Electronic copies of REDs, TREDs, and IREDs are available on the Internet at *http://www. epa.gov/pesticides/reregistration/status.htm*.

The selection of an individual tolerance level is based on crop field residue studies designed to produce the maximum residues under the existing or proposed product label. Generally, the level selected for a tolerance is a value slightly above the maximum residue found in such studies, provided that the tolerance is safe. The evaluation of whether a tolerance is safe is a separate inquiry. EPA recommends the raising of a tolerance when data show that:

1. Lawful use (sometimes through a label change) may result in a higher residue level on the commodity.

2. The tolerance remains safe, notwithstanding increased residue level allowed under the tolerance.

In REDs, Chapter IV on ''Risk management, Reregistration, and Tolerance Reassessment'' typically describes the regulatory position, FQPA assessment, cumulative safety determination, determination of safety for U.S. general population, and safety for infants and children. In particular, the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. In TREDs, the Agency discusses its evaluation of the dietary risk associated with the active ingredient and whether it can determine that there is a reasonable certainty (with appropriate mitigation) that no harm to any population subgroup will result from aggregate exposure. EPA also seeks to harmonize tolerances with international standards set by the Codex Alimentarius Commission, as described in Unit III.

Explanations for proposed modifications in tolerances can be found in the RED and TRED document and in more detail in the Residue Chemistry Chapter document which supports the RED and TRED. Copies of the Residue Chemistry Chapter documents are found in the Administrative Record electronically. Electronic copies are available through EPA's electronic public docket and comment system, regulations.gov at *http://www.regulations.gov*. You may search for docket ID number EPA–HQ–OPP–2007–0674 and/or 2,4-D (EPA–HQ–OPP–2004–0167), Bensulide (EPA–HQ–OPP–2007–0674 and EPA–HQ–OPP–2007–0151), DCPA (EPA–HQ–OPP–2007–0097), Desmedipham (EPA–HQ–OPP–2004–0261), Dimethoate (EPA–HQ–OPP–2005–0084), Fenamiphos (EPA–HQ–OPP–2007–0674 and EPA–HQ–OPP–2007–0151), Phorate (EPA–HQ–OPP–2007–0674 and EPA–HQ–OPP–2007–0151), Sethoxydim (EPA–HQ–OPP–2005–0323), Terbufos (EPA–HQ–OPP–2007–0674 and EPA–HQ–OPP–2007–0151), and Tetrachlorvinphos (EPA–HQ–OPP–2007–0674 and EPA–HQ–OPP–2007–0151) then click on that docket ID number to view its contents.

EPA has determined that the aggregate exposures and risks are not of concern for the above-mentioned pesticide active ingredients based upon the data identified in the RED or TRED which lists the submitted studies that the Agency found acceptable.

EPA has found that the tolerances that are proposed in this document to be modified, are safe; i.e., that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with FFDCA section 408(b)(2)(C). (Note that changes to tolerance nomenclature do not constitute modifications of tolerances). These findings are discussed in detail in each RED or TRED. The references are available for inspection as described in this document under **SUPPLEMENTARY INFORMATION.**

In addition, EPA is proposing to revoke certain specific tolerances because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or legally treated domestic commodities.

1. *2,4-D*. In the **Federal Register** notices published on June 6, 2007 (72 FR 31221) (FRL–8122–7) and September 12, 2007 (72 FR 52013) (FRL–8142–2), the Agency determined in error that the tolerances in/on grapes, stone fruits, and pome fruits should be decreased to 0.1 ppm rather than 0.05 ppm. In that same proposal, the tolerance for strawberries was increased to 0.1 ppm in error, when, in fact, it should have remained unchanged at 0.05 ppm. Therefore, EPA proposes correcting the tolerances in 40 CFR 180.142(a) for the combined 2,4-D residues of concern in/on grape from 0.1 to 0.05 ppm; fruit, stone, group 12 from 0.1 to 0.05 ppm; fruit, pome group 11 from 0.1 to 0.05 ppm, and strawberry from 0.1 to 0.05 ppm.

2. *Bensulide*. In order to account for the instability of bensulide in/on cucurbits and leafy vegetables as evidenced in a non-concurrent storage stability study, the Agency has determined the tolerances should be increased from 0.1 to 0.15 ppm in/on vegetable, cucurbit group 9 and vegetable, leafy, except brassica group 4. The Agency is also revising commodity terminology to conform to current practice including removing the negligible residue designation (N)

associated with the tolerances. Therefore, EPA proposes increasing and revising the tolerances in 40 CFR 180.241(a) for the combined bensulide residues of concern in/on cucurbits at 0.10 (N) ppm to vegetable, cucurbit group 9 at 0.15; and vegetable, leafy at 0.1 (N) ppm to vegetable, leafy, except brassica group 4 at 0.15 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Because the use of bensulide is limited to Texas, the Agency has determined that the carrot tolerance should be a regional tolerance. Therefore, EPA proposes transferring the carrot, root at 0.1 ppm tolerance in 40 CFR 180.241(a) to 40 CFR 180.241(c).

Based on available field trial data that indicate bensulide residues of concern are less than 0.15 ppm in/on the representative commodities (broccoli, cabbage, and Brussels sprouts) of the vegetable, brassica, leafy group 5, the Agency determined that the tolerance should be established for vegetable, brassica, leafy group 5 at 0.15 ppm. Therefore, EPA proposes establishing a tolerance in 40 CFR 180.241(a) for combined bensulide residues of concern in/on vegetable, brassica, leafy group 5 at 0.15 ppm.

The Agency is revising commodity terminology to conform to current practice. Therefore, EPA proposes revising the tolerances in 40 CFR 180.241 from onion, dry bulb to onion, bulb; and vegetable, fruiting to vegetable, fruiting, group 8.

Currently, there are no Codex MRLs (maximum residue levels) in place for bensulide.

3. *DCPA*. In the **Federal Register** proposal and final rule published on June 6, 2007 (72 FR 31221) (FRL–8122–7), and September 12, 2007 (72 FR 52013) (FRL–8142–2), the permanent tolerance on vegetable, brassica, leafy, group 5 at 5 ppm was transferred to inadvertent tolerance because there were no uses on brassica vegetables. Since then, it has been determined that there are direct uses of DCPA on brassica vegetables and a permanent tolerance in/on vegetable, brassica, leafy, group 5 at 5 ppm is appropriate. Therefore, EPA proposes transferring the tolerance vegetable, brassica, leafy, group 5 at 5 ppm in 40 CFR 180.185(d) to 40 CFR 180.185(a) for the combined residues of the herbicide DCPA and its metabolites MTP and TCP (calculated as DCPA).

4. *Desmedipham*. Based on field trial data received subsequent to the TRED that indicate residues of desmedipham as high as 0.05 ppm in/on sugar beet roots and an average of 1.38 ppm (standard deviation 2.88 ppm) in/on sugar beet tops, the Agency determined that the tolerance should be decreased from 0.2 ppm to 0.1 ppm in/on sugar beet roots and increased from 0.2 ppm to 5.0 ppm in/on sugar beet tops. Therefore, EPA proposes revising the tolerance on sugar beet (roots and tops) from 0.2 ppm to sugar, beet, roots at 0.1 ppm and sugar, beet, tops at 5.0 ppm in 40 CFR 180.353(a) for residues of the herbicide desmedipham (ethyl-m-hydroxycarbanilate carbanilate). The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Currently, there are no Codex MRLs in place for desmedipham.

5. *Dimethoate*. The uses on apples, cabbage, collards, head lettuce, spinach, and grapes were canceled due to revisions of the human health risk assessment for tolerance reassessment as published in **Federal Register** Notices dated Sept 10, 2003 (69 FR 53371) (FRL–7321–2), January 28, 2004 (69 FR 4135) (FRL–7340–1), and May 12, 2004 (69 FR 26384) (FRL–7354–3). Although the use on head lettuce has been canceled, the use on leaf lettuce remains. There are no active registrations with the use on blueberries; however, the blueberry tolerance is for the purpose of imports and for this reason will not be revoked. Lentils are covered by the existing pea, dry tolerance in accordance with 40 CFR 180.1(g). Therefore, EPA proposes revoking the tolerances in 40 CFR 180.204(a) for the combined dimethoate residues of concern in/on apple at 2 ppm; cabbage at 2 ppm; collards at 2 ppm; grape at 1 ppm; lentil, seed at 2 ppm; and spinach at 2 ppm; and revise lettuce to lettuce, leaf.

Based on field trial residue data serving as the basis of the tolerance on potatoes at 0.2 ppm and translating those data to turnip roots, the Agency has determined that the tolerance in/on turnip roots should be decreased to 0.2 ppm. Therefore, EPA proposes decreasing the tolerance in 40 CFR 180.204(a) for the combined dimethoate residues of concern in/on turnip, roots from 2 ppm to 0.2 ppm.

Based on available field trial data that indicate dimethoate residues of concern less than 0.1 ppm in/on sorghum grain and forage, the Agency determined that the tolerance should be decreased to 0.1 ppm in/on sorghum, grain, forage and a tolerance should be established for sorghum, grain, stover at 0.1 ppm. EPA is also revising the commodity terminology to conform to current Agency practice. Therefore, EPA proposes decreasing and revising the tolerance in 40 CFR 180.204(a) for the combined dimethoate residues of concern from sorghum, forage at 0.2 ppm to sorghum, grain, forage at 0.1 ppm and establishing a tolerance on sorghum, grain, stover at 0.1 ppm.

EPA is revising the commodity terminology to conform to current Agency practice. Also, when the tolerance reassessment was conducted for reregistration on dimethoate, the tolerance on ''wheat, green fodder'' existed. The correct terminology for ''wheat, green fodder'' is ''wheat, hay'' and ''wheat, forage.'' Recently, 40 CFR 180.204 has been revised to align commodity terminology to current standards. At that time, the ''wheat, green fodder'' tolerance was revised to ''wheat, hay'' and the tolerance for ''wheat, forage'' was inadvertently omitted; therefore, the wheat, forage tolerance should be established. Lastly, the Agency is correcting the reference to 180.1(n) to 180.1(m) in 40 CFR 180.204(c). Therefore, EPA proposes revising the tolerances in 40 CFR 180.204(a) for the combined dimethoate residues of concern in/on alfalfa to alfalfa, forage and alfalfa, hay; from corn, forage to corn, field, forage and corn, sweet, forage; corn, grain to corn, field, grain and corn, pop, grain; corn, stover to corn, field, stover and corn, pop, stover; sorghum, grain to sorghum, grain, grain; soybean to soybean, seed; and turnip, greens to turnip, tops; proposes establishing a tolerance in/on wheat, forage at 2.0 ppm and proposes revising tolerances in 40 CFR 180.204(c) from cherry to cherry, sweet and cherry, tart and revising the reference of 180.1(n) to 180.1(m).

The Codex Alimentarius Commission has established separate maximum residue limits (MRLs) for dimethoate per se and omethoate per se in/on various commodities resulting from application of the insecticides dimethoate, formothion, and omethoate. By contrast, the U.S. tolerance expression is in terms of the combined residues of dimethoate and omethoate, as a metabolite. Formothion and omethoate are not currently registered for use in the U.S. Therefore, the Codex MRLs and U.S. tolerances are not harmonized with respect to MRL/tolerance expression.

6. *Fenamiphos*. Based on the available field trial data that indicate fenamiphos residues of concern are up to 1.0 ppm in/on peanuts, the Agency determined that the tolerance should be increased to 1.0 ppm. Therefore, EPA proposes increasing the tolerance in 40 CFR

180.349(a)(1) for fenamiphos residues of concern in/on peanut from 0.02 ppm to 1.0 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result form aggregate exposure to the pesticide chemical residue.

Based on the available field trial data that indicate fenamiphos residues of concern are less than 0.05 ppm in/on eggplant and Brussels sprouts, the Agency determined that the tolerances should be decreased to 0.05 ppm. The Agency is also decreasing the Brussels sprouts tolerance to harmonize with Codex. Therefore, EPA proposes decreasing the tolerance in 40 CFR 180.349(a)(1) for fenamiphos residues of concern in/on eggplant from 0.10 ppm to 0.05 ppm and Brussels sprouts from 0.10 ppm to 0.05 ppm.

Pineapple bran is no longer regulated as a commodity in accordance with Table 1.—Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops which is found in Residue Chemistry Test Guidelines OPPTS 860.1000 dated August 1996, available at *http://www.epa.gov/opptsfrs/publications/OPPTS Harmonized/860 Residue Chemistry Test Guidelines/Series*; consequently, the Agency has determined that a pineapple bran tolerance is no longer needed. There are no active registrations for the use of fenamiphos on cotton, consequently the Agency has determined the cotton undelinted seed tolerance should be revoked. Therefore, EPA proposes removing the tolerance in/on pineapple, bran and revoking the tolerance in/on cotton, undelinted seed in 40 CFR 180.349(a)(1) for fenamiphos residues of concern.

There are currently individual tolerances for grapefruit, lemon, lime, orange, and tangerine each at 0.60 ppm. Because there are established tolerances for the representative commodities for the fruit, citrus, group 10 and the use patterns on these commodities are the same, the Agency determined that the individual tolerances should be replaced with the fruit, citrus, group 10 tolerance. Further, in order to harmonize with the Codex MRLs, the Agency has determined the tolerances associated with these commodities should be decreased from 0.60 to 0.50 ppm. Therefore, EPA proposes removing the tolerances in 40 CFR 180.349(a)(1) for fenamiphos residues of concern in/on grapefruit; lemon; lime; orange, sweet; and tangerine each at 0.60 ppm and establishing a tolerance for fruit, citrus, group 10 at 0.50 ppm.

Based on revisions of the OPPTS Harmonized Test Guidelines--Series 860 Residue Chemistry Guidelines (August 1996) Table 1 available at *http://www.epa.gov/opptsfrs/publications/OPPTS Harmonized/860 Residue Chemistry Test Guidelines/Series* eliminating several animal feed items used to estimate secondary residues in livestock commodities, the Agency determined there is no expectation of finite residues in animal commodities in accordance with Category 40 CFR 180.6(a)(3). Therefore, EPA proposes revoking all of the tolerances in 40 CFR 180.349(a)(2) for fenamiphos residues of concern in cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; milk; sheep, fat; sheep, meat; sheep, meat byproducts each at 0.05 ppm; remove 40 CFR 180.349(a)(2); and designate 40 CFR 180.349(a)(1) as 40 CFR 180.349(a).

The Agency is revising commodity terminology to correspond to current Agency practice. Therefore, EPA proposes revising tolerances in 40 CFR 180.349(a)(1) for fenamiphos residues of concern in/on grape, raisins to grape, raisin and cherry to cherry, sweet and cherry, tart.

In accordance with section 6(f)(1) of FIFRA, the Agency issued a cancellation order published on December 10, 2003 (68 FR 68901) (FRL–7332–5). The order reflects the voluntary cancellations submitted by Bayer CropScience for product registrations containing fenamiphos effective May 31, 2007. The order requires the registrant to cease sale/distribution of products (by persons other that Bayer CropScience) containing fenamiphos by May 31, 2008. Bayer CropScience anticipates that commodities treated with fenamiphos may continue to be imported into the U.S. after the final effective dates and therefore supports import tolerances for banana; fruit, citrus, group 10; garlic; grape; and pineapple. In order to permit the use of existing stocks of products to clear the channels of trade and for tolerances to cover subsequent fenamiphos residues of concern on commodities, the Agency determined the tolerances should expire on December 31, 2009 except for those tolerances for import commodities (banana; fruit, citrus, group 10; citrus, dried pulp; citrus, oil; garlic; grape; and pineapple). The tolerances for banana; fruit, citrus, group 10; garlic; grape; and pineapple will not have a U.S. registration as of December 31, 2009, and will be designated as such by a footnote. Therefore, EPA proposes establishing an expiration/revocation date of December 31, 2009, on tolerances in 40 CFR 180.349 for fenamiphos residues of concern in/on apple; Brussels sprouts; cabbage; cherry, sweet; cherry, tart; eggplant; okra; peach; peanut; raspberry; strawberry; asparagus; beet, garden, roots; beet, garden, tops; Bok choy; kiwifruit; and pepper, nonbell and add the footnote ''1 There are no U.S. registrations as of December 31, 2009.''

7. *Phorate*. Based on available field trial data that indicate phorate residues of concern do not exceed 0.05 ppm in or on beans, field and sweet corn; sorghum, grain; soybean; and sugarcane, cane; the Agency determined that the tolerance should be decreased to 0.05 ppm in/on field and sweet corn, sorghum, grain; soybean; and sugarcane, cane. Based on available field trial data that indicate phorate residues of concern do not exceed 0.2 ppm in/on potato and in order to harmonize with CODEX, the Agency has determined the tolerance should be decreased to 0.2 ppm. Therefore, EPA proposes decreasing the tolerances in 40 CFR 180.206(a) for phorate residues of concern in/on bean; corn, sweet, kernel plus cob with husks removed; corn, grain; sorghum, grain; soybean; and sugarcane, cane from 0.1 to 0.05 ppm; and potato from 0.5 to 0.2 ppm.

Based on available field trial data that indicate phorate residues of concern are up to 2.0 ppm in or on hops, the Agency determined that the tolerance should be increased to 2.0 ppm. Therefore, EPA is proposing to increase the tolerances in 40 CFR 180.206(a) for phorate residues of concern in/on hop from 0.5 to 2.0 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

The current tolerances in 40 CFR 180.206 are expressed in terms of phorate and its cholinesterase-inhibiting metabolites. The Agency has determined that the tolerance expression should be revised to harmonize with CODEX by regulating phorate, phorate sulfoxide, phorate sulfone, phorate oxygen analog, phorate oxygen analog sulfoxide, and the phorate oxygen analog sulfone, specifically. Therefore, EPA proposes revising the tolerance expression in 40 CFR 180.206(a) to regulate the combined residues of the insecticide phorate (O,O-diethyl S[(ethylthio) methyl]phosphorodithioate), phorate sulfoxide, phorate sulfone, phorate oxygen analog, phorate oxygen analog sulfoxide, and phorate oxygen analog sulfone.

When the tolerance reassessment was conducted for reregistration on phorate, the tolerance on ''wheat, green fodder''

existed. The correct terminology for ''wheat, green fodder'' is ''wheat, hay'' and ''wheat, forage.'' Recently, 40 CFR part 180 has been revised to align commodity terminology to current standards. At that time, the ''wheat, green fodder'' tolerance was revised to ''wheat, hay'' and the tolerance for ''wheat, forage'' was inadvertently omitted. Therefore, the Agency has determined a tolerance in/on wheat, forage at 1.5 ppm should be established. Therefore, EPA proposes establishing a tolerance in 40 CFR 180.206(a) for the combined residues of phorate and its cholinesterase-inhibiting metabolites in/on wheat, forage at 1.5 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

EPA is revising commodity terminology to conform to current Agency practice. Therefore, EPA proposes revising the tolerances in 40 CFR 180.206(a) for the combined residues of phorate and its cholinesterase-inhibiting metabolites from bean to bean, dry, seed and bean, succulent; coffee, bean, green to coffee, green bean; corn, forage to corn, field, forage and corn, sweet, forage; corn, grain to corn, field, grain; hop to hop, dried cones; sorghum, grain to sorghum, grain, grain; and soybean to soybean, seed; and revise the footnote to ''There are no U.S. registrations as of September 1, 1993, for the use of phorate on the growing crop, coffee.''

The proposed tolerance actions herein for phorate, to implement the recommendations of the phorate IRED, reflect use patterns in the U.S. which support a different tolerance than the Codex level on beans, beets, coffee beans, because of differences in good agricultural practices. However, compatibility currently exists between U.S. tolerances and Codex MRLs for cottonseed and will exist (upon completion of this action) for phorate residues in or on potato, sorghum grain, soybean seed, field and sweet corn/maize.

8. *Sethoxydim*. Based on available field trial data that indicate residues of sethoxydim as high as 50.7 ppm in or on clover hay and 2.2 ppm in/on cranberry, the Agency determined that the tolerance should be increased to 55 ppm in/on clover, hay and 2.5 ppm in/on cranberry. Therefore, EPA is proposing to increase the tolerances in 40 CFR 180.412 for sethoxydim residues of concern in/on clover, hay from 50 to 55 ppm and cranberry from 2.0 to 2.5 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

EPA is revising commodity terminology to conform to current Agency practice. Therefore, EPA proposes revising the tolerances in 40 CFR 180.412(a) for sethoxydim residues of concern in/on bean, forage to cowpea, forage; bean, hay to cowpea, hay; canola/rapeseed to rapeseed, seed and canola, seed; canola/rapeseed, meal to rapeseed, meal and canola, meal; coriander to coriander, leaves; corn, fodder to corn, field, fodder; corn, forage to corn, field, stover; fruit, citrus to fruit, citrus, group 10; fruit, pome to fruit, pome, group 11; peppermint, tops (stems and leaves) to peppermint, tops; potato flakes and potato granules to potato granules/flakes; potato waste, processed (wet and dry) to potato waste, processed; safflower to safflower, seed; soybean to soybean, seed; spearmint, tops (stems and leaves) to spearmint, tops; turnip, greens to turnip, tops; and vegetable, fruiting to vegetable, fruiting, group 8.

As part of improving sethoxydim tolerance harmonization between the U.S. and Canada, the Agency has reexamined the residue data and tolerance levels for bean, dry, seed at 20 ppm; lentil, seed at 30 ppm; and pea, dry, seed 40 ppm. Using the tolerance/MRL calculator developed under the North American Free Trade Agreement (NAFTA) and the dry peas, lentil, and dry bean field trial data which reflect similar use patterns, the Agency has determined the tolerances on the dry pea, lentil seed, and dry bean commodities can be revised to the pea and bean, dried shelled, except soybean, subgroup 6C at 25 ppm, which covers these commodities. Therefore, EPA proposes revising the tolerances in 40 CFR 180.412(a) for sethoxydim residues of concern from bean, dry seed at 20 ppm; lentil, seed at 30 ppm; and pea, dry, seed at 40 ppm to pea and bean, dried shelled, except soybean, subgroup 6C at 25 ppm.

Because apple dry pomace, citrus molasses, cotton seed soapstock, flax straw, peanut soapstock, tomato concentrated products, and tomato dry pomace are no longer recognized as raw agricultural commodities and are no longer considered to be significant food/feed items, the associated tolerances are no longer needed. The tolerance for flax seed currently covers the commodity flax, meal, therefore the flax, meal tolerance is no longer needed. Therefore, EPA is removing the tolerances in 40 CFR 180.412(a) in/on apple, dry pomace at 0.8 ppm; citrus, molasses at 1.5 ppm; cotton, seed, soapstock at 15 ppm; flax, straw at 2.0 ppm; flax, meal at 7 ppm; peanut, soapstock at 75.0 ppm; tomato, concentrated products at 24 ppm; and tomato, dry pomace at 12.0 ppm.

Currently, there are no Codex MRLs in place for sethoxydim.

9. *Terbufos*. The current tolerance expression in 40 CFR 180.352 regulates the insecticide terbufos (S-[[1,1-dimethyl)thio]methyl]O,O-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites. The Agency has determined that the chemical name for terbufos should be corrected and the tolerance expression should be more specific for the five phosphorylated (cholinesterase-inhibiting) metabolites. Therefore, EPA proposes revising the tolerance expression in 40 CFR 180.352(a) to regulate the combined residues of the insecticide terbufos (phosphorodithioic acid, S-(t-butylthio)methyl O,O-diethyl ester) and its phosphorylated (cholinesterase-inhibiting) metabolites (phosphorothioic acid, S-(t-butylthio)methyl O,O-diethyl ester; phosphorothioic acid, S-(t-butylsulfinyl)methyl O,O-diethyl ester; phosphorothioic acid, S-(t-butylsulfonyl)methyl O,O-diethyl ester; phosphorodithioic acid, S-(t-butylsulfinyl)methyl O,O-diethyl ester; and phosphorodithioic acid, S-(t-butylsulfonyl)methyl O,O-diethyl ester).

The Agency has determined that the coffee bean, green tolerance should be established for import purposes. The Agency is also revising the section to conform to current standards and configurations. Therefore, EPA proposes transferring the tolerance in 40 CFR 180.352(b) for the combined residues of terbufos and its cholinesterase-inhibiting metabolites in/on coffee bean, green at 0.05 ppm to 40 CFR 180.352(a); redesignate 40 CFR 180.352(b) as Section 18 emergency exemptions–reserved; establish 40 CFR 180.352(c) as tolerances with regional registrations–reserved and establish 40 CFR 180.352(d) as indirect or inadvertent residues – reserved.

EPA is revising commodity terminology to conform to current Agency practice and removing ''(N)''-negligible residue designation associated with some of the tolerances because the term is no longer applicable. Because tolerances on corn, pop, forage and corn, pop, stover refer to the same commodity (i.e. duplicative) and because corn, pop, stover is the most current terminology, the Agency has determined the tolerance on corn, pop, forage should be removed. Therefore, EPA proposes revising the tolerances in 40 CFR 180.352(a) for the

combined residues of terbufos and its cholinesterase-inhibiting metabolites from corn, grain to corn, field, grain and corn, pop, grain; sorghum, forage to sorghum, grain, forage; and sorghum, grain to sorghum, grain, grain and removing corn, pop, forage.

The proposed tolerance actions herein for terbufos, to implement the recommendations of the terbufos RED, reflect different method levels of detection (LOD) where the LOD under the CODEX system is 0.01 ppm and the LOD under the U.S. system is 0.05 ppm which result in differing Codex levels on banana, corn/maize, popcorn, sugar beets, and sweet corn than the U.S. tolerances. Other differences in MRLs and tolerances between CODEX and the U.S. exist for cereal grain straw, fodder and stover because some are measured on a dry weight basis versus a wet weight basis. Lastly, the CODEX levels have changed since the tolerance reassessment such that, currently none of the U.S. tolerances and CODEX tolerances are harmonized.

10. *Tetrachlorvinphos*. Currently, the residue of concern in 40 CFR 180.252(a)(1) is tetrachlorvinphos (2-chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate). The chemical name of tetrachlorvinphos as specified in 40 CFR 180.252 should be replaced with the CAS chemical name: (Z)-2-chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate. The Agency has also determined that the metabolites, 1-(2,4,5-trichlorophenyl)-ethanol (free and conjugated forms), 2,4,5-trichloroacetophenone, and 1-(2,4,5-trichlorophenyl)-ethanediol are also of toxicological concern and should be regulated. Therefore, EPA proposes revising the tolerance expression in 40 CFR 180.252(a)(1) to regulate the residues of the insecticide tetrachlorvinphos ((Z)-2-chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate) and its metabolites, 1-(2,4,5-trichlorophenyl)-ethanol (free and conjugated forms), 2,4,5-trichloroacetophenone, and 1-(2,4,5-trichlorophenyl)-ethanediol.

Currently, EPA has insufficient data to establish permanent tolerances for milk, cattle, hog and poultry commodities; however, EPA has been able to estimate tolerances for these livestock commodities using existing animal metabolism data on an interim basis of 18 months to permit time for the submission of additional data to support permanent tolerances. The tolerances are also being revised to address the additional tetrachlorvinphos metabolites of concern. Based on the metabolism data which indicate the tetrachlorvinphos residues of concern as high as 0.18 ppm in/on cattle and hog fat; 0.50 ppm in/on cattle and hog kidney; 0.38 ppm in/on cattle and hog liver; 1.86 ppm in/on cattle and hog meat; 0.50 ppm in/on cattle and hog meat byproducts except kidney and liver; 0.02 ppm in milk; 0.19 ppm in/on eggs; 6.1 ppm in/on poultry fat; 2.32 ppm in/on poultry meat; 1.27 ppm in/on poultry liver and 1.27 ppm in/on meat byproducts except liver, the Agency determined that interim tolerances should be established for 18 months at the decreased levels of 0.2 ppm (of which no more than 0.1 ppm is tetrachlorvinphos per se) in/on cattle and hog fat; and 0.05 ppm (of which no more than 0.05 ppm is tetrachlorvinphos per se) in/on milk, fat. The Agency also determined that interim tolerances should be established for 18 months at 1.0 ppm (of which no more than 0.05 ppm is tetrachlorvinphos per se) in/on cattle and hog kidney; 0.5 ppm (of which no more than 0.05 ppm is tetrachlorvinphos per se) in/on cattle and hog liver; 2.0 ppm (of which no more than 2.0 ppm is tetrachlorvinphos per se) cattle and hog meat; 1.0 ppm in/on cattle and hog meat byproducts except liver and kidney; 3.0 ppm (of which no more than 3.0 ppm is tetrachlorvinphos per se) in/on poultry meat; 2.0 ppm (of which no more than 0.05 ppm is tetrachlorvinphos per se) in/on poultry liver; and 2.0 ppm in/on poultry meat byproducts except liver. The Agency determined that interim tolerances should be established for 18 months at the increased level of 0.2 ppm (of which no more than 0.05 ppm is tetrachlorvinphos per se) in/on eggs; and 7.0 ppm (of which no more than 7.0 ppm is tetrachlorvinphos per se) in/on poultry fat. Therefore, EPA proposes revising and establishing 18–month time-limited tolerances in newly proposed 40 CFR 180.252(a)(1) for residues of the insecticide tetrachlorvinphos and its metabolites in/on cattle, fat and hog, fat from 1.5 ppm to 0.2 ppm (of which no more than 0.1 ppm is tetrachlorvinphos per se); cattle, kidney and hog, kidney at 1.0 ppm (of which no more than 0.05 ppm is tetrachlorvinphos per se); cattle, liver and hog, liver at 0.5 ppm (of which no more than 0.05 ppm is tetrachlorvinphos per se); cattle, meat and hog, meat at 2.0 ppm (of which no more than 2.0 ppm is tetrachlorvinphos per se); cattle, meat byproducts except kidney and liver and hog, meat byproducts except kidney and liver at 1.0 ppm; milk, fat at 0.05 ppm reflecting negligible residues in whole milk (of which no more than 0.05 ppm is tetrachlorvinphos per se); eggs from 0.1 to 0.2 ppm (of which no more than 0.05 ppm is tetrachlorvinphos per se); poultry, fat from 0.7 to 7.0 ppm (of which no more than 7.0 ppm is tetrachlorvinphos per se); poultry, meat at 3.0 ppm (of which no more than 3.0 ppm is tetrachlorvinphos per se); poultry, liver at 2.0 ppm (of which no more than 0.05 ppm is tetrachlorvinphos per se); and poultry, meat byproducts except liver at 2.0 ppm all of which expire on [18 months from the date of final publication]. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Because the Agency is taking action to establish the time-limited tolerances in/on cattle, hog and poultry commodities (above), the Agency has determined that the exception that permits ''the safe use of tetrachlorvinphos as an additive to beef cattle, dairy cattle, horse and swine feed at the rates of 0.00015 lb per 100 lb body weight per day for cattle and horses, and 0.00011 lb per 100 lb body weight per day for swine'' is no longer necessary. In addition, any uses of tetrachlorvinphos in/on horses destined for slaughter are prohibited. Therefore, EPA proposes revoking the tolerances in 40 CFR 180.252(a)(1) for residues of the insecticide tetrachlorvinphos in/on goat, fat at 0.5 ppm; horse, fat at 0.5 ppm; removing 40 CFR 180.252(a)(2); and changing the designation of 40 CFR 180.252(a)(1) to 40 CFR 180.252(a).

Currently, there are no Codex MRLs in place for tetrachlorvinphos.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered

under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of FQPA. The safety finding determination is discussed in detail in each post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued post-FQPA REDs (and Interim REDs) for 2,4-D, bensulide, DCPA, desmedipham, dimethoate, fenamiphos, phorate, sethoxydim, terbufos, and tetrachlorvinphos, whose REDs were completed prior to FQPA. Also, EPA issued a RED prior to FQPA for tetrachlorvinphos and made a safety finding which reassessed its tolerances according to the FFDCA standard, maintaining them when new tolerances were established as noted in Unit II.A. REDs and TREDs contain the Agency's evaluation of the database for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and in REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FFDCA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are proposed in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops for uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry, and/or eggs.
2. There is a reasonable expectation that finite residues will exist.
3. There is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities (40 CFR 180.6(b) and (c)).

EPA has evaluated certain specific meat, milk, poultry, and egg tolerances proposed for revocation in this document and has concluded that there is no reasonable expectation of finite pesticide residues of concern in or on those commodities.

C. When Do These Actions Become Effective?

EPA is proposing that the tolerance actions herein become effective on the date of publication of the final rule in the **Federal Register**. The tolerances proposed for revocation in this document are associated with uses that have been canceled for several years and none of the other tolerance actions proposed herein are expected to result in adulterated commodities. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider revising the expiration date of the tolerance in the final rule. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, any residues

of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance actions in this proposal are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standards established by FFDCA. The same food safety standards apply to domestically produced and imported foods.

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international Maximum Residue Limits (MRLs) established by the Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level in a notice published for public comment. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs, and in the Residue Chemistry document which supports the RED and TRED, as mentioned in Unit II.A. Specific tolerance actions in this proposed rule and how they compare to Codex MRLs (if any) are discussed in Unit II.A.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish tolerances under FFDCA section 408(e), and also modify and revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (e.g., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020) (FRL–5753–1), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed rule will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that

have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 22, 2008.

Marty Monell,

Acting Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.142 is amended by revising the entries for ''Grape,'' ''Fruit, pome, group 11,'' ''Fruit, stone, group 12,'' and ''Strawberry'' in the table in paragraph (a) to read as follows:

§ 180.142 2,4-D; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * *	*
Grape	0.05
* * * *	*
Fruit, pome, group 11	0.05
Fruit, stone, group 12	0.05
* * * *	*
Strawberry	0.05
* * * *	*

* * * * *

3. Section 180.185 is amended by removing the entry for ''Vegetable, brassica, leafy, group 5'' from the table in paragraph (d) and adding it alphabetically to the table in paragraph (a) to read as follows.

§ 180.185 DCPA; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * *	*
Vegetable, brassica, leafy, group 5	0.05
* * * *	*

* * * * *

4. Section 180.204 is amended by revising the table in paragraphs (a) and (c) to read as follows:

§ 180.204 Dimethoate; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Alfalfa, forage	2.0
Alfalfa, hay	2.0
Bean, dry, seed	2.0
Bean, lima	2.0
Bean, snap, succulent	2.0
Blueberry[1]	1.0
Broccoli	2.0
Cattle, meat byproducts	0.02
Cauliflower	2.0
Celery	2.0
Citrus, dried pulp	5.0
Corn, field, forage	1.0
Corn, field, grain	0.1
Corn, field, stover	1.0
Corn, pop, grain	0.1
Corn, pop, stover	1.0
Corn, sweet, forage	1.0
Cotton, undelinted seed	0.1
Egg	0.02
Endive	2.0
Goat, meat byproducts	0.02
Grapefruit	2.0
Hog, meat byproducts	0.02
Horse, meat byproducts	0.02
Kale	2.0
Lemon	2.0
Lettuce, leaf	2.0
Melon	1.0
Milk	0.002
Mustard greens	2.0
Orange, sweet	2.0
Pear	2.0
Pea	2.0
Pecan	0.1
Pepper	2.0
Potato	0.2
Poultry, meat byproducts	0.02
Safflower, seed	0.1
Sheep, meat byproducts	0.02
Sorghum, grain, forage	0.1
Sorghum, grain, grain	0.1
Sorghum, grain, stover	0.1
Soybean, seed	0.05
Soybean, forage	2.0
Soybean, hay	2.0
Swiss chard	2.0
Tangerine	2.0
Tomato	2.0
Turnip, tops	2.0
Turnip, roots	0.2
Wheat, forage	2.0
Wheat, grain	0.04
Wheat, hay	2.0
Wheat, straw	2.0

[1]There are U.S. registrations as of August 16, 1996.

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in 180.1(m), are established for total residues of dimethoate including its oxygen analog in or on the following food commodities:

Commodity	Parts per million
Asparagus	0.15
Brussels sprouts	5.0
Cherry, sweet	2.0
Cherry, tart	2.0

* * * * *

5. Section 180.206 is amended by revising paragraph (a) to read as follows:

§ 180.206 Phorate; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide phorate (O,O-diethyl S[(ethylthio) methyl]phosphorodithioate), phorate sulfoxide, phorate sulfone, phorate oxygen analog, phorate oxygen analog sulfoxide, and phorate oxygen analog sulfone in or on the following food commodities:

Commodity	Parts per million
Bean, dry, seed	0.05
Bean, succulent	0.05
Beet, sugar, roots	0.3
Beet, sugar, tops	3.0
Coffee, green bean[1]	0.02
Corn, field, forage	0.5
Corn, field, grain	0.05
Corn, sweet, forage	0.5
Corn, sweet, kernel plus cob with husks removed	0.05
Cotton, undelinted seed	0.05
Hop, dried cones	2.0
Peanut	0.1
Potato	0.2
Sorghum, grain, grain	0.05
Sorghum, grain, stover	0.1
Soybean, seed	0.05
Sugarcane, cane	0.05
Wheat, forage	1.5
Wheat, grain	0.05
Wheat, hay	1.5
Wheat, straw	0.05

[1]There are no U.S. registrations as of September 1, 1993, for the use of phorate on the growing crop, coffee.

* * * * *

6. Section 180.241 is amended by revising the heading and paragraphs (a) and (c) to read as follows:

§ 180.241 Bensulide; tolerances for residues.

(a) *General.* Tolerances are established for the residues of S-(O,O-diisopropyl phosphorodithioate) of N-

(2-mercaptoethyl) benzenesulfonamide including its oxygen analog S-(O,O-diisopropylphosphorodithioate) of N-(2-mercaptoethyl) benzenesulfonamide in or on the following food commodities:

Commodity	Parts per million
Onion, bulb	0.10
Vegetable, brassica, leafy group 5	0.15
Vegetable, cucurbits group 9	0.15
Vegetable, fruiting group 8	0.10
Vegetable, leafy except brassica group 4	0.15

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in 180.1(m), are established for the residues of S-(O,O-diisopropyl phosphorodithioate) of N-(2-mercaptoethyl) benzenesulfonamide including its oxygen analog S-(O,O-diisopropylphosphorodithioate) of N-(2-mercaptoethyl) benzenesulfonamide in or on the following food commodities:

Commodity	Parts per million
Carrot, roots	0.10

* * * * *

7. Section 180.252 is amended by revising paragraph (a) to read as follows:

§180.252 Tetrachlorvinphos; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide tetrachlorvinphos ((Z)-2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate) and its metabolites, 1-(2,4,5-trichlorophenyl)-ethanol (free and conjugated forms), 2,4,5-trichloroacetophenone, and 1-(2,4,5-trichlorophenyl)-ethanediol in/on the following food commodities:

Commodity	Parts per million	Expiration/Revocation Date
Cattle, fat (of which no more than 0.1 ppm is tetrachlorvinphos per se)	0.2	[date 18 months from the date of Final tolerance publication]
Cattle, kidney (of which no more than 0.05 ppm is tetrachlorvinphos per se)	1.0	[date 18 months from the date of Final tolerance publication]
Cattle, liver (of which no more than 0.05 ppm is tetrachlorvinphos per se)	0.5	[date 18 months from the date of Final tolerance publication]
Cattle, meat (of which no more than 2.0 ppm is tetrachlorvinphos per se)	2.0	[date 18 months from the date of Final tolerance publication]
Cattle, meat by products except kidney and liver	1.0	[date 18 months from the date of Final tolerance publication]
Egg (of which no more than 0.05 ppm is tetrachlorvinphos per se)	0.2	[date 18 months from the date of Final tolerance publication]
Hog, fat (of which no more than 0.1 ppm is tetrachlorvinphos per se)	0.2	[date 18 months from the date of Final tolerance publication]
Hog, kidney (of which no more than 0.05 ppm is tetrachlorvinphos per se)	1.0	[date 18 months from the date of Final tolerance publication]
Hog, liver (of which no more than 0.05 ppm is tetrachlorvinphos per se)	0.5	[date 18 months from the date of Final tolerance publication]
Hog, meat (of which no more than 2.0 ppm is tetrachlorvinphos per se)	2.0	[date 18 months from the date of Final tolerance publication]
Hog, meat byproducts except kidney and liver	1.0	[date 18 months from the date of Final tolerance publication]
Milk, fat (reflecting negligible residues in whole milk and of which no more than 0.05 ppm is tetrachlorvinphos per se)	0.05	[date 18 months from the date of Final tolerance publication]
Poultry, fat (of which no more than 7.0 ppm is tetrachlorvinphos per se)	7.0	[date 18 months from the date of Final tolerance publication]
Poultry, liver (of which no more than 0.05 ppm is tetrachlorvinphos per se)	2.0	[date 18 months from the date of Final tolerance publication]
Poultry, meat (of which no more than 3.0 ppm is tetrachlorvinphos per se)	3.0	[date 18 months from the date of Final tolerance publication]
Poultry, meat byproducts except liver	2.0	[date 18 months from the date of Final tolerance publication]

* * * * *

8. Section 180.349 is amended by revising paragraph (a) and the table in paragraph (c) to read as follows:

§ 180.349 Fenamiphos; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the nematocide fenaminphos, (ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate, and its cholinesterase inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl) phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl) phenyl (1-methylethyl) phosporamidate in or on the following food commodities:

Commodity	Parts per million	Expiration/Revocation Date
Apple	0.25	December 31, 2009
Banana[1]	0.10	None
Brussels sprouts	0.05	December 31, 2009
Cabbage	0.10	December 31, 2009
Cherry, sweet	0.25	December 31, 2009
Cherry, tart	0.25	December 31, 2009
Citrus, dried pulp	2.5	None
Citrus, oil	25.0	None
Eggplant	0.05	December 31, 2009
Fruit, citrus, group 10[1]	0.50	None
Garlic[1]	0.50	None
Grape[1]	0.10	None

Commodity	Parts per million	Expiration/Revocation Date
Grape, raisin	0.30	None
Okra	0.30	December 31, 2009
Peach	0.25	December 31, 2009
Peanut	1.0	December 31, 2009
Pineapple[1]	0.30	None
Raspberry	0.10	December 31, 2009
Strawberry	0.60	December 31, 2009

[1]There are no U.S. registrations as of December 31, 2009.

* * * * *

(c) *Tolerances with regional registrants.* * * *

Commodity	Parts per million	Expiration/ Revocation Date
Asparagus	0.02	December 31, 2009
Beet, garden roots.	1.5	December 31, 2009
Beet, garden, tops.	1.0	December 31, 2009
Bok choy	0.50	December 31, 2009
Kiwifruit	0.10	December 31, 2009
Pepper, nonbell.	0.60	December 31, 2009

* * * * *

9. Section 180.352 is revised to read as follows:

§ 180.352 Terbufos; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide terbufos (phosphorodithioic acid, S-(t-butylthio)methyl O,O-diethyl ester) and its phosphorylated (cholinesterase-inhibiting) metabolites (phosphorothioic acid, S-(t-butylthio)methyl O,O-diethyl ester; phosphorothioic acid, S-(t-butylsulfinyl)methyl O,O-diethyl ester; phosphorothioic acid, S-(t-butylsulfonyl)methyl O,O-diethyl ester; phosphorodithioic acid, S-(t-butylsulfinyl)methyl O,O-diethyl ester; and phosphorodithioic acid, S-(t-butylsulfonyl)methyl O,O-diethyl ester) in or on food commodities:

Commodity	Parts per million
Banana	0.025
Beet, sugar, roots	0.05
Beet, sugar, tops	0.1
Coffee, green bean[1]	0.05
Corn, field, forage	0.5
Corn, field, grain	0.5
Corn, field, stover	0.5
Corn, pop, grain	0.5
Corn, pop, stover	0.5
Corn, sweet, kernel plus cob with husks removed	0.05
Corn, sweet, forage	0.5
Corn, sweet, stover	0.5
Sorghum, grain, forage	0.5
Sorghum, grain, grain	0.05
Sorghum, grain, stover	0.5

[1]There are no U. S. registrations as of August 2, 1995, for the use of terbufos on the growing crop, coffee.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

10. Section 180.353 is amended by revising the table in paragraph (a) to read as follows:

§ 180.353 Desmedipham; tolerances for residues.

(a) *General.*

* * * * *

Commodity	Parts per million
Beet, garden, roots	0.05
Beet, garden, tops	1.0
Beet, sugar, roots	0.1
Beet, sugar, tops	5.0
Spinach	6.0

* * * * *

11. Section 180.412 is amended by revising the table in paragraph (a) to read as follows:

§ 180.412 Sethoxydim; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Alfalfa, forage	40
Alfalfa, hay	40
Almond, hulls	2.0
Apricot	0.2
Apple, wet pomace	0.8
Asparagus	4.0
Bean, succulent	15
Beet, sugar, molasses	10
Beet, sugar, tops	3.0
Blueberry	4.0
Borage, meal	10
Borage, seed	6.0
Buckwheat, flour	25
Buckwheat, grain	19
Caneberry subgroup 13 A	5.0
Canola, meal	40
Canola, seed	35
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, meat byproducts	1.0
Cherry, sweet	0.2
Cherry, tart	0.2
Citrus, dried pulp	1.5
Clover, forage	35
Clover, hay	55
Coriander, leaves	4.0
Corn, field, fodder	2.5
Corn, field, grain	0.5
Corn, field, stover	2.0
Corn, sweet, forage	3.0
Corn, sweet, kernel plus cob with husk removed	0.4
Corn, sweet, stover	3.5
Cotton, undelinted seed	5.0
Cowpea, forage	15
Cowpea, hay	50
Cranberry	2.5
Dillweed, fresh leaves	10
Egg	2.0
Flax, seed	5.0
Fruit, citrus, group 10	0.5
Fruit, pome, group 11	0.2
Goat, fat	0.2
Goat, meat	0.2
Goat, meat byproducts	1.0
Grape	1.0
Grape, raisin	2.0
Hog, fat	0.2
Hog, meat	0.2
Hog, meat byproducts	1.0
Horse, fat	0.2
Horse, meat	0.2
Horse, meat byproducts	1.0
Juneberry	5.0
Lingonberry	5.0
Milk	0.5
Nectarine	0.2
Nut, tree, group 14	0.2
Okra	2.5
Pea and bean, dried shelled, except soybean, subgroup 6C	25
Pea, field, hay	40
Pea, field, vines	20
Pea, succulent	10
Peach	0.2
Peanut	25
Peppermint, tops	30
Pistachio	0.2
Potato granules/flakes	8.0
Potato waste, processed	8.0
Poultry, fat	0.2
Poultry, meat	0.2

Commodity	Parts per million
Poultry, meat byproducts	2.0
Radish, tops	4.5
Rapeseed, meal	40
Rapeseed, seed	35
Safflower, seed	15
Salal	5.0
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, meat byproducts	1.0
Soybean, hay	10
Soybean, seed	16
Spearmint, tops	30
Strawberry	10
Sunflower, meal	20
Sunflower, seed	7.0
Turnip, tops	5.0
Vegetable, brassica, leafy, group 5	5.0
Vegetable, bulb, group 3	1.0
Vegetable, cucurbit, group 9	4.0
Vegetable, fruiting, group 8	4.0
Vegetable, leafy, except brassica, group 4	4.0
Vegetable, root and tuber, group 1	4.0

* * * * *

[FR Doc. E8–2094 Filed 2–5–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 07–245; FCC 07–187]

Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether to amend its rules governing pole attachments, which are designed to ensure the attachment of facilities of cable television systems and telecommunications carriers to utility poles, ducts, conduits, or rights-of-way (collectively, ''pole attachments'') at just and reasonable rates, terms and conditions. The Commission has received petitions for rulemaking from Fibertech Networks, LLC and United States Telecom Association seeking review of the current pole attachment rules, which petitioners and commenters claim are inadequate in scope or no longer accord with developing technology and business models. The Commission seeks to resolve questions regarding appropriate regulation of pole attachment rates, terms, and conditions of access.

DATES: Comments are due March 7, 2008 and Reply Comments are due March 24, 2008. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 7, 2008.

ADDRESSES: You may submit comments, identified by WC Docket No. 07–245, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Include the docket number in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Jonathan Reel, Wireline Competition Bureau, (202) 418–1580. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Jerry R. Cowden at (202) 418–0447, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file Comments on or before March 7, 2008 and Reply Comments on or before March 24, 2008. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. 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, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* 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, filers 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor 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, Express, and Priority mail must be

addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Synopsis of the Notice of Proposed Rulemaking

Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments

1. In this Notice of Proposed Rulemaking (*NPRM*), the Commission seeks comment with regard to implementation of section 224 of the Communications Act of 1934, as amended (Act). Section 224 confers on cable television systems and telecommunications carriers the right to pole attachments at just and reasonable rates, terms and conditions. In the Telecommunications Act of 1996 (1996 Act), Congress expanded the definition of a ''pole attachment'' for purposes of section 224 to include not only poles but also ''any attachment'' to a ''duct, conduit, or right-of-way owned or controlled by a utility.'' The Commission seeks to ensure that its regulatory framework remains current and faithful to the pro-competitive, market-opening provisions of the Act in light of experience over the last decade, advances in technology, and developments in the markets for telecommunications and video services.

2. *Rate Regulation.* Congress first directed the Commission to ensure that the rates, terms, and conditions for pole attachments by cable television systems were just and reasonable in 1978 when it added section 224 to the Act. Then, as now, the statute provided that the Commission will regulate pole attachments except where such matters are regulated by a state. Eighteen states and the District of Columbia have certified that they regulate pole attachments, and thus the Commission does not regulate pole attachments in those states. In a series of orders, the Commission implemented a formula that cable television system attachers and utilities could use to determine a just and reasonable rate, and procedures for resolving rate complaints. In 1987, the U.S. Supreme Court found that the formula the Commission devised for pole attachments by cable television systems (the cable rate) did not result in an unconstitutional ''taking.'' Congress expanded the reach of section 224 in several notable ways in the 1996 Act. Congress granted attachers an affirmative right to access utility poles. The 1996 Act also added ducts, conduits, and rights-of-way to the facilities covered by section 224. Congress included a proviso, however, that utilities providing electric service may deny access, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes. Further, Congress added ''telecommunications carrier'' as a category of attacher under section 224. Congress established two separate provisions governing the maximum rates for pole attachments—one for attachments used by ''telecommunications carriers'' to provide telecommunications services (the telecommunications rate), and another for attachments used ''solely to provide cable service.'' For purposes of section 224, Congress excluded incumbent local exchange carriers (LECs) from the definition of ''telecommunications carriers.''

3. *Access Regulation.* To implement the new section 224 access requirements of the 1996 Act, the Commission adopted five rules of general applicability and several broad policy guidelines addressing such issues as capacity expansion, reservation of space by utilities for their own use, and the right of non-electric utilities to deny access for capacity or safety reasons. The Commission declined at that time to mandate specific access requirements, concluding instead that the reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis. The Commission stated that it would monitor the effect of the case-specific approach, and would propose specific rules at a later date if conditions warranted. The Commission also concluded that section 224's principle of nondiscrimination required utilities to expand capacity for attachers as they would for themselves. In *Southern Co.* v. *FCC,* 293 F.3d 1338, 1346–47 (11th Cir. 2002), the U.S. Court of Appeals for the Eleventh Circuit rejected the Commission's requirement that utilities expand capacity for attachers, holding that, under the plain language of section 224 of the Act, ''[w]hen it is agreed that capacity is insufficient, there is no obligation to provide third parties with access'' to poles. The Eleventh Circuit also held, however, that the term ''insufficient capacity'' is not defined by statute and is ambiguous, and that utilities do not ''enjoy the unfettered discretion to determine when capacity is insufficient.'' *Southern,* 293 F.3d at 1348.

4. *Petitions for Rulemaking.* On December 7, 2005, Fibertech Networks, LLC (Fibertech) petitioned the Commission to conduct a rulemaking to adopt seven ''standard practices'' for pole and conduit access. On October 11, 2005, United States Telecom Association (USTelecom) petitioned the Commission to conduct a rulemaking to consider whether, as providers of telecommunications services, incumbent LECs are entitled to regulated pole attachment rates. Among the numerous ex parte filings submitted in these dockets, Time Warner Telecom, Inc. (TWTC) filed a White Paper seeking adoption of a single pole attachment rate for both cable television systems and telecommunications carriers in order to remove regulatory bias from investment decisions regarding deployment of broadband and other services.

5. *Market Forces and Change.* The Commission inquires about the current state of pole attachments, ducts, conduits, and rights-of-way, and the relationship between these facilities and the competitive telecommunications market. It seeks data on the nature and scope of pole attachments by the various types of providers, and inquires about the difference in pole attachment prices paid by cable systems, incumbent LECs, and competing telecommunications carriers that provide the same or similar services. The Commission asks, for example, in what ways do pole attachments affect the expansion of broadband Internet access service and how do pole attachments by cable systems and providers of telecommunications services affect competition to deliver services. Over the last few years, the Commission has recognized that the once-clear distinction between ''cable television systems'' and ''telecommunications carriers'' has blurred as each type of company enters markets for the delivery

of services historically associated with the other.

6. The Commission also seeks comment regarding possible changes in bargaining power between electric utilities and incumbent LECs, and whether pole attachment rates paid by incumbent LECs could affect the vitality of competition to deliver telecommunications, video services, and broadband Internet access service. The Commission seeks comment on developments related to rates, costs, and bargaining power between electric utilities and incumbent LECs. The Commission seeks comment regarding ''joint use agreements,'' including the number and percentage of poles that are owned or managed jointly, and how to evaluate when ownership and control of poles is truly ''joint.'' The Commission also seeks comment on claims that small and rural incumbent LECs are particularly at a disadvantage.

7. *Authority To Regulate Pole Attachments.* The Commission seeks general comment regarding the contours of the Commission's flexibility to interpret section 224. Section 224(b)(1) states that ''the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable'' and section 224(a)(4) states that ''[t]he term 'pole attachment' means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.'' In addition to this broad mandate, and as noted above, section 224 also provides two separate and explicit rate formulas. One rate—the cable rate—applies to cable television systems' attachments used solely to provide cable service; the other—the telecommunications rate—applies to both cable systems and telecommunications carriers' attachments used to provide telecommunications services.

8. The statute does not specify which of these rates, if either, should apply to transmission of information access services. The Commission seeks comment on the extent to which the current cable rate formula, whose space factor does not include unusable space, results in a subsidized rate, and, if so, whether cable operators should continue to receive such subsidized pole attachment rate at the expense of electric consumers. The Commission seeks comment on whether cable operators should continue to qualify for the cable rate where they offer multiple services in addition to cable service, and whether all telecommunications carriers must pay the telecommunications rate, regardless of what other services they may provide over their attachments. The Commission asks under what circumstances the Commission may adopt another rate, what is the extent of the Commission's ability to modify how the cable and telecommunications rates are applied. The Commission further asks whether wireless carriers are entitled to attach equipment at the subsection (e) telecommunications rate, or whether their attachments differ to such an extent that another rate would be more reasonable. The Commission seeks comment on the reach of its general authority to regulate pole attachments pursuant to section 224(b), asking whether it has the authority under section 224 to regulate pole attachment rates for all providers of telecommunications services, including incumbent LECs.

9. *A Unified Pole Attachment Rate and the Existing Cable and Telecommunications Rates.* The Commission seeks comment on the statutory limits, if any, to unifying the pole attachment rate paid by both cable systems and telecommunications carriers when their pole attachments are used to provide broadband Internet access service. TWTC proposes that the Commission should eliminate the telecommunications rate and apply the cable rate to all pole attachments, and argues that the Commission should use its broad authority to apply the cable rate to all pole attachments. TWTC further argues that section 224(e)(1) mandates that rates must be nondiscriminatory, and that where cost allocation guidelines yield discriminatory rates, that the nondiscrimination mandate trumps the cost allocation guidelines. The Commission questions TWTC's assertion that the cable rate should apply to all pole attachments, particularly because the cable rate does not include an allocation of the cost of unusable space. The Commission seeks comment on the advantages and disadvantages of a unitary rate for all providers of broadband Internet access service, and the appropriate level of such rate.

10. *The Rights of Incumbent LECs under Section 224.* The Commission seeks comment on the extent of its authority to regulate pole attachment rates for incumbent LECs. In the Local Competition Order and succeeding orders, and in the rules implementing section 224, the Commission interpreted the exclusion of incumbent LECs from the term ''telecommunications carrier'' (and from the corresponding right to attach to utility poles) to mean that section 224 does not apply to attachment rates paid by incumbent LECs. USTelecom asks the Commission to revisit that interpretation. USTelecom acknowledges that incumbent LECs are excluded from the section 224 definition of ''telecommunications carrier.'' USTelecom argues, however, that sections 224(b)(1) and 224(a)(4) provide an independent right to reasonable rates, terms, and conditions for any pole attachment by a provider of telecommunications service, and that the statute thus mandates the Commission to apply the ''just and reasonable'' standard to pole attachments for all such providers, including incumbent LECs. USTelecom asks the Commission to revise any pole attachment rule that conflates ''right of access'' with ''just and reasonable rates, terms, and conditions.'' USTelecom argues that Congress could have required just and reasonable rates only for ''a cable television system or any telecommunications carrier''—the phrase used to specify the right of access—but Congress chose instead to afford such protection to ''any attachment by a cable television system or provider of telecommunications service.'' Therefore, according to USTelecom, because the Commission's current rules ignore this distinction, they only partially implement section 224. Under USTelecom's proposal, although only cable television systems and ''telecommunications carriers'' would be assured of access to poles, all attaching ''providers of telecommunications service,'' including incumbent LECs, would be assured of just and reasonable rates. The Commission seeks comment on the view that, under section 224, ''access'' and ''rates, terms, and conditions'' are severable rights that should be implemented separately.

11. *Rate Level.* The Commission seeks comment on whether it should move toward a single rate for pole attachments used for the same or similar services, and whether adopting a single pole attachment rate would promote the goals of the Act with regard to competition, deregulation, and the deployment of advanced telecommunications capability. TWTC maintains that adopting a single attachment rate for both cable television systems and telecommunication carriers would remove regulatory bias from investment decisions regarding deployment of broadband and other services. TWTC also notes that both cable television systems and telecommunications carriers pay a single rate for using conduit, which suggests that having two different rates

for pole attachments is inherently baseless and discriminatory. TWTC further claims having two rates discourages investment in broadband networks, and for these reasons proposes that the Commission eliminate the telecommunications rate and apply the cable rate to all wire and cable pole attachments. The Commission seeks comment on whether having a single pole attachment rate better achieves the goals of the Act than having two separate rates, and asks whether the current pole attachment rate structure unreasonably discriminates between similarly situated entities or otherwise distorts the market.

12. The Commission also seeks comment regarding whether having two rates leads to recurring disputes over which rate to apply, and solicits general comment on whether the current system is clear, certain, and enforceable, and to what extent there is a perceived uncertainty about which rate to apply. The Commission adopted specific formulas implementing the cable rate and telecommunications rate, which differ only in the manner in which the costs associated with the unusable portion of the pole are allocated. Both of these formulas include a component for the net costs of a bare pole and the carrying charge rate. Carrying charges are the costs incurred by the utility in owning and maintaining poles regardless of the presence of pole attachments. TWTC argues that the similarities in the Commission's cable rate and telecommunications rate formulas are inappropriate, in light of textual differences between section 224(d) and section 224(e) regarding costs. In particular, TWTC contends that the telecommunications rate includes elements not mentioned in section 224(e), citing (1) the ''carrying charges'' and (2) the ''rate of return'' element. TWTC alleges that such costs ''bear no relation'' to the cost of providing space for attachment and should be eliminated from the telecommunications rate. The Commission seeks comment on the desirability of moving to a single pole attachment rate and also on the appropriate level of such a single rate. The Commission invites comment on the possible effect on small entities from adopting a single rate.

13. The Commission seeks comment on USTelecom's suggestion that the default ''just and reasonable'' attachment rate for incumbent LECs should be the telecommunications rate. The Commission asks if it adopts rules or guidelines for jointly owned poles how it should consider variables such as the proportion of poles owned, the division of maintenance costs and responsibilities, the income each party receives from other attachers, and similar variables. The Commission also seeks comment regarding whether, given the historical and continuing relationship regarding pole ownership between electric utilities and incumbent LECs, a ''just and reasonable'' rate for incumbent LECs should be determined by a method other than by applying a rate formula, and seeks comment on alternative approaches. The Commission further seeks comment on whether the historical relationship between incumbent LECs and power companies suggests that it should adopt a purely procedural solution instead of applying a rate formula, such as requiring parties to engage in mediated negotiation or arbitration subject to Commission review.

14. Wireless telecommunications carriers urge the Commission to adopt rules explicitly stating that the Commission's telecommunications rate formula applies to the attachment of wireless devices. The Commission has found no clear indication that the rules could not accommodate wireless attachers' use of poles. The Commission now seeks comment on whether, when they are ''telecommunications carriers,'' wireless providers are entitled to the telecommunications rate as a matter of law, or whether the Commission should adopt a rate specifically for wireless pole attachments. The Commission asks whether, if a wireless facility uses more than the presumptive one foot of space, the per-foot rate could simply be doubled, trebled, or otherwise multiplied as required. The Commission also asks whether, if wireless providers are permitted to attach facilities to pole tops, pole owners should receive a higher rate of compensation, because unlike lateral space, each pole has only one top. The Commission also seeks comment on the extent to which municipalities lease pole attachments for municipal broadband purposes or other services such as telecommunications services, and seeks comment on the impact that the tentative conclusion below might have on municipalities seeking to provide their residents municipal broadband or other services like telecommunications services.

15. *Tentative Conclusion for Broadband Internet Access Service.* Due to the importance of promoting broadband deployment and the importance of technological neutrality, the Commission tentatively concludes that all categories of providers should pay the same pole attachment rate for all attachments used for broadband Internet access service, and the Commission seeks comment on that tentative conclusion. Section 706 of the Act directs the Commission to promote the deployment of broadband infrastructure, and this directive leads the Commission to separate out those pole attachments that are used to offer broadband Internet access service from those used for other services. As a policy matter, the Commission tentatively concludes that the critical need to create even-handed treatment and incentives for broadband deployment would warrant the adoption of a uniform rate for all pole attachments used for broadband Internet access service. Additionally, the Commission concludes that the rate should be higher than the current cable rate, yet no greater than the telecommunications rate; seeks comment on these tentative conclusions; and seeks comment on the possible economic effect on small entities of adopting this tentative conclusion.

16. *Terms and Conditions of Access.* When the Commission adopted general rules governing requests for access pursuant to the 1996 Act, it declined to regulate specific techniques for pole and conduit modification. Rather, the Commission concluded that the reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis. In the record developed in response to the Fibertech Petition, a number of concerns have been expressed regarding terms and conditions of access to pole attachments, and the Commission seeks comment on these concerns. For example, commenters raised concerns regarding searches and surveys of both poles and conduit, including related information management practices. Parties also expressed concerns regarding performance of make-ready work, including timeliness, safety, capacity, and the use of boxing and extension arms. Sunesys supports Fibertech's position, but also submits its own plan to limit survey and make-ready work to six months, proposing that utility-approved contractors could perform the work if they were required to meet the deadline. Other commenters also recommended the use of qualified third-party contract workers. Certain commenters raised additional issues regarding access to in-building ducts, conduit, and rights-of-way, including access to incumbent LEC central offices. Parties also express concern regarding practices relating to drop lines and poles. These are illustrative categories of access concerns, and the Commission seeks comment on these and any other pole attachment access concerns, such

as concerns about the process for obtaining access.

17. The Commission also seeks comment on allegations or concerns regarding unauthorized attachments, or attachments that have been installed without a lawful attachment agreement. The Commission seeks comment on the prevalence of this practice, and whether the Commission's existing enforcement mechanisms are sufficient to address any unlawful practices by attachers and ensure the safety and reliability of critical electric infrastructure. Commenters are asked to address whether, in addition to the right, under section 224(f)(2) of the Act, of a utility to deny access to poles on a nondiscriminatory basis for reasons of safety, reliability and generally applicable engineering purposes, specific enforceable safety requirements should be adopted. For example, commenters are asked to address to what extent safety codes, such as the National Electrical Safety Code, should apply to all attachers, and whether the Commission's enforcement authority can or should be used to address alleged violations of such codes. Finally, the Commission seeks comment on the general usefulness of rules, presumptions, or guidelines, as opposed to case-specific adjudication, and seeks comment on how these alternative approaches to resolving access issues may affect small entities.

Ex Parte Presentations

18. The rulemaking this *NPRM* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

Initial Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act of 1980, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth separately below. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA. Comments are due on March 7, 2008 and Reply Comments are due on March 24, 2008.

Paperwork Reduction Act

20. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Initial Regulatory Flexibility Analysis

21. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA. Comments are due March 7, 2008 and Reply Comments are due March 24, 2008. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

22. The *NPRM* seeks comment on a variety of issues relating to implementation of section 224 pole attachment rules in light of increasing intermodal competition in the decade since the Commission began to implement the 1996 Act. Specifically, the *NPRM* asks whether existing rules governing pole attachment rates remain appropriate in light of competition in the marketplace today; whether section 224 confers rights on incumbent local exchange carriers (LECs), including regulation of the rates they pay for pole attachments; and whether it would be appropriate to adopt specific rules regarding certain non-price terms and conditions associated with section 224 access rights. With regard to rates, the *NPRM* tentatively concludes that all attachments used for broadband Internet access service should be subject to a single rate, regardless of the platform over which those services are provided.

B. Legal Basis

23. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 4(i), 4(j), 224, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 224, 303, 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

24. 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. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

25. Small Businesses. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

26. Small Organizations. Nationwide, there are approximately 1.6 million small organizations.

27. Small Governmental Jurisdictions. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

1. Telecommunications Service Entities

a. Wireline Carriers and Service Providers

28. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that,

for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

29. Incumbent LECs. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the Commission's action.

30. Competitive LECs, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.'' Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

31. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 330 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by Commission action.

b. Wireless Telecommunications Service Providers

32. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

33. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

34. Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. The Commission has estimated that 260 of these are small under the SBA small business size standard.

35. Paging. The SBA has developed a small business size standard for the broad economic census category of ''Paging.'' Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. In addition, according to Commission data, 365 carriers have reported that they are engaged in the provision of ''Paging and Messaging Service.'' Of this total, the Commission estimates that 360 have 1,500 or fewer employees, and five have more than 1,500 employees. Thus, in this category the majority of firms can be considered small.

36. We also note that, in the Paging Second Report and Order, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. In this context, a small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third

auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. The Commission also notes that, currently, there are approximately 74,000 Common Carrier Paging licenses.

37. Wireless Telephony. Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 221 of these are small under the SBA small business size standard.

38. Broadband Personal Communications Service. The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

39. Narrowband Personal Communications Services. To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

40. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

41. Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

42. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

2. Cable and OVS Operators

43. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated

for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

44. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

45. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

46. Open Video Systems (OVS). In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (LECs). The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard of Cable and Other Program Distribution Services, which consists of such entities having $13.5 million or less in annual receipts. The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June 2005, is currently the largest BSP and 14th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. The Commission thus believes that at least some of the OVS operators may qualify as small entities.

3. Internet Service Providers

47. Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by Commission action.

48. All Other Information Services. ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

4. Public Utilities

49. Electric Power Generation, Transmission and Distribution. The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' This category includes Electric Power Distribution, Hydroelectric Power Generation, Fossil Fuel Power Generation, Nuclear Electric Power Generation, and Other Electric Power Generation. The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and the Commission has not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, the Commission estimates that 1,644 or fewer firms may be considered small under the SBA small business size standard.

50. Natural Gas Distribution. This economic census category comprises: ''(1) Establishments primarily engaged in operating gas distribution systems (e.g., mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers.'' The SBA has developed a small business size standard for this industry, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2002, there were 468 firms in this category that operated for the entire year. Of this total, 424 firms had employment of fewer than 500

employees, and 18 firms had employment of 500 to 999 employees. Thus, the majority of firms in this category can be considered small.

51. Water Supply and Irrigation Systems. This economic census category ''comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems.'' The SBA has developed a small business size standard for this industry, which is: All such firms having $6.5 million or less in annual receipts. According to Census Bureau data for 2002, there were 3,830 firms in this category that operated for the entire year. Of this total, 3,757 firms had annual sales of less than $5 million, and 37 firms had sales of $5 million or more but less than $10 million. Thus, the majority of firms in this category can be considered small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

52. Should the Commission alter the pole attachment rate structure, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping or other compliance requirements for pole owners and attaching entities. For example, if the Commission were to adopt a uniform rate for all pole attachments used for broadband Internet access service, providers of such services might be required to record and report where such service is offered. If the Commission were to adopt a uniform rate for all pole attachments, such action could eliminate the need for cable television systems to record and report to utilities where they or their lessees offer telecommunications services. Changes to reporting, recordkeeping or other compliance requirements could either be new (e.g., if telecommunications carriers begin to record or report where they offer broadband Internet access service) or could reconfigure existing requirements (e.g., if cable television systems begin to record and report where they or their lessees offer broadband Internet access service, but cease to record and report where they or their lessees offer telecommunications services). If the Commission initiates regulation of the rates, terms, and conditions of pole attachment by incumbent LECs, such regulation could increase reporting, recordkeeping or other compliance requirements for pole owners and incumbent LECs where incumbent LECs attach to poles owned by other utilities.

53. Should the Commission adopt regulations concerning access to poles, ducts, conduits, and rights-of-way, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping or other compliance requirements for pole owners, attaching entities, and users of ducts, conduits, and rights-of-way. In particular, if the Commission adopts rules governing specific techniques for pole and conduit modification, as opposed to resolution on a case-specific complaint basis, reporting, recordkeeping or other compliance requirements could change. Examples of specific topics where recordkeeping, reporting, or compliance requirements could change by virtue of Commission action include: (1) Searches and surveys of both poles and conduit, including information management; (2) performance of make-ready work, including timeliness, safety, capacity, and the use of boxing and extension arms; (3) the use of qualified third-party contract workers; (4) access to in-building ducts, conduit, and rights-of-way, including access to incumbent LEC central offices; or (5) practices relating to drop lines and poles.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

54. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

55. The Commission tentatively concludes that it will promote broadband deployment and technological neutrality by requiring all categories of companies to pay the same pole attachment rate for all pole attachments used for broadband Internet access service, and the *NPRM* seeks comment on the possible economic effect on small entities of adopting this requirement. In coming to this tentative conclusion, the Commission first assessed the alternative of continuing a system of two rates. Another objective is to implement overarching policies concerning safety, certainty, administrability, and nondiscrimination. When alternatives are discussed, such as whether it would be better to choose an existing rate as the broadband Internet access services rate (and, if so, which rate) or to modify existing rates, the *NPRM* invites small entities to discuss the economic ramifications of such action. The *NPRM* seeks comment on whether regulation of pole attachment rates is particularly necessary for small incumbent LECs, and asks how incumbent LECs could be affected if rates and terms were regulated absent a right of access. The *NPRM* also seeks comment on the general usefulness of rules, presumptions, or guidelines, as opposed to case-specific adjudication, and how these alternative approaches to resolving access issues may affect small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

56. None. Since the enactment of the 1996 Act, the Commission has encouraged disputing parties to participate in staff-supervised, pre-complaint mediation. Such mediation has proven to be very successful, including in pole attachment disputes. Certain rules regarding pole attachment complaints, however, may have had the unintended consequence of discouraging pre-complaint mediation. Thus, the Commission seeks comment on whether those rules should be amended or eliminated to facilitate mediation of disputes. In addition, under current Commission rules, an attacher may execute a pole attachment agreement with a utility, and then later file a complaint challenging the lawfulness of a provision of that agreement. The Commission seeks comment on whether it should adopt some contours to the rule, such as time-frames for raising written concerns about a provision of a pole attachment agreement.

Ordering Clauses

57. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(j), 224, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 224, 303, 403, this Notice of Proposed Rulemaking in WC Docket No. 07–245 *is adopted*.

58. *It is further ordered* that the Fibertech Networks, LLC, Petition for Rulemaking, RM–11303, and the United States Telecom Association Petition for Rulemaking, RM–11293, *are granted* to the extent indicated herein and otherwise *are denied*.

59. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *NPRM*, including the Initial

Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–2177 Filed 2–5–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 07–267; FCC 07–202]

Petition To Establish Procedural Requirements To Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment regarding whether to adopt procedural rules to govern the Commission's consideration of petitions to forbear from enforcing rules that are alleged to be unnecessary or inconsistent with the public interest (forbearance petitions). The Commission is responding to arguments that current procedures governing consideration of forbearance petitions are unfair, and to several proposed new rules that would include, for example, requiring forbearance petitions to be complete-as-filed, and assigning the burden of proof on parties that file forbearance petitions. The Commission intends both to solicit comment on the proposals before it and to encourage suggestions of other rules that the Commission should consider that would govern the form and content of forbearance petitions.

DATES: Comments are due March 7, 2008 and Reply Comments are due March 24, 2008. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 7, 2008.

ADDRESSES: You may submit comments, identified by WC Docket No. 07–267, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Include the docket number in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Jonathan Reel, Wireline Competition Bureau, (202) 418–1580. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Jerry R. Cowden at (202) 418–0447, or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: 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 March 7, 2008 and Reply Comments on or before March 24, 2008. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. 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, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* 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, filers 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor 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, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

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- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
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• *E-mail: ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Include the docket number in the subject line of the message.

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For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Synopsis of the Notice of Proposed Rulemaking

Petition To Establish Procedural Requirements To Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended

1. In this Notice of Proposed Rulemaking (*NPRM*), the Commission addresses the Petition filed on September 19, 2007 by Covad Communications Group, NuVox Communications, XO Communications, LLC, Cavalier Telephone Corp., and McLeod USA Telecommunications Services, Inc. (Petitioners or Covad, *et al.*) asking the Commission to consider the adoption of procedural rules to govern the Commission's consideration of petitions for forbearance pursuant to the Communications Act of 1934, as amended (Act).

2. Pursuant to section 10 of the Act, the Commission is required to forbear from any statutory provision or regulation if it determines that: (1) Enforcement of the regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. In determining whether forbearance is consistent with the public interest, the Commission also must consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions. In addition, section 332(c)(1)(A) of the Act authorizes the Commission to ''forbear'' from applying the provisions of Title II to commercial mobile radio service (CMRS) providers, except for sections 201, 202, and 208, if certain criteria are satisfied. In particular, the Commission may exercise its forbearance authority pursuant to section 332 if it determines that: (1) Enforcement of the requirement is unnecessary to ensure that rates are just, reasonable, and non-discriminatory; (2) the requirement is not needed to protect consumers; and (3) forbearance is consistent with the public interest. The Commission also must consider whether any proposed forbearance from the requirements of Title II will enhance competition among CMRS providers.

3. The Commission seeks comment in general on the need for procedural rules to govern the Commission's consideration of petitions for forbearance pursuant to section 10 and/or section 332 (collectively, forbearance petitions), and with respect to the issues raised and rules proposed by the Petitioners in particular. For example, the Petitioners cite the need to apply Administrative Procedure Act (APA) notice-and-comment rules to forbearance petitions. The Petitioners state that to date the Commission's practice has been to provide interested parties with the opportunity to comment on a forbearance petition. Petitioners argue, however, that the Commission should institutionalize this practice to ensure that potentially-affected parties have a well-defined right to have their views taken into account. The Commission seeks comment both on the Petitioners' specific proposal and, more generally, on how the Commission should provide notice and an opportunity to comment in forbearance proceedings.

4. The Petitioners also request the adoption of rules governing the format and content of forbearance petitions, including a complete-as-filed requirement. In particular, the Petitioners contend that a complete-as-filed rule would facilitate Commission review and would help ensure that all interested parties have a full and fair opportunity to present their views to the Commission. The Petitioners note that the Commission has adopted similar requirements in other circumstances, such as section 271 proceedings and formal complaint proceedings subject to statutory deadlines. The Commission seeks comment on the Petitioners' specific proposal for complete-as-filed requirements, including whether the Commission should specify certain information necessary for a *prima facie* showing that forbearance is warranted as the Petitioners recommend. The Commission also seeks comment on the Petitioners' proposal for a rule specifying that the forbearance petitioner has the burden of proof. The Commission also seeks comment on whether there are other particular rules governing the form and content of forbearance petitions that the Commission should consider.

5. In addition, the Petitioners propose that the Commission require a forbearance petitioner to separately demonstrate how it has satisfied each component of the forbearance standard. They assert that such a requirement is consistent with the Commission's pleading requirements in other contexts. The Petitioners contend that, in past practice, petitioners have failed to address each element of the section 10 standard individually, instead generally asserting that the forbearance criteria are satisfied with respect to all of the regulations and statutory provisions from which they are seeking forbearance. The Commission seeks comment on the Petitioners' specific proposal, including its relationship to the section 10 or section 332 forbearance standard and the Commission's forbearance analysis set forth in prior orders.

6. The Commission also seeks comment on the Petitioners' request that the Commission adopt particular rules addressing the scope and interpretation of protective orders in forbearance proceedings. The Petitioners suggest rules governing the timing of adoption of protective orders and the terms of access to, and use of, documents and information submitted pursuant to those protective orders. For example, the Petitioners suggest that all interested parties should be permitted to obtain copies of confidential and highly confidential documents. In addition, the Petitioners recommend that parties be allowed to use information submitted pursuant to protective order in one forbearance proceeding in other Commission forbearance proceedings in which a petitioning party seeks relief from the same rules and/or statutory provisions and that states be permitted

to use documents designated as Confidential and Highly Confidential in related state proceedings. The Commission seeks comment on the Petitioners' specific proposals, as well as any other comments regarding the submission of, access to, and use of documents and information covered by protective orders in forbearance proceedings. The Commission also seeks comment specifically on the relationship between the rules proposed by Petitioners or other commenters and the Commission's rules and precedent regarding information withheld from public inspection.

7. The Petitioners further seek rules establishing a timetable for Commission proceedings addressing forbearance petitions, which, among other things, incorporates a limited period for a petitioning party to cure minor defects in its petition without having to re-start the statutory clock, provides a specific vehicle for state commission input in the forbearance process; addresses motions to dismiss, and establishes a standard comment cycle; as well as a time limit on substantive ex parte submissions and other requirements. The Commission seeks comment on each of the proposals suggested by the Petitioners, as well as their general recommendation for the adoption of specific timetables for the Commission's review of forbearance petitions. The Commission also seeks comment on other proposals for steps the Commission could take to facilitate the participation of state commissions, as well as other parties, in forbearance proceedings.

8. The Petitioners propose that the Commission adopt additional requirements for petitions seeking forbearance from sections 251 and/or 271 of the Act. For example, the Petitioners propose that petitioners seeking forbearance from sections 251 or 271 must provide supporting data at the wire center level. The Petitioners further propose that the Commission adopt a rule inviting states to report to the Commission on the potential effects of sections 251 and/or 271 forbearance in their states.

9. The Petitioners also suggest certain procedural requirements governing the resolution of forbearance petitions, including a proposal that the Commission adopt a rule requiring the issuance of a written order on all forbearance petitions, including those petitions that previously have been ''deemed granted.'' The Commission seeks comment on that proposal.

10. To the extent that the Commission adopts procedural rules to govern forbearance petitions, the Petitioners request that those rules apply both to forbearance petitions filed in the future, as the well as forbearance petitions already pending before the Commission. The Commission seeks comment on the extent of the Commission's authority to adopt procedural rules governing both future forbearance petitions as well as those that already are pending before the Commission, particularly with respect to the procedural rules proposed by the Petitioners. The Commission also seeks comment on the propriety, as a policy matter, of extending particular procedural rules in such manner.

11. In recent years, the Commission has witnessed a significant increase in the number of petitions seeking forbearance submitted by telecommunications carriers that the Commission oversees. These petitions have had different results, such as petitions being approved, denied, withdrawn or deemed granted. In the course of Congressional oversight, some Members of Congress have raised concerns with how forbearance is used. Some companies have indicated serious concerns with the forbearance process, while others argue that it is an important tool for the Commission to eliminate rules, consistent with the public interest. The Commission therefore seeks comment on whether forbearance is an effective means for the Commission to make changes to its regulations. The Commission also seeks comment on whether forbearance is being utilized for the purposes intended by Congress. The Commission asks whether there are unintended consequences of forbearance, such as a focus on these petitions at the expense of other industry-wide proceedings, including burdens on stakeholders from forbearance proceedings, such as administrative and financial costs. The Commission asks whether there are additional burdens placed on stakeholders due to the fact that there is a statutory deadline on the completion of forbearance petitions. The Commission also seeks comment regarding the effects of having a company-specific petition drive agency decisions, rather than the Commission deciding to take industry-wide actions.

12. Finally, the Commission seeks comment on any other aspects of the Petition, as well as any other comments regarding the need for any other procedural rules to govern the Commission's consideration of forbearance petitions. The Commission also invites comment on the possible effect on small entities from adopting any of the Petitioners' proposed rules, or variations of those proposals set forth above. To the extent that the Commission were to adopt any procedural rules governing forbearance petitions proposed by the Petitioners or otherwise justified in the record, the Commission asks what would be the appropriate remedy for a violation of those rules.

Ex Parte Presentations

13. The rulemaking this *NPRM* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

Initial Regulatory Flexibility Analysis

14. As required by the Regulatory Flexibility Act of 1980, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth separately below. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA. Comments are due March 7, 2008 and Reply Comments are due March 24, 2008.

Paperwork Reduction Act

15. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Accessible Formats

16. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer &

Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov*; phone: 202–418–0530 or TTY: 202–418–0432.

Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need For, and Objectives Of, the Proposed Rules

18. In this *NPRM*, we seek comment on whether the Commission should adopt procedural rules governing its consideration of petitions for forbearance pursuant to section 10 or section 332 of the Act. In particular, we seek comment on the need to apply APA notice-and-comment rules to forbearance petitions. We also seek comment on the burdens of proof and production in forbearance proceedings. Additionally, we seek comment on whether to adopt rules governing the form and content of forbearance petitions, including possibly a ''complete-as-filed'' requirement and a requirement that the petitioner demonstrate that it has satisfied each element of the forbearance standard. Further, we solicit comment on the need for rules governing the scope and interpretation of protective orders in forbearance proceedings. In addition, we seek comment on the need for rules establishing timetables for Commission proceedings addressing forbearance petitions. In the *NPRM*, we also seek comment on whether additional rules are warranted for petitions seeking forbearance from section 251 or section 271 of the Act. We further seek comment on whether we should adopt procedural requirements governing the resolution of forbearance petitions. We also seek comment on the need for any other procedural rules governing forbearance petitions, the scope of application of such rules, and the appropriate remedies for violation should the Commission adopt such rules. For each of these issues, we seek comment on the possible effects on small entities, associated with any rules the Commission might adopt.

B. Legal Basis

19. The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1, 4(i), 4(j), 10, 303, 332 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 160, 303, 332, 403.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules May Apply

20. 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 and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

21. Small Businesses. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.

22. Small Organizations. Nationwide, there are approximately 1.6 million small organizations.

23. Small Governmental Jurisdictions. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

24. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

25. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.'' Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 94 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed action.

26. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority

of IXCs are small entities that may be affected by our proposed action.

27. International Service Providers. There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.

28. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

29. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

30. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

31. Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

32. Common Carrier Paging. As noted, the SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, U.S. Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

33. In addition, in the Paging Second Report and Order, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 408 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Of these, we estimate that 589 are small, under the SBA-approved small business size standard. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

34. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities,

and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

35. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Trends in Telephone Service data, 437 carriers reported that they were engaged in wireless telephony. We have estimated that 260 of these are small under the SBA small business size standard.

36. Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

38. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 188 C Block licenses and 21 F Block licenses in Auction No. 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses.

39. Narrowband Personal Communications Services. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

40. Lower 700 MHz Band Licenses. We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. We have defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is ''entrepreneur,'' which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

41. Upper 700 MHz Band Licenses. In *Service Rules for the 746–764 and 776–794 MHz Bands*, 16 FCC Rcd 1239 (January 12, 2001), the Commission authorized service in the upper 700 MHz band. This auction, previously scheduled for January 13, 2003, has been postponed.

42. 700 MHz Guard Band Licenses. In the 700 MHz Guard Band Order, we adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were

sold to three bidders. One of these bidders was a small business that won a total of two licenses.

43. Fixed Microwave Services. Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

44. 39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards.

The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000.

The 18 bidders who claimed small business status won 849 licenses.

45. Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses that won 119 licenses.

46. 218–219 MHz Service. The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years. The SBA has approved of these definitions. A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses may be awarded to small businesses.

47. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, we will use the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

48. Incumbent 24 GHz Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

49. Future 24 GHz Licensees. With respect to new applicants in the 24 GHz band, we have defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million. ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding

three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

50. Should the Commission decide to adopt any procedural rules governing petitions for forbearance, the associated rules potentially could modify or impose new reporting or recordkeeping requirements. For example, we seek comment on the possible need for rules governing the form and content of forbearance petitions, such as ''complete-as-filed'' requirements and obligations for forbearance petitioners to demonstrate that they have satisfied each element of the forbearance standard. The Commission also seeks comment on the possible need or rules governing the scope and interpretation of protective orders in forbearance proceedings, including rules governing the submission of, access to, and use of information submitted pursuant to protective orders in forbearance proceedings. In addition, we seek comment on the need for rules establishing timetables for Commission proceedings addressing forbearance petitions, including requirements governing modification of forbearance petitions and processes for ex parte filings. We further seek comment on whether we should adopt procedural requirements governing petitions for reconsideration of forbearance decisions. The Commission also seeks comment on the need for any other procedural rules governing forbearance petitions, the scope of application of such rules, and the appropriate remedies for violation should the Commission adopt such rules. These proposals may impose additional reporting and recordkeeping requirements on entities. Also, we seek comment on the effects of any of these proposals on small entities. Entities, especially small businesses, are encouraged to quantify the costs and benefits or any reporting requirement that may be established in this proceeding.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

51. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

52. The Commission's primary objective is to implement the ''pro-competitive, deregulatory'' framework established in sections 10 and 332 of the Act. We seek comment on the burdens, including those placed on small carriers, associated with related Commission rules and whether the Commission should adopt different requirements for small businesses.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

53. None.

Ordering Clauses

54. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(j), 10, 303, 332 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 160, 303, 332, 403, this Notice of Proposed Rulemaking in WC Docket No. 07–267 *is adopted*.

55. *It is further ordered* that the Covad, et al. Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended, WC Docket No. 07–267 (filed Sept. 19, 2007), *is granted* to the extent indicated herein and otherwise *is denied*.

56. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–2180 Filed 2–5–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 226

[Docket No. 070801431–7787–01]

RIN 0648–AV35

Endangered and Threatened Species; Critical Habitat for Threatened Elkhorn and Staghorn Corals

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), propose to designate critical habitat for elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals, which we listed as threatened under the Endangered Species Act of 1973, as amended (ESA), on May 9, 2006. Four specific areas are proposed for designation: the Florida unit, which comprises approximately 3,301 square miles (8,671 sq km) of marine habitat; the Puerto Rico unit, which comprises approximately 1,383 square miles (3,582 sq km) of marine habitat; the St. John/St. Thomas unit, which comprises approximately 121 square miles (313 sq km) of marine habitat; and the St. Croix unit, which comprises approximately 126 square miles (326 sq km) of marine habitat. We propose to exclude one military site, comprising approximately 47 square miles (123 sq km), because of national security impacts.

We are soliciting comments from the public on all aspects of the proposal, including our identification and consideration of the positive and negative economic, national security, and other relevant impacts of the proposed designation, and the areas we propose to exclude from the designation. A draft impacts report prepared pursuant to section 4(b)(2) of the ESA in support of this proposal is also available for public review and comment.

DATES: Comments on this proposal must be received by May 6, 2008. Public hearings will be held; see **SUPPLEMENTARY INFORMATION** for dates and locations.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 0648–AV35, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the

Federal eRulemaking Portal: *http://www.regulations.gov*.

Mail: Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Ave. South, St. Petersburg, FL 33701.

Facsimile (fax) : 727–824–5309.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Public Hearing: See **SUPPLEMENTARY INFORMATION** for hearing dates and locations.

FOR FURTHER INFORMATION CONTACT: Jennifer Moore or Sarah Heberling, NMFS, at the address above or at 727–824–5312; or Marta Nammack, NMFS, at 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 2006, we listed elkhorn and staghorn corals as threatened under the ESA (71 FR 26852; May 9, 2006). At the time of listing, we also announced our intention to propose critical habitat for elkhorn and staghorn corals. We are proposing to designate critical habitat for both species through one rule; due to their similar life histories, distribution, threats, and conservation requirements, critical habitat for these coral species is overlapping.

Elkhorn and Staghorn Coral Natural History

The following discussion of the life history and reproductive biology of threatened corals is based on the best scientific data available, including the Atlantic *Acropora* Status Review Report (Acropora Biological Review Team, 2005), and additional information, particularly concerning the genetics of these corals.

Acropora spp. are widely distributed throughout the Caribbean (U.S.—Florida, Puerto Rico, U.S. Virgin Islands (U.S.V.I.), Navassa; and Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Grenada, Guadeloupe, Haiti, Honduras, Jamaica, Martinique, Mexico, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and Venezuela). In general, elkhorn and staghorn corals have the same geographic distribution, with few exceptions. The northern extent (Palm Beach County, Florida) of staghorn coral occurrence is farther north than that of elkhorn coral (Broward County, Florida). Staghorn coral commonly grows in more protected, deeper water ranging from 5 to 20 m in depth and has been found in rare instances to 60 m. Elkhorn coral commonly grows in turbulent shallow water on the seaward face of reefs in water ranging from 1 to 5 m in depth but has been found to 30 m depth.

Elkhorn and staghorn corals were once the most abundant and most important species on Caribbean coral reefs in terms of accretion of reef structure. Relative to other corals, elkhorn and staghorn corals have high growth rates that have allowed reef growth to keep pace with past changes in sea level. Both species exhibit branching morphologies that provide important habitat for other reef organisms. Environmental influences (e.g., wave action, currents) result in morphological variation (e.g., length, shape of branches) in both species.

Staghorn coral is characterized by staghorn antler-like colonies with cylindrical, straight, or slightly curved branches. The diameter of staghorn coral branches ranges from 1 to 4 cm, and tissue color ranges from golden yellow to medium brown. The growing tips of staghorn coral tend to be lighter or lack color. The linear growth rate for staghorn coral has been reported to range from 3 to 11.5 cm/year. Today, staghorn coral colonies typically exist as isolated branches and small thickets, 0.5 to 1 m across in size, unlike the vast fields (thickets) of staghorn found commonly during the 1970s.

Elkhorn coral is the larger species of *Acropora* found in the Atlantic. Colonies are flattened to near round with frond-like branches. Branches are up to 50 cm across and range in thickness from 2 to 10 cm, tapering towards the branch terminal. Like staghorn coral, branches are white near the growing tip, and brown to tan away from the growing area. The linear growth rate for elkhorn coral is reported to range from 4 to 11 cm/year. Individual colonies can grow to at least 2 m in height and 4 m in diameter.

Elkhorn and staghorn corals require relatively clear, well-circulated water and are almost entirely dependent upon sunlight for nourishment. Unlike other coral species, neither acroporid species is likely to compensate for long-term reductions in water clarity with alternate food sources, such as zooplankton and suspended particulate matter. Typical water temperatures in which *Acropora* spp. occur from 21 to 29 °C, with the species being able to tolerate temperatures higher than the seasonal maximum for a brief period of time (days to weeks depending on the magnitude of the temperature elevation). The species' response to temperature perturbations is dependent on the duration and intensity of the event. Both acroporids are susceptible to bleaching (loss of symbiotic algae) under adverse environmental conditions.

Acropora spp. reproduce both sexually and asexually. Elkhorn and staghorn corals do not differ substantially in their sexual reproductive biology. Both species are broadcast spawners: male and female gametes are released into the water column where fertilization takes place. Additionally, both species are simultaneous hermaphrodites, meaning that a given colony will contain both male and female reproductive parts during the spawning season; however, an individual colony or clone will not produce viable offspring. The spawning season for elkhorn and staghorn corals is relatively short, with gametes released on only a few nights during July, August, and/or September. In most populations, spawning is synchronous after the full moon during any of these 3 months. Larger colonies of elkhorn and staghorn corals have much higher fecundity rates (Soong and Lang, 1992).

In elkhorn and staghorn corals, fertilization and development are exclusively external. Embryonic development culminates with the development of planktonic larvae called planulae. Little is known concerning the settlement patterns of planula of elkhorn and staghorn corals. In general, upon proper stimulation, coral larvae, whether released from parental colonies or developed in the water column external to the parental colonies (like *Acropora* spp.), settle and metamorphose on appropriate substrates. Like most corals, elkhorn and staghorn corals require hard, consolidated substrate, including attached, dead coral skeleton, for their larvae to settle. Unlike most other coral larvae, elkhorn (and presumably staghorn) planulae appear to prefer settling on upper, exposed surfaces, rather than in dark, cryptic ones, at least in a laboratory setting (Szmant and Miller, 2005).

Coral planula larvae experience considerable mortality (90 percent or

more) from predation or other factors prior to settlement and metamorphosis (Goreau, *et al.*, 1981). Because newly settled corals barely protrude above the substrate, juveniles need to reach a certain size to reduce damage or mortality from impacts such as grazing, sediment burial, and algal overgrowth. Recent studies examining early survivorship indicated that lab cultured elkhorn coral settled onto experimental limestone plates and placed in the field had substantially higher survivorship than another spawning coral species, *Montastraea faveolata*, and similar survivorship to brooding coral species (species that retain developing larvae within the parent polyp until an advanced stage) over the first 9 months following settlement (Szmant and Miller, 2005). This pattern corresponds to the size of planulae; elkhorn coral eggs and larvae are much larger than those of *Montastraea* spp. Overall, older recruits (i.e., those that survive to a size where they are visible to the human eye, probably 1 to 2 years post-settlement) of *Acropora* spp. appear to have similar growth and post-settlement mortality rates observed in other coral species.

Studies of *Acropora* spp. from across the Caribbean confirm two overall patterns of sexual recruitment: (1) Low juvenile densities relative to other coral species; and (2) low juvenile densities relative to the commonness of adults (Porter, 1987). This pattern suggests that the composition of the adult population is based upon variable recruitment. To date, the settlement rates for *Acropora* spp. have not been quantified.

Few data on the genetic population structure of elkhorn and staghorn corals exist; however, due to recent advances in technology, the genetic population structure of the current, depleted population is beginning to be characterized. Baums, *et al.* (2005) examined the genetic exchange in elkhorn coral by sampling and genotyping colonies from 11 locations throughout its geographic range using microsatellite markers. Results indicate that elkhorn populations in the eastern Caribbean (St. Vincent and the Grenadines, U.S.V.I., Curacao, and Bonaire) have experienced little or no genetic exchange with populations in the western Caribbean (Bahamas, Florida, Mexico, Panama, Navassa, and Mona Island). Mainland Puerto Rico is an area of mixing where elkhorn populations show genetic contribution from both regions, though it is more closely connected with the western Caribbean. Within these regions, the degree of larval exchange appears to be asymmetrical, with some locations being entirely self-recruiting and some receiving immigrants from other locations within their region.

Vollmer and Palumbi (2007) examined multilocus sequence data from 276 colonies of staghorn coral spread across 22 populations from 9 regions in the Caribbean, Florida, and the Bahamas. Their data were consistent with the Western-Eastern Caribbean subdivision observed in elkhorn coral populations by Baums, *et al.* (2005). Additionally, the data indicated that regional populations of staghorn separated by greater than 500 km are genetically differentiated and that gene flow across the greater Caribbean is low in staghorn coral. This is consistent with studies conducted on other Caribbean corals showing that gene flow is restricted at spatial scales over 500 km (Fukami, *et al.*, 2004; Baums, *et al.*, 2005; Brazeau, *et al.*, 2005). Furthermore, fine-scale genetic differences were observed among reefs separated by as little as 2 km, suggesting that gene flow in staghorn corals may be limited over much smaller spatial scales (Vollmer and Palumbi, 2007).

Both acroporid population studies suggest that no population is more or less significant to the status of the species. Staghorn coral populations on one reef exhibit limited ability to seed another population separated by large distances. Elkhorn coral populations are genetically related over larger geographic distances; however, because sexual recruitment levels are extremely low, re-seeding potential is also minimal. This regional population structure suggests that conservation should be implemented at local to regional scales because relying on long-distance larval dispersal as a means of recovery may be unreliable and infeasible. Therefore, protecting source populations, in relatively close proximity to each other (<500 km), is likely the more effective conservation alternative (Vollmer and Palumbi, 2007).

Elkhorn and staghorn corals, like most coral species, also reproduce asexually. Asexual reproduction involves fragmentation, wherein colony pieces or fragments break from a larger colony and re-attach to hard, consolidated substrate to form a new colony. Reattachment occurs when: (1) Live coral tissue on the fragment overgrows suitable substrate where it touches after falling; or (2) encrusting organisms settle on the dead basal areas of the fragment and cement it to the adjacent substrate (Tunnicliffe, 1981). Fragmentation results in multiple colonies (ramets) that are genetically identical, while sexual reproduction results in the creation of new genotypes (genets). Fragmentation is the most common means of forming new elkhorn and staghorn coral colonies in most populations and plays a major role in maintaining local populations when sexual recruitment is limited. The larger size of fragments compared to planulae may result in higher survivorship after recruitment (Jackson, 1977, as cited by Lirman, 2000). Also unlike sexual reproduction, which is restricted seasonally for elkhorn coral (Szmant, 1986, as cited by Lirman, 2000), fragmentation can take place year-round.

Critical Habitat Identification and Designation

Critical habitat is defined by section 3 of the ESA (and further by 50 CFR 424.02(d)) as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.'' This definition provides a step-wise approach to identifying areas that may be designated as critical habitat for listed corals.

Geographical Areas Occupied by the Species

The best scientific data available show the current geographical area occupied by both elkhorn and staghorn corals has remained unchanged from their historical ranges. In other words, there is no evidence of range constriction for either species. ''Geographical areas occupied'' in the definition of critical habitat is interpreted to mean the current range of the species and not every discrete location on which individuals of the species physically are located (45 FR 13011; February 27, 1980). In general, elkhorn and staghorn corals have the same distribution, with few exceptions, and are widely distributed throughout the Caribbean. *The Status of Coral Reefs in the Western Atlantic: Results of Initial Surveys, Atlantic and Gulf Rapid Reef Assessment (AGRRA) Program* (Lang, 2003) provides results (1997–2004) of a regional systematic survey of corals, including *Acropora* spp., from many locations throughout the

Caribbean. AGRRA data (1997–2004) indicate that the historic range of both species remains intact; staghorn coral is rare throughout the range (including areas of previously known dense occurrence); and elkhorn coral occurs in moderation. We also collected data and information pertaining to the geographical area occupied by these species at the time of listing by partnering with our Southeast Fisheries Science Center (SEFSC), NOAA National Centers for Coastal Ocean Science Biogeography Team, and the U.S. Geological Survey of the Department of the Interior. These partnerships resulted in the collection of geographic information system (GIS) and remote sensing data (e.g., benthic habitat data, water depth, and presence/absence location data for *Acropora* spp. colonies), which we supplemented with relevant information collected from the public during comment periods and workshops held throughout the ESA listing process.

In Southeast Florida, staghorn coral has been documented along the east coast as far north as Palm Beach County in deeper (16 to 30 m) water (Goldberg, 1973) and is distributed south and west throughout the coral and hardbottom habitats of the Florida Keys (Jaap, 1984), through Tortugas Bank. Elkhorn coral has been reported as far north as Broward and Miami-Dade Counties, with significant reef development and framework construction by this species beginning at Ball Buoy Reef in Biscayne National Park, extending discontinuously southward to the Dry Tortugas.

In Puerto Rico, elkhorn and staghorn corals have been reported in patchy abundance around the main island and isolated offshore locations. In the late 1970s, both elkhorn and staghorn corals occurred in dense and well developed thickets on many reefs off the northeast, east, south, west and northwest coast, and also the offshore islands of Mona, Vieques and Culebra (Weil, *et al.*, unpublished data). Dense, high profile, monospecific thickets of elkhorn and staghorn corals have been documented in only a few reefs along the southwest shore of the main island and isolated offshore locations (Weil, *et al.*, unpublished data) though recent monitoring data for the presence of coral are incomplete in coverage around the islands. Further, the species have been recently documented along the west (e.g., Rincon) and northeast coasts (e.g., La Cordillera). Additionally, large stands of dead elkhorn currently exist on the fringing coral reefs along the south shoreline (e.g., Punta Picúa, Punta Miquillo, Río Grande, Guánica, La Parguera, Mayaguez). It appears that elkhorn and staghorn are rare on the north shore of Puerto Rico; however, there is a thin strip of hardbottom substrate on that shore, which may be supporting additional unrecorded colonies of elkhorn or staghorn.

The U.S.V.I. also supports populations of elkhorn and staghorn corals, particularly at Buck Island Reef National Monument. St. Croix has coral reef and colonized hardbottom surrounding the entire island. Data from the 1980's indicate that the species were present along the north, eastern, and western shores at that time. The GIS data we compiled indicate the presence of elkhorn and staghorn currently along the north, northeastern, south, and southeastern shores of St. Croix. Monitoring data are incomplete, and it is possible that unrecorded colonies are present along the western, northwestern, or southwestern shores. For the islands of St. Thomas and St. John, there are limited GIS presence data available for elkhorn and staghorn corals. However, Grober-Dunsmore, *et al.* (2006) show that from 2001–2003, elkhorn colonies were distributed in many locations around the island of St. John. Additionally, the data we have indicate coral reef and coral-colonized hard bottom surrounding each of these islands as well as the smaller offshore islands. Again, it is possible that unrecorded colonies are present in these areas.

Navassa Island is a small, uninhabited, oceanic island approximately 50 km off the southwest tip of Haiti managed by U.S. Fish and Wildlife Service (FWS) as one component of the Caribbean Islands National Wildlife Refuge (NWR). Both acroporid species are known from Navassa, with elkhorn apparently increasing in abundance and staghorn rare (Miller and Gerstner, 2002).

Last, there are two known colonies of elkhorn at the Flower Garden Banks National Marine Sanctuary (FGBNMS), located 100 mi (161 km) off the coast of Texas in the Gulf of Mexico. The FGBNMS is a group of three areas of salt domes that rise to approximately 15 m water depth and are surrounded by depths from 60 to 120 m. The FGBNMS is regularly surveyed, and the two known colonies, which were only recently discovered and are considered to be a potential range expansion, are constantly monitored.

Our regulations at 50 CFR 424.12(h) state: ''Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.'' Although the geographical area occupied by elkhorn and staghorn corals includes coastal waters of many Caribbean and Central and South American nations, we are not proposing these areas for designation. The geographical area occupied by listed coral species which is within the jurisdiction of the United States is therefore limited to four counties in the State of Florida (Palm Beach County, Broward County, Miami-Dade County, and Monroe County), FGBNMS, and the U.S. territories of Puerto Rico, U.S.V.I, and Navassa Island.

Physical or Biological Features Essential for Conservation (Primary Constituent Elements)

Within the geographical area occupied, critical habitat consists of specific areas on which are found those physical or biological features essential to the conservation of the species (hereafter also referred to as essential features or ''Primary Constituent Elements'' or ''PCEs''). Section 3 of the ESA (16 U.S.C. 1532(3)) defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean: ''To use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.'' Further, our regulations at 50 CFR 424.12(b) for designating critical habitat state that physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection may include, but are not limited to: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. These regulations state that we shall focus on essential features within the specific areas considered for designation.

As stated in the Atlantic Acropora Status Review Report (Acropora Biological Review Team, 2005),

> there are several implications of the current low population sizes of *Acropora* spp. throughout much of the wider Caribbean. First, the number of sexual recruits to a population will be most influenced by larval availability, recruitment, and early juvenile mortality. Because corals cannot move and are dependent upon external fertilization in order to produce larvae, fertilization success declines greatly as adult density declines;

this is termed an Allee effect (Levitan 1991). To compound the impact, *Acropora* spp., although hermaphroditic, do not effectively self-fertilize; gametes must be outcrossed with a different genotype to form viable offspring. Thus, in populations where fragmentation is prevalent, the effective density (of genetically distinct adults) will be even lower than colony density. It is highly likely that this type of recruitment limitation (Allee effect) is occurring in some local elkhorn and staghorn populations, given their state of drastically reduced abundance/density. Simultaneously, when adult abundances of elkhorn and staghorn corals are reduced, the source for fragments (to provide for asexual recruitment) is also compromised. These conditions imply that once a threshold level of population decline has been reached (i.e., a density where fertilization success becomes negligible) the chances for recovery are low.

Thus, we determined that based on available information, facilitating increased incidence of successful sexual and asexual reproduction is the key objective to the conservation of these species. We then turned to determining the physical or biological features essential to this conservation objective.

Currently, sexual recruitment of elkhorn and staghorn corals is limited in some areas and absent in most. Compounding the difficulty of documenting sexual recruitment is the difficulty of visually distinguishing some sexual recruits from asexual recruits (Miller, *et al.*, 2007). Settlement of larvae or attachment of fragments is often unsuccessful, given limited amounts of appropriate habitat due to the shift in benthic community structure from coral-dominated to algae-dominated that has been documented since the 1980s (Hughes and Connell, 1999). Appropriate habitat for elkhorn and staghorn coral recruits to attach and grow consists of hard, consolidated substrate. In addition to being limited, the availability of appropriate habitat for successful sexual and asexual reproduction is susceptible to becoming reduced further because of such factors as fleshy macroalgae overgrowing and preempting the space available for larval settlement, recruitment, and fragment reattachment. Similarly, sediment accumulating on suitable substrate impedes sexual and asexual reproductive success by preempting available substrate and smothering coral recruits. Exacerbating the effect of sedimentation is the presence of turf algae, which traps the sediment, leading to greater amounts of accumulations as compared to bare substrate alone. As described above, features that will facilitate successful larval settlement and recruitment, and reattachment of asexual fragments, are essential to the conservation of elkhorn and staghorn corals. Without successful recruits, the species will not increase in abundance, distribution, and genetic diversity.

Elkhorn and staghorn corals, like most corals, require hard, consolidated substrate (i.e., attached, dead coral skeleton or hardbottom) for their larvae to settle or fragments to reattach. The type of substrate available directly influences settlement success and fragment survivorship. Lirman (2000) demonstrated this in a transplant experiment using elkhorn coral fragments created by a ship grounding. Fifty fragments were collected within 24 hours of fragmentation and assigned to one of the following four types of substrate: (1) Hardbottom (consolidated carbonate framework), (2) rubble (loose, dead pieces of elkhorn and staghorn corals), (3) sand, and (4) live coral. The results showed that the survivorship of transplanted fragments was significantly affected by the type of substrate, with fragment mortality being the greatest for those transplanted to sandy bottom (58 percent loss within the first month and 71 percent after 4 months). Fragments placed on live adult elkhorn coral colonies fused to the underlying tissue and did not experience any tissue loss; and fragments placed on rubble and hardbottom substrates showed high survivorship.

Unlike fragments, coral larvae cannot attach to living coral (Connell, *et al.*, 1997). Larvae can settle and attach to dead coral skeleton (Jordan-Dahlgren, 1992; Bonito and Grober-Dunsmore, 2006) and may settle in particular areas in response to chemical cues from certain species of crustose coralline algae (CCA) (Morse, *et al.*, 1996; Heyward and Negri, 1999; Harrington and Fabricius, 2004). While algae, including CCA and fleshy macroalgae, is a natural component of healthy reef ecosystems, the recent increase in the dominance of fleshy macroalgae as major space-occupiers on many Caribbean coral reefs impedes the recruitment of new corals. This shift in benthic community structure (from the dominance of stony corals to that of fleshy algae) on Caribbean coral reefs is generally attributed to the greater persistence of fleshy macroalgae under reduced grazing regimes due to human overexploitation of herbivorous fishes (Hughes, 1994) and the regional mass mortality of the herbivorous long-spined sea urchin in 1983–84. Further, impacts to water quality (principally nutrient input) coupled with low herbivore grazing are also believed to enhance fleshy macroalgal productivity. Fleshy macroalgae are able to colonize dead coral skeleton and other available substrate, preempting space available for coral recruitment.

The persistence of fleshy macroalgae under reduced grazing regimes has impacts on CCA growth, which may reduce settlement of coral larvae as CCA is thought to provide chemical cues for settlement. Most CCA are susceptible to fouling by fleshy algae, particularly when herbivores are absent (Steneck, 1986). Patterns observed in St. Croix, U.S.V.I., also indicate a strong positive correlation between CCA abundance and herbivory (Steneck, 1997). A study in which Miller, *et al.* (1999) used cages to exclude large herbivores from the study site resulted in increased cover of both turf algae and macroalgae, and cover of CCA decreased. The response of CCA to the experimental treatment persisted for 2 months following cage removal (Miller, *et al.*, 1999). Additionally, following the mass mortality of the urchin *Diadema antillarum*, significant increases in cover of fleshy and filamentous algae occurred with parallel decreases in cover of CCA (de Ruyter van Steveninck and Bak, 1986; Liddel and Ohlhorst, 1986). The ability of fleshy macroalgae to affect growth and survival of CCA has indirect, yet important, impacts on the ability of coral larvae to successfully settle and recruit.

Several studies show that coral recruitment tends to be greater when algal biomass is low (Rogers, *et al.*, 1984; Hughes, 1985; Connell, *et al.*, 1997; Edmunds, *et al.*, 2004; Birrell, *et al.*, 2005; Vermeij, 2006). In addition to preempting space for coral larvae settlement, many fleshy macroalgae produce secondary metabolites with generalized toxicity, which also may inhibit settlement of coral larvae (Kuffner and Paul, 2004). Furthermore, algal turfs can trap sediments (Eckman, *et al.*, 1989; Kendrik, 1991; Steneck, 1997; Purcell, 2000; Nugues and Roberts, 2003; Wilson, *et al.*, 2003; Purcell and Bellwood, 2001), which then creates the potential for algal turfs and sediments to act in combination to hinder coral settlement (Nugues and Roberts, 2003; Birrell, *et al.*, 2005). These turf algae sediment mats also can suppress coral growth under high sediment conditions (Nugues and Roberts, 2003) and may gradually kill the marginal tissues of stony corals with which they come into contact (Dustan, 1977, 1999, as cited by Roy, 2004).

Sediments enter the reef environment through many processes that are natural or anthropogenic in origin, including erosion of coastline, resuspension of bottom sediments, terrestrial run-off, and nearshore dredging for coastal construction projects and navigation

purposes. The rate of sedimentation affects reef distribution, community structure, growth rates, and coral recruitment (Dutra, *et al.*, 2003). Accumulation of sediment can smother living corals, dead coral skeleton, and exposed hardbottom. Sediment accumulation on dead coral skeletons and exposed hardbottom reduces the amount of available substrate suitable for coral larvae settlement and fragment reattachment (Rogers, 1990; Babcock and Smith, 2002). Accumulation of sediments is also a major cause of mortality in coral recruits (Fabricius, *et al.*, 2003). In some instances, if mortality of coral recruits does not occur under heavy sediment conditions, then settled coral planulae may undergo reverse metamorphosis and not survive (Te, 1992). Sedimentation, therefore, impacts the health and survivorship of all life stages (i.e., fecund adults, fragments, larvae, and recruits) of elkhorn and staghorn corals.

Based on the key conservation objective we have identified to date, the natural history of elkhorn and staghorn corals, and their habitat needs, the physical or biological feature of elkhorn and staghorn corals' habitat essential to their conservation is substrate of suitable quality and availability, in water depths from the mean high water (MHW) line to 30 m, to support successful larval settlement, recruitment, and reattachment of fragments. For purposes of this definition, ''substrate of suitable quality and availability'' means consolidated hardbottom or dead coral skeleton that is free from fleshy macroalgae cover and sediment cover. This feature is essential to the conservation of these two species due to the extremely limited recruitment currently being observed.

We determined that no other environmental features are appropriate or necessary for defining critical habitat for the two corals. Other than the substrate PCE, we cannot conclude that any other sufficiently definable feature of the environment is essential to the corals' conservation. Other features of the corals' environment, such as water temperature, are more appropriately viewed as sources of impacts or stressors that can harm the corals, rather than habitat features that provide a conservation function. Therefore, these stressors would not be analyzed as factors that may contribute to a determination whether the corals' critical habitat is likely to be destroyed or adversely modified. Some environmental features are also subsumed within the definition of the substrate PCE; for instance, substrate free from macroalgal cover would encompass water quality sufficiently free of nutrients.

Specific Areas Within the Geographical Area Occupied by the Species

The definition of critical habitat further instructs us to identify specific areas on which are found the physical or biological features essential to the species' conservation. Our regulations state that critical habitat will be defined by specific limits using reference points and lines on standard topographic maps of the area, and referencing each area by the State, county, or other local governmental unit in which it is located (50 CFR 424.12(c)). As discussed below, we determined that specific areas in FGBNMS and Navassa National Wildlife Refuge that contain the PCE do not otherwise meet the definition of critical habitat. Hence, in this section we only describe our identification of the specific areas we are proposing to include in this designation.

In addition to information obtained from the public, we partnered with SEFSC, NOAA Biogeography Team, and U.S. Geological Survey to obtain GIS and remote sensing data (e.g., benthic habitat data, water depth) to compile existing data to identify and map areas that may contain the identified PCE. The following are the major datasets upon which we relied. NOAA's National Ocean Service (NOS) and the Florida Fish and Wildlife Research Institute completed The Benthic Habitat Mapping of Florida Coral Reef Ecosystems using a series of 450 aerial photographs collected in 1991–1992. For this mapping effort, coral ecosystem ecologists outlined the boundaries of specific habitat types by interpreting color patterns on the photographs. Benthic habitats were classified into four major categories—corals, seagrasses, hardbottom, and bare substrate—and 24 subcategories, such as sparse seagrass and patch reef. Each habitat type was groundtruthed in the field by divers to validate the photo-interpretation of the aerial photography. Habitat boundaries were georeferenced and digitized to create computer maps. A similar method was followed by NOS using 1999 aerial imagery in developing the Benthic Habitat Mapping of Puerto Rico and the U.S.V.I.

Using GIS software, we extracted all areas that could be considered potential recruitment habitat, including hardbottom and coral. The benthic habitat information assisted in identifying any major gaps in the distribution of the substrate PCE. Given uncertainties in the age and resolution of the data, we were unable to identify smaller, discrete specific areas that contained the PCE rather than large, continuous areas. Thus, we concluded that, based upon the best available information, although the PCE is unevenly dispersed throughout the ranges of the species, no major gaps existed in the distribution. We further limited the specific areas to the maximum depth of occurrence of the two corals (i.e., 30 m). The 30-m contour was extracted from the National Geophysical Data Center Coastal Relief Model for Puerto Rico & Virgin Islands, and Florida. Because Puerto Rico and the U.S.V.I. are islands, the contours yielded continuous closed polygons. However, because the two species only occur off specific counties in Florida, we used additional boundaries to close the polygons. The Florida Area consists of all waters contained by the boundary beginning at the MHW line at the north boundary of Palm Beach County; then due east to the 30-m contour; then following the 30-m contour to the intersection with the FKNMS boundary northeast of the Dry Tortugas; then following the FKNMS boundary to the intersection with the COLREGS line (see 33 CFR 80.727, 730, 735, and 740) for Florida Bay; then following the COLREGS line southeast to the intersection with Long Key; then following the COLREGS line and MHW line returning to the beginning point. The COLREGS line separates inland waters from marine waters. Also included are the waters in two shoals southwest of the Dry Tortugas bounded by the 30-m contour.

Using the above procedure and consistent with our regulations (50 CFR 424.12(c)), we identified four ''specific areas'' and a few small adjacent areas (separated from main areas by water depth greater than 30 m) within the geographical area occupied by the species, at the time of listing, that contain the PCE. These areas comprise all waters in the depths of 30 m and shallower to the MHW or COLREG line off: (1) Palm Beach, Broward, Miami-Dade, and Monroe Counties, including the Marquesas Keys and the Dry Tortugas, Florida; (2) Puerto Rico and associated Islands; (3) St. John/St. Thomas, U.S.V.I.; and (4) St. Croix, U.S.V.I.) (see maps). Within these specific areas, the PCE consists of consolidated hardbottom or dead coral skeleton that are free from fleshy macroalgae cover and sediment cover. The PCE can be found unevenly dispersed throughout these four areas due to trends in macroalgae coverage, and naturally occurring unconsolidated sediment and seagrasses dispersed within the reef ecosystem. A larger

number of smaller specific areas could not be identified because the submerged nature of the PCE, the limits of available information on the distribution of the PCE, and limits on mapping methodologies make it infeasible to define the specific areas containing the PCE more finely than described herein. Further, based on data about their historical distributions, the corals are capable of successfully recruiting and attaching to available substrate anywhere within the boundaries of the four specific areas. Given these species' reduced abundances, the four specific areas were identified to include all available potential settling substrate within the 30 m contour to maximize the potential for successful recruitment and population growth.

The PCE is not likely to be present in natural sites covered with loose sediment, fleshy macroalgal covered hardbottom, or seagrasses. Additionally, existing man-made structures such as aids-to-navigation (ATONs), artificial reefs, boat ramps, docks, pilings, maintained channels or marinas do not provide the PCE that is essential to the species' conservation. Substrate within the proposed critical habitat boundaries that do not contain the PCE are not part of the designation. Federal actions, or the effects thereof, limited to these areas would not trigger section 7 consultation under the ESA, unless they may affect the species and/or the PCE in adjacent critical habitat. As discussed here and in the supporting impacts analysis, given the precise definition of the proposed PCE, determining whether an action may affect the feature can be accomplished without entering into an ESA section 7 consultation.

Unoccupied Areas

ESA section 3(5)(A)(ii) further defines critical habitat to include specific areas outside the geographical area occupied if the areas are determined by the Secretary to be essential for the conservation of the species. Regulations at 50 CFR 424.12(e) specify that we shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. At the present time, the range of these species has not been constricted, and we have not identified any areas outside the geographical area occupied by the species that are essential for their conservation. Therefore, we are not proposing to designate any unoccupied areas for elkhorn and staghorn corals.

Special Management Considerations or Protection

Specific areas within the geographical area occupied by a species may be designated as critical habitat only if they contain physical or biological features that ''may require special management considerations or protection.'' A few courts have interpreted aspects of this statutory requirement, and the plain language aids in its interpretation. For instance, the language clearly indicates the features, not the specific area containing the features, are the focus of the ''may require'' provision. Use of the disjunctive ''or'' also suggests the need to give distinct meaning to the terms ''special management considerations'' and ''protection.'' Generally speaking, ''protection'' suggests actions to address a negative impact or threat of a negative impact. ''Management'' seems plainly broader than protection, and could include active manipulation of a feature or aspects of the environment. Two Federal district courts, focusing on the term ''may,'' ruled that features can meet this provision based on either present requirements for special management considerations or protections, or on possible future requirements. See, *Center for Biol. Diversity* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003); *Cape Hatteras Access Preservation Alliance* v. *DOI,* 344 F. Supp. 108 (D.D.C. 2004). The Arizona district court ruled that the provision cannot be interpreted to mean that features already covered by an existing management plan must be determined to require ''additional'' special management, because the term ''additional'' is not in the statute. Rather, the court ruled that the existence of management plans may be evidence that the features in fact require special management. *Center for Biol. Diversity* v. *Norton,* 1096–1100. NMFS' regulations define ''special management considerations or protections'' to mean ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species'' (50 CFR 424.02(j)).

Based on the above, we evaluated whether the PCE proposed in this document may require special management considerations or protections by evaluating four criteria:

(a) Whether there is presently a need to manage the feature;

(b) Whether there is the possibility of a need to manage the feature;

(c) Whether there is presently a negative impact on the feature; or

(d) Whether there is the possibility of a negative impact on the feature.

In evaluating present or possible future management needs for the PCE, we recognized that the feature in its present condition must be the basis for a finding that it is essential to the corals' conservation. In addition, the needs for management evaluated in (a) and (b) were limited to managing the feature for the conservation of the species. In evaluating whether the PCE meets either criterion (c) or (d), we evaluated direct and indirect negative impacts from any source (e.g., human or natural). However, we only considered the criteria to be met if impacts affect or have the potential to affect the aspect of the feature that makes it essential to the conservation of the species. We then evaluated whether the PCE met the ''may require'' provision separately for each of the four ''specific areas'' proposed for designation, as well as Navassa Island and FGBNMS (discussed later), as management and protection requirements can vary from area to area based on such factors as the legal authorities applicable to areas and the location of the area within the occupied range.

Suitable habitat available for larval settlement and recruitment, and asexual fragment reattachment, of these coral species, is particularly susceptible to impacts from human activity because of the shallow water depth range (MHW to 30 m) in which elkhorn and staghorn corals commonly grow. The proximity of this habitat to coastal areas subject this feature to impacts from multiple activities including, but not limited to, dredging and disposal activities, stormwater run-off, coastal and maritime construction, land development, wastewater and sewage outflow discharges, point and non-point source pollutant discharges, fishing, placement of large vessel anchorages, and installation of submerged pipelines or cables. The impacts from these activities, combined with those from natural factors (e.g., major storm events), significantly affect the quality and quantity of available substrate for these threatened species to successfully sexually and asexually reproduce. We concluded that the PCE is currently and will likely continue to be negatively impacted by some or all of these factors in all four specific areas.

Overfishing of herbivorous fishes and the mass die-off of long-spined sea urchin *Diadema antillarum* are considered two of the primary contributing factors to the recent shift in benthic community structure from the dominance of stony corals to that of fleshy macroalgae on Caribbean coral reefs. In the absence of fish and urchin grazing or at very low grazing pressures,

coral larvae, algae, and numerous other epibenthic organisms settle in high numbers, but most young, developing coral larvae are rapidly outcompeted for space, and their mortality levels are high (Sammarco, 1985). The weight of evidence suggests that competition between algae and corals is widespread on coral reefs and is largely mediated by herbivory (McCook, *et al.*, 2001).

An additional factor contributing to the dominance of fleshy macroalgae as major space-occupiers on many Caribbean coral reefs is nutrient enrichment. Nutrients are added to coral reefs from both point sources (readily identifiable inputs where pollutants are discharged to receiving surface waters from a pipe or drain) and non-point sources (inputs that occur over a wide area and are associated with particular land uses). Anthropogenic sources of nutrients include sewage, stormwater and agricultural runoff, river discharge, and groundwater; however, natural oceanographic sources like internal waves and upwelling also distribute nutrients on coral reefs. Coral reefs have been considered to be generally nutrient-limited systems, meaning that levels of accessible nitrogen and phosphorus limit the rates of macroalgae growth. When nutrient levels are raised in such a system, growth rates of fleshy macroalgae can be expected to increase, and this can yield imbalance and changes in community structure.

The anthropogenic source routes for nutrients may also bring additional sediments into the coral reef environment. Sources of sediment include erosion of coastline, resuspension of bottom sediments, terrestrial run-off (following clearing of mangroves and deforestation of hillsides), beach renourishment, and nearshore dredging and disposal for coastal construction projects and for navigation purposes. Sediment deposition and accumulation affect the overall amount of suitable substrate available for larval settlement, recruitment, and fragment reattachment (Babcock and Davies, 1991), and both sediment composition and deposition affect the survival of juvenile corals (Fabricius, *et al.*, 2003).

The major category of habitat-related activities that may affect the PCE for the two listed corals is water quality management. Activities within this category have the potential to negatively affect the PCE for elkhorn and staghorn corals by altering the quality and availability of suitable substrate for larval settlement, recruitment, and fragment reattachment. Nutrient enrichment, via sewage, stormwater and agricultural runoff, river discharge, and groundwater, is a major factor contributing to this shift in benthic community structure and preemption of available substrate suitable for larval settlement, recruitment, and asexual fragment reattachment. Additionally, sedimentation resulting from land-use practices and from dredging and disposal activities in all four specific areas reduces the overall availability and quality of substrate suitable for successful sexual and asexual reproduction by the two acroporid corals. Thus, the PCE currently needs and will likely continue to need special management or protection.

Although they fall within U.S. jurisdiction and may contain the PCE, we are not proposing to include FGBNMS and Navassa National Wildlife Refuge in our critical habitat designation, because we do not believe the PCE in these areas requires special management considerations or protections. Both FGBNMS and Navassa Island are remote marine protected areas and are not currently exposed to the negative impacts and conditions needing management discussed for the other areas above. Additionally, based on available information, we do not expect the PCE found within these two protected areas to experience negative impacts from human or natural sources that would diminish the feature's conservation value to the two coral species.

Activities That May Be Affected

Section 4(b)(8) of the ESA requires that we describe briefly and evaluate, in any proposed or final regulation to designate critical habitat, those activities that may destroy or adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect critical habitat and, when carried out, funded, or authorized by a Federal agency, will require an ESA section 7 consultation. Such activities include, but are not limited to, dredging and disposal, beach renourishment, large vessel anchorages, submarine cable/pipeline installation and repair, oil and gas exploration, pollutant discharge, and oil spill prevention and response. Notably, all the activities identified that may affect the critical habitat may also affect the species themselves, if present within the action area of a proposed Federal action.

We believe this proposed critical habitat designation will provide Federal agencies, private entities, and the public with clear notification of critical habitat for elkhorn and staghorn corals and the boundaries of the habitat. This designation will allow Federal agencies and others to evaluate the potential effects of their activities on critical habitat to determine if ESA section 7 consultation with NMFS is needed given the specific definition of the PCE above. Consistent with recent agency guidance on conducting adverse modification analyses (NMFS, 2005), we will apply the statutory provisions of the ESA, including those in section 3 that define ''critical habitat'' and ''conservation,'' to determine whether a proposed future action might result in the destruction or adverse modification of critical habitat.

Application of ESA Section 4(a)(3)(B)(I)

Section 4(a)(3)(B) prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP), if we determine that such a plan provides a benefit to the coral species (16 U.S.C. 1533(a)(3)(B)). The legislative history to this provision explains:

- ''The conferees would expect the [Secretary] to assess an INRMP's potential contribution to species conservation, giving due regard to those habitat protection, maintenance, and improvement projects and other related activities specified in the plan that address the particular conservation and protection needs of the species for which critical habitat would otherwise be proposed. Consistent with current practice, the Secretary would establish criteria that would be used to determine if an INRMP benefits the listed species for which critical habitat would be proposed'' (Conference Committee report, 149 Cong. Rec. H. 10563; November 6, 2003).

No areas within the specific areas being proposed for designation are covered by relevant INRMPs. Although Naval Air Station Key West (NASKW) is within the specific areas being proposed for designation, the current INRMP was adopted in 2001 and does not address listed corals, nor corals in general. NASKW is in the process of updating the 2001 INRMP and has issued a draft of the document to NMFS for review. If the draft INRMP were to become final and provide a benefit to the two corals as described above, then we would not designate critical habitat within the boundaries covered by the INRMP. NASKW is, however, being proposed for exclusion pursuant to section 4(b)(2), as explained below.

Application of ESA Section 4(b)(2)

The foregoing discussion described the specific areas within U.S. jurisdiction that fall within the ESA section 3(5) definition of critical habitat in that they contain the physical feature

essential to the corals' conservation that may require special management considerations or protection. Before including areas in a designation, section 4(b)(2) of the ESA requires the Secretary to take into consideration the economic impact, impact on national security, and any other relevant impacts of designation of any particular area. Additionally, the Secretary has the discretion to exclude any area from designation if he determines the benefits of exclusion (that is, avoiding some or all of the impacts that would result from designation) outweigh the benefits of designation based upon the best scientific and commercial data available. The Secretary may not exclude an area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any particular area under any circumstances.

The analysis of impacts below summarizes the comprehensive analysis contained in our Draft Section 4(b)(2) Report, first by considering economic, national security, and other relevant impacts that we projected would result from including each of the four specific areas in the proposed critical habitat designation. This consideration informed our decision on whether to exercise our discretion to propose excluding particular areas from the designation. Both positive and negative impacts were identified and considered (these terms are used interchangeably with benefits and costs, respectively). Impacts were evaluated in quantitative terms where feasible, but qualitative appraisals were used where that is more appropriate to particular impacts.

The ESA does not define what ''particular areas'' means in the context of section 4(b)(2), or the relationship of particular areas to ''specific areas'' that meet the statute's definition of critical habitat. As there was no biological basis to subdivide the four specific critical habitat areas into smaller units, we treated these areas as the ''particular areas'' for our initial consideration of impacts of designation.

Impacts of Designation

The primary impacts of a critical habitat designation result from the ESA section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat. Determining these impacts is complicated by the fact that section 7(a)(2) also requires that Federal agencies ensure their actions are not likely to jeopardize the species' continued existence. One incremental impact of designation is the extent to which Federal agencies modify their proposed actions to ensure they are not likely to destroy or adversely modify the critical habitat beyond any modifications they would make because of listing and the jeopardy requirement. When a modification would be required due to impacts to both the species and critical habitat, the impact of the designation may be co-extensive with the ESA listing of the species. Additional impacts of designation include state and local protections that may be triggered as a result of designation, and positive impacts that may arise from conservation of the species and their habitat, and education of the public to the importance of an area for species conservation.

A Draft ESA 4(b)(2) Report describes the impacts analysis in detail (NMFS, 2007). The report describes the projected future Federal activities that would trigger section 7 consultation requirements because they may affect the PCE. Additionally, the report describes the project modifications we identified that may reduce impacts to the PCE, and states whether the modifications are more likely to be solely a result of the critical habitat designation or co-extensive with another regulation, including the ESA listing of the species. The report also identifies the potential national security and other relevant impacts that may arise due to the proposed critical habitat designation. This report is available on NMFS' Southeast Region Web site at *http://sero.nmfs.noaa.gov/pr/esa/acropora.htm*.

Economic Impacts

As discussed above, economic impacts of the critical habitat designation result through implementation of section 7 of the ESA in consultations with Federal agencies to ensure their proposed actions are not likely to destroy or adversely modify critical habitat. These economic impacts may include both administrative and project modification costs; economic impacts that may be associated with the conservation benefits of the designation are described later.

Because elkhorn and staghorn corals are newly listed and we lack a lengthy consultation history for these species, we needed to make assumptions about the types of future Federal activities that might require section 7 consultation under the ESA. We examined the consultation record over the last 10 years, as compiled in our Public Consultation Tracking System (PCTS) database, to identify types of Federal activities that have the potential to adversely affect elkhorn or staghorn coral critical habitat. We request Federal action agencies to provide us with information on future consultations if our assumptions omitted any future actions likely to affect the proposed critical habitat. We identified 13 categories of activities conducted by 7 Federal action agencies: Airport repair and construction; anchorages; construction of new aids to navigation; beach nourishment and bank stabilization; coastal construction; discharges to navigable waters; dredging and disposal; fishery management; maintenance construction; maintenance dredging and disposal; military installation management; resource management; and development or modification of water quality standards. Notably, all categories of projected future actions that may trigger consultation because they have the potential to adversely affect the PCE also have the potential to adversely affect the corals themselves. There are no categories of activities that would trigger consultation on the basis of the proposed critical habitat designation alone. However, it is feasible that a specific future project within a category of activity would have impacts on critical habitat but not on the species. Because the total surface area covered by the proposed PCE (although unquantified) is far larger than the total surface area on which the corals (again unquantified) currently occur, it is likely there will be more consultations with impacts on critical habitat than on the species. Nonetheless, it was impossible to determine how many of those projects there may be over the 10-year horizon of our impacts analysis.

To avoid underestimating impacts, we assumed that all of the projected future actions in these categories will require formal consultations for estimation of both administrative and project modification costs. This assumption likely results in an overestimation of the number of future formal consultations.

We next considered the range of modifications we might seek for these activities to avoid adverse modification of elkhorn and staghorn coral critical habitat. We identified 13 potential project modifications that we may require to reduce impacts to the PCE through section 7 consultation under the ESA. To be conservative in estimating impacts, we assumed that project modifications would be required to address adverse effects from all projected future agency actions requiring consultation. Although we made the assumption that all potential project modifications would be required by NMFS, not all of the modifications

identified for a specific category of activity would be necessary for an individual project, so we were unable to identify the exact modification or combinations of modifications that would be required for all future actions.

We also identified whether a project modification would be required due to the listing of the species or another existing regulatory authority to determine if the cost of the project modification was likely to be co-extensive or incremental. Several project modifications (i.e., conditions monitoring, diver education, horizontal directional drilling (HDD), tunneling or anchoring cables and pipelines, sediment control measures, fishing gear maintenance, and water quality standard modification) were characterized as fully co-extensive with the listing of the species or other existing statutory or regulatory authority, because the nature of the actions that would require these modifications typically involve a large action area likely to include both the PCE and either the listed corals or other coral reef resources. Other project modifications (i.e., project relocation, diver assisted anchoring or mooring buoy use, global positioning system (GPS) and dynamic positioning vessel (DPV) protocol, sand bypassing/backpassing, shoreline protection measures, and use of upland or artificial sources of sand) were characterized as partially co-extensive with the listing of the species or other existing statutory or regulatory authority such as the Clean Water Act because of the typically smaller action area of projects that would involve these modifications, and thus the greater likelihood that specific projects would impact only the PCE. We did not identify any project modification that we expected would result in fully incremental costs due to the critical habitat designation.

Table 1 provides a summary of the estimated costs, where possible, of individual project modifications. The Draft ESA 4(b)(2) Report provides a detailed description of each project modification, methods of determining estimated costs, and actions for which it may be prescribed. Although we have a projection of the number of future formal consultations (albeit an overestimation), the lack of information on specific project designs limits our ability to forecast the exact type and amount of modifications required. Thus, while the costs associated with types of project modifications were characterized, no total cost of this proposed rule could be quantified.

TABLE 1.—SUMMARY OF POTENTIAL PER-PROJECT COSTS ASSOCIATED WITH SPECIFIC PROJECT MODIFICATIONS—WHERE INFORMATION WAS AVAILABLE, RANGES OF SCOPES ARE INCLUDED

Project modification	Cost	Unit	Range	Approximate per project total
Fully Co-extensive:				
Conditions Monitoring	$3.5–6K	per day	1–400 days	$3.5K–2.4M.
Diver Education	Admin. Cost	n/a	n/a	n/a.
HDD/Tunneling	$1.4–2.4M	per mile	0.2–31.5 miles	$278K–76.9M.
Pipe Collars or Cable Anchors	$1.2K	per anchor	13–2,529 anchors	$15.6K–3M.
Sediment Controls	$43K	per mile	0.05–7 miles	$2–301K.
Water Quality Standard Modification.	Undeterminable	n/a	n/a	n/a.
Partially Co-extensive:				
Project Relocation	Undeterminable	n/a	n/a	n/a.
Diver-assisted Anchoring or Mooring Buoy Use.	$300–1,000	per day	n/a	n/a.
GPS & DPV protocol	Undeterminable	n/a	n/a	n/a.
Sand Bypassing or Backpassing	$1.5–16K	per cu yd	75–512K cu yd	$113K–8.2M.
Shoreline Protection Measures	Undeterminable	n/a	n/a	n/a.
Upland or Artificial Sources of Sand.	Undeterminable	n/a	n/a	n/a

In addition to project modification costs, administrative costs of consultation will be incurred by Federal agencies and project permittees or grantees as a result of this designation. Estimates of the cost of an individual consultation were developed from a review and analysis of the consultation database, as previously discussed, and from the estimated ESA section 7 consultation costs identified in the Economic Analysis of Critical Habitat Designation for the Gulf Sturgeon (IEc, 2003) inflated to 2006 dollars (the 2007 inflation coefficient was not known at the time of drafting). Cost figures are based on an average level of effort for consultations of low or high complexity (based on NMFS and other Federal agency information), multiplied by the appropriate labor rates for NMFS and other Federal agency staff. Although the PCE occurs in greater abundance than the corals and thus the probability that a consultation would be required because of the critical habitat designation is higher than for the listing of corals, we were unable to estimate the number of consultations that may be required on the basis of critical habitat alone. Therefore, we present the estimated maximum incremental administrative costs as averaging $827,220 to $1,633,229, annually.

National Security Impacts

Previous critical habitat designations have recognized that impacts to national security result if a designation would trigger future ESA section 7 consultations because a proposed military activity ''may affect'' the physical or biological feature(s) essential to the listed species' conservation. Anticipated interference with mission-essential training or testing or unit readiness, either through delays caused by the consultation process or through expected requirements to modify the action to prevent adverse modification of critical habitat, has been identified as a negative impact of critical habitat designations. (See, e.g., Proposed Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover, 71 FR 34571, June 15, 2006, at 34583; and Proposed Designation of Critical Habitat for Southern Resident Killer Whales; 69 FR 75608, Dec. 17, 2004, at 75633.)

Past designations have also recognized that whether national

security impacts result from the designation depends on whether future consultations would be required under the jeopardy standard regardless of the critical habitat designation, and whether the critical habitat designation would add new burdens beyond those related to the jeopardy consultation.

As discussed above, based on the past 10-year consultation history, it is likely that consultations with respect to activities on DOD facilities will be triggered as a result of the proposed critical habitat designation. Further, it is possible that some consultations will be due to the presence of the PCE alone, and that adverse modification of the PCE could result, thus requiring a reasonable and prudent alternative to the proposed DOD activity.

On May 22, 2007, we sent a letter to DOD requesting information on national security impacts of the proposed critical habitat designation, and received a response from the Department of the Navy (Navy). Further discussions and correspondence identified Naval Air Station Key West (NASKW) as the only installation potentially affected by the critical habitat designation. NASKW resides solely within the Florida specific area of the proposed critical habitat (Area 1). No other DOD installations were identified as likely to be impacted by this proposed designation.

The Navy identified several specific activities within NASKW and associated annexes that would be adversely impacted by requirements to modify the actions to avoid destroying or adversely modifying critical habitat. These activities include: military training and readiness; access to, management of, and maintenance of piers, harbors, and waterfront instrumentation; and support for refueling or docking of Federal vessels. The Navy considers nearshore areas to be under its control pursuant to its navigable servitude for purposes of national defense under the Submerged Lands Act (43 U.S.C. 1314). Additionally, the Navy states that NASKW and associated annexes (including bombing and strafing areas) provide training necessary to national security and identified the types of military activities that take place in the areas. The Navy concluded that critical habitat designation at NASKW would likely impact national security by diminishing military readiness through the requirement to consult on their activities within critical habitat in addition to the requirement to consult on the two listed corals. We discuss our exclusion analysis based on these national security impacts below.

Other Relevant Impacts

Past critical habitat designations have identified two broad categories of other relevant impacts: Conservation benefits, both to the species and to society as a result of designation, and impacts on governmental or private entities that are implementing existing management plans that provide benefits to the listed species. Our Draft Section 4(b)(2) Report discusses conservation benefits of designating the four specific areas to the corals, and the benefits of conserving the corals to society, in both ecological and economic metrics.

As summarized in the Draft 4(b)(2) Report, elkhorn and staghorn corals currently provide a range of important uses and services to society. Because the features that form the basis of the critical habitat are essential to, and thus contribute to, successful conservation of the two listed corals, protection of critical habitat from destruction or adverse modification may, at minimum, prevent further loss of the benefits currently provided by the species. Moreover, because the PCE is essential to increasing the abundance of elkhorn and staghorn corals, its successful protection may actually contribute to an increase in the benefits of these species to society in the future. While we cannot quantify nor monetize the benefits, we believe they are not negligible and would be an incremental benefit of this designation. However, although the PCE is essential to the corals' conservation, critical habitat designation alone will not bring about their recovery. The benefits of conserving elkhorn and staghorn coral are, and will continue to be, the result of several laws and regulations.

Elkhorn and staghorn corals are two of the major reef-building corals in the Caribbean. Over the last 5,000 years, they have made a major contribution to the structure that makes up the Caribbean reef system. The structural and ecological roles of Atlantic acroporids in the Caribbean are unique and cannot be filled by other reef-building corals in terms of accretion rates and the formation of structurally complex reefs. At current levels of acroporid abundance, this ecosystem function is significantly reduced. Due to elkhorn and staghorn corals' extremely reduced abundance, it is likely that Caribbean reefs are in an erosional, rather than accretional, state.

In addition to the important functions of reef building and reef maintenance provided by elkhorn and staghorn corals, these species themselves serve as fish habitat (Ogden and Ehrlich, 1977; Appeldoorn, *et al.*, 1996), including essential fish habitat (CFMC, 1998), for species of economic and ecological importance. Specifically, Lirman (1999) reported significantly higher abundances of grunts (Haemulidae), snappers (Lutjanidae), and sweepers (Pempheridae) in areas dominated by elkhorn coral compared to other coral sites suggesting that fish schools use elkhorn colonies preferentially. Additionally, Hill (2001) found that staghorn coral in a Puerto Rican back-reef lagoon was the preferred settlement habitat for the white grunt *(Haemulon plumieri*). Numerous reef studies have also described the relationship between increased habitat complexity and increased species richness, abundance, and diversity of fishes. Due to their branching morphologies, elkhorn and staghorn corals provide complexity to the coral reef habitat that other common species with mounding or plate morphologies do not provide.

Another benefit of elkhorn and staghorn corals is provided in the form of shoreline protection. Again, due to their function as major reef building species, elkhorn and staghorn corals provide shoreline protection by dissipating the force of waves, which are a major source of erosion and loss of land (NOAA, 2005). For example, in 2005, the coast of Mexico north of Cancun was impacted by Hurricane Wilma; wave height recorded just offshore of the barrier reef was 11 m while wave height at the coast was observed to be 3 m (B. van Tussenbroek, pers. comm.). Damage to coastal structures would have been significantly greater had the 11-m waves not been dissipated by the reef.

Lastly, numerous studies have identified the economic value of coral reefs to tourism and recreation. Of particular relevance, Johns, *et al.* (2003) estimated the value of natural reefs to reef users, and the contribution of natural reefs to the economies of the four counties of Florida that are associated with the proposed designation (discussed below). The importance of the benefits elkhorn and staghorn corals provide is also evidenced by the designation of marine protected areas specifically for the protection of these species (e.g., Tres Palmas Reserve, Puerto Rico).

Many previous designations have evaluated the impacts of designation on relationships with, or the efforts of, private and public entities that are involved in management or conservation efforts benefitting listed species. Similar to national security impacts, impacts on entities responsible for natural resource management or conservation plans that benefit listed

species, or on the functioning of those plans, depend on the type and number of ESA section 7 consultations and potential project modifications that may result from the proposed critical habitat designation in the areas covered by the plans. Several existing resource management areas (Florida Keys National Marine Sanctuary, Dry Tortugas National Park, Dry Tortugas Ecological Reserve, Biscayne Bay National Park, Buck Island Reef National Monument, Virgin Islands National Park, and Virgin Islands Coral Reef National Monument) will likely require section 7 consultation in the future when the responsible Federal agencies revise their management plans or associated regulations or implement management actions. Negative impacts to these agencies could result if the designation interferes with their ability to provide for the conservation of the species or otherwise hampers management of these areas. Because we identified that resource management was a category of activities that may affect both the species and the critical habitat and that the project modifications required through section 7 consultation would be the same for the species and the PCE, these costs are considered to be coextensive. However, we found no evidence that relationships would be negatively affected or that negative impacts to other agencies' ability to provide for the conservation of the corals would result from the designation. We also describe in our draft 4(b)(2) report that the critical habitat designation will provide an important unique benefit to the corals by protecting settling substrate for future coral recruitment and recovery, compared to existing laws and management plans for these areas that focus on protecting existing coral resources.

Synthesis of Impacts Within the Four Specific Areas

As discussed above, no categories of Federal actions would require consultation in the future solely due to the critical habitat designation; all projected categories of future actions have the potential to adversely affect both the PCE and the listed corals. However, an individual action within these categories may ultimately result in impacts to only the PCE because the species may not be present within the action area. In addition, past actions triggered consultation due to effects on one or more other listed species within the areas covered by the proposed designation (e.g., sea turtles, smalltooth sawfish, Johnson's seagrass), but for purposes of the impacts analysis we assumed these other species consultations would not be co-extensive with consultations for the corals or the PCE. For each of the specific areas, whether future consultations are incremental impacts of the critical habitat designation or are co-extensive impacts of the listing or other legal authorities will depend on whether the listed corals or other coral species are in the action area. Based on the relative abundance of the PCE and the listed corals, or all corals combined, there seems to be a higher likelihood that a future project could impact the PCE alone and thus be an incremental impact of designation. On the other hand, projects with larger or diffuse action areas may have a greater likelihood of impacting both the PCE and the corals, and the same modifications would alleviate both types of impacts, so the costs of these projects would more likely be co-extensive either with the listing or existing authorities focused on protecting coral reef resources.

The proposed Florida specific area of critical habitat (Area 1) will have the greatest number of ESA section 7 consultations resulting from the proposed critical habitat designation over the next 10 years, 317 consultations, or, on average, 31 per year; the Puerto Rico specific area (Area 2) will have the second highest number of consultations, 115, or, on average, 11–12 per year; and the U.S.V.I. specific areas combined (Areas 3 and 4) will have the lowest number of consultations, 41, or, on average, 4 per year. The number of future consultations is proportional to the length of coastline in each of the four specific areas: Area 1 is projected to experience 66 percent of total consultations and it contains 65 percent of critical habitat coastline; Area 2 is projected to have 25 percent of consultations and contains 26 percent of shoreline included in the designation; and Areas 3 and 4 are projected to have 9 percent of consultations and contain 8 percent of total shoreline. In all four specific areas USACE-permitted marine construction activities comprise the largest number of projected future actions, in similar percentages across the areas (75 percent in Area 1; 65 percent in Area 2; and 61 percent in Areas 3 and 4). We detected no patterns or clumping in the geographic distribution of projected future actions and future consultations and project modifications within any of the specific areas that would suggest an economic basis for focusing our evaluation of impacts on smaller areas within any of the areas. In other words, no particular areas within the specific areas identified are expected to incur a disproportionate share of the costs of designation.

As mentioned above, the majority of projected ESA section 7 consultations in all four specific areas will be USACE-authorized marine construction activities, and all of these could involve third-party permittees. Although we assumed all of these projects will require formal consultation due to effects on the PCE and the corals to avoid underestimating ESA section 7 impacts, as discussed in our impacts report, it is unlikely that *all* of these projects will trigger consultation for either the PCE or the corals, or that they would require modification to avoid adverse impacts. Though our database on past consultations is not complete, the data indicate that the majority of the projects in this category were residential dock construction, and as such would have been located in protected shorelines such as manmade canals where the PCE and the corals are not routinely found. Even when these projects trigger consultation in the future, the project modifications that may be required as a result of the proposed critical habitat may also be required by an existing regulatory authority, including the ESA listing of the two corals. Thus, if both the PCE and corals are present, or if another regulatory authority would also require the project modification, the costs associated with these project modifications will be co-extensive. Many of the other categories of activities projected to occur in all four specific areas have the potential to have effects over larger, more diffuse action areas, and thus are more likely to be co-extensive costs of the designation (e.g., dredging projects, water discharge, and water quality regulatory projects).

We estimated the maximum incremental administrative costs of conducting ESA section 7 consultation for each of the four specific areas. Multiplying the total number of consultations by the low and high estimates of cost yields the following ranges of total administrative costs (in 2006 dollars) per area over the next 10 years: $5,543,946 to $10,945,740 in Area 1; $2,011,211 to $3,970,852 in Area 2; and $717,040 to $1,415,695 in Areas 3 and 4. Table 1 above provides a summary of the estimated costs, where possible, of individual project modifications. The Draft Section 4(b)(2) Report provides a detailed description of each project modification, methods of determining estimated costs, and for which action(s) it may be prescribed. Although we have a projection of the

number of future formal consultations (albeit an overestimation), the lack of information on the specifics of project design limits our ability to forecast the exact type and amount of modifications required. Therefore, while the costs associated with types of project modifications were characterized, no total cost of this proposed rule can be quantified accurately.

Preventing these project impacts is expected to contribute to the preservation of, and potential increases in, economic and other conservation benefits in each of the four specific areas, as described in the Draft Section 4(b)(2) Report. In Area 1, the natural reefs formed and inhabited by elkhorn and staghorn corals provide over $225 million in average annual use value (2003 dollars) and a capitalized value of over $7 billion to the four Florida counties covered by Area 1. Natural reef-related industries provided over 40,000 jobs in Area 1 in 2003, generating over $1 billion in income. Area 1 experienced almost $6 million in value of commercial reef-dependent fish landings in 2005. Available information also demonstrates the direct link between healthy coral reef ecosystems and the value of scuba-diving related tourism throughout the Caribbean, including Florida, with estimated losses in the hundreds of millions of dollars region-wide per year if reef degradation continues. Coral reefs provided over 87 percent of average annual commercial fish and invertebrate landings in Puerto Rico (Area 2) from 1995 to 2002. In 2005, domestic landings of shallow water reef fish comprised about 66 percent of all fish landed in Puerto Rico and were valued at over $1.7 million. Tourism is not as important a component of Puerto Rico's overall economy as it is in Areas 1, 3, and 4, but it may be much more significant for the shoreside communities from which dive and other reef-related tourism activities embark. Tourism accounts for 80 percent of the U.S.V.I.'s (Area 3) Gross Domestic Product and employment. One survey documented that 100 percent of hotel industry respondents stated they believed there would be a significant impact on tourist visits if the coast and beaches were degraded, or fisheries or coral reefs declined. In 2005, domestic landings of shallow water reef fish comprised about 83 percent of all fish landed in the U.S.V.I. that year and were valued at over $3.8 million.

Conservation benefits to the corals in each of the four specific areas are expected to result from the designation. As we have determined, recovery of elkhorn and staghorn corals cannot succeed without protection of the PCE from destruction or adverse modification. No existing laws or regulations protect the PCE from destruction or adverse modification with a specific focus on increasing coral abundance and eventual recovery. Given the extremely low current abundance of the corals and characteristics of their sexual reproduction (e.g., limited success over long ranges), protecting the PCE throughout the corals' range and throughout each of the four specific areas is extremely important for conservation of these species. We also describe the potential educational and awareness benefits to the corals that may result from the critical habitat designation in our Draft 4(b)(2) Report.

Regarding economic impacts, the limitations to the type and amount of existing information do not allow us to predict the total costs and benefits of the proposed designation. Nevertheless, we believe that our characterization of the types of costs and benefits that may result from the designation, in particular circumstances, may provide some useful information to Federal action agencies and potential project permittees. We have based the proposed designation on a very specifically defined feature essential to the corals' conservation, which allowed us to identify the few, specific effects of human activities that may adversely affect the corals and thus require section 7 consultation under the ESA (sedimentation, nutrification, and physical destruction). We identified potential routine project modifications we may require to avoid destroying or adversely modifying the essential substrate feature. In some cases, these modifications are common environmental mitigation measures that are already being performed under existing laws and regulations that seek to prevent or minimize adverse impacts to coral reef or marine resources in general. Thus, we believe that parties planning future activities within the four specific areas proposed for designation will be able to predict the potential added costs of their projects resulting from the designation based on their knowledge of the location, size, and timing of their planned activities. We have discussed to the extent possible the circumstances under which section 7 impacts will be incremental impacts of this rule, or co-extensive impacts of this rule and the listing of the corals or another existing legal authority. We believe that the limitations of current information about potential future projects do not allow us to be more specific in our estimates of the section 7 impacts (administrative consultation and project modification costs) of the proposed designation. In addition, based on available information, we did not identify any patterns or clumping in the distribution of future projects (and the associated consultations and potential modifications) either between or within the four specific areas proposed for designation that would suggest any disproportionate impact of the designation.

Similarly, with regard to the conservation benefits of the proposed designation, we determined that the designation will result in benefits to society. We provide a literature survey of the valuation of coral reefs to provide context for the readers on benefits of protective measures. Given the potential number and type of future ESA section 7 consultations, we expect that the designation will prevent adverse effects to the proposed critical habitat feature, and thus assist in maintaining the feature's conservation function for the two corals. We believe the designation will assist in preventing further losses of the corals and, eventually, in increased abundance of the two species. By contributing to the continued existence of these two species and eventually their increased abundance, the proposed designation will, at minimum, prevent loss of important societal benefits described above that are currently provided by the species, and potentially increase these benefits over time.

Regarding impacts on Federal agencies responsible for managing resources in areas proposed for designation, we expect section 7 consultation responsibilities will result from the designation as described above. However, as explained further in the section 4(b)(2) report, we determined that the designation will not negatively impact the management or operation of existing managed areas or the Federal agencies responsible for these areas. We further determined that the designation provides an added conservation benefit to the corals beyond the benefits provided by the existing management plans and associated regulations. We believe our evaluation and consideration of the potential impacts above support our conclusion that there are no economic or other relevant impacts that warrant our proposing to exclude particular areas from the designation. Given the limitations on existing data and information, we are specifically requesting comments and information that may be useful in refining our analysis, including any omitted categories of activities that may affect the essential feature and more

precise cost estimates for project modifications.

As discussed in the next section, we are exercising our discretion to propose excluding particular areas from the critical habitat designation based on national security impacts.

Proposed Exclusions Under Section 4(b)(2)

Impacts to national security as a result of the proposed critical habitat designation are expected to occur in Area 1, specifically on 47.3 sq miles (123 sq km) of NASKW. Based on information provided to us by the Navy, national security interests would be negatively impacted by the designation, because the potential additional consultations and project modifications to avoid adversely modifying the PCE would interfere with military training and readiness. Based on these considerations, we propose exclusion of the particular areas identified by the Navy from the critical habitat designation.

The benefit of excluding the NASKW particular areas is that the Navy would only be required to comply with the jeopardy prohibition of ESA section 7(a)(2) and not the adverse modification prohibition. The Navy maintains that the additional commitment of resources in completing an adverse modification analysis, and any change in its activities to avoid adverse modification of critical habitat, would likely reduce its readiness capability. Given that the Navy is currently actively engaged in training, maintaining, and deploying forces in the current war effort, this reduction in readiness could reduce the ability of the military to ensure national security.

The best scientific and commercial data available indicate that the PCE is rare within the proposed exclusion area. Further, the area to be excluded comprises only 1.1 percent of Area 1. The corals and habitat will still be protected through ESA section 7 consultations that prohibit jeopardizing the species' continued existence and require modifications to minimize the impacts of incidental take. Further, there are no other Federal activities that might adversely impact the proposed critical habitat that would be exempted from future consultation requirements due to this proposed exclusion, since these areas are under exclusive military control. Therefore, in our judgment, the benefit of including the particular area of NASKW is outweighed by the national security benefit the Navy will gain by not consulting on critical habitat. Given the small percentage of Area 1 encompassed by this area, we conclude that exclusion will not result in extinction of either elkhorn or staghorn corals.

Critical Habitat Designation

We are proposing to designate approximately 4,931 square miles (12,569 sq km) of marine habitat within the geographical area occupied by elkhorn and staghorn corals in Florida, Puerto Rico, and the U.S.V.I. The proposed specific areas contain the substrate physical feature, or PCE, we determined to be essential to the conservation of these species and that may require special management considerations or protection.

Public Comments Solicited

We request that interested persons submit comments, information, maps, and suggestions concerning this proposed rule and supporting draft 4(b)(2) report during the comment period (see **DATES**). We are soliciting comments or suggestions from the public, other concerned governments and agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are also soliciting comments on the draft 4(b)(2) report and its analysis of economic, national security, and other relevant impacts and proposed exclusions. You may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). The proposed rule, maps, fact sheets, references, and other materials relating to this proposal can be found on the NMFS Southeast Region Web site at *http://sero.nmfs.noaa.gov/pr/protres.htm.* We will consider all comments pertaining to this designation received during the comment period in preparing the final rule. Accordingly, the final designation may differ from this proposal.

Public Hearings

50 CFR 424.16(c)(3) requires the Secretary to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed rule to designate critical habitat. Such hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. We encourage the public's involvement in these hearings. Based on the high level of public interest in elkhorn and staghorn corals, public meetings have been scheduled for:

1. Tuesday, March 4, 2008, 7 p.m. to 9 p.m., IGFA Events Hall, 300 Gulf Stream Way, Dania Beach, Florida.

2. Wednesday, March 5, 2008, 7 p.m. to 9 p.m., Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

3. Tuesday, March 11, 2008, 6 p.m. to 8 p.m., Administration and Conference Center (ACC), 1st Floor Conference Room, University of the Virgin Islands, #2 John Brewer's Bay, St. Thomas, U.S.V.I./Simulcast Location on St. Croix: The Great Hall, Room #134, University of the Virgin Islands, RR 1, Box 10000 Kingshill, St. Croix, U.S.V.I.

4. Wednesday, March 12, 2008, 7 p.m. to 9 p.m., 4th Floor Conference Room, Environmental Building, Cruz Matos, State Road #838, km 6.3, Sector El Cinco, Rio Piedras, Puerto Rico.

Requests for additional public hearings must be made in writing (see **ADDRESSES**) by March 24, 2008.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the scientific information that supports this proposal to designate critical habitat for elkhorn and staghorn corals and incorporated the peer review comments prior to dissemination of this proposed rulemaking. A Draft 4(b)(2) Report (NMFS, 2007) that supports the proposal to designate critical habitat for elkhorn and staghorn corals was also peer reviewed and is available on our Web site (see **ADDRESSES**).

We determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management programs of Florida, Puerto Rico, and U.S.V.I. The determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule has been determined to be significant under Executive Order (E.O.) 12866. We have integrated the regulatory principles of the E.O. into the development of this proposed rule to the extent consistent with the mandatory duty to designate critical habitat, as defined in the ESA.

We prepared an initial regulatory flexibility analysis (IRFA) pursuant to section 603 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), which describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and its legal basis are included in the preamble section of this proposed rule.

Small businesses, small nonprofit organizations, and small governmental jurisdictions may be affected by this proposed designation if they engage in activities that would affect the essential feature identified in this proposed designation and if they receive funding or authorization for such activity from a Federal agency. Such activities would trigger ESA section 7 consultation requirements and potential requirements to modify proposed activities to avoid destroying or adversely modifying the critical habitat. The consultation record from which we have projected likely Federal actions over the next 10 years indicates that applicants for Federal permits or funds have included small entities. For example, marine contractors have been the recipients of USACE permits for dock construction; some of these contractors were small entities.

According to the Small Business Administration, businesses in the Heavy and Civil Engineering Construction subsector (NAICS Code 237990), which includes firms involved in marine construction projects such as breakwater, dock, pier, jetty, seawall and harbor construction, must have average annual receipts of no more than $31 million to qualify as a small business (dredging contractors that perform at least 40 percent of the volume dredged with their own equipment, or equipment owned by another small concern are considered small businesses if their average annual receipts are less than or equal to $18.5 million). Our consultation database does not track the identity of past permit recipients or whether the recipients were small entities, so we have no basis to determine the percentage of grantees or permittees that may be small businesses in the future. We do know from the more recent consultation history that small governmental jurisdictions (population less than or equal to 50,000) have received USACE permits for beach renourishment. Small businesses in the tourist and commercial fishing industries may benefit from the rule, as conservation of elkhorn and staghorn corals is expected to result in increased direct and indirect use of, and values derived from, coral reefs. We encourage small businesses, small governmental jurisdictions, and other small entities to provide comment on whether they may be affected by this rulemaking to help us provide an accurate estimate of the number of small entities to which the proposed rule will apply.

We projected that, on average, approximately 39 Federal projects with non-federal grantees or permittees will be affected by implementation of the proposed critical habitat designation, annually, across all four areas proposed for inclusion in the critical habitat designation. Some of these grantees or permittees could be small entities, or could hire small entities to assist in project implementation. Historically, these projects have involved pipeline installation and maintenance, mooring construction and maintenance, dock/pier construction and repair, marina construction, bridge repair and construction, new dredging, maintenance dredging, NPDES/water quality standards, cable installation, beach nourishment, shoreline stabilization, reef ball construction and installation, and port construction. Potential project modifications we have identified that may be required to prevent these types of projects from adversely modifying critical habitat include: project relocation; environmental conditions monitoring; GPS and DPV protocols; diver assisted anchoring or mooring buoy use; pipe collars or cable anchoring; shoreline protection measures; use of upland or artificial sources of sand; direction drilling or tunneling; and sediment and turbidity control measures (see Tables 20, 21 and 24 of the Draft Section 4(b)(2) Report).

Even though we cannot determine relative numbers of small and large entities that may be affected by this proposed rule, there is no indication that affected project applicants would be limited to, nor disproportionately comprise, small entities. It is unclear whether small entities would be placed at a competitive disadvantage compared to large entities. However, as described in the Draft Section 4(b)(2) Report, consultations and project modifications will be required based on the type of permitted action and its associated impacts on the essential critical habitat feature. Because the costs of many potential project modifications that may be required to avoid adverse modification of critical habitat are unit costs (e.g., per mile of shoreline, per cubic yard of sand moved) such that total project modification costs would be proportional to the size of the project, it is not unreasonable to assume that larger entities would be involved in implementing the larger projects with proportionally larger project modification costs.

It is also unclear whether the proposed rule will significantly reduce profits or revenue for small businesses. As discussed throughout the Draft Section 4(b)(2) Report, we made assumptions that all of the future consultations will be formal, and all will require project modifications; but this is likely an overestimation. In addition, as stated above, though it is not possible to determine the exact cost of any given project modification resulting from consultation, the smaller projects most likely to be undertaken by small entities would likely result in relatively small modification costs. Finally, many of the modifications identified to reduce the impact of a project on critical habitat may be a baseline requirement either due to the ESA listing of the species or under another regulatory authority, notably the Clean Water Act.

There are no record-keeping requirements associated with the proposed rule. Similarly, there are no reporting requirements other than those that might be associated with reporting on the progress and success of implementing project modifications, which do not require specific skills to satisfy. However, third party applicants or permittees would be expected to incur costs associated with participating in the administrative process of consultation along with the permitting Federal agency. Such third party costs of consultation were estimated for the 2003 designation of critical habitat for Gulf sturgeon in the southeast United States. In 2006 dollars, per consultation administrative costs for third parties are estimated to average from $3,251 to $4,596.

We encourage all small businesses, small governmental jurisdictions, and other small entities that may be affected by this rule to provide comment on the potential economic impacts of the proposed designation, such as anticipated costs of consultation and potential project modifications, to improve the above analysis.

No Federal laws or regulations duplicate or conflict with the proposed rule. Existing Federal laws and regulations overlap with the proposed rule only to the extent that they provide protection to marine natural resources or corals generally. However, no existing laws or regulations specifically prohibit destruction or adverse modification of critical habitat for, and focus on the recovery of, elkhorn and staghorn corals.

The alternatives to the proposed designation considered consisted of a no-action alternative and an alternative based on a broader conservation objective that would include multiple physical or biological features of the corals' environment in the designation. The no-action, or no designation, alternative would result in no additional ESA section 7 consultations relative to the status quo of the species' listing and finalization of a recently proposed ESA section 4(d) rule. However, while additional administrative and potential project modification costs would not be incurred under this alternative, this alternative is not necessarily a no cost alternative, including to small entities, given the potential loss of existing benefits provided by the corals if they continue to decline due to failure to protect the substrate PCE from adverse modification. The multiple features alternative was expected to increase the number and complexity of section 7 consultations and associated costs to small entities without concomitant increased conservation benefits to the corals, because we believe the additional features are already effectively managed through the jeopardy analysis required under ESA section 7 or subsumed within the substrate PCE identified for this designation.

An environmental analysis as provided for under National Environmental Policy Act for critical habitat designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Pursuant to the Executive Order on Federalism, E.O. 13132, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action and request comments from the appropriate official(s) of the states and territories in which the two species occur.

The proposed action has undergone a pre-dissemination review and determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (Section 515 of Pub. L. 106–554).

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule is consistent with E.O. 13089, which is intended to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment.

References Cited

A complete list of all references cited in this rulemaking can be found on our Web site at *http://sero.nmfs.noaa.gov/pr/protres.htm* and is available upon request from the NMFS Southeast Regional Office in St. Petersburg, Florida (see **ADDRESSES**).

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transporation.

50 CFR Part 226

Endangered and threatened species.

Dated: January 31, 2008.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, we propose to amend 50 CFR parts 223 and 226 as set forth below:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

§ 223.102 [Amended]

2. Amend § 223.102 by removing the text, ''NA'', from the column labeled ''Citation for Critical Habitat Designation'' in paragraphs (d)(1) and (d)(2) and adding in its place the **Federal Register** citation for the final rule associated with this proposed rule.

PART 226—DESIGNATED CRITICAL HABITAT

3. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

4. Add § 226.215, to read as follows:

§ 226.215 Critical habitat for Elkhorn (Acropora palmata) and Staghorn (A. cervicornis) Corals.

Critical habitat is designated for both elkhorn and staghorn corals as described in this section. The textual descriptions of critical habitat in paragraphs (b) and (c) of this section are the definitive source for determining the critical habitat boundaries. The overview maps in paragraph (d) of this section are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) *Physical Feature Essential to the Conservation of Threatened Corals.* The physical feature essential to the conservation of elkhorn and staghorn corals is: substrate of suitable quality and availability, in water depths from mean high water to 30 m, to support larval settlement and recruitment, and reattachment of asexual fragments. ''Substrate of suitable quality and availability'' is defined as natural consolidated hardbottom or dead coral skeleton that is free from fleshy macroalgae cover and sediment cover.

(b) *Critical Habitat Areas.* Critical habitat includes one specific area of the Atlantic Ocean offshore of Palm Beach, Broward, Miami-Dade, and Monroe counties, Florida, and three specific areas of the Atlantic Ocean and Caribbean Sea offshore of the U.S. Territories of Puerto Rico and the U.S. Virgin Islands. The boundaries of each specific critical habitat area are described below. Generally, the seaward boundary is the 30-m depth contour and the shoreward boundary is the line of mean high water (MHW; see 33 CFR 329.12(a)). Within these boundaries, discrete areas of water deeper than 30 m are not included.

(1) *Florida Area:* The boundary for the Florida area begins at the MHW line at the north boundary of Palm Beach County at 26°58′13.5″ N; then due east to the point of intersection with the 30-m contour; then following the 30-m contour to 24°45′20.6″ N, 82°34′35.4″ W, the point of intersection with the Florida Key National Marine Sanctuary (FKNMS) boundary (see 15 CFR 922.161); then following the FKNMS boundary to the point of intersection with the COLREGS line (see 33 CFR 80.727, 730, 735, and 740) at 24°54′56.8″ N, 80°56′25.2″ W; then following the COLREGS line to a point of intersection on Long Key at 24°49′1.7″ N, 80°49′36.1″ W; then following the COLREGS line and MHW line returning to the beginning point. The Florida area also includes two shoal areas southwest of the Dry Tortugas bounded by the 30-m contour.

(2) *Puerto Rico Area:* All areas surrounding the islands of the Commonwealth of Puerto Rico, 30 m in depth and shallower, seaward of the COLREGS line (see 33 CFR 80.738).

(3) *St. Thomas/St. John Area:* All areas surrounding the islands of St. Thomas and St. John, U.S. Virgin Islands, and smaller surrounding islands, 30 m in depth and shallower.

(4) *St. Croix Area:* All areas surrounding the island of St. Croix, U.S. Virgin Islands, 30 m in depth and shallower.

(c) *Areas excluded from critical habitat on the basis of national security impacts.* Critical habitat does not

include the following particular areas in the state of Florida:

(1) All waters surrounding Naval Air Station, Key West from the shoreline delimited by the line of mean high water to a distance of 46 m.

(2) All waters identified as naval restricted areas and danger zone at 33 CFR 334.610, as follows:

(i) All waters within 100 yards of the south shoreline of the Harry S. Truman Annex, beginning at a point on the shore at 24°32′45.3″ N, 81°47′51″ W; thence to a point 100 yards due south of the south end of Whitehead Street of 24°32′42.3″ N, 81°47′51″ W; thence extending westerly, paralleling the southerly shoreline of the Harry S. Truman Annex, to 24°32′37.6″ N, 81°48′32″ W, thence northerly to the shore at 24°32′41″ N, 81°48′31″ W.

(ii) All waters within 100 yards of the westerly shoreline of the Harry S. Truman Annex and all waters within a portion of the Truman Annex Harbor, as defined by a line beginning on the shore at 24°33′00″ N, 81°48′41.7″ W; thence to a point 100 yards due west at 24°33′00″ N, 81°48′45″ W; thence northerly, paralleling the westerly shoreline of the Harry S. Truman Annex, including a portion of the Truman Annex Harbor entrance, to 24°33′23″ N, 81°48′37″ W; thence southeasterly to the shore (sea wall) at 24°33′19.3″ N, 81°48′28.7″ W.

(iii) All waters within 100 yards of the U.S. Coast Guard Station and the westerly end of Trumbo Point Annex beginning at the shore at 24°33′47.6″ N, 81°47′55.6″ W; thence westerly to 24°33′48″ N, 81°48′00.9″ W; thence due south to 24°33′45.8″ N, 81°48′00.9″ W; thence westerly to 24°33′47″ N, 81°48′12″ W; thence northerly to 24°34′06.2″ N, 81°48′10″ W; thence easterly to a point joining the restricted area around Fleming Key at 24°34′03.3″ N, 81°47′55″ W.

(iv) Beginning at 24°34′03.3″ N, 81°47′55″ W; proceed northwesterly, maintaining a distance of 100 yards from the shoreline of Fleming Key, except for a clearance of approximately 400 yards across the mouth of Fleming Cove near the southwesterly end of Fleming Key, continue around Fleming Key to a point easterly of the southeast corner of Fleming Key at 24°34′00.8″ N, 81°47′37.5″ W; thence easterly to 24°33′57.6″ N, 81°47′20″ W; thence southerly to a point on the shore at 24°33′54.7″ N, 81°47′20.9″ W.

(v) All waters contiguous to the southwesterly shoreline of Boca Chica Key beginning at a point on the southwest shoreline at 24°33′24″ N, 81°42′30″ W; proceed due south 100 yards to 24°33′20.4″ N, 81°42′30″ W; thence, maintaining a distance of 100 yards from the shoreline, proceed westerly and northerly to 24°34′03″ N, 81°42′47″ W; thence due north to a point at the easterly end of the U.S. Highway 1 (Boca Chica Channel) bridge at 24°34′39″ N, 81°42′47″ W.

(vi) Danger zone. All waters within an area along the northeast side of the Naval Air Station on Boca Chica Key defined by a line beginning at 24°35.472′ N, 81°41.824′ W; thence proceed in a northerly direction to a point at 24°36.289′ N, 81°41.437′ W; thence proceed westerly to a point at 24°36.392′ N, 81°41.970′ W; thence to a point on shore at 24°35.698′ N, 81°41.981′ W.

(3) All waters contained within the area identified as the Fleming Key Drop Zone, as defined by a rectangle with bounding coordinate pairs of: 24°35′42.2″ N and 81°47′43.6″ W; 24°35′42.6″ N and 81°46′27.3″ W; 24°35′13.0″ N and 81°47′38.2″ W; and 24°35′13.3″ N and 81°46′27.2″ W.

(4) All waters identified as bombing and strafing target areas at 33 CFR 334.620(a)(2)(i) through (iii), as follows:

(i) A circular area immediately west of Marquesas Keys with a radius of two nautical miles having its center at 24°33.4′ and 82°10.9′, not to include land area and area within Marquesas Keys.

(ii) A circular area located directly west of Marquesas Keys with a radius of three statute miles having its center at 24°35.6′ and 82°11.6′, not to include land area within Marquesas Keys.

(iii) A circular area located west of Marquesas Keys with a radius of two nautical miles having its center at 24°34′30″ and 82°14′00″ .

(d) Overview maps of designated critical habitat for elkhorn and staghorn corals follow.

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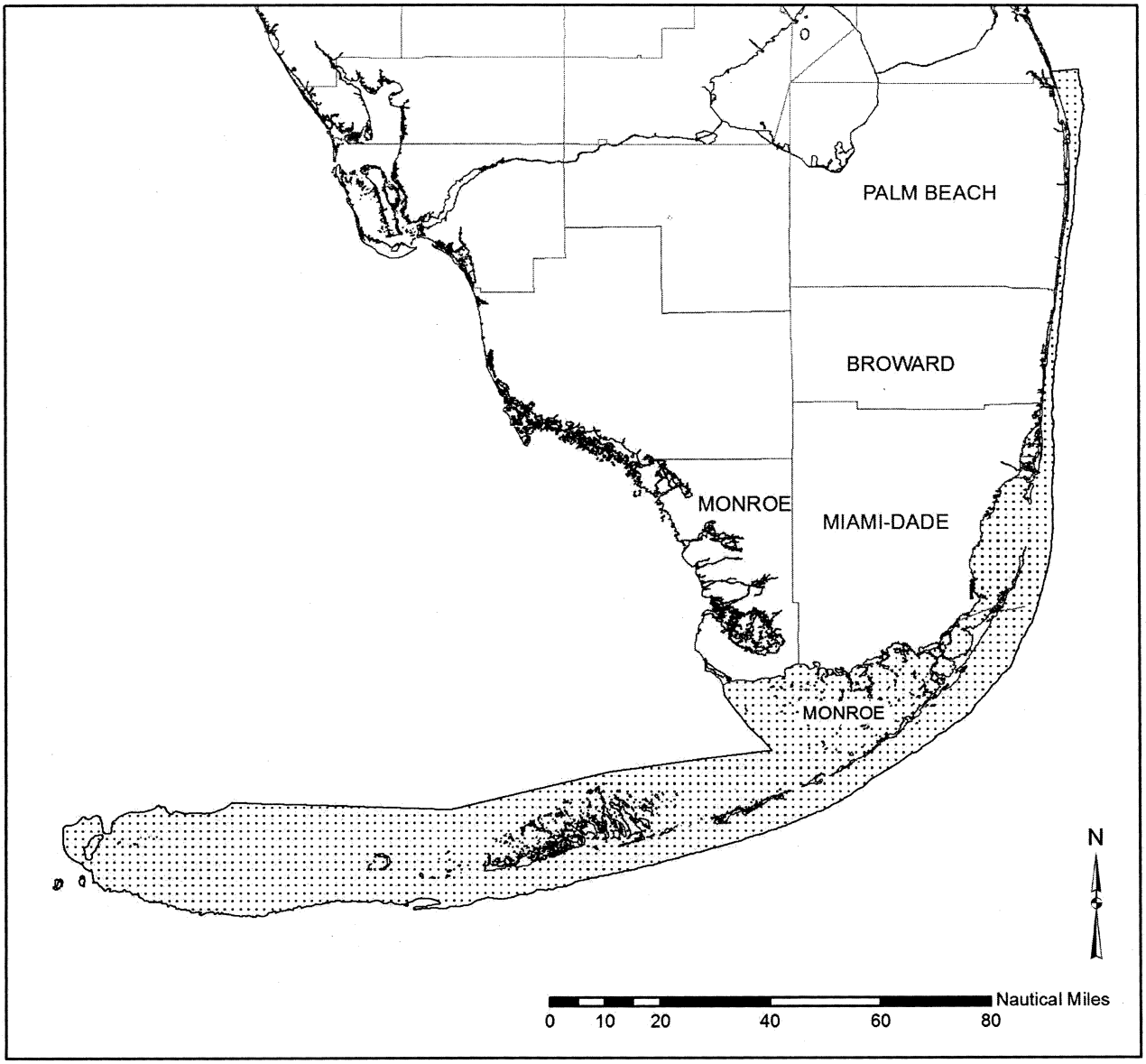
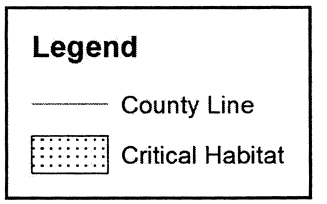
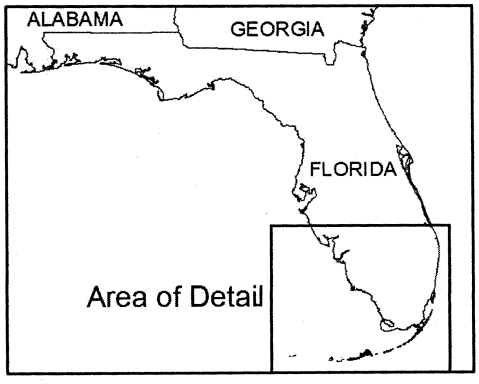
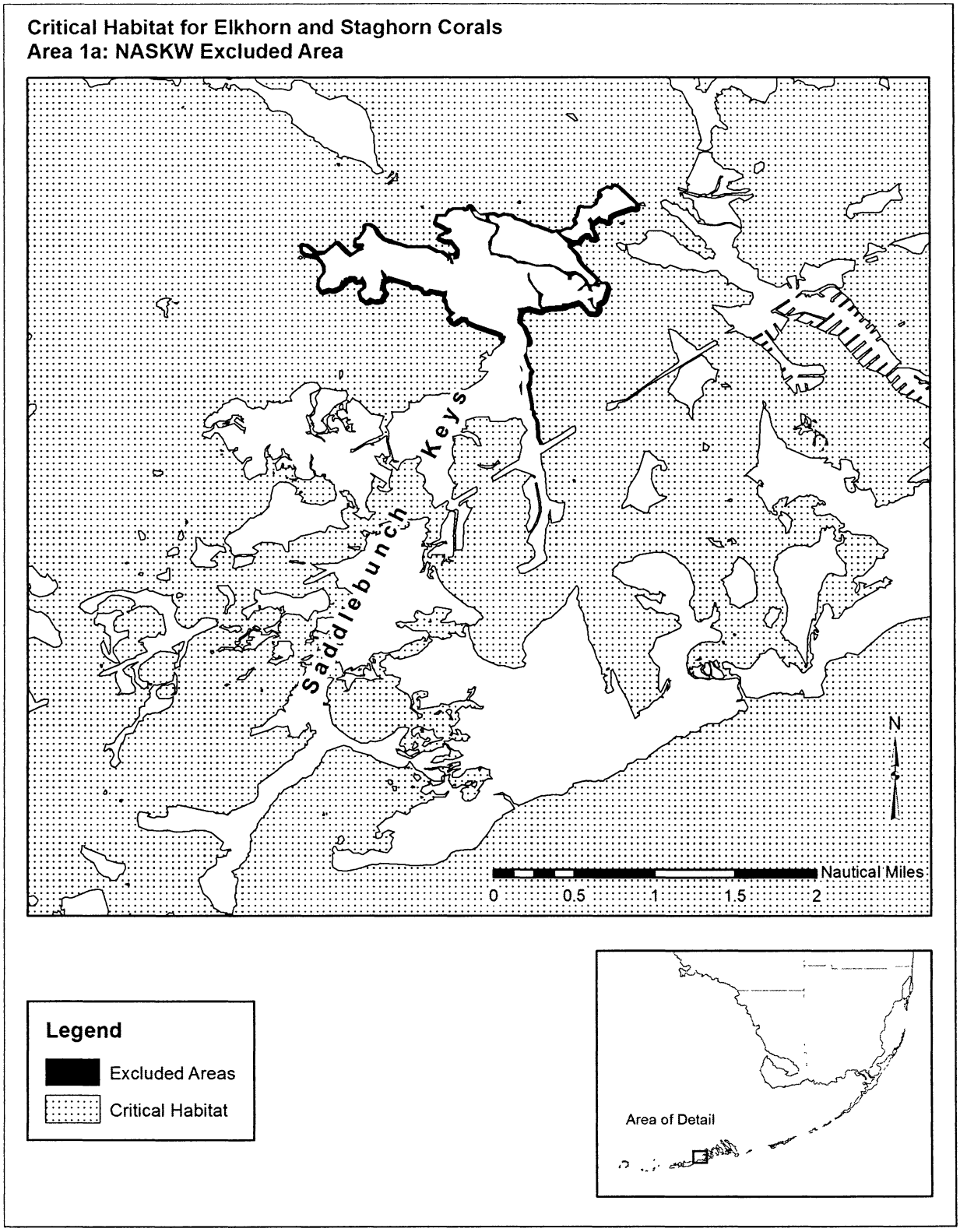
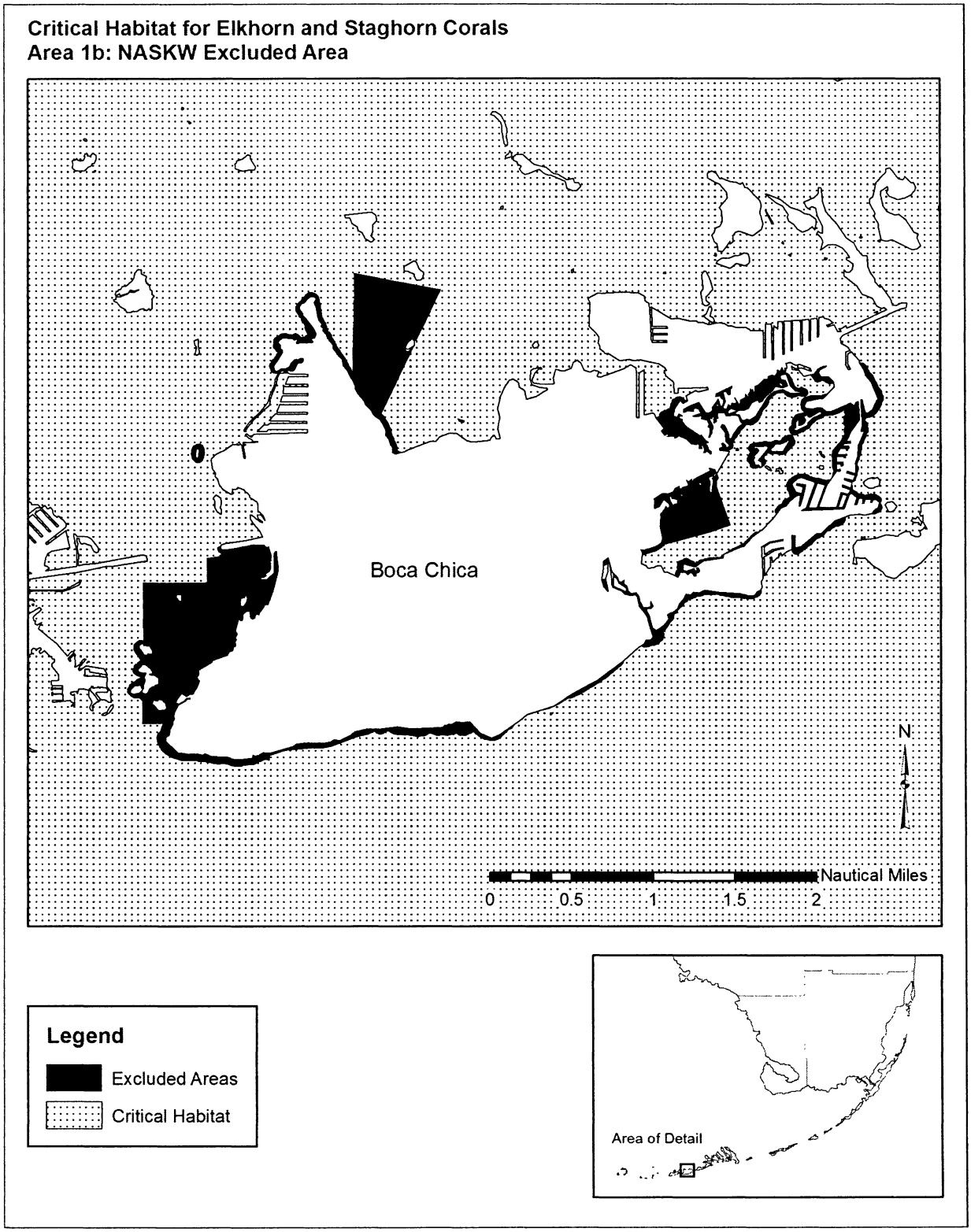
Critical Habitat for Elkhorn and Staghorn Corals
Area 1: Florida



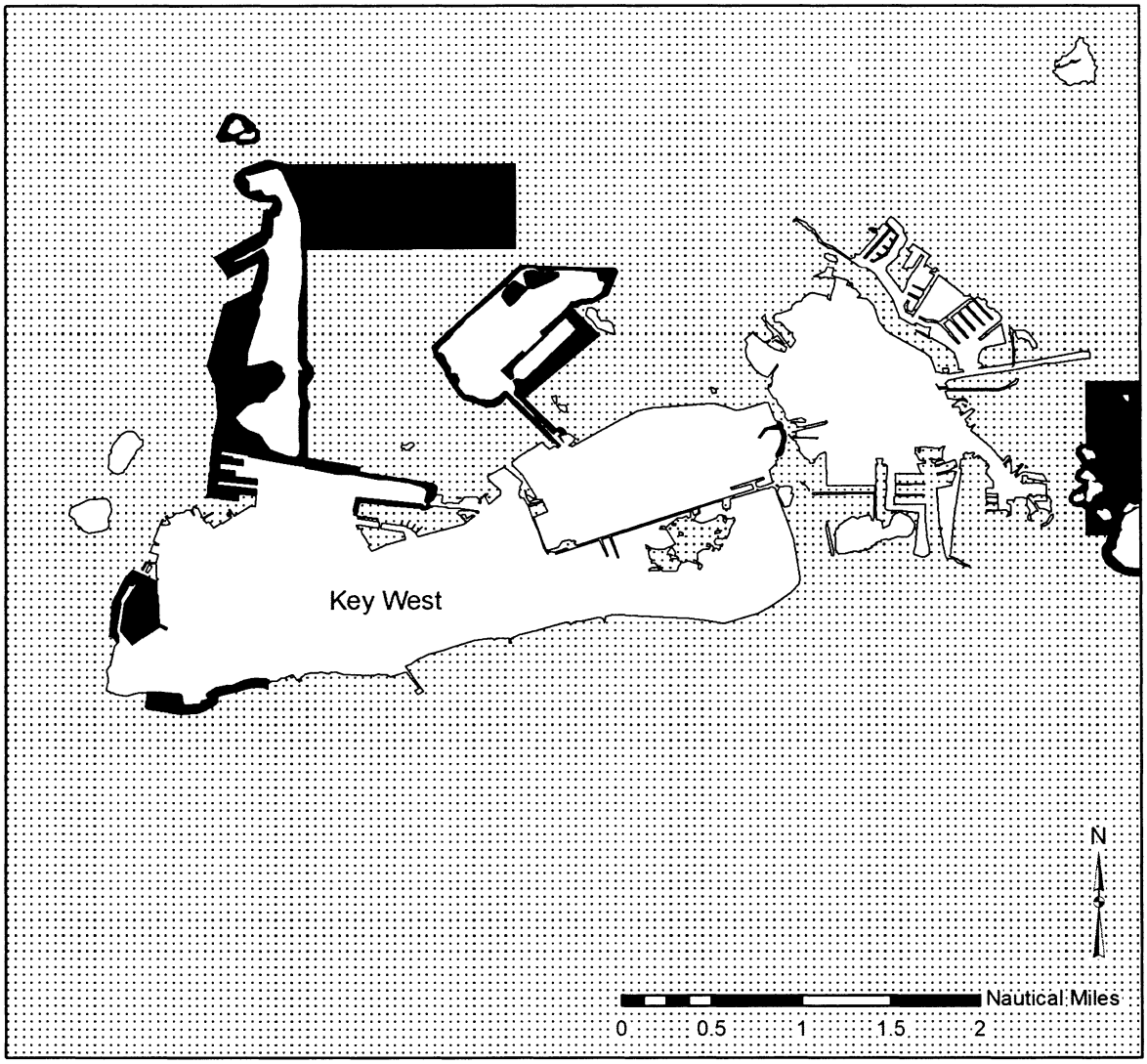


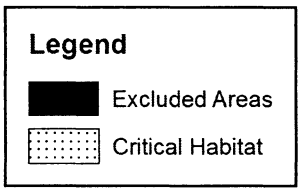


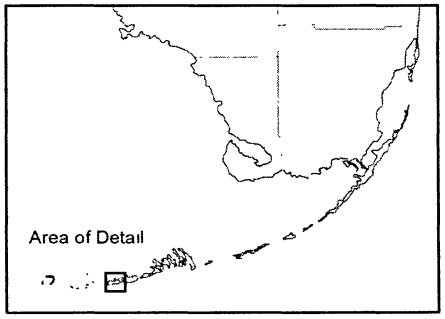

Critical Habitat for Elkhorn and Staghorn Corals
Area 1a: NASKW Excluded Area
Saddlebunch Keys
N
Nautical Miles
0
0.5
1
1.5
2
Legend
Excluded Areas
Critical Habitat
Area of Detail

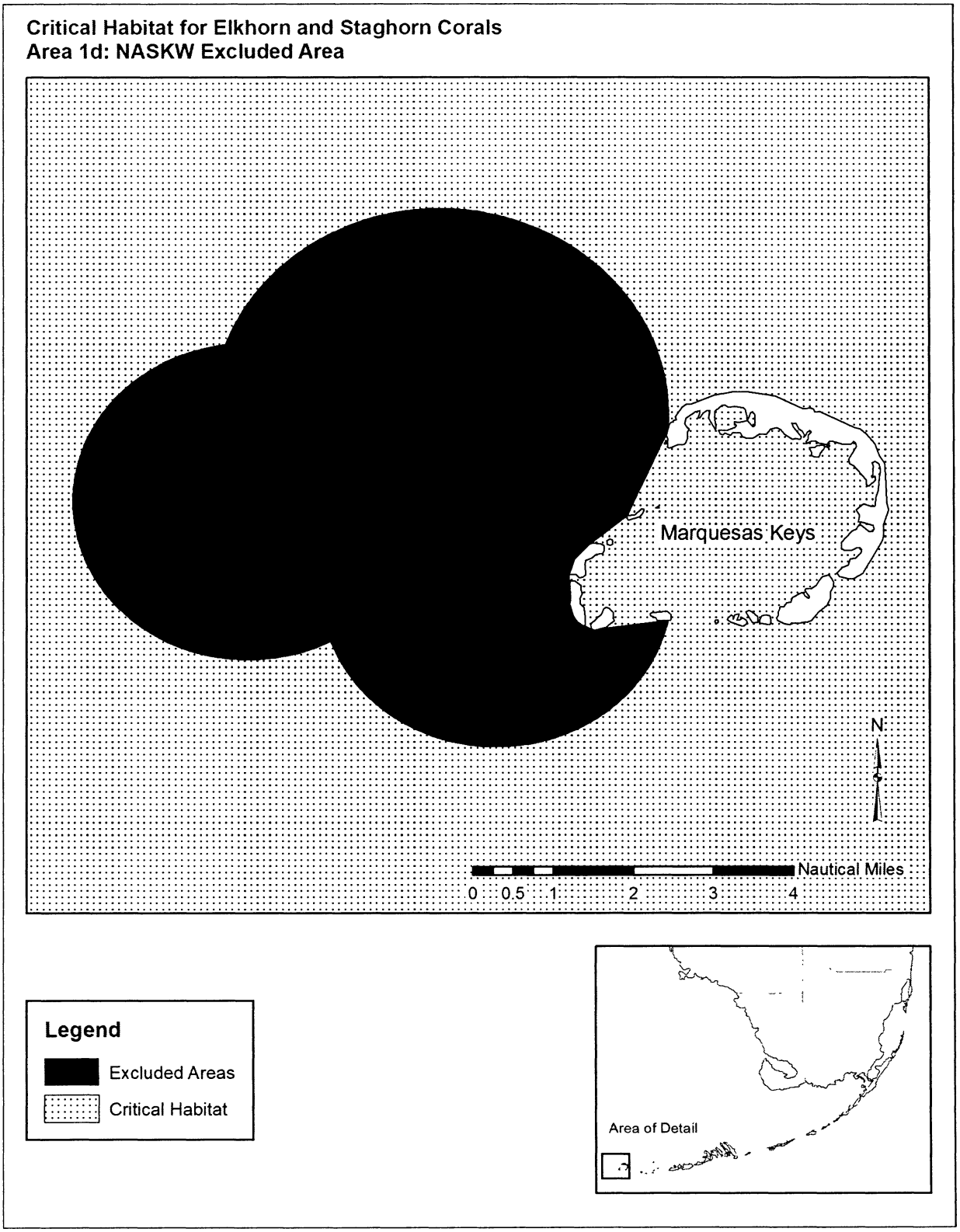

Critical Habitat for Elkhorn and Staghorn Corals
Area 1b: NASKW Excluded Area
Boca Chica
N
Nautical Miles
0
0.5
1
1.5
2
Legend
Excluded Areas
Critical Habitat
Area of Detail

Critical Habitat for Elkhorn and Staghorn Corals
Area 1c: NASKW Excluded Area

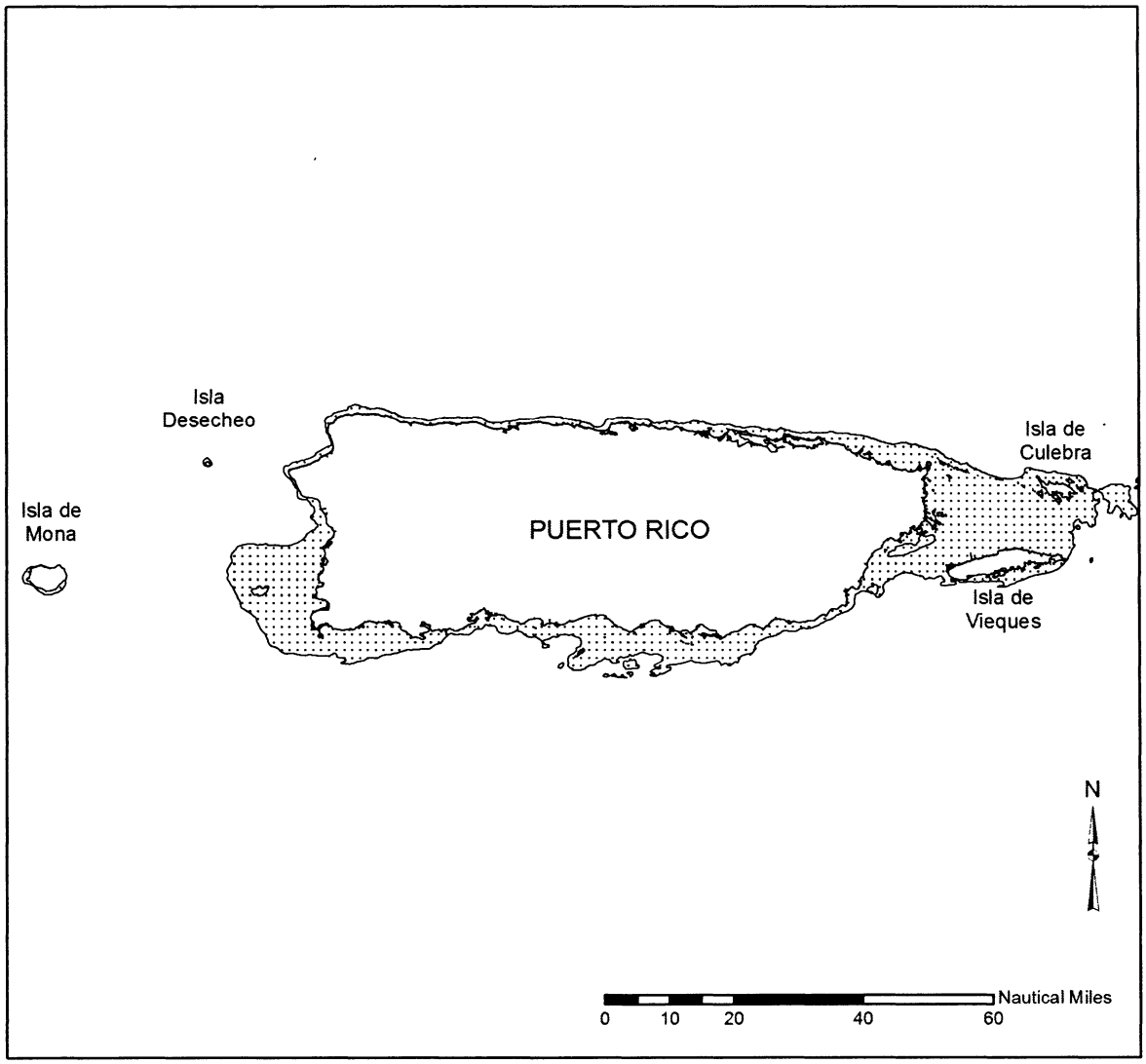


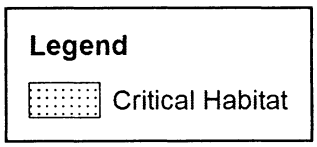


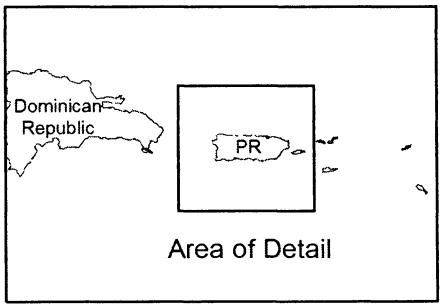


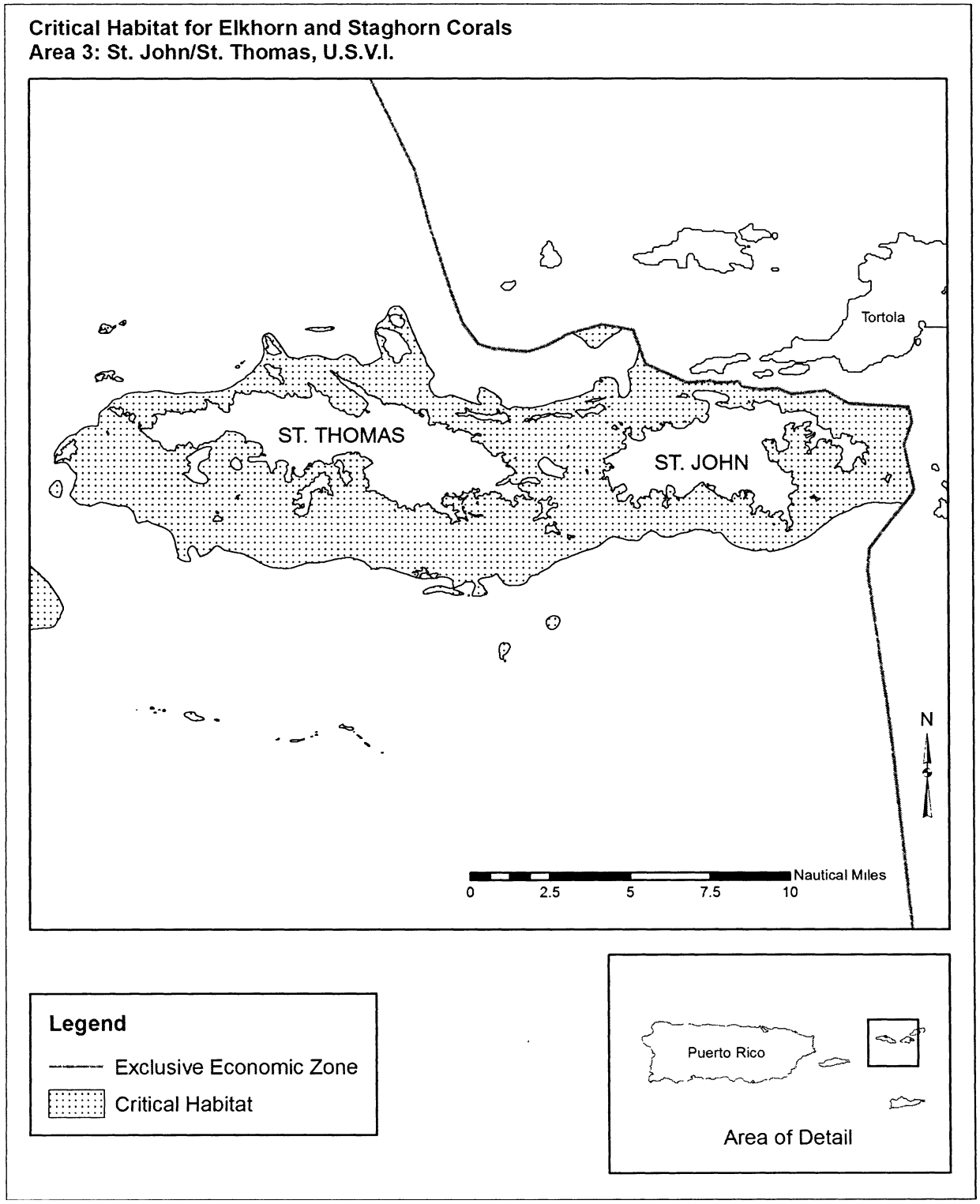

Critical Habitat for Elkhorn and Staghorn Corals
Area 1d: NASKW Excluded Area
Marquesas Keys
N
Nautical Miles
0 0.5 1 2 3 4
Legend
Excluded Areas
Critical Habitat
Area of Detail

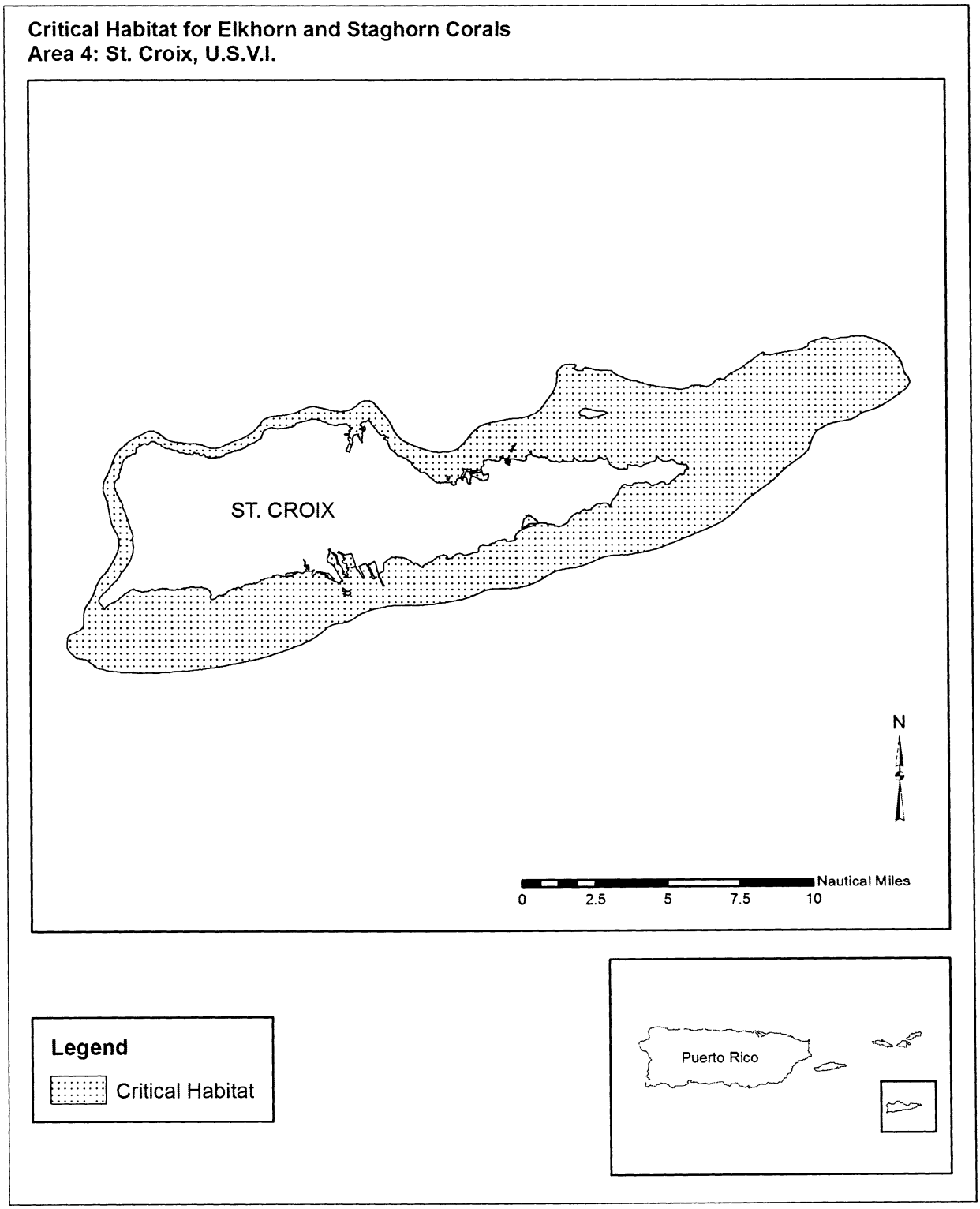
Critical Habitat for Elkhorn and Staghorn Corals
Area 2: Puerto Rico and Associated Islands








Critical Habitat for Elkhorn and Staghorn Corals
Area 3: St. John/St. Thomas, U.S.V.I.
Tortola
ST. THOMAS
ST. JOHN
N
Nautical Miles
0
2.5
5
7.5
10
Legend
Exclusive Economic Zone
Critical Habitat
Puerto Rico
Area of Detail



[FR Doc. 08–497 Filed 1–31–08; 4:13pm]

BILLING CODE 3510–22–C

Notices

Federal Register

Vol. 73, No. 25

Wednesday, February 6, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Centennial Salvage Timber Sale; Caribou-Targhee National Forest, Fremont and Clark Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of withdrawal of the Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Forest Supervisor of the Caribou-Targhee National Forest gives notice of the agency's intent to withdraw the Centennial Salvage Timber Sale Environmental Impact Statement. The project is being withdrawn because the trees proposed for harvest are no longer marketable and the project, as originally proposed, no longer meets resource objectives.

The original NOI was published in the **Federal Register** on September 9, 2004 (54627–54628). A revised NOI was published on December 1, 2004 (69883).

DATES: Effective upon the date of publication of this notice in the **Federal Register**, this project is withdrawn.

FOR FURTHER INFORMATION CONTACT: Cathey Hardin, Forester, Ashton-Island Park Ranger District, P.O. Box 865, Ashton, ID 83420 Telephone: (208) 558–7301.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

Dated: January 23, 2008.

Lawrence A. Timchak,

Forest Supervisor.

[FR Doc. 08–514 Filed 2–5–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Basin Electric Power Cooperative, Inc.; Notice of Intent To Hold Public Scoping Meeting and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent To Hold Public Scoping Meeting and Prepare an Environmental Assessment (EA).

SUMMARY: The Rural Utilities Service (RUS) an Agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or Agency, intends to hold a public scoping meeting and prepare an Environmental Assessment (EA) in connection with possible impacts related to a project being proposed by Basin Electric Power Cooperative, Inc. (Basin Electric), of Bismarck, North Dakota. The proposal consists of the construction and operation of a natural gas-fired combustion turbine generation facility referred to as the Culbertson Unit 1 East Side Peaking Project, consisting of a single maximum net 100 Megawatt (MW) unit, at a site near Culbertson, Montana.

DATES: RUS will conduct the public scoping meeting in an open-house format on February 26, 2008, from 4 p.m. to 7 p.m., Mountain Standard Time, at the Culbertson American Legion, 119 2nd Street, East, Culbertson, Montana.

FOR INFORMATION CONTACT: Richard Fristik, Senior Environmental Protection Specialist, Water and Environmental Programs, Rural Development, Utilities Programs, 1400 Independence Ave. SW., Mail Stop 1571, Washington DC 20250–1571, telephone: (202) 720–5093 or e-mail: *richard.fristik@wdc.usda.gov* , or Kevin L. Solie, Basin Electric Power Cooperative, Inc., 1717 East Interstate Avenue, Bismarck, ND 58503–0564, telephone: (701) 355–5495 or e-mail: *ksolie@bepc.com*.

SUPPLEMENTARY INFORMATION: Basin Electric proposes to construct a new 80–100 MW, simple-cycle natural gas fired turbine less than (50 MW average annual output), ancillary facilities and systems, a new natural gas pipeline to connect to the existing Northern Border Pipeline, and necessary equipment to allow connection to the Western Area Power Administration (WAPA) transmission system. Basin Electric is requesting RUS to provide financing for the proposed project. WAPA will construct a new or modify an existing electrical substation, and construct up to 12 miles of new transmission line to facilitate connection of the proposed facility to its grid, and as such has agreed to be a cooperating agency in preparation of the EA. The Montana Department of Environmental Quality (DEQ) is also a cooperating agency due to its responsibilities under the Montana Environmental Policy Act (MEPA) and for air quality permitting.

Alternatives to be considered by RUS include no action, purchased power, load management, renewable energy sources, distributed generation, and alternative site locations. Comments regarding the proposed project may be submitted (orally or in writing) at the public scoping meeting or in writing within 30 days after the February 26, 2008, scoping meeting to RUS at the address provided in this notice.

A proposal development document—Alternative Evaluation and Site Selection Study—is available for public review at RUS or Basin Electric, at the addresses provided in this notice. This study is also available at the Culbertson Public Library, 202 Broadway, Culbertson, MT 59218.

From information provided in the study mentioned above, and using input provided by government agencies, private organizations, and the public, RUS will prepare a Draft EA. The Draft EA will be available for review and comment for 45 days after distribution. A Final EA will then be prepared that considers all comments received. The Final EA will be available for review and comment for 30 days after distribution. Following the 30-day comment period, RUS will prepare either a Finding of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS). Notices announcing the availability of the Draft and Final EA and a FONSI, as appropriate, will be published in the **Federal Register** and in local newspapers.

Any final action by RUS related to the proposed projects will be subject to, and contingent upon, compliance with all relevant Federal, State and local

environmental laws and regulations and completion of the environmental review requirements as prescribed in the RUS Environmental Policies and Procedures (7 CFR Part 1794).

Dated: January 31, 2008.

James R. Newby,

Assistant Administrator, Electric Programs.

[FR Doc. E8–2101 Filed 2–5–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: BEES Please.

OMB Control Number: 0693–0036.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 1,875.

Number of Respondents: 30.

Average Hours Per Response: 62 hours and 30 minutes.

Needs and Uses: The Building for Environmental and Economic Sustainability (BEES) Please is a voluntary program to collect data from product manufacturers to scientifically evaluate their products' environmental performance using the BEES software. These data include product-specific materials use, energy consumption, waste, and environmental releases. BEES evaluates these data, translates them into decision-enabling results, and delivers them in a visually intuitive graphical format.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5806 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: January 31, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–2105 Filed 2–5–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 080125088–8090–01]

Program Announcement for the Trade Adjustment Assistance for Firms Program

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice.

SUMMARY: EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. As part of this mission, EDA administers the Trade Adjustment Assistance for Firms (TAAF) Program under the Trade Act of 1974, as amended, through a national network of eleven Trade Adjustment Assistance Centers (each, a TAAC) to provide technical assistance to firms that have lost domestic sales and employment due to increased imports of similar or competitive goods. This program announcement applies only to the current eleven EDA-funded TAACs, and provides information necessary to clarify the requirements for operating and providing technical assistance to trade-impacted firms as a TAAC under a cooperative agreement with EDA for fiscal years 2008–2010. This notice does not solicit new applications for TAAC operators.

DATES: A current TAAC that wishes to apply for federal financial assistance for the three-year project period for fiscal years 2008–2010 must submit an application to EDA at least 30 days before the expiration date of the TAAC's 2005–2007 cooperative agreement. EDA will amend currently active cooperative agreements as necessary to ensure that each TAAC that wishes to apply will have at least 30 days to complete the application requirements set out in this program announcement. EDA's TAAF Program Officer will hold a teleconference during the week of February 11, 2008 for all current TAACs to address questions about this program announcement. The exact date, time, registration requirements, and protocols for the call will be announced to all participants in advance of the teleconference.

ADDRESSES: Applications for federal financial assistance may be submitted in either paper format or electronic format, in accordance with the procedures provided in this program announcement. The content of the application is the same for both paper and electronic submissions. EDA will not accept facsimile transmissions of applications.

The eleven TAACs may obtain paper application packages by contacting the designated point of contact listed below under **FOR FURTHER INFORMATION CONTACT** or by downloading the required forms from EDA's Web site at *www.eda.gov/InvestmentsGrants/Preapp.xml.*

Paper Submissions: A complete, signed original application may be sent via postal mail, shipped overnight or hand-delivered to EDA headquarters at the following address: William P. Kittredge, Ph.D., Program Officer, U.S. Department of Commerce, Economic Development Administration, 1401 Constitution Avenue, NW., Room 7009, Washington, DC 20230.

Electronic Submissions: A complete, electronically signed original application may be e-mailed to *taac@eda.doc.gov* with the subject line ''[Insert full name of TAAC] FY 2008 application.''

FOR FURTHER INFORMATION CONTACT: For additional information or for a paper copy of the application package, please contact William P. Kittredge, Ph.D., Program Officer, at *taac@eda.doc.gov* or at 202–482–4122.

SUPPLEMENTARY INFORMATION:

Program Information: EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. One of EDA's economic development tools is the TAAF Program under the Trade Act of 1974, as amended (19 U.S.C. 2341—2355, 2391) (Trade Act). The goal of the TAAF Program is to identify firms that have been negatively impacted by import competition and assist these firms to become competitive in the global economy, thereby creating or retaining domestic jobs.

Each TAAC is staffed by trade adjustment assistance professionals that help U.S. production and manufacturing firms apply for certification under the Trade Act. The TAAC assists the firm in completing and submitting to EDA a

petition for certification of eligibility. If EDA determines that the firm meets the eligibility criteria for technical assistance under the Trade Act and approves the petition, the TAAC then works closely with the certified client-firm to diagnose the firm's strengths and weaknesses, develop an adjustment proposal (AP) to address those strengths and weaknesses, and implement the AP. As required by the statute, an AP must: (1) Be reasonably calculated to contribute materially to the economic adjustment of a client-firm; (2) give adequate consideration to the interests of the workers of the client-firm; and (3) demonstrate that the client-firm will make all reasonable efforts to use its own resources for economic development. The adjustment assistance identified in the AP must consist of specialized consulting services designed to assist the firm in becoming more competitive in the global marketplace. For this purpose, adjustment assistance generally consists of knowledge-based services such as market penetration studies, customized business improvements, and designs for new products. Adjustment assistance does not include expenditures for capital improvements or for the purchase of business machinery or supplies.

This program announcement is intended to provide information and clarify the operational requirements for the current eleven EDA-funded TAACs. The cooperative agreements associated with fiscal years 2005–2007 for the current TAACs will expire this year and, therefore, this program announcement sets out important elements that will be included in each TAAC's cooperative agreement for fiscal years 2008–2010, subject to funding availability.

A current TAAC that wishes to apply for federal financial assistance for the three-year project period for fiscal years 2008–2010 must submit an application to EDA at least 30 days before the expiration date of the TAAC's 2005–2007 cooperative agreement. EDA will amend currently active cooperative agreements as necessary to ensure that each TAAC will have at least 30 days to complete the application requirements set out under this program announcement.

The current TAACs and the States they serve are:

TAAC	States served
Great Lakes TAAC.	Indiana, Michigan, and Ohio
Mid-America TAAC.	Arkansas, Kansas, Missouri
Mid-Atlantic TAAC.	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia
Midwest TAAC	Illinois, Iowa, Minnesota, and Wisconsin
New England TAAC.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
New York State TAAC.	New York
Northwestern TAAC.	Alaska, Idaho, Montana, Oregon, and Washington
Rocky Mountain TAAC.	Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Wyoming
Southeastern TAAC.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee
Southwest TAAC.	Louisiana, Oklahoma, and Texas
Western TAAC	California, Arizona, Nevada, and Hawaii

Electronic Access: The complete TAAF program announcement is available at *www.eda.gov*.

Funding Availability: Currently, the TAAF Program is fully funded and at capacity with eleven TAACs providing technical assistance to trade-impacted firms throughout the nation. This program announcement merely clarifies the operating principles and administrative and procedural requirements applicable to the TAAF Program. Future funding for the TAAF Program under this program announcement depends upon the availability of funds appropriated for the Program.

Statutory Authority: The specific authority for the TAAF Program is chapters 3 and 5 of Title II of the Trade Act, which authorizes EDA to administer the Program through the TAACs. EDA's regulations at 13 CFR Part 315 set forth the general and specific regulatory requirements applicable to the TAAF Program. EDA's regulations and the Trade Act are accessible on EDA's Internet Web site at *www.eda.gov/InvestmentsGrants/Lawsreg.xml.*

Catalog of Federal Domestic Assistance (CFDA) Number: 11.313, Trade Adjustment Assistance for Firms.

Eligibility: The TAAF Program currently is administered through a national network of eleven TAACs. As set out at 13 CFR 315.4, a TAAC may be a university affiliate, State or local government affiliate, or nonprofit organization.

Project Period: EDA administers the TAAF Program by entering into cooperative agreements with each TAAC for a three-year project period. Once funded, a TAAC is not required to compete for the second and third years of funding, providing that performance is satisfactory (as determined by EDA). Funding beyond the initial year of the project period also is subject to the availability of funds. Carryover funds and program income earned in one year may be carried over and used to carry out eligible activities in a subsequent year throughout the three-year project period. At the conclusion of the third year of the project period, each TAAC has 90 days to submit final vouchers for reimbursement related to eligible activities funded prior to expiration of the project period. The maximum amount awarded by EDA under a cooperative agreement is for expenditures related to the TAAC's scope of work.

Cost Sharing Requirement: EDA may fund up to 100 percent of TAAC operations. See section 253(b)(3) of the Trade Act (19 U.S.C. 2343). Once a firm is certified to receive assistance from a TAAC under the TAAF Program, the client-firm must pay at least 25 percent of the cost of preparing its AP. A client-firm that requests $30,000 or less in total assistance to implement an approved AP must pay at least 25 percent of the cost of that assistance. A client-firm that requests more than $30,000 in total assistance in its approved AP must pay at least 50 percent of the cost of that assistance. General cost limitations on APs are set out below in section VI.C. Limitations on assistance provided through an AP specific to a particular TAAC will be set out in the cooperative agreement between EDA and the TAAC. See 13 CFR 315.6(c)(2).

Intergovernmental Review: Applications for funding under the TAAF Program are not subject to the State review requirements imposed by Executive Order 12372, ''*Intergovernmental Review of Federal Programs.*''

Current TAAC Evaluation: EDA generally evaluates currently funded TAACs based on:

(1) Performance under cooperative agreements with EDA and compliance with the terms and conditions of such cooperative agreements;

(2) Proposed scope of work, budget and application or amended application; and

(3) Availability of funds.

See 13 CFR 315.5(c)(1).

New TAAC Evaluation: If EDA determines that it is necessary to select a new TAAC to provide assistance under the TAAF Program (for example,

if a currently funded TAAC does not timely provide an application per the requirements of this program announcement), EDA generally evaluates new TAACs based on:

(1) Competence in administering business assistance programs;

(2) Background and experience of staff;

(3) Proposed scope of work, budget and application; and

(4) Availab3ility of funding.

See 13 CFR 315.5(c)(2).

Content and Form of Application Submissions

General Requirements: A complete application to provide assistance as a TAAC for the 2008–2010 project period consists of Forms SF–424, ''*Application for Federal Assistance*;'' SF–424A, ''*Budget Information—Non-Construction Programs;*'' SF–424B, ''*Assurances—Non-Construction Programs*;'' CD–512, ''*Certification Regarding Lobbying Lower Tier Covered Transactions*;'' all supporting documentation required by these forms; a project narrative; and a detailed budget narrative. All information submitted by a TAAC in an application for funding shall be accurate and based on the most current data available for the TAAC's service region.

TAACs interested in applying for continued funding are advised to carefully read the instructions contained in this program announcement and on the application forms. The applicant TAAC is solely responsible for ensuring that applications are complete and timely received by EDA. Applications may be submitted either in paper format or electronically.

EDA will evaluate applications consistent with the application review information set forth in this program announcement. A completed application must contain all the items listed in the ''Checklist of Application Materials'' set out below.

Checklist of Application Materials

Project Narrative

Cover Page

Section 1. Organizational History and Capability

Section 2. Service Region, Needs of Service Region, and Target Audience

Section 3. Scope of Work and Anticipated Impacts and Benefits

Budget and Budget Narrative

Budget Narrative (for each year of the award period)

Staffing Plan

Resumes of Key Project Staff

Standard Forms (SF) and Department of Commerce (CD Forms)

Form SF–424, *Application for Federal Assistance* (The list of certifications and assurances referenced in Item 21 of Form SF–424 is contained in Form SF–424B.)

Form SF–424A, *Budget—Non-Construction Programs* (for each year of the project period)

Form SF–424B, *Assurances—Non-Construction Programs*

Form SF-LLL, *Disclosure of Lobbying Activities* (if applicable) (Form SF-LLL can be accessed at EDA's Internet Web site at *www.eda.gov* and at *www.whitehouse.gov/omb/grants/grants_forms.html*.)

Form CD–511, *Certification Regarding Lobbying* (Form CD–511 can be accessed at the Department of Commerce's Forms Management Internet Web site at *http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic_Forms/index.htm*.)

Project Narrative. The Project Narrative must provide both an overall three-year operational plan and scope of work for the entire fiscal years 2008 through 2010 project period, and a detailed operational plan and scope of work for the initial year of the project period. For each subsequent year of the project period, each TAAC will execute an amendment to the cooperative agreement and submit an updated Project Narrative that reflects changes to and trends within the TAAC's service region. The Project Narrative must provide for a three-year scope of work and a timeline for project implementation during the three-year project period. The Project Narrative must include the following items, which should be presented to EDA in the following format:

Cover Page

Section 1. Organizational History and Capability

a. *Overview.* Briefly state the purpose of the submission and the TAAC's federal funding request and proposed matching funds, if applicable.

b. *Organization and Staffing.* Submit a staffing plan listing all positions that will be charged to the federal and non-federal (if applicable) portion of the budget for each project year. The staffing plan must include position titles, maximum annual salaries, and the total amount of annual salaries that will be charged to the TAAF Program. The total amount of annual salaries that will be charged to the Program must be consistent with the amount reflected on the ''Personnel'' budget line-item (found in ''Section B—Budget Categories'' of Form SF–424A) for each project year. In addition, identify each TAAC employee, describe their specific role with reference to TAAC operations, and provide a brief overview of each employee's most pertinent experience. In addition, the resume, curriculum vitae, or other statement of qualifications for each employee must be included as an attachment. If the TAAC plans to hire employees during the project period, provide a staffing plan for filling any vacancies or new positions.

c. *History and Accomplishments.* Provide a narrative overview of the history of the TAAC and the TAAC's accomplishments in providing assistance to import-impacted firms under past cooperative agreements with EDA. Discuss the TAAC's capacity and experience in providing assistance under the TAAF Program.

d. *Organizational Form or Affiliated or Sponsoring Institution, if applicable.* Detail the organizational context in which the TAAC will provide technical assistance under the TAAF Program. If the TAAC is affiliated with another entity, such as a university or a nonprofit, include the TAAC's placement within the organizational structure of that entity and explain how this affiliation may impact the cooperative agreement with EDA and the provision of assistance to import-impacted firms.

Section 2. Service Region, Needs of Service Region, and Target Audience

a. *Definition of Service Region.* Define the TAAC's geographic service region.

b. *Existing Conditions within Service Region.* Detail the economic development needs, issues, and opportunities of the TAAC's service region, focusing on import-impacted industries and firms.

c. *Target Firms and Industries.* Identify target import-impacted firms and industries within the TAAC's geographic service region.

d. *Presentation.* Maps and other graphic representations that accurately portray the current condition of the TAAC's service region are welcome and encouraged.

e. *Accuracy and Timeliness of Information.* All information presented in the application must be pertinent, accurate and current. This section in particular must contain accurate data and estimates provided by the Bureau of Economic Analysis, the U.S. Census Bureau, or other similar governmental agency that compiles socioeconomic data that is current as of the date of the application. Additional pertinent, accurate and current data, information, analyses and estimates from reputable

non-governmental sources may also be provided, but such data cannot serve as a substitute for governmental data. Since the goal of the TAAF Program is to address the existing conditions of import-impacted firms, the use of outdated data is not acceptable and will be considered nonresponsive. If an application contains out-of-date data, EDA may reject the application and choose to re-solicit applications on a competitive basis.

Section 3. TAAC Business Plan and Anticipated Impacts and Benefits

Outline the scope of work to be undertaken by the TAAC during the three-year project period. This section must be organized into the following five elements: (i) TAAC program management; (ii) TAAC business plan; (iii) timeline and benchmarks for program implementation; (iv) TAAC outreach strategy; and (v) plan to coordinate with Trade Adjustment Assistance Programs operated by the Department of Labor (DOL) to provide the most value to firms and maximize the benefit of each federal dollar. Pertinent details on the above-listed elements of the TAAC's scope of work are set out below.

a. *TAAC Program Management.* Provide a plan for the TAAC's overall fiscal and TAAF Program management to ensure the TAAC's accountability for federal funds. In general, TAACs use federal funds to enter into contracts to meet the needs of client-firms. Therefore, this plan must include the TAAC's procurement code of conduct and procedures. Recipients of federal assistance that are institutions of higher education, hospitals, and other nonprofit and commercial organizations must have:

(i) Written standards of conduct governing the performance of its employees engaged in the award and administration of contracts; and

(ii) Written procurement procedures. *See* 15 CFR 14.42 and 14.44 for more information on these requirements.

b. *TAAC Business Plan.* Describe how the TAAC plans to provide assistance to import-impacted firms and how the TAAC plans to partner or coordinate with other organizations to provide effective assistance and leverage federal dollars.

c. *Timeline and Benchmarks for Program Implementation.* Provide a three-year timeline for Program implementation, which includes significant milestones and accomplishments. The TAAC also must submit a timeline for the initial year of the project period detailing over the course of that year the activity, timeline, and benchmarks for the implementation of the TAAF Program. This initial year timeline must include the current status of any pending certifications, APs, or other client-firm assistance; the projected number of firms that the TAAC will contact; the projected number of petitions for certification that the TAAC will submit for EDA approval; the projected number of APs that will be submitted for EDA's approval; the projected number of projects that will be proposed in APs; and the number of projects that the TAAC anticipates client-firms will complete. These projections should be based on the TAAC's analysis of need in its geographic service region and its experience operating the TAAF Program.

d. *TAAC Outreach Strategy.* Detail how the TAAC will provide information about assistance services in the TAAC's geographic service region. Examples of TAAC information and literature provided to potential client-firms and other outreach strategies are welcome and encouraged.

e. *Plan for Coordination with DOL.* Detail how the TAAC will coordinate with Trade Adjustment Assistance Programs operated by DOL under the Trade Act to provide comprehensive assistance to import-impacted firms and employees, avoid duplicative effort, and maximize federal dollars.

Budget and Budget Narrative. Applicants must submit a separate budget on Form SF–424A and a budget narrative for each year of the three-year project period. The budget must include columns reflecting the federal, non-federal cash, non-federal in-kind (if applicable) and total amounts allocated to each budget line-item for each project year. Applicants should use the budget categories identified in ''Section B—Budget Categories'' of Form SF–424A, with sub-categories and explanations as necessary. The allowability of costs incurred depends upon the classification of the TAAC and is determined in accordance with the requirements set out in 2 CFR Part 220, ''*Cost Principles for Educational Institutions (OMB Circular A–21)*;'' 2 CFR Part 225, ''*Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87)*;'' or 2 CFR Part 230, ''*Cost Principles for Non-Profit Organizations (OMB Circular A–122)*,'' as applicable. Generally, allowable costs include salaries, supplies, and other expenses that are reasonable and necessary for successful completion of the scope of work.

1. *Budget Narrative.* The budget for each year must include a brief narrative describing each budget line-item. For budget planning purposes, applicant TAACs should assume flat funding for the three-year project period.

2. *Facilities and Administrative Costs.* If indirect or facilities and administrative costs (replacing the term ''indirect costs'' for institutions of higher education) are included in the budget, the applicant must include a copy of its current Indirect or Facilities and Administrative Cost Rate Agreement or documentation applying for an Indirect or Facilities and Administrative Cost Rate Agreement. Applicants that do not have a current Indirect or Facilities and Administrative Cost Rate Agreement negotiated and approved by the Department of Commerce (or by the applicable cognizant federal agency) may propose indirect or facilities and administrative costs in their budget. However, any TAAC without a currently approved Indirect or Facilities and Administrative Cost Rate Agreement must prepare and submit an indirect or facilities and administrative cost allocation plan and rate proposal as required by 2 CFR Part 220 (OMB Circular A–21), 2 CFR Part 225 (OMB Circular A–87), or 2 CFR Part 230 (OMB Circular A–122), as applicable. The allocation plan and the rate proposal must be submitted to the Department of Commerce's Office of Acquisition Management (or applicable cognizant federal agency) within 90 days from the award start date.

The maximum dollar amount of allocable indirect or facilities and administrative costs for which EDA will reimburse a recipient shall be the lesser of the:

(i) Line-item amount for the federal share of indirect or facilities and administrative costs contained in the EDA-approved budget for the award; or

(ii) federal share of the total allocable indirect or facilities and administrative costs of the award based on the cost rate approved by the Department of Commerce (or applicable cognizant federal agency), provided that the cost rate is current at the time the costs were incurred and provided that the rate is approved on or before the award end date. *See* Paragraph 5 (Indirect Costs) of the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements* (69 FR 78389).

The TAAC should include a statement in the budget narrative indicating whether it does not have, or has not applied for, an Indirect or Facilities and Administrative Cost Rate Agreement.

3. *Program Income.* If the operation of the TAAC is expected to generate ''program income'' (as defined in 15 CFR 14.24 or 24.25, as applicable), such

amounts must be accounted for in the project budget and must be added to those budget line-items pertaining to direct Program delivery.

Program Requirements for TAACs

The TAACs are advised to carefully read the following paragraphs that detail programmatic and administrative requirements to be included in each TAAC's fiscal years 2008–2010 cooperative agreement with EDA. Some of the requirements set out below are currently required of TAACs and some are new requirements.

Petitions for Certification of Eligibility.

1. *Petition for Certification Template.* Petitions for certification of eligibility must be made by completing and submitting Form ED–840P, which will be provided to TAACs as a portable document format (PDF) document. The TAAF Program Worksheet also is attached as Exhibit C to this program announcement. EDA strongly encourages TAACs to complete and submit the TAAF Program Worksheet along with each petition for certification. The worksheet is formatted as a fillable PDF document, and will help EDA expedite the TAAC's petitions.

2. *Submission of Petitions.* All TAAF Program documentation and submissions must be made electronically. Petitions for certification must be submitted to EDA's TAAF mailbox at *taac@eda.doc.gov* in PDF format. Each petition shall include all information needed for EDA to assess the petition. Each PDF document included in a petition must use a descriptive file name that includes both the name of the TAAC and the name of the petitioning firm.

3. *Employment Data.* Each TAAC shall require any firm applying for certification to retrieve and submit the most currently available documentation of the firm's required quarterly employee contribution to social security and Medicare under the Federal Insurance Contributions Act (FICA) or the Self-Employment Contributions Act so that the TAAC and EDA can confirm the firm's level of employment. This documentation must be scanned or saved electronically and included in each firm's petition for certification.

4. *Customer Interviews.* To help evaluate whether a firm has been trade-impacted, the firm must provide a list of four important current or recent customers. Each TAAC must interview at least two of these customers to determine if and why each customer has decreased purchases from the firm. A synopsis of each customer interview conducted in the course of a firm petition, whether or not the customer has adjusted its purchasing patterns because of import competition, must be included in the petition. The synopsis shall include all information necessary for EDA to make the statutory findings that imports contributed importantly to the decline in employment and sales or production (e.g., what factors affected the amount of purchases the customer made from the firm, whether the customer is purchasing imported products in lieu of the firms products, and the length of time the customer has been purchasing imported products).

5. *The TAAC Director's Certification of Customer Interviews.* Each TAAC Director is responsible for ensuring that the representations made in a certification petition are complete and accurate to the best knowledge of the TAAC and must certify to that effect. Failure to exercise due diligence to ensure that a firm's representations are accurate constitutes a material breach of the TAAC's cooperative agreement with EDA. EDA will issue a deficiency memorandum to a TAAC each time the TAAC submits a certification with inaccurate or inadequate information. *See* the paragraph below for more information on EDA's consideration of deficiency memoranda.

Adjustment Proposals: The AP is the tool through which a client-firm should begin to reestablish competitive advantage. Each AP is to be developed by the TAAC in consultation with and submitted on behalf of a client-firm. Each AP shall contain sufficient information and detail to allow EDA to make the determination that the AP:

(i) Is reasonably calculated to contribute materially to the economic adjustment of the client-firm (i.e., that such proposal will constructively assist the firm to establish a competitive position in the same or a different industry);

(ii) Gives adequate consideration to the interests of a sufficient number of separated workers of the client-firm; and

(iii) Demonstrates that the client-firm will make all reasonable effort to use its own resources for its recovery. *See* 13 CFR 315.16.

1. *AP Template.* The AP template and accompanying instructions are included in this program announcement as Exhibit D. While each AP must be tailored to the specific needs of the client-firm, the template will provide a standard format to help TAACs and contractors produce APs that effectively assist firms and meet EDA requirements. EDA strongly encourages TAACs and contractors to use the AP template in providing assistance to firms. The template is formatted as a fillable PDF document and it will assist EDA Program staff to expeditiously review APs.

2. *Submission of APs.* All APs must be submitted electronically to EDA as a single PDF document at *taac@eda.doc.gov*. The PDF document must include all information needed for EDA to evaluate the AP.

3. *Assistance Cost Limits.* As noted above under ''Cost Sharing Requirement,'' a client-firm must pay at least 25 percent of the cost of the preparation of its AP. A client-firm that requests $30,000 or less in total assistance to implement an approved AP must pay at least 25 percent of the cost of that assistance. A client-firm that requests more than $30,000 in total assistance in its approved AP must pay at least 50 percent of the cost of that assistance. The total amount of assistance provided to a client-firm in an AP is generally limited to $150,000 ($75,000 EDA funds and $75,000 client-firm funds). Assistance that exceeds this limit may be provided only with EDA's prior written approval. Limitations specific to a particular TAAC will be set out in the cooperative agreement between EDA and the TAAC. Also, the procurement agreement among the TAAC, the client-firm, and the contractor providing assistance should describe clearly applicable cost limitations. *See* 13 CFR 315.6(c)(2).

4. *Procurement of Assistance under APs.* Each TAAC must have written procurement procedures. These procedures must require, in part, that solicitations for services, including services to create or implement an AP, must include:

a. A clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition;

b. Requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals;

c. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards;

d. The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation;

e. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement; and

f. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

5. *Sole-Sourcing of AP Projects.* As required by federal acquisition regulations, a TAAC shall select contractors providing services under an AP via an open bid process that the TAAC ensures is free from conflicts of interest.

Each TAAC shall maintain a list of each contractor that produces, consults, provides services under, receives federal funds through, or is any way involved in the creation or implementation of an AP for a client-firm. The TAAC shall provide EDA with this list on request. The identity of each contractor that produces, consults on, provides services under, receives federal funds through, or is in any way involved in the creation or implementation of an AP must be disclosed and easily identifiable on the document. As noted above, all APs must be submitted to EDA electronically. Identification of consulting firms shall include Employer Identification Numbers (EINs) and Data Universal Number System (DUNS) numbers.

If the procurement of services to create or implement an AP exceeds $100,000 (the current simplified acquisition threshold), the TAAC shall, on request, make available for EDA pre-award review and procurement documents, such as the requests for proposals or invitations for bids and independent cost estimates. EDA may ask the TAAC to make available information about its procurement practices if the procurement was awarded without competition or if only one bid or offer was received in response to a solicitation or if a proposed contract modification changed the scope of a contract or increased the contract amount by more than $100,000. *See* 15 CFR 14.40–14.48 or 24.36, as applicable, for more information on these requirements.

6. *Implementation of and Changes to APs.* APs should be designed to address a client-firm's current conditions so that the firm can better compete in the future. To ensure that approved APs are effective tools for economic recovery, the firm should begin implementing the AP expeditiously, generally within six months of EDA's approval, subject to the availability of funds. Each TAAC is responsible for facilitating its client-firms' implementation of their APs and providing as much assistance as possible. If active steps towards implementing an approved AP, as determined by EDA, are not taken within six months of EDA's approval, the TAAC must provide an explanation of the delay to EDA. Each TAAC must monitor client-firms' implementation of APs and provide updates on implementation in the TAAC's regular report to EDA. However, in accordance with Department of Commerce regulations, TAACs may not charge a fee for such monitoring. *See* the paragraph below on the prohibition on charging a monitoring fee. The following are details on allowable adjustments to APs:

a. *Amended APs.* If a certified firm does not satisfactorily demonstrate progress toward implementing its approved AP within six months of approval, EDA will assume the projects contained in the approved AP are no longer current and it will be the firm's fiscal responsibility to either amend the AP by updating it, or to demonstrate to EDA that the projects in the AP continue to meet the firm's current needs and will meet the AP criteria as set out at 13 CFR 315.16(c); and

b. *Revised APs.* If EDA approves an AP for a certified firm that has a total cost that is less than the maximum amount of assistance set out in the cooperative agreement between EDA and the TAAC, and the firm successfully implements or demonstrates progress towards implementing its AP, the TAAC, with EDA's prior written approval, may revise it by adding projects to the AP up to the maximum amount of assistance as set out in the cooperative agreement between EDA and the TAAC.

7. *Prohibition on Monitoring Fees Charged by a TAAC.* TAACs frequently subcontract with third parties to provide services under APs. Department of Commerce award recipients are responsible for monitoring subcontractor performance. See 15 CFR 14.51 or 24.40, as applicable. A TAAC may not assess a fee under the award or otherwise attempt to generate program income via any other charge or fee for monitoring contractor performance. In addition, a TAAC may not assess either client-firms or EDA a fee for monitoring client-firm progress in implementing an AP. *See* 15 CFR 14.51 or 24.40, as applicable, and 13 CFR 315.6(c)(2), which sets out matching share requirements to be paid by client-firms for the preparation of APs. Except as provided in paragraph 3 of this section (''Assistance Cost Limits'') above, TAACs may not assess fees in connection with the program.

8. *Firms' Responsibility to Implement APs.* Certified firms have five years from the date of EDA's approval of an AP to complete work on that AP. Generally, EDA will not consider requests to implement an AP beyond five years from the date of EDA's approval of the AP. Any request for an extension beyond five years must demonstrate an exceptional need and justifiable extenuating circumstances for the delay.

Program Performance Assessment: EDA will assess program performance to ensure that the TAAF Program accomplishes its purposes and that federal funds are put to their most productive use. EDA will evaluate each TAAC using the following criteria to help determine the funding level for the TAAC's funding periods within a project period.

1. *Quality of TAAC Submissions.* TAAC Directors are responsible for the quality of submissions to EDA. All submissions should be timely, proof-read, complete, and accurate, and should not cause EDA to undertake additional background work to assess the quality and validity of the information submitted.

2. *Deficiency Citations.* EDA will issue a deficiency memorandum whenever it determines that a petition, AP, or other TAAC submission is not timely, proof-read, complete, accurate, or otherwise causes EDA to undertake additional background work to assess the quality and validity of the information submitted. The number and substance of deficiency memoranda issued to a TAAC during each year of the TAAC's project period will be considered when EDA assesses the TAAC's performance and will have an impact upon TAAC funding for subsequent project periods. If repeated or major deficiencies are identified through EDA's assessment of the quality of the TAAC's submissions, EDA will take steps to protect the federal interest under the award, including suspension and termination.

3. *Services to Client-Firms.* EDA must ensure that funds appropriated to assist trade-impacted firms are put to their highest and best use. To that end, EDA will examine the percentage of the total amount awarded to each TAAC that is delivered to firms as client services. EDA will notify each TAAC of the target percentage. Percentages higher than the target indicate that the TAAC should re-evaluate its expenditure of award funds.

4. *Collaboration.* EDA will examine evidence of the TAAC's collaboration with DOL Trade Adjustment Assistance Programs to ensure that both EDA and DOL funds are leveraged to the maximum extent possible.

5. *Firm Survey.* Following the completion and delivery of an AP to a client-firm and the implementation of each project or service proposed in an approved AP, the TAAC will provide the firm with a survey to help assess the

effectiveness of and the firm's satisfaction with the assistance provided. EDA will provide this survey to the TAACs, and will review service delivery periodically based in part on this survey.

Financial Management

1. *TAAC Budget.* The budget is the financial expression of the TAAC's planned program execution. The TAAC's budget is submitted on the Form SF–424A, ''*Budget Information—Non-Construction Programs*,'' both for an original award (i.e., a three-year project period) and for each amendment to the original award.

2. *Changes to the TAAC Budget.* A TAAC shall not transfer funds across direct cost categories if the federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds 10% of the total federal and non-federal amount of the award. In addition, a TAAC must receive EDA's written approval if the transfer implicates a change in project scope or objective or if the transfer is of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa. *See* 15 CFR 14.25 or 24.30, as applicable.

3. *Payment.* A TAAC may request an advance or reimbursement of award funds from EDA to cover costs incurred in providing assistance to client-firms and to pay for reasonable and necessary TAAC administrative expenses. Department of Commerce regulations authorize EDA to advance funds to a TAAC as long as the TAAC maintains:

a. Written procedures that minimize the time elapsing between the transfer of funds to and the disbursement by the TAAC; and

b. Financial management systems that meet the standards for fund control and accountability set out at 15 CFR 14.21.

Advances are limited to the minimum amounts needed for project costs and must be timed in accordance with the actual, immediate cash requirements of the TAAC in carrying out project needs. The timing and amount of advances shall be as close as is administratively feasible to the actual disbursement by the TAAC for direct project costs and the proportionate share of allowable indirect costs.

The TAAC must submit each request for award funds to EDA using Form SF–270, ''*Request for Advance or Reimbursement,*'' in accordance with these requirements. Each request shall be sufficient to meet the TAAC's reasonably anticipated needs for the upcoming 30 days or to cover the TAAC's expenditures for the most recently past 30 days, if the TAAC receives a reimbursement of award funds. If the TAAC does not meet the Department of Commerce's requirements for advance payment of award funds, EDA may decide to make payments solely through reimbursement. *See* 15 CFR 14.22 or 24.21, as applicable.

4. *Supporting Documentation for Requests for Advances or Reimbursements.* Pursuant to EDA's duty of responsible stewardship over federal funds, if EDA has reasonable concerns regarding a TAAC's submitted Form SF–270, EDA may request the TAAC to submit an expense report with supporting documentation that fully explains the TAAC's request for an advance or reimbursement. The report shall be in the same format as the budget submitted as the TAAC's controlling budget, and shall show the original budget, the budget for the upcoming 30 days for which the advance is requested, and expenses incurred year to date. EDA is in the process of developing an expense report template to provide to each TAAC.

5. *Financial Reporting.* Each TAAC shall submit Form SF–269, ''*Financial Status Report,*'' to EDA quarterly to report the status of unreimbursed obligations. This report will provide information on the amount of allowable project expenses that have been incurred, but not claimed for reimbursement by the recipient.

When EDA advances funds to a TAAC, the TAAC also must submit Form SF–272, ''*Report of Federal Cash Transactions,*'' to EDA quarterly to monitor advances to a disbursement by the TAAC. EDA may require the TAAC to forecast federal funds requirements in the ''Remarks'' section of the report. When practical and deemed necessary, EDA also may require the TAAC to report on advances received in excess of three days and provide short narrative explanations on actions taken by the TAAC to reduce excess balances in the ''Remarks'' section of the SF–272.

The first submission of Forms SF–269 and SF–272, if applicable, shall be as of March 30 of each year and shall be submitted to EDA no later than April 30 of each year; the second report shall be as of June 30 of each year and shall be submitted to EDA not later than July 30 of each year; the third report shall be of September 30 and shall be submitted to EDA not later than October 30 of each year; and the fourth report shall be of December 30 of each year and shall be submitted to EDA no later than January 30 of the following year. EDA may require TAACs that receive advances totaling $1 million or more per year to submit Form SF–272 on a monthly basis. *See* 15 CFR 14.52 or 24.41, as applicable.

6. *End-of-Year Submission of Budget.* Within 90 days of the end of the TAAC's annual funding period under its award, the TAAC shall submit an analysis of the TAAC's prior year budget as planned versus implemented that clearly identifies, justifies, and explains any differences between planned costs and actual costs, any transfers among cost categories, and any other changes that took place during the year.

7. *Audit Requirements.* Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A–133, ''*Audits of States, Local Governments, and Non-Profit Organizations,*'' and the related ''*Compliance Supplement.*'' TAACs typically expend federal awards of $500,000 or more in a fiscal year and thus are required to have an audit conducted for that year in accordance with the requirements contained in OMB Circular A–133. Each TAAC associated with a university is responsible for instructing the auditor to address the operations and controls of the sponsored programs or similar university office. Audit findings shall specifically address the operations and controls of the sponsored programs or similar office of the university.

A copy of the audit must be submitted to the Bureau of the Census at the following address: Federal Audit Clearinghouse, 1201 E. 10th Street, Jeffersonville, IN 47132. In addition, each TAAC must submit the TAAC's currently valid audit required under OMB Circular A–133 to EDA headquarters within 30 days of completion of the audit. The address for OMB Circular A–133 audit submissions is: Department of Commerce, Economic Development Administration, William P. Kittredge, Ph.D., 1401 Constitution Avenue, NW., Room 7009, Washington, DC 20230.

TAAC Administrative Requirements: Each TAAC will maximize coordination with the other TAACs and relevant organizations to avoid duplication of services offered by other organizations. Additionally, TAACs shall adhere to the minimum administrative guidelines detailed below. In reviewing performance, EDA will evaluate the TAACs on their adherence to these guidelines as well as their performance in assisting firms, since TAAC administration is key to effective firm assistance. The Director of each TAAC is expected to ensure compliance with these guidelines.

1. *TAAC Operation and Management.* TAACs provide assistance to a wide range of production and manufacturing firms experiencing difficulty in adjusting to the global marketplace. These firms provide jobs and capital that are vital to State, local, and national economic well-being. Therefore, each TAAC is expected to be managed professionally and to be capable of responding flexibly to client-firms.

a. *Forty-Hour Customary Workweek.* For each week of the calendar year, each TAAC shall be open to the public during workdays and hours customary to each TAAC's geographic service region, for not less than a 40-hour, Monday through Friday workweek. Each TAAC Director shall work a 40-hour workweek during the business hours customary to each TAAC's geographic service region. If TAAC workload demands additional hours or a firm requires additional assistance, the TAAC shall include flexibility in its budget to remain open for the period needed to resolve the workload or firm issues.

b. *Consistent Contact with EDA.* During each TAAC's customary business hours, EDA must have a direct line contact phone number and e-mail address for each TAAC Director. If the TAAC Director is on official travel status that is being charged to the award, TAAC staff shall be able to provide EDA with contact information for the Director, including the name of the hotel at which the Director is staying and a telephone number at which the Director can be reached.

c. *TAAC Facilities and Resources.* TAAC facilities and resources shall not be used for any activities inconsistent with the terms and conditions of the award to the TAAC. TAAC offices, addresses, and telephone numbers are not to be listed in any manner that would cause a reasonable person to misconstrue the TAAC office as a residence or other place of business. TAAC employees are prohibited from using the TAAC address for any purpose other than those described in the cooperative agreement and award scope of work. EDA will be the sole interpreter of those provisions.

d. *TAAC Staff Training.* Each TAAC Director is responsible for training TAAC staff to deliver services to client-firms. When the TAAC Director is absent for any reason, there shall be a TAAC staff member responsible for maintaining consistent TAAC operations in the Director's absence.

e. *TAAC Boards and Other Management or Governing Body.* The TAAC Director is responsible for ensuring that each member of the TAAC's Board of Directors (or other management or governing body) is aware of EDA's conflicts of interest rules and that actual or apparent conflicts of interest are avoided. If a conflict is discovered, the TAAC Director is responsible for promptly resolving the matter through disqualification, divestiture, waiver or other appropriate measures. *See* 13 CFR 300.3 (for the definition of ''Interested Party'') and 302.17.

2. *Travel.* A TAAC's travel costs are allowable only to the extent that they are necessary as determined by EDA and otherwise allowable under relevant Office of Management and Budget (OMB) cost principles. A TAAC must provide receipts and documentation of travel-related expenses and any airfare costs must not exceed the customary standard commercial airfare (coach or equivalent). If EDA determines that a TAAC is in persistent noncompliance with the applicable cost principles that govern travel costs, EDA reserves the right to use the reimbursement method to cover all travel costs incurred by the TAAC or to take such other action as EDA deems appropriate.

TAAF Program Promotion: Promoting the TAAF Program helps ensure that a wide variety of trade-impacted firms receive assistance. Therefore, the TAAF Program's status as a federally funded program and EDA as the funding agency must be prominently featured on all public information, including press releases, Web sites, program brochures, and reports released by the TAAC, including APs.

No Obligation for Future Funding: As provided in the *Department of Commerce Standard Terms and Conditions for Financial Assistance Awards* (May 2007), if an applicant is awarded funding, neither the Department of Commerce nor EDA is under any obligation to provide any additional future funding in connection with that award or to make any future award(s). Amendment or renewal of an award to increase funding or to extend the period of performance is at the sole discretion of the Department of Commerce and of EDA.

Past Performance and Non-Compliance with Award Provisions: Unsatisfactory performance under prior federal awards, such as audit reports with findings of reportable conditions and material weaknesses, may result in an application or a funding period extension not being considered.

Failure to comply with any or all of the provisions of an award may have a negative impact on future funding by the Department of Commerce (or any of its operating units) and may be considered grounds for any combination or all of the following actions: temporarily withholding payments pending correction of the deficiency; disallowance of all or part of the cost of the activity or action not in compliance; wholly or partially suspending or terminating the current award; withholding further awards; changing the method of payment from advance to reimbursement only; or the imposition of other special award conditions unique to the circumstances at hand. *See* 15 CFR 14.14 and 14.62 or 24.12 and 24.43, as applicable.

Program Teleconferences: EDA headquarters will hold a teleconference to provide general program information and information regarding this program announcement during the week of February 11, 2008. The exact date, time, registration information, and protocols for the teleconference will be provided to participants in advance of the call.

Classification

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms (SF) SF–424, SF–424A, SF–424B, and SF–LLL, and ED–900A has been approved by OMB under the respective OMB Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0610–0094. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The administrative and national policy requirements for all Department of Commerce awards, contained in the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements* (69 FR 78389), are applicable to this program announcement.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules

concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: January 30, 2008.

Benjamin Erulkar,

Deputy Assistant Secretary of Commerce for Economic Development.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on February 20 and 21, 2008, 9 a.m., at the Space and Naval Warfare Systems Center (SPAWAR), Building 33, Cloud Room, 53560 Hull Street, San Diego, California, 92152. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, February 20

Open Session

1. Welcome and Introduction.
2. Quantum Computing.
3. Lasers Lithography.
4. 3–D Semiconductor Technology.
5. Discussion: Wassenaar Proposals for 2008.
6. Discussion: APP Review.
7. Bio-metric Technology.

Thursday, February 21

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov,* no later than February 13, 2008.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 31, 2008, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: February 1, 2008.

Teresa Telesco,

Acting Committee Liaison Officer.

[FR Doc. E8–2150 Filed 2–5–08; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–808]

Certain Cut–to-Length Carbon Steel Plate from the Russia; Preliminary Results of Administrative Review of the Suspension Agreement

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of the Administrative Review of the Suspension Agreement on Certain Cut–to-Length Carbon Steel Plate from the Russia.

SUMMARY: In response to a request from Nucor Corporation (Nucor), a domestic interested party, the Department of Commerce (the Department) is conducting an administrative review of the Agreement Suspending the Antidumping Investigation of Certain Cut–to-Length Carbon Steel Plate from the Russian Federation (the Agreement) for the period January 1, 2006 through December 31, 2006, to review the current status of the Agreement and compliance with the Agreement by Joint Stock Company Severstal (Severstal). For the reasons stated in this notice, the Department preliminarily determines that Severstal is in compliance with the Agreement. The preliminary results are set forth in the section titled ''Preliminary Results of Review,'' infra. Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to provide: (1) a statement of the issues, and (2) a brief summary of the arguments.

EFFECTIVE DATE: February 6, 2008.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Jay Carreiro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0162 or (202) 482–3674.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2002, the Department signed an agreement under section 734(b) of the Tariff Act of 1930, as amended (the Act), with Russian steel producers/exporters, including Severstal, which suspended the antidumping duty investigation on certain cut–to-length carbon steel plate (CTL plate) from Russia. *See Suspension of Antidumping Duty Investigation: Certain Cut–to-Length Carbon Steel Plate from the Russian Federation*, 68 FR 3859 (January 27, 2003) (*Suspension Agreement*).

On January 3, 2007, Nucor submitted a request for an administrative review pursuant to *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 99 (January 3, 2007). On March 14, 2007, and October 5, 2007, the Department issued its Questionnaire and Supplemental Questionnaire, respectively, to Severstal. Severstal submitted its responses on April 20, 2007, and October 26, 2007, respectively.

On October 1, 2007, the Department postponed the preliminary results of this review until January 31, 2008. *See Notice of Extension of Time Limit for the Preliminary Results of Administrative Review of the Suspension Agreement on Certain Cut–to-Length Carbon Steel Plate from Russia*, 72 FR 55744 (October 1, 2007).

Scope of Review

The products covered by the Agreement are hot–rolled iron and non–alloy steel universal mill plates (i.e., flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non–alloy steel flat–rolled products not in coils, of rectangular shape, hot–rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat–rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')--for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of this Agreement is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Review

The period of review (POR) is January 1, 2006 through December 31, 2006.

Preliminary Results of Review

Section 751(a)(1)(C) of the Act specifies that the Department shall ''review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.'' In this case, the Department and Severstal signed the Agreement, which suspended the underlying antidumping duty investigation, on December 20, 2002. Pursuant to the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of the subject merchandise exceeds the U.S. price of its merchandise subject to the Agreement. *SeeSuspension Agreement* , 68 FR at 3860–61. For this purpose, the Department determines, on a semi–annual basis and as requested by a signatory, the NV in accordance with section 773(e) of the Act, and U.S. price in accordance with section 772 of the Act. Further, the Department calculates the NV for purposes of the Agreement by adjusting the constructed value; in effect, any expenses uniquely associated with the covered products sold in the domestic market are subtracted from the constructed value, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the constructed value to calculate the NV. *See Suspension Agreement* at Appendix A.

On March 14, 2007 and October 5, 2007, the Department issued its questionnaire and supplemental questionnaire, respectively, to Severstal. Severstal submitted its responses on April 20, 2007 and October 26, 2007, respectively. Neither Nucor nor any other interested party has submitted comments to date. Our review of the information submitted by Severstal indicates that the company has adhered to the terms of the Agreement. In its questionnaire response, Severstal describes the system which it and its U.S. sales arm, Severstal Export GmbH, have established to ensure that each product sold to the United States is sold at or above the relevant NV. *See Severstal Questionnaire Response*, pages 7–9. Severstal indicates that it is committed to compliance with the Agreement and that its system of compliance has worked well since it began shipping subject merchandise under the Agreement. Severstal further indicates that neither it nor any of its affiliates made any sales of the subject merchandise into the United States below the appropriate NVs during the POR. *See Severstal Questionnaire Response*, page 9. In response to the Department's questionnaire, Severstal states that it did not sell the subject merchandise during the POR to customers in Canada or other third countries that was destined for the United States and is not aware of any such sales. *See Severstal Questionnaire Response*, page 10.

The Department finds no evidence in the information submitted of any discrepancies in Severstal's exports to the United States, either directly or through third countries, which would constitute a violation of the Agreement. Furthermore, the Department examined Severstal's reported sales and cost information covering the POR for purposes of calculating and releasing requested NVs to Severstal on December 20, 2006, and June 20, 2007. See December 20, 2006, letter from Ronald K. Lorentzen to JSC Severstal with attachments. See also June 20, 2007, letter from Ronald K. Lorentzen to JSC Severstal with attachments. The Department also verified Severstal's reported sales covering the period from January 1, 2006, through June 30, 2006, in October 2006. See ''Sales Verification Report'' Memorandum from Jonathan Herzog through Judith Wey Rudman to Case File (November 16, 2006). Therefore, in light of the record evidence described above, we preliminarily determine that Severstal has been in compliance with the Agreement.

Public Comment

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 C.F.R. 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 C.F.R. 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. *See* 19 C.F.R. 351.309(d). Parties who submit comments in these proceedings are requested to provide: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, parties submitting case briefs and/or rebuttal briefs are requested to provide the Department with an additional copy of the public version of any such briefs on diskette. The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised in any written comments or at a hearing, if requested, within 120 days of publication of these preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–2176 Filed 2–5–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film Sheet and Strip from the Republic of Korea: Extension of Time Limit for Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 6, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION: On October 2, 2007, the Department of Commerce (the Department) published the preliminary results of the changed circumstances review in the antidumping duty order of polyethylene terephthalate film sheet and strip from the Republic of Korea. *See Polyethylene Terephthalate Film Sheet and Strip from the Republic of Korea: Preliminary Results of Changed Circumstances Review and Intent to Reinstate Kolon Industries, Inc. in the Antidumping Duty Order, (Preliminary Results)* 72 FR 56048 (October 2, 2007). The current deadline for the final results of this review is January 30, 2008.

Extension of Time Limits for Final Results

In our *Preliminary Results*, we indicated we would issue the final results of this changed circumstances review within 120 days after the date on which the preliminary results were published. However, it is not practicable to complete the review within this time period. Accordingly, pursuant to 19 CFR 351.302(b), we are extending the time limit by 60 days.

The Department finds that it is not practicable to complete this review within the original time frame. In order to evaluate fairly the issues raised by Petitioners (DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC Inc., and Toray Plastics (America) Inc.) and Kolon Industries, Inc., in their respective case and rebuttal briefs, we are extending the time frame for completion of this review. These issues include the appropriate model matching procedures to employ in this changed circumstances review, and whether the Department should employ investigation or administrative review methodologies in calculating dumping margins. Consequently, in accordance with 19 CFR 351.302(b), the Department is extending the time period for issuing the final results of review by 60 days. Therefore, the final results will be due no later than March 30, 2008. As March 30, 2008 falls on a Sunday, our final results will be issued no later than Monday March 31, 2008. This notice is published in accordance with section 771(i) of the Tariff Act, as amended.

Dated: January 30, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–2179 Filed 2–5–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium from the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 6, 2008.

FOR FURTHER INFORMATION CONTACT: Hua Lu, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6478.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2007, the Department of Commerce (''the Department'') published in the **Federal Register** a notice for an opportunity to request an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (''PRC''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 23796 (May 1, 2007). As a result of a request for a review and a one year deferral filed by Tianjin Magnesium International Co., Ltd. (''TMI'') on May 30, 2007, and a request for a review filed by Shanxi Datuhe Coke & Chemicals Co., Ltd. (''Datuhe'') on May 31, 2007, the Department published in the **Federal Register** a notice of initiation of an administrative review (*i.e.*, Datuhe) and deferral of initiation of administration review with respect to TMI for the period May 1, 2006, through April 30, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 72 FR 35690 (June 29, 2007). Upon learning that the domestic interested party did not receive notice of TMI's request for a deferral, we extended the time period for the domestic interested party to object. The domestic interested party did object. Consequently, pursuant to 19 CFR 351.213 (c), we determined not to defer the review for TMI. *See* memorandum to the file from Hua Lu, Case Analyst, through Robert Bolling, Granting Petitioner An Extension of Time to File An Objection to Respondent's Deferral Request, dated September 26, 2007. The preliminary results of review are currently due no later than January 31, 2008.

Extension of Time Limit of Preliminary Results.

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires the Department to issue preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time period to a maximum of 365 days. We determine that completion of the preliminary results of this review within the 245-day period is not practicable because the Department requires additional time to analyze information pertaining to the respondents' sales practices, factors of production, and to issue and review responses to supplemental questionnaires.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the preliminary results of review by 90 days until April 30, 2008, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: January 31, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–2178 Filed 2–5–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 3, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSSC) from Taiwan (72 FR 43236). This review covers three producers/exporters of the subject merchandise to the United States. The period of review (POR) is July 1, 2005, through June 30, 2006. We are rescinding the review with respect to nine companies because these companies had no shipments of subject merchandise during the POR.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: February 6, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

This review covers three producers/exporters. These companies are Chia Far Industrial Factory Co., Ltd. (Chia Far), PFP Taiwan Co., Ltd. (PFP Taiwan) and Yieh Trading Corp. (also known as Yieh Corp.).

On August 3, 2007, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on SSSSC from Taiwan. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 72 FR 43236 (Aug. 3, 2007) (*Preliminary Results*).

We invited parties to comment on our preliminary results of review. In September 2007, we received case and rebuttal briefs from the petitioners [1] (*i.e.*, Allegheny Ludlum Corporation, United Auto Workers Local 3303 (formerly Butler Armco Independent Union), United Steelworkers of America, AFL–CIO/CLC, and Zanesville Armco Independent Organization) and Chia Far, the sole respondent participating in this review.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

Also excluded from the scope of the order are certain specialty stainless steel products described below. Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve

[1] We note that, on October 16, 2007, we rejected the petitioners' case and rebuttal briefs because of the improper bracketing (*i.e.*, claims for treatment as business proprietary information) of public information. *See* the September 26, 2007, memorandum from Elizabeth Eastwood to the file entitled, ''Conversation with Counsel for Chia Far industrial Factory Co., Ltd., Regarding the Bracketing of Information Contained in the Petitioners' September 10, 2007, and September 17, 2007, Submissions in the Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from Taiwan.'' The petitioners resubmitted properly-bracketed versions of both their case and rebuttal briefs on October 18, 2007.

steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as Arnokrome III.[2]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as Gilphy 36.[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as Durphynox 17.[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as GIN4 Mo. The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is GIN5 steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, GIN6.[6]

Period of Review

The POR is July 1, 2005, through June 30, 2006.

Partial Rescission of Review

Nine of the companies that responded to the Department's questionnaire stated that they had no shipments/entries of subject merchandise into the United States during the POR. These companies are: (1) Chain Chon Industrial Co., Ltd.; (2) Chien Shing Stainless Co.; (3) China Steel Corporation; (4) Goang Jau Shing Enterprise Co., Ltd.; (5) Ta Chen Stainless Pipe Co., Ltd.; 6) Tang Eng Iron Works; (7) Yieh Loong Enterprise Co. Ltd.; (8) Yieh Mau Corp.; and (9) Yieh United Steel Corporation. We have confirmed this with data obtained from U.S. Customs and Border Protection (CBP). Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are rescinding our review with respect to these companies. *See*, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 52065 (Sept. 12, 2007) (administrative review rescinded for companies that demonstrated they had no shipments of subject merchandise during the POR); *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005) (administrative review rescinded for companies that demonstrated they had no shipments during the POR).

Emerdex Companies

The Department finds that it is appropriate to rescind the instant review with respect to the Emerdex

[2] Arnokrome III is a trademark of the Arnold Engineering Company.

[3] Gilphy 36 is a trademark of Imphy, S.A.

[4] Durphynox 17 is a trademark of Imphy, S.A.

[5] This list of uses is illustrated and provided for descriptive purposes only.

[6] GIN4 Mo, GIN5 and GIN6 are the proprietary grades of Hitachi Metals America, Ltd.

Companies named by the petitioners in their review request because the Department found in the 2003–2004 administrative review of this order that the Emerdex companies are U.S. entities. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 71 FR 45521, 45524–45525 (Aug. 9, 2006) (unchanged in *Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 75504 (Dec. 15, 2006)). We note that the petitioners in the instant review have not provided any additional information demonstrating that the Emerdex companies for which they have requested a review are located in Taiwan. Consequently, consistent with the Department's findings in the prior review, we are rescinding this review with regard to the Emerdex companies.

Facts Available

In the preliminary results, we determined that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available was appropriate as the basis for the dumping margins for PFP Taiwan and Yieh Corp. because these companies failed to respond to the Department's requests for information. *See Preliminary Results*, 72 FR at 43239–40.

Section 776(a) of the Act, provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not available on the record or an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified.

In August 2006, the Department requested that all companies subject to review respond to the Department's questionnaire. The original deadline to file a response was September 1, 2006. Because PFP Taiwan did not respond to this request for information, on September 7, 2006, the Department issued a letter to PFP Taiwan affording it a second opportunity to respond to the Department's request for information. However, PFP Taiwan also did not respond to this second questionnaire. On July 31, 2007, the Department placed documentation on the record confirming delivery of the questionnaire to this company. *See* the July 31, 2007, Memorandum to the File from Elizabeth Eastwood, Senior Analyst, entitled, ''Confirmation of Delivery of the Questionnaire in the 2005–2006 Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from Taiwan.''

Furthermore, one additional company, Yieh Corp., claimed that it made no shipments of subject merchandise to the United States during the POR. However, according to data obtained from CBP, it appeared that Yieh Corp. shipped subject merchandise to the United States during the POR. On January 29, 2007, we placed copies of the entry documentation related to these shipments on the record of this proceeding. *See* the January 29, 2007, Memorandum to the File from Jill Pollack, Senior Analyst, entitled, ''2005–2006 Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan: Entry Documents from U.S. Customs and Border Protection (CBP).''

On February 1, 2007, we requested that Yieh Corp. explain why it did not report the entries in question, and on March 5, 2007, Yieh Corp. responded by stating that it had inadvertently overlooked the entries. Therefore, again on May 24, 2007, we informed Yieh Corp. that it was required to respond to the Department's questionnaire. However, Yieh Corp. failed to file a response.

By failing to respond to the Department's questionnaire, PFP Taiwan and Yieh Corp. withheld requested information and significantly impeded the proceeding. Therefore, as in the preliminary results, the Department finds that the use of total facts available for PFP Taiwan and Yieh Corp. is appropriate pursuant to sections 776(a)(2)(A) and (C) of the Act. *See Preliminary Results*, 72 FR at 43239–40.

Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1 (1994), at 870. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27340 (May 19, 1997). *See also*, *Nippon Steel Corp.* v. *United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*). We find that PFP Taiwan and Yieh Corp. did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's requests for information. Therefore, an adverse inference is warranted in selecting facts otherwise available. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as adverse facts available (AFA) information derived from: (1) The petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792, 55796 (Aug. 30, 2002); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (Feb. 23, 1998).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have assigned a rate of 21.10 percent, which is the highest appropriate dumping margin assigned in this or any prior segment of the proceeding, to PFP Taiwan and Yieh Corp. The Department finds that this rate is sufficiently high as to effectuate the purpose of the AFA rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act).

For the reasons stated in the *Preliminary Results,* we continue to find that the information upon which this margin is based has probative value and

thus satisfies the corroboration requirements of section 776(c) of the Act. *See Preliminary Results,* 72 FR at 43240.

Cost of Production

As discussed in the preliminary results, we conducted an investigation to determine whether Chia Far made home market sales of the foreign like product during the POR at prices below its costs of production (COP) within the meaning of section 773(b) of the Act. For these final results, we performed the cost test following the same methodology as in the *Preliminary Results.*

We found that more than 20 percent of Chia Far's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B)–(D) of the Act.

Therefore, for purposes of these final results, we found that Chia Far made below-cost sales not in the ordinary course of trade. Consequently, we disregarded the below-cost sales and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum (Decision Memo) accompanying this notice, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/.* The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations for Chia Far. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period July 1, 2005, through June 30, 2006:

Manufacturer/Producer/Exporter Margin Percentage

Chia Far Industrial Factory Co., Ltd., 1.41, PFP Taiwan Co., Ltd., 21.10, Yieh Trading Corp./Yieh Corp. 21.10.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates for Chia Far based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. This clarification will also apply to POR entries of subject merchandise produced by companies for which we are rescinding the review based on certifications of no shipments, because these companies certified that they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the LTFV investigation if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

Further, the following deposit requirements will be effective for all shipments of SSSSC from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.61 percent, the ''All Others'' rate made effective by the LTFV investigation. *See Notice of Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From United Kingdom, Taiwan, and South Korea,* 64 FR 40555, 40557 (July 27, 1999) . These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), 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.

Notification to Interested Parties

This notice serves as the only 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 return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

1. Unreported Sales

2. Home Market Rebates
3. Affiliation Between Chia Far Industrial Co. Ltd. and Lucky Medsup
4. Lucky Medsup's U.S. Indirect Selling Expenses
5. Cost of Manufacturing
6. Clerical Error in the Preliminary Results
7. Affiliated Party Purchases

[FR Doc. E8–2181 Filed 2–5–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XF48

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Scallop Plan Team will meet in Anchorage, AK.

DATES: The meeting will be held on February 21, 2008, from 10 a.m. to 5 p.m. and February 22, 2008, from 9 a.m. to 2 p.m.

ADDRESSES: The meeting will be held a the Captain Cook Hotel, 939 W 5th Avenue, Club Room 2, 10th Floor, Anchorage, AK 99501

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda will include: Elect officers and discuss additional membership needs; discussion of current and future scallop survey techniques; central region assessment techniques, plans and management; review Status of Statewide Scallop Stocks and compile SAFE Report; discussion of ageing techniques and documentation issues; discussion of economics of the scallop fishery; and review and revise research priorities.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 1, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–2119 Filed 2–5–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary; Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting Date Change.

SUMMARY: On *Wednesday, 2 January 2008 (73 FR 173)* the Department of Defense announced a closed meeting of the Defense Science Board (DSB) Winter Quarterly. The meeting dates have been revised from February 6–7, 2008 to March 12–13, 2008. The meeting will be held at the Pentagon.

FOR FURTHER INFORMATION CONTACT: Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *debra.rose@osd.mil*, or via phone at (703) 571–0084.

Dated: January 30, 2008.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 08–513 Filed 2–5–08; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

United States Marine Corps; Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to Delete Five System of Records Notices.

SUMMARY: The U.S. Marine Corps is deleting five systems of records notices from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: Effective February 6, 2008.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC–ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' records systems 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 U.S. Marine Corps proposes to delete five systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: January 30, 2008.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

MMN00039

SYSTEM NAME:

Citizen Band Radio Request and Authorization File (January 4, 2000, 65 FR 291).

Reason: Navy/Marine system of records notice NM05000–2, Program Management and Locator System printed in the **Federal Register** on January 24, 2008 with the number of 73 FR 4194 is a joint Navy and Marine Corps system that covers this collection. Accordingly, all files have been merged into this system.

MMN00040

SYSTEM NAME:

Individual Training Records/Training Related Matters (January 4, 2000, 65 FR 291).

Navy/Marine system of records notice NM05000–2, Program Management and Locator System printed in the **Federal Register** on January 24, 2008 with the number of 73 FR 4194 is a joint Navy and Marine Corps system that covers this collection. Accordingly, all files have been merged into this system.

MMN00042

SYSTEM NAME:

Marine Corps Locator Files (February 22, 1993, 58 FR 10630).

Reason: Navy/Marine system of records notice NM05000–2, Program Management and Locator System printed in the **Federal Register** on

January 24, 2008 with the number of 73 FR 4194 is a joint Navy and Marine Corps system that covers this collection. Accordingly, all files have been merged into this system.

MMN00047

SYSTEM NAME:

Officer Slate File System (February 22, 1993, 58 FR 10630).

REASON:

Navy/Marine system of records notice NM05000–2, Program Management and Locator System printed in the **Federal Register** on January 24, 2008 with the number of 73 FR 4194 is a joint Navy and Marine Corps system that covers this collection. Accordingly, all files have been merged into this system.

MTE00001

SYSTEM NAME:

Telephone Billing/Accounting File (January 4, 2000, 65 FR 291).

REASON:

Records collection no longer required.

[FR Doc. E8–2146 Filed 2–5–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[USAF–2008–0001]

Privacy Act of 1974 System of Records

AGENCY: Department of Air Force, DOD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of Air Force proposes to amend a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on March 7, 2008, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCISI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Ms. Novella Hill at (703) 588–7855.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 31, 2008.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDA 13

SYSTEM NAME:

War Souvenir Registration/Authorization (February 27, 2007, 72 FR 8697).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with ''F024 AF USTRANSCOM A.''

* * * * *

F024 AF USTRANSCOM A

SYSTEM NAME:

War Souvenir Registration/Authorization.

SYSTEM LOCATION:

United States Transportation Command (USTRANSCOM), ATTN: TCJ5/4–PT, 508 Scott Drive, Scott AFB, IL 62225–5357.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and DoD civilian personal serving in overseas theaters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), rank and/or grade, Organization and/or unit, home address, war souvenir description, and overseas theater.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part IV, Chapter 153, Sec. 2579; DoDD 5030.40, DoD Customs and Border Clearance Program; DoD 4500.9R Defense Transportation Regulation, Part V DoD Customs and Border Clearance Policies and Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

To register and authorize an individual to retain a war souvenir and to return the item to the United States.

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 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of Department of Air Force'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:

Paper in file folders.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

Access to the records is limited to those who require the records in the performance of their official duties. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending approval of records disposition schedule by the National Records and Administration Agency.

SYSTEM MANAGER(S) AND ADDRESS:

United States Transportation Command (USTRANSCOM), ATTN: TCJ5/4–PT—Transportation Specialist, 508 Scott Drive, Scott AFB, IL 62225–5357.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the United States Transportation Command (USTRANSCOM), ATTN: TCJ5/4–PT–Transportation Specialist, 508 Scott Drive, Scott AFB, IL 62225–5357.

Requests should contain individual's name, address, Social Security Number (SSN), unit, Company Commander/Contracting Officer's Representative, and date requested war souvenir registration.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the United States Transportation Command (USTRANSCOM), ATTN: TCJ5/4–PT–Transportation Specialist, 508 Scott Drive, Scott AFB, IL 62225–5357.

Requests should contain individual's name, address, Social Security Number (SSN), unit, Company Commander/

Contracting Officer's Representative, and date requested war souvenir registration.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–2145 Filed 2–5–08; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2008–1]

Safety Classification of Fire Protection Systems

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) which addresses the safety classification of fire protection systems at defense nuclear facilities in the Department of Energy complex.

DATES: Comments, data, views, or arguments concerning the recommendation are due on or before March 7, 2008.

ADDRESS: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Brian Grosner or Andrew L. Thibadeau at the address above or telephone (202) 694–7000.

Dated: January 31, 2008.

A.J. Eggenberger,

Chairman.

Recommendation 2008–1 to the Secretary of Energy Safety Classification of Fire Protection Systems Pursuant to 42 U.S.C. 2286a(a)(5) Atomic Energy Act of 1954, As Amended

Date: January 29, 2008.

Fire protection systems in defense nuclear facilities have generally not been designated as ''safety-class'' as that term pertains to protection of the public from accidents. Such designation would bring into play a variety of Department of Energy (DOE) rules and directives, among them DOE Order 420.1B, *Facility Safety,* and DOE Guide 420.1–1, *Nonreactor Nuclear Safety Design Criteria and Explosives Safety Criteria.* While these documents describe general requirements for safety-class systems, e.g., redundancy and quality assurance, they do not provide specific guidance on how a fire protection system such as an automatic sprinkler system should be designed, operated, and maintained.

Accordingly, when DOE's Savannah River Site contractor proposed in the late 1990s that certain fire protection systems employed in the site's tritium facilities be designated as safety-class (and thus credited with protecting the public from accidents involving an offsite release of tritium), both DOE and the Defense Nuclear Facilities Safety Board (Board) were forced to conduct reviews of the proposal on an ad hoc basis without reference to specific guidance. The Board's review led to a March 18, 1999, letter to the Secretary of Energy agreeing with the reclassification of certain fire protection systems at the site's tritium facilities. The technical basis for the Board's agreement is found in the report appended to the letter:

> Controlling incipient fires through operability of a more reliable fire suppression system would make large fires less likely to occur. To substantially reduce the predicted likelihood of such fires to the ''extremely unlikely'' frequency range, WSRC reclassified the fire suppression (and some detection) systems as safety class. TSRs will be applied to fire protection systems falling in this category * * * WSRC acknowledges that installed fire suppression systems will not meet criteria such as redundancy or nuclear-grade quality assurance, nor are these systems seismically qualified. Imposition of safety-class requirements means that, in addition to meeting National Fire Protection Association (NFPA) code requirements, higher levels of maintenance and surveillance and of operability for these systems will be addressed in the TSRs. The intent is to increase the reliability of the suppression systems to maintain the SAR assumption that full-facility fires will be extremely unlikely. The TSRs will require that immediate actions be taken, such as cessation of operations and posting of a fire watch, should a safety-class fire suppression system be taken out of service or found to be inoperative.

In June of 2000, the Board addressed more broadly the safety classification of fire protection systems. In Section 3.3 of Technical Report DNFSB/TECH-27, *Fire Protection at Defense Nuclear Facilities,* the Board stated:

> Designation of safety-class or safety-significant structures, systems, and components (SSCs), administrative controls, and engineered design features is determined through a prescribed methodology (DOE–STD–3009–94, [U.S. Department of Energy, 1994] and DOE G 420.1–2, [U.S. Department of Energy, 2000]) that relies to a large extent on the engineering judgment of the safety analysts and designers. Overall, the objective is to prevent a fire, or to control and confine a fire should one occur. Methods of accomplishing this objective are set forth in NFPA codes that have been a requirement of the DOE program for decades. It is essential that decisions concerning the application of these codes and the selection of features and controls be made by qualified and experienced fire protection engineers.

This section of the report provided additional guidance on application of these principles to the control of ignition sources, use of passive fire barriers, suppression of incipient fires, minimization of transient combustibles, and enhancement and protection of confinement systems such as ventilation through HEPA (high efficiency particulate air) filters. The report acknowledged the Board's letter regarding Savannah River's tritium facilities and encouraged the safety designation of suppression systems when they are relied on for critical safety functions: ''Fire sprinkler systems relied upon for worker safety and public protection should be classified as safety-class or safety-significant SSCs because they provide the most effective, automated, and quick response to a fire.'' (Report, p. 3–3) The report noted that the Los Alamos National Laboratory (LANL) had identified the fire sprinkler system in the Chemistry and Metallurgy Research Facility as a vital system and had begun an effort to inspect and test the system for functional performance.

Subsequent to the Board's 1999 letter and 2000 technical report, DOE expanded its reliance on fire protection systems as primary lines of defense against accidents. For example, the following projects initially planned or reclassified fire protection systems as safety-class or safety-significant:

- Chemistry and Metallurgy Research Replacement Project, LANL.
- Device Assembly Facility, Nevada Test Site.
- Building 9212, Y–12 National Security Complex.
- Explosive Bays and Cells, Pantex Plant.
- Building 332, Lawrence Livermore National Laboratory.
- Highly Enriched Uranium Materials Facility, Y–12 National Security Complex.
- Uranium Processing Facility, Y–12 National Security Complex.
- K-Area Container Surveillance and Storage Capability, Savannah River Site.

Although it should be clear from the Board's earlier statements that it can support reliance on fire protection systems as primary safety measures, the Board is no longer comfortable with

such widespread reliance in the continued absence of specific criteria for the design and operation of such systems. At this time, DOE's fire protection guidance documents do not provide design and operational criteria for fire protection systems designated as safety-class or safety-significant. This lack of guidance makes design of new facilities more difficult and time-consuming and renders problematic the assessment of proposed enhancements to fire protection systems in existing facilities. In the latter case, possible upgrades to existing systems can be evaluated using a procedure developed by the Energy Facility Contractors Group (EFCOG), *Safety System Design Adequacy* (August 2004). Proper application of this procedure demands that an existing system be compared with ''a set of appropriate design, quality, or maintenance requirements, specifically including applicable current codes and standards.'' At present, DOE does not have a set of requirements that would permit use of the EFCOG procedure.

Lack of suitable requirements and guidance does not pose an immediate safety issue, because each separate project listed above can be evaluated on an ad hoc basis both by DOE and by the Board. However, this unstructured approach is wasteful of DOE and Board resources and prevents the sharing of technical knowledge and engineering solutions throughout the complex. More importantly, the Board's enabling legislation, 42 U.S.C. 2286a(a)(1) requires that it

> * * * recommend to the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected. The Board shall include in its recommendations necessary changes in the content and implementation of such standards, as well as matters on which additional data or additional research is needed.

Because the Department has chosen to increase its reliance on fire protection systems as primary safety systems, the Board concludes that the Department should without delay develop standards in this area. These standards should be sufficiently specific to guide both the design of new fire protection systems and the reclassification of existing systems. All of the necessary attributes of a safety-class or safety-significant fire protection system should be identified, leaving room for engineering judgment and innovative approaches in achieving high reliability and quality.

The Board observes that work on revising a key fire protection directive, DOE–STD–1066–99, *Fire Protection Design Criteria,* is expected to commence early in 2008 and be completed by the end of the year. Incorporation of suitable guidance for safety classification of fire protection systems in this standard would be a good starting point for carrying out the purposes of this Recommendation. Other guides that may need enhancement or revision include DOE Guide 420.1–1, *Nonreactor Nuclear Safety Design Criteria and Explosives Safety Criteria,* and DOE Guide 420.1–3, *Implementation Guide for DOE Fire Protection and Emergency Services Programs.* Safety classification of fire protection systems may necessitate changes to other DOE orders or directives.

Pursuant to its statutory mandate to recommend needed changes in DOE's standards for safety at defense nuclear facilities, the Board recommends that DOE:

1. Develop design and operational criteria for safety-class and safety-significant fire protection systems.

2. Use the revision of DOE–STD–1066–99, *Fire Protection Design Criteria,* as a starting point to provide suitable guidance for safety classification of fire protection systems. The revision to this standard must incorporate:

a. Design approaches for a variety of fire protection systems, e.g., automatic sprinklers, gaseous suppression, alarm, detection, and passive barriers, that can be used to achieve safety-class or safety-significant designation.

b. Guidance on technical safety requirements and administrative controls, in areas such as maintenance, tests, and configuration control, so as to ensure the operability of safety-class and safety-significant fire protection systems.

3. Identify design codes and standards for safety-class and safety-significant fire protection systems and their components, and incorporate them into DOE Guide 420.1–1, *Nonreactor Nuclear Safety Design Criteria and Explosives Safety Criteria.*

4. Modify other DOE directives and standards as necessary to ensure consistency with the new guidance for fire protection systems.

A.J. Eggenberger,

Chairman.

[FR Doc. E8–2185 Filed 2–5–08; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Indian Education—Demonstration Grants for Indian Children; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.299A.

DATES: Applications Available: February 6, 2008.

Deadline for Transmittal of Applications: March 7, 2008.

Deadline for Intergovernmental Review: April 7, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Demonstration Grants for Indian Children program is to provide financial assistance to projects that develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary Indian students.

Priorities: This competition contains two absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priorities are from the regulations for this program (34 CFR 263.21(c)(1) and (3)). In accordance with 34 CFR 75.105(b)(2)(iv), the competitive preference priorities are from sections 7121 and 7143 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7441(d)(1)(B) and 7473).

Absolute Priorities: For FY 2008 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or both of the following priorities.

These priorities are:

Absolute Priority One

School readiness projects that provide age appropriate educational programs and language skills to three- and four-year-old Indian students to prepare them for successful entry into school at the kindergarten school level.

Absolute Priority Two

College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including math and science, to enable Indian students to transition successfully to postsecondary education.

Competitive Preference Priorities: For FY 2008, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an

additional 10 points to an application, depending on how well the application meets one or both of these priorities.

These priorities are:

Competitive Preference Priority One

We award five competitive preference priority points to an applicant that presents a plan for combining two or more of the activities described in section 7121(c) of the ESEA over a period of more than one year.

Note: For *Competitive Preference Priority One*, the combination of activities is limited to the activities described in the *Absolute Priorities* section of this notice.

Competitive Preference Priority Two

We award five competitive preference priority points to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education, including a consortium of any of these entities with other eligible entities. An application from a consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five competitive preference points. These competitive preference points are in addition to the five competitive preference points that may be given under *Competitive Preference Priority One.*

Note: A consortium agreement, signed by all parties, must be submitted with the application in order for the application to be considered a consortium application. Letters of support do *not* meet the requirement for a consortium agreement. We will reject any application from a consortium that does not meet this requirement.

Program Authority: 20 U.S.C. 7441.

Applicable Regulations: (a) 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. (b) The regulations for this program in 34 CFR part 263.

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: Discretionary grants.

Estimated Available Funds: $1,600,000.

Estimated Range of Awards: $100,000–$300,000.

Estimated Average Size of Awards: $229,000.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for this program are State educational agencies (SEAs); local educational agencies (LEAs), including charter schools that are considered LEAs under State law; Indian tribes; Indian organizations; federally supported elementary or secondary schools for Indian students; Indian institutions (including Indian institutions of higher education); or a consortium of any of these entities.

An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must include a signed consortium agreement with the application. Letters of support do *not* meet the requirement for a consortium agreement.

Applicants applying in consortium with or as an ''Indian organization'' must demonstrate eligibility by showing how the ''Indian organization'' meets all the criteria outlined in 34 CFR 263.20.

The term ''Indian institution of higher education'' means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College), authorized in the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a *et seq.*).

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* Projects funded under this competition must plan to budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, 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), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 299A.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII 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 program.

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 the application narrative (Part III) to no more than 35 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).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

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, 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 if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: February 6, 2008.

Deadline for Transmittal of Applications: March 7, 2008.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 7, 2008.

4. *Intergovernmental Review:* This competition 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.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the Demonstration Grants for Indian Children competition, CFDA Number 84.299A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for Demonstration Grants for Indian Children at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.299, not 84.299A).

Please note the following:

- 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.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or

submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date (with the exception of consortium agreements which must be submitted within the electronic application, if applicable).

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll-free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5C152, Washington, DC 20202–6335. FAX: (202) 260–7779.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address: *By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.299A), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or *By mail through a commercial carrier:* U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.299A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, 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.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department 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.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: 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 qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.299A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *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 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, 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 from 34 CFR 75.210 and are listed 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 notify you informally, also.

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 directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Demonstration Grants for Indian Children program: (1) The percentage of 3- and 4-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, at a minimum, on an approved assessment of language and communication development as evidenced by a pre- and post-test each project year; (2) the percentage of 3- and 4-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, at a minimum, on an approved assessment of cognitive skills and conceptual knowledge as evidenced by a pre- and post-test each project year; (3) the percentage of 3- and 4-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, on an approved assessment of social development as evidenced by a pre- and post-test each project year; (4) the percentage of high school American Indian and Alaska Native students successfully completing (as defined by a passing grade of C or better) at least 3 years of challenging core courses (English, mathematics, science, and social studies) by the end of their fourth year in high school; and (5) the percentage of American Indian and Alaska Native students who graduate with their incoming 9th grade cohort (not counting those who transfer to another school).

We encourage applicants to demonstrate a strong capacity to provide reliable data on these measures in their responses to the selection criteria ''Quality of project services'' and ''Quality of the project evaluation.'' All grantees will be expected to submit, as part of their performance report, information with respect to these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5C152, Washington, DC 20202–6335. Telephone: (202) 205–2528 or by e-mail: *Indian.education@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and 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 in this notice.

Electronic Access to This Document: You can 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: February 1, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–2154 Filed 2–5–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 08–01–PO]

Notice of Procedural Order Eliminating Quarterly Reporting Requirement and Amending Monthly Reporting Requirement for Natural Gas and Liquefied Natural Gas Import/Export Authorization Holders

AGENCY: Office of Fossil Energy (FE), Department of Energy (DOE).

ACTION: Notice of Procedural Order Amending Natural Gas Import and Export Orders.

SUMMARY: DOE has issued the attached Procedural Order eliminating the quarterly reporting requirement and modifying the current monthly reporting requirement for existing and future orders authorizing the import and export of natural gas and liquefied natural gas (LNG). The Procedural Order includes the background and basis for the reporting and the new monthly requirement as modified.

DATES: The first monthly report, for the reporting period January 1, 2008 through January 31, 2008, required by the Procedural Order shall be filed no later than February 29, 2008.

ADDRESSES: All monthly filings required by the Procedural Order shall be made to U.S. Department of Energy (FE–34), Office of Fossil Energy, Office of Natural Gas Regulatory Activities, P.O. Box 44375, Washington, DC 20026–4375, Attention: Ms. Yvonne Caudillo. Reports may be e-mailed to Ms. Caudillo at *yvonne.caudillo@hq.doe.gov* or *ngreports@hq.doe.gov.* Reports may be faxed to Ms. Caudillo at (202) 585–6050.

FOR FURTHER INFORMATION CONTACT: Yvonne Caudillo, U.S. Department of Energy (FE–34), Office of Fossil Energy, Office of Natural Gas Regulatory Activities, P.O. Box 44375, Washington, DC 20026–4375, (202) 586–4587, *yvonne.caudillo@hq.doe.gov.*

Issued in Washington, DC, on February 1, 2008.

R.F. Corbin,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

Procedural Order Eliminating Quarterly Reporting Requirement and Amending Monthly Reporting Requirement for Natural Gas and Liquefied Natural Gas Import/Export Authorization Holders

FE Docket No. 08–01–PO

DOE/FE Order No. 2464

I. Background

FE is delegated the authority to regulate natural gas and LNG imports and exports under section 3 of the Natural Gas Act (15 U.S.C. 717b).[1] In order to carry out its delegated responsibility, FE requires those persons authorized to import or export natural gas and LNG to file reports containing basic information about the scope and nature of the import or export activity. FE has been collecting the import and export transaction information on a monthly and quarterly basis. That information is used to monitor North American natural gas trade, which in turn enables the Federal government to perform market and regulatory analyses, to improve the capability of industry and government to respond to any future energy-related supply problems, and to inform the general public regarding the international natural gas trade. Additionally, the data collected enables FE to ensure that importers and exporters are in compliance with the terms and conditions of their authorizations.

DOE has undertaken a Natural Gas Data Collection Initiative to improve the way it gathers and disseminates information about the U.S. natural gas trade. As a result of this initiative, FE continues to seek ways to improve and streamline its reporting process. As part of that effort, the submission of quarterly reports will no longer be required, and monthly reports will be amended to include the information and details previously collected on the quarterly reports. Monthly reports must still be filed within 30 days following the end of each calendar month indicating whether or not imports and/or exports have been made and reporting the details of all import and/or export transactions. This Procedural Order amends existing import and export authorizations listed in Appendix A to reflect such revisions. This Procedural Order also clarifies how those reports shall be filed with DOE. This monthly reporting requirement will also be made a condition in all future natural gas and LNG import and export authorizations. Requiring the submission of import and export data on a monthly basis only will improve the accuracy, timeliness, and publication of the data collected, and will simplify the obligation and reduce the burden on authorization holders who are now required to provide two different data reports on two different reporting schedules.

II. Comments

On August 10, 2006, DOE's Energy Information Administration (EIA) published a notice in the **Federal Register** (71 FR 45800) soliciting comments on the proposed extension of Form FE–746R, ''The Natural Gas Import and Export Authorization Application and Monthly Reports.'', which included the elimination of the associated quarterly reporting requirement. Three parties filed timely comments and one party filed a late comment. The three timely parties supported the changes discussed above. In addition, these parties made suggestions for modifying the reports. The suggested changes were to: (1) Eliminate the requirement to report end-user data, and (2) eliminate the requirement to report special price clauses. DOE had already considered and elected to make those changes prior to the suggestions submitted in the comments. One of the commenters suggested that FE require the volumes to be reported in Million British Thermal Units (MMBtu) rather than Thousand Cubic Feet (Mcf) to be consistent with the way the prices for those volumes are being reported. DOE disagreed with this suggestion, because, among other reasons, volumetric reporting of transactions in Mcf is a standard measure within the U.S. government and the natural gas industry. The late commenter expressed concern about confidentiality issues and stated that monthly pricing information should be delayed for three months and aggregated to preserve confidentiality. All reports become public information once the reports are filed with FE. However, DOE will continue to publish the data on a quarterly basis and not increase the frequency of the publication of the data.

On January 29, 2007, EIA published a notice in the **Federal Register** (72 FR 3997) indicating the submission to the Office of Management and Budget (OMB) of the final Form FE–746R for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and requesting comments by February 28, 2007. No comments were received. On May 18, 2007, OMB approved the collection of natural gas and LNG import and export data pursuant to Form FE–746R until May 31, 2010.

III. Order

In accordance with DOE's Natural Gas Data Collection Initiative and pursuant to section 3 of the Natural Gas Act, it is hereby ordered that:

1. The quarterly reporting requirement in all natural gas and LNG import and export authorizations listed in Appendix A attached to this Order is eliminated as of January 1, 2008.

2. The monthly reporting requirement in all natural gas and LNG import and export authorizations listed in Appendix A attached to this Order, including how those reports shall be filed with DOE, is amended as follows:

All authorized importers and exporters shall file a report with the Office of Natural Gas Regulatory Activities within 30 days following the last day of each calendar month indicating whether imports and/or exports have been made. Monthly reports shall be filed whether or not initial deliveries have begun. If imports and/or exports have not occurred, a report of ''no activity'' for that month must be filed. If imports and/or exports have occurred, the report must give the following details:

(A) For natural gas imports and/or exports, the report shall include:

(1) for imports, the country of origin,

(2) for exports, the country of destination,

(3) the point(s) of entry or exit,

(4) the volume in thousand cubic feet (Mcf),

(5) the average purchase price of gas per million British thermal units (MMBtu) at the international border,

(6) the name of the supplier(s),

(7) the name of the U.S. transporter(s),

(8) the estimated or actual duration of the supply agreement(s), and

(9) for imports, the geographic market(s) served (list State(s), U.S. Census Region(s), or general U.S. geographic area(s));

(B) For LNG imports by vessel, the report must include:

(1) the name of the U.S. receiving terminal,

(2) the name of the LNG tanker,

(3) the date of arrival at the U.S. receiving terminal,

(4) the country of origin,

(5) the name of the supplier/seller,

(6) the volume in Mcf,

(7) the landed price per MMBtu at the point of import,

(8) the duration of the supply agreement (indicate spot purchases),

(9) the name(s) of the purchaser(s), and

(10) the geographic market served (list State(s), U.S. Census Region(s), or general U.S. geographic area(s));

(C) For LNG exports by vessel, the report must include:

[1] This authority is delegated to the Assistant Secretary of FE pursuant to Redelegation Order No. 00.002.04C (January 30, 2007).

(1) the name of the U.S. export terminal,
(2) the name of the LNG tanker,
(3) the date of departure from the U.S. export terminal,
(4) the country of destination,
(5) the name of the supplier/seller,
(6) the volume in Mcf,
(7) the delivered price per MMBtu,
(8) the duration of the supply agreement (indicate spot sales), and
(9) the name(s) of the purchaser(s); and

(D) For LNG imports and/or exports by truck, the report must include:
(1) the name of the U.S. receiving or departure facility,
(2) the country of origin or destination,
(3) the point(s) of entry or exit,
(4) the name(s) of the supplier(s)/seller(s),
(5) the name(s) of the LNG transporter(s),
(6) the volume in Mcf,
(7) for imports, the landed price and for exports, the delivered price per MMBtu at the point of entry or exit,
(8) the duration of the supply agreement,
(9) for imports, the geographic market served (list State(s), U.S. Census Region(s), or general U.S. geographic area(s)).

The first monthly report for the reporting period January 1, 2008, through January 31, 2008, required by this Procedural Order shall be filed no later than February 29, 2008. All monthly report filings shall be made to U.S. Department of Energy (FE–34), Office of Fossil Energy, Office of Natural Gas Regulatory Activities, P.O. Box 44375, Washington, DC 20026–4375 Attention: Ms. Yvonne Caudillo. Alternatively, reports may be e-mailed to Ms. Caudillo at *yvonne.caudillo@hq.doe.gov* or *ngreports@hq.doe.gov,* or may be faxed to Ms. Caudillo at (202) 585–6050.

Issued in Washington, DC, on February 1, 2008.

R.F. Corbin,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

APPENDIX A

Dated issued	Docket No.	Company	Order No.
11/20/92	92–70–NG	Saranac Power Partners, L.P	725
03/05/93	93–09–NG	Portal Municipal Gas	780
02/16/93	93–15–NG	TM Star Fuel Company	771
03/28/94	94–07–NG	Brooklyn Navy Yard Cogeneration Partners, L.P	929; 929A; 929B
05/02/94	94–31–NG	Chevron Natural Gas Services	938
08/01/94	94–49–NG	Hermiston Generating Company, L.P	964
08/31/94	95–51–NG	United States General Services Administration	972
04/19/95	94–91–LNG	EcoElectrica, L.P	1042
10/25/96	95–64–NG	Pittsfield Company, L.P	1088; 1088–A
09/28/95	95–65–NG	Pittsfield Generating Company, L.P	1089; 1089–A
11/07/95	95–100–NG	Distrigas Corporation	1115
01/03/96	95–106–NG	Cascade Natural Gas Corporation	1141
01/02/96	95–111–NG	Vermont Gas Systems, Inc	1139
06/26/96	96–39–NG	North Canadian Marketing Corporation	1182
09/11/96	96–54–NG	Bear Paw Energy, LLC	1195; 1195–A
09/16/96	96–60–NG	ProGas U.S.A, Inc	1197; 1197–A; 1197–B
09/16/96	96–61–NG	ProGas U.S.A., Inc	1198; 1198–A
06/20/00	96–99–NG	ConocoPhillips	261F
04/01/04			1473
05/06/97	97–35–NG	United States Gypsum Company	1272
11/06/97	97–87–NG	Progas U.S.A., Inc	1329
11/06/97	97–89–NG	Progas U.S.A., Inc	1330; 1330–A
01/28/98	98–05–NG	Tenaska Washington Partners, L.P	1354
02/10/98	98–08–NG	Vermont Gas Systems, Inc	1361
05/08/98	98–20–NG	TransCanada Energy Ltd	1382
05/20/98	98–30–NG	Rock-Tenn Company, Mill Division, Inc	1385
11/02/98	98–85–NG	Husky Gas Marketing Inc	1432
05/05/99	99–26–NG	ProGas U.S.A., Inc	1479
05/20/99	99–27–NG	City of Duluth, Minnesota	1484
04/10/07	99–110–LNG	Phillips Alaska Natural Gas Corp/Marathon Oil Co	1580
03/08/00	00–10–NG	RDO Foods Company	1575
05/07/01	01–15–NG	Energia Azteca X, S. de R.I. de C.V	1678
08/01/01	01–38–NG	Sierra Production Company	1703
04/09/02	02–15–NG	Midland Cogeneration Venture Ltd. Partnership	1765
07/15/03	03–30–NG	TransAlta Chihuahua S.A. de C.V.	1877
12/30/03	03–76–LNG	BG LNG Services, LLC	1932
04/19/04	04–39–LNG	BG LNG Services LLC	1977; 1977–A; 1977–B
11/16/04	04–106–NG	Cascade Natural Gas Corporation	2045
11/16/04	04–107–NG	Cascade Natural Gas Corporation	2046
12/06/04	04–121–NG	Cascade Natural Gas Corporation	2051
06/24/05	05–24–NG	Ocean State Power II	2104
06/24/05	05–25–NG	Ocean State Power I	2103
06/24/05	05–27–NG	Ocean State Power II	2105
03/20/06	05–48–NG	Selkirk Cogen Partners, L.P	2186
03/20/06	05–49–NG	Selkirk Cogen Partners, L.P	2187
03/20/06	05–50–NG	Selkirk Cogen Partners, L.P	2188
12/28/05	05–76–NG	TransCanada Pipelines Limited	2167
12/28/05	05–78–NG	TransCanada Pipelines Limited	2168
12/28/05	05–79–NG	TransCanada Pipelines Limited	2169
03/20/06	05–104–NG	Puget Sound Energy, Inc	2179
03/20/06	05–105–NG	Puget Sound Energy, Inc	2180
03/20/06	05–106–NG	Puget Sound Energy, Inc	2181

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Dated issued	Docket No.	Company	Order No.
03/20/06	05–107–NG	Puget Sound Energy, Inc	2182
03/20/06	05–108–NG	Puget Sound Energy	2183
02/24/06	05–111–NG	Applied LNG Technologies USA, LLC	2177
12/28/05	05–112–NG	DTE	2166
05/02/06	05–114–NG	BG LNG Services, LLC	2199
04/25/06	05–123–NG	Puget Sound Energy, Inc	2196
11/17/06	06–01–LNG	BG LNG Services, LLC	2283
11/17/06	06–02–LNG	BG LNG Services, LLC	2284
11/17/06	06–03–LNG	BG LNG Services, LLC	2285
11/17/06	06–04–LNG	BG LNG Services, LLC	2286
11/17/06	06–05–LNG	BG LNG Services, LLC	2287
05/22/06	06–06–LNG	BG LNG Services, LLC	2288
03/20/06	06–10–NG	Quicksilver Resources, Inc	2201
03/20/06	06–11–NG	J.P. Morgan Ventures Energy Corporation	2185
03/20/06	06–12–NG	JP Morgan Chase Bank, N.A	2184
05/22/06	06–13–NG	Kimball Energy Corporation	2202
04/25/06	06–15–NG	OGE Energy Resources, Inc	2189
05/22/06	06–16–NG	Burlington Resources Canada Marketing Ltd	2217
05/22/06	06–17–NG	Shell NA LNG LLC	2203
07/21/06	06–18–NG	Puget Sound Energy, Inc	2230
07/21/06	06–19–NG	Puget Sound Energy, Inc	2231
04/25/06	06–20–NG	Morgan Stanley Capital Group Inc	2192
05/22/06	06–21–NG	NJR Energy Services Company	2204
04/25/06	06–22–NG	BG LNG Services, LLC	2193
05/22/06	06–23–NG	Northwest Natural Gas Company	2205
05/22/06	06–24–NG	PERC Canada, Inc	2206
04/25/06	06–26–NG	Indeck-Yerkes Limited Partnership	2194
05/11/06	06–27–NG	United Energy Trading Canada, ULC	2198
05/22/06	06–28–NG	eCorp Energy Marketing, LLC	2208
04/25/06	06–29–NG	Michigan Consolidated Gas Company	2191
05/22/06	06–30–NG	Anadarko Energy Services Company	2209
04/25/06	06–31–NG	Sequent Energy Management, LP	2190
05/22/06	06–32–NG	Devon Canada Marketing Corporation	2210
05/22/06	06–34–NG	Gasoducto Rosarito, S. de R.I de C.V	2211
05/22/06	06–35–NG	Exxonmobile Gas & Power Mktg., a div of Exxon Corporation	2212; 2212–A
05/22/06	06–36–NG	National Fuel Resources, Inc	2213
05/22/06	06–37–NG	Lehman Brothers Commodity Services, Inc	2214
05/22/06	06–38–NG	West Texas Gas, Inc	2215
05/25/06	06–40–NG	Central Lomas de Real, S.A. de C.V	2219
05/22/06	06–41–NG	Coral Energy Resources, L.P	2221
05/22/06	06–42–NG	Energy Source Canada, Inc	2220
05/22/06	06–43–NG	St. Lawrence Gas Company	2222
05/26/06	06–44–NG	New York State Electric & Gas Corporation	2223
06/09/06	06–45–NG	Sacramento Municipal Utility District	2224
07/21/06	06–46–NG	Suez LNG Services NA LLC	2225
07/21/06	06–47–NG	Moneta Capital Partners Ltd	2226
07/27/06	06–48–NG	Calpine Energy Services, L.P	2236
08/08/06	06–63–NG	Power City Partners, L.P	2240
08/08/06	06–64–NG	Marathon Oil Company	2241
08/08/06	06–65–NG	IGI Resources, Inc	2242
08/08/06	06–66–NG	BP Energy Company	2243
08/17/06	06–67–NG	Alcoa Inc	2245
08/28/06	06–69–NG	Pioneer Natural Resources Canada Inc	2252
08/28/06	06–70–NG	Constellation Energy Commodities Group, Inc	2251
08/28/06	06–71–NG	Hess Corporation	2254
08/28/06	06–72–NG	Select Energy New York d/b/a Hess Energy New York Corporation	2248
08/28/06	06–73–NG	Union Gas Limited	2247
08/28/06	06–74–NG	Central Valle Hermoso, S.A. de C.V	2253
08/28/06	06–75–NG	Seminole Canada Gas Company**	2249; 2249–A
11/17/06	06–76–NG	InterGlobal Energy and Marine Services Inc	2289
09/25/06	06–77–NG	Alliance Canada Marketing L.P	2255
09/29/06	06–78–NG	Premstar Energy Canada L.P	2259
10/27/06	06–79–NG	Energy Natural Gas Corporation	2265
09/25/06	06–80–NG	Macquarie Cook Energy, LLC	2256
09/25/06	06–81–NG	Merrill Lynch Commodities, Inc	2257
09/29/06	06–82–NG	BP Canada Energy Marketing Corp	2260
07/21/06	06–52–NG	Southwest Energy, LP	2228
09/29/06	06–84–NG	Marathon LNG Marketing LLC	2258
11/17/06	06–85–NG	UBS AG, London Branch	2290
10/16/06	06–86–NG	Regent Resources Ltd	2262
10/16/06	06–87–NG	Bear Energy LP	2263
10/16/06	06–88–NG	TransCanada Energy Ltd	2264

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Dated issued	Docket No.	Company	Order No.
12/07/06	06–89–NG	Selkirk Cogen Partners, L.P	2306
10/27/06	06–90–NG	Boise White Paper, L.L.C	2266
12/21/06	06–91–NG	Nexen Marketing U.S.A. Inc	2314
11/17/06	06–92–NG	Pemex Gas Y Petroquimica Basica	2291
11/17/06	06–93–NG	Texas Eastern Transmission	2292
10/31/06	06–94–NG	Duke Energy Trading & Marketing, L.L.C	2302
10/27/06	06–95–NG	Cannat Energy Inc	2276
10/27/06	06–96–LNG	Fortuna (US) L.P	2277
11/17/06	06–97–LNG	Verboil Energy, Inc	2293
12/07/06	06–98–NG	City of Glendale Water and Power	2307
10/05/06	06–99–NG	Distrigas LLC	2294
12/21/06	06–100–NG	Boss Energy, Ltd	2315
10/28/06	06–101–NG	Connecticut Natural Gas Corporation	2278
10/27/06	06–102–NG	Bay State Gas Company	2267
10/27/06	06–103–NG	Northern Utilities, Inc	2268
10/27/06	06–104–NG	National Fuel Gas Distribution Corporation	2269
10/27/06	06–105–NG	The Brooklyn Union Gas Company (d/b/a KeySpan Energy Delivery New York)	2279
10/27/06	06–106–NG	Boston Gas Company (d/b/a KeySpan Energy Deliver New England)	2270
10/27/06	06–107–NG	Essex Gas Company (d/b/a KeySpan Energy Delivery New England)	2280
11/22/06	06–121–NG	FB Energy Canada Corp	2303
11/22/06	06–122–NG	Fortis Energy Marketing & Trading, GP	2304
11/22/06	06–123–NG	Montana-Dakota Utilities Co	2300
01/16/07	06–124–NG	San Diego Gas & Electric Company	2323
11/22/06	06–125–NG	Termoelectrica de Mexicali, S. de R.L. de C.V	2301
12/21/06	06–127–NG	H.Q. Energy Services (U.S.) Inc	2316
12/07/06	06–128–NG	BP Energy Company	2310
12/01/06	06–129–LNG	Gazprom Marketing & Trading USA, Inc	2305
01/19/07	06–130–NG	San Diego Gas & Electric Company	2324
12/21/06	06–131–NG	Coral Energy Northwest, LLC	2317
12/07/06	06–132–NG	Alberta Northeast Gas, Limited	2311
12/07/06	06–133–NG	Chehalis Power Generating, Limited Liability Corporation	2312
12/28/06	06–134–NG	Citadel Energy Products LLC	2319
12/28/06	06–135–NG	Powerex Corp	2320
12/28/06	06–136–NG	Vitol Inc	2321
12/21/06	06–137–NG	NorthWestern Corporation d/b/a NorthWestern Energy	2318
01/19/07	06–138–NG	Albitibi-Consolidated Company of Canada	2325
01/11/07	07–01–NG	El Paso Marketing, L.P	2322
01/29/07	07–03–NG	Cheniere Marketing, Inc	2327
01/19/07	07–04–NG	Petrocom Ventures, Ltd	2326
03/01/07	07–05–NG	Sequent Energy Canada Corp	2330
03/08/07	07–06–NG	Total Gas & Power North America, Inc	2331
02/07/07	07–07–NG	Cargill, Incorporated	2328
02/02/07	07–08–NG	Sprague Energy Corp	2329
03/08/07	07–09–NG	Petro-Canada Hydrocarbons, Inc	2332
04/06/07	07–10–NG	Suez Energy Marketing NA, Inc	2343
03/29/07	07–11–NG	Hunt Oil Company of Canada, Inc	2336
03/29/07	07–12–NG	Nitogo Management, Inc	2337
03/29/07	07–13–NG	Eagle Energy Partners I, L.P	2338
03/15/07	07–14–NG	Integrys Energy Services of Canada Corp	2333
03/15/07	07–15–NG	Integrys Energy Services, Inc	2334
03/23/07	07–16–NG	Citigroup Energy Canada ULC	2335
03/29/07	07–17–NG	ProGas USA, Inc	2339
03/29/07	07–18–NG	Ontario Energy Savings L.P	2340
03/29/07	07–20–NG	Terasen Gas Inc	2341
04/03/07	07–21–NG	St. Lawrence Gas Company, Inc	2342
05/14/07	07–22–NG	EnergyNorth Natural Gas, Inc	2351
05/14/07	07–23–NG	Boston Gas Company	2352
05/14/07	07–24–NG	Brooklyn Union Gas Company	2353
05/14/07	07–25–NG	Keyspan Gas East Corporation	2354
05/14/07	07–26–NG	Essex Gas Company	2355
04/24/07	07–28–NG	Merrill Lynch Commodities, Inc	2344
05/30/07	07–29–NG	Statoil Natural Gas LLC	2356
05/08/07	07–30–NG	United States Steel Corporation	2345
05/08/07	07–31–NG	EnCana Marketing (USA) Inc	2346
05/08/07	07–32–NG	American Gas Supply, LP	2347
05/08/07	07–33–NG	LNG Partners, LLC	2348
05/08/07	07–34–NG	Mexicana de Cobre, S.A. de C.V	2349
05/08/07	07–35–NG	BP West Coast Products, LLC	2350
05/30/07	07–36–NG	Excelerate Energy Gas Marketing, L.L.C	2357
06/14/07	07–37–NG	Pasadena Water and Power	2360
06/14/07	07–38–NG	ECOGAS Mexico	2361
07/09/07	07–40–NG	BG Energy Merchants, LLC	2376

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Dated issued	Docket No.	Company	Order No.
07/09/07	07–41–NG	Cascade Natural Gas Corporation	2377
05/30/07	07–42–NG	KeySpan-Ravenswood, LLC	2358
06/22/07	07–43–NG	PPM Energy, Inc	2370
06/18/07	07–44–NG	CHI Engineering Services, Inc	2362
07/09/07	07–45–NG	Apache Corporation	2378
06/18/07	07–46–NG	Sithe/Independence Power Partners, L.P	2363
06/18/07	07–47–NG	Dynegy Power Marketing, Inc.	2364
06/18/07	07–48–NG	Transalta Energy Marketing (U.S.) Inc	2365
06/19/07	07–49–NG	Chevron U.S.A. Inc	2366
06/22/07	07–50–NG	Sumas Cogeneration Company, L.P	2371
07/26/07	07–51–NG	Cambridge Energy, LLC	2382; 2382–A
06/22/07	07–52–NG	CIMA Energy, Ltd	2372
06/22/07	07–53–NG	ONEOK Energy Services Company	2373
06/19/07	07–54–NG	Masefield Natural Gas, Inc	2367
06/19/07	07–55–NG	Altagas Marketing (U.S.) Inc	2368
06/22/07	07–56–NG	Constellation NewEnergy Gas Division, LLC	2374
07/17/07	07–57–NG	Pacific Summit Energy LLC	2379
06/19/07	07–58–NG	ConocoPhillips Energy Marketing Corp	2369
07/24/07	07–60–NG	Pan-Alberta Gas (U.S.) Inc	2380
06/24/07	07–61–NG	Louis Dreyfus Energy Canada LP	2385
07/24/07	07–62–NG	Emera Energy Services	2381
07/31/07	07–63–NG	Oxy Energy Canada, Inc. f/k/a Oxy Energy Canada LLC	2386
07/26/07	07–65–NG	Southern California Gas Company	2384
07/31/07	07–66–NG	Idaho Power Company	2387
08/09/07	07–67–NG	Gibson Energy Marketing Ltd	2388
08/16/07	07–68–NG	Husky Gas Marketing Inc	2389
08/30/07	07–69–NG	FPL Energy Power Marketing, Inc	2390
09/07/07	07–70–NG	Greenfield Energy Centre LP	2396
08/30/07	07–71–NG	Canada Imperial Oil Limited	2391
08/30/07	07–72–NG	Murphy Gas Gathering, Inc	2392
08/30/07	07–73–NG	ConocoPhillips Company	2393
08/30/07	07–74–LNG	ConocoPhillips Company	2394
08/30/07	07–75–NG	Wisconsin Public Service Corporation	2395
09/07/07	07–76–NG	Michigan Consolidated Gas Company	2397
09/11/07	07–77–NG	Public Utility District No. 1 of Clark County, Washington	2398
09/11/07	07–78–NG	Occidental Energy Marketing, Inc	2399
09/11/07	07–79–NG	Pacific Gas & Electric Company	2400
09/11/07	07–80–NG	Enterprise Products Operating L.P	2401
09/11/07	07–81–NG	Tenaska Marketing Ventures	2402
09/21/07	07–82–NG	Yankee Gas Services Company	2403
09/26/07	07–83–NG	Northeast Gas Markets LLC	2407
09/26/07	07–84–NG	Tristar Producer Services of Texas, L.P	2408
09/21/07	07–85–NG	Reef Ventures LP	2404
09/26/07	07–86–NG	Transcanada Pipelines Limited	2409
09/26/07	07–87–NG	Direct Energy Marketing Limited	2406
09/21/07	07–88–NG	Direct Energy Marketing Inc	2405
09/26/07	07–89–NG	Portland General Electric Company	2410
09/26/07	07–90–NG	Energetix, Inc	2411
09/26/07	07–91–NG	Rochester Gas & Electric Corporation	2412
09/26/07	07–92–NG	Weyerhaeuser Company	2413
10/31/07	07–93–NG	Consolidated Edison Company of New York, Inc	2429
10/31/07	07–94–NG	Keyspan Gas East Corporation	2430
10/31/07	07–95–NG	New York State Electric & Gas Corporation	2431
10/31/07	07–96–NG	The Brooklyn Union Gas Company	2432
10/31/07	07–97–NG	Central Hudson Gas & Electric Corporation	2433
10/31/07	07–98–NG	Central Hudson Gas & Electric Corporation	2439
10/31/07	07–99–NG	The Narragansett Electric Company	2434
10/31/07	07–100–NG	New York State Electric & Gas Corporation	2435
10/31/07	07–101–NG	Keyspan Gas East Corporation	2436
10/31/07	07–102–NG	Consolidated Edison Company of New York, Inc	2437
10/31/07	07–103–NG	The Brooklyn Union Gas Company	2438
10/10/07	07–104–NG	Kinetic LNG	2414
10/18/07	07–105–NG	Enbridge Gas Services (U.S.) Inc	2418
10/25/07	07–106–NG	NewPage Corporation	2427
10/18/07	07–107–NG	United States Gypsum Company	2419
10/18/07	07–108–NG	Middleton Energy Management Ltd	2420
10/10/07	07–109–NG	Dynegy Marketing and Trade	2415
10/23/07	07–110–NG	The Royal Bank of Scotland plc	2424
10/10/07	07–111–NG	Maritimes NG Supply Limited Partnership	2416
10/18/07	07–112–NG	JD Irving, Limited	2421
10/18/07	07–113–NG	Luminant Energy Company LLC	2422
10/10/07	07–114–NG	NYSEG Solutions, Inc	2417

APPENDIX A—Continued

Dated issued	Docket No.	Company	Order No.
10/29/07	07–116–NG	Suncor Energy Marketing Inc	2428
10/22/07	07–117–NG	Consolidated Edison Company of New York, Inc	2423; 2423–A
10/24/07	07–118–NG	Sempra LNG Marketing Corp	2426
11/06/07	07–119–NG	Vista Corporation	2443
10/31/07	07–120–NG	National Fuel Marketing Company, LLC	2440
11/01/07	07–121–NG	ENERGY International Corporation	2441
11/27/07	07–123–NG	Sempra Energy Trading LLC	2445
11/27/07	07–125–NG	Vermont Gas Systems, Inc	2446
12/05/07	07–126–NG	Irving Oil Terminals Inc	2448
12/12/07	07–127–NG	Enbridge Gas Distribution Inc	2450
11/29/07	07–128–NG	Sierra Pacific Power Company	2447
12/19/07	07–129–NG	DTE Energy Trading, Inc	2453
12/12/07	07–131–NG	Cambridge Energy LLC	2451
12/11/07	07–132–NG	Southern California Gas Company	2449
11/16/89	87–68–LNG	Yukon Pacific Company, L.P	350; 350–A;
08/04/92	92–35–LNG	Yukon Pacific Company, L.P	350–B
11/16/93	93–110–NG	IGI Resources, Inc	876
05/17/94	94–14–LNG	Distrigas of Massachusetts Corporation	950
09/16/97	97–61–NG	Public Service Company of New Mexico	1299
06/22/98	98–41–NG	AG-Energy, L.P	1390
05/16/00	00–32–NG	OGE Energy Resources, Inc	1592
10/16/01	01–54–LNG	Small Ventures U.S.A., LLC	1718
10/30/01	01–61–NG	Nova Scotia Power Inc	1728
10/24/07	07–115–NG	Devon Canada Marketing Corporation	2425
11/08/07	07–124–NG	Puget Sound Energy, Inc	2444
12/17/07	07–130–NG	Panhandle Pipe Line Co	2452
12/20/07	07–133–NG	J.P. Morgan Ventures Energy Corporation	2454
12/20/07	07–134–NG	JP Morgan Chase Bank, N.A	2455
01/15/08	08–01–NG	Brookfield Energy Marketing Inc	2456
01/15/08	07–136–LNG	Freeport LNG Development, L.P	2457
01/16/08	07–135–LNG	Applied LNG Technologies USA, L.L.C	2458
08/08/06	06–62–LNG	Alea Trading LLC	2239
10/27/06	06–108–NG	Colonial Gas Company	2271
12/07/06	06–118–NG	Arc Resources Ltd	2308
07/09/07	07–41–NG	Cascade Natural Gas Corp	2377
12/06/04	04–121–NG	Cascade Natural Gas Corp	2051
11/16/04	04–107–NG	Cascade Natural Gas Corp	2046
11/16/04	04–106–NG	Cascade Natural Gas Corp	2045
01/03/96	95–106–NG	Cascade Natural Gas Corp	1141
11/06/07	07–119–NG	Avista Corporation	2443
09/21/07	07–88–NG	Direct Energy Marketing Inc	2405
09/26/07	07–87–NG	Direct Energy Marketing Inc	2406
08/08/06	06–60–NG	EPCO Energy Marketing (US) Inc	2238
10/27/06	06–79–NG	Empire Natural Gas Corporation	2265
11/22/06	06–114–NG	Energia de Baja California, S. de R.L. de C.V	2296
05/07/01	01–15–NG	Energia Azteca X, S. de R.I. de C.V	1678
09/26/07	07–89–NG	Portland General Electric Company	2410
08/31/94	94–51–NG	United States General Services Administration	972
12/14/06	06–115–NG	JM and RAL Energy Inc	2313
06/09/06	06–56–NG	LNGJ USA Inc	2234
07/21/06	06–51–NG	Minnesota Energy Resources Corporation	2227
11/22/06	06–113–NG	Niagara Mohawk Power Corporation	2295
08/18/06	06–61–NG	Phibro LLC	2246
10/27/06	06–110–NG	Southern Connecticut Gas Company	2273
08/08/06	06–50–NG	Summitt Energy Management	2237
07/25/06	06–55–NG	Virginia Power Energy Marketing, Inc	2233
10/27/06	06–53–NG	Consolidated Edison Company of New York, Inc	2282
07/25/06	06–57–NG	Chevron U.S.A. Inc	2235
08/28/06	06–59–NG	Concord Energy LLC	2250
10/27/06	06–122–NG	Central Hudson Gas & Electric Corporation	2275
10/27/06	06–109–NG	EnergyNorth Natural Gas, Inc	2272
10/27/06	06–111–NG	KeySpan Gas East Corporation	2274
10/27/06	06–119–NG	The Narragansett Electric Company	2281
11/22/06	06–120–NG	SEMCO Energy Gas Company	2299
06/14/07	07–27–NG	Sempra Energy Trading Corporation	2359
11/01/07	07–122–NG	Ominex Canada, Inc	2442
01/29/08	08–02–LNG	BG LNG Services, LLC	2459
01/29/08	08–03–NG	SemCanada Energy	2460
01/29/08	08–04–NG	Central Lomas de Real, S.A. de C.V	2461
01/29/08	08–06–NG	Gasoducto Rosarito, S. De. R.L. de C.V	2462
01/30/08	08–05–NG	Energy Source Canada Inc	2463

[FR Doc. E8–2147 Filed 2–5–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–314–000, ER08–314–001]

Bicent (California) Malburg, LLC; Notice of Issuance of Order

January 30, 2008.

Bicent (California) Malburg, LLC (Bicent) filed an application for market-based rate authority, with accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Bicent also requested waivers of various Commission regulations. In particular, Bicent requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Bicent.

On January 24, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Bicent, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov*.

Notice is hereby given that the deadline for filing protests is February 25, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Bicent is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Bicent, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Bicent's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2116 Filed 2–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13075–000]

California Wave Energy Partners I, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 30, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13075–000.

c. *Date filed:* November 9, 2007.

d. *Applicant:* California Wave Energy Partners I, LLC.

e. *Name of Project:* Centerville OPT Wave Energy Park.

f. *Location:* The project would be located in the Pacific Ocean in Humboldt County, California, southwest of the town of Eureka. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Charles F. Dunleavy, California Wave Energy Partners I, LLC, 1590 Reed Road, Pennington, NJ 08534, (609) 730–0400, and Dr. George W. Taylor, California Wave Energy Partners I, LLC, 1590 Reed Road, Pennington, NJ 08534, (609) 730–0400.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13075–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 40 to 80 Wave Energy Converter (WEC) units such as the PowerBuoy ® technology unit having a total installed capacity of 20 megawatts, (2) a proposed underwater transmission line from the proposed project to the shore, which will connect with a local distribution line, and (3) appurtenant facilities. The project would have an average annual generation of 61.320 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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, call toll free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2113 Filed 2–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 1, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–320–080.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Co., LP submits an amendment to a negotiated rate letter agreement executed re the East Texas to Mississippi Expansion Project.
Filed Date: 01/30/2008.
Accession Number: 20080131–0195.
Comment Date: 5 p.m. Eastern Time on Monday, February 11, 2008.

Docket Numbers: RP00–70–018.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits Original Sheet 88 et al. to FERC Gas Tariff, Fifth Revised Volume 1, to become effective 2/1/08.
Filed Date: 01/30/2008.
Accession Number: 20080131–0196.
Comment Date: 5 p.m. Eastern Time on Monday, February 11, 2008.

Docket Numbers: RP04–99–004.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits Second Revised Sheet 305A *et al.* to FERC Gas Tariff, Fifth Revised Volume 1 to become effective 3/1/08.
Filed Date: 01/30/2008.
Accession Number: 20080201–0101.
Comment Date: 5 p.m. Eastern Time on Monday, February 11, 2008.

Docket Numbers: RP08–135–001.
Applicants: CenterPoint Energy-Mississippi River Transmission.
Description: CenterPoint Energy-Mississippi River Transmission Corporation submits Substitute Fourth Revised Sheet 92 *et al.* to FERC Gas Tariff, Third Revised Volume 1 to become effective 1/21/08.
Filed Date: 01/29/2008.
Accession Number: 20080130–0201.
Comment Date: 5 p.m. Eastern Time on Monday, February 11, 2008.

Docket Numbers: RP08–176–000.
Applicants: Venice Gathering System, LLC.
Description: Venice Gathering System LLC submits Second Revised Sheet 0 *et al.* to its FERC Gas Tariff, Original Volume 1, to become effective 3/1/08.
Filed Date: 01/29/2008.
Accession Number: 20080130–0202.
Comment Date: 5 p.m. Eastern Time on Monday, February 11, 2008.

Docket Numbers: RP08–177–000.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits Seventh Revised Sheet 501 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to become effective 3/1/08.
Filed Date: 01/30/2008.
Accession Number: 20080131–0056.
Comment Date: 5 p.m. Eastern Time on Monday, February 11, 2008.

Docket Numbers: RP08–178–000.
Applicants: Southern Natural Gas Company.
Description: Southern Natural Gas Co. submits Eleventh Revised Sheet 26 et al to FERC Gas Tariff, Seventh Revised Volume 1, to become effective 3/1/08.
Filed Date: 01/30/2008.
Accession Number: 20080131–0194.
Comment Date: 5 p.m. Eastern Time on Monday, February 11, 2008.

Docket Numbers: RP08–179–000.
Applicants: Young Gas Storage Company, Ltd.
Description: Young Gas Storage Co., Ltd submits Eighth Revised Sheet 11 *et al.* to FERC Gas Tariff, Original Volume 1, to become effective 3/1/08.
Filed Date: 01/30/2008.
Accession Number: 20080131–0193.
Comment Date: 5 p.m. Eastern Time on Monday, February 11, 2008.

Docket Numbers: RP08–180–000.
Applicants: Southern Natural Gas Company.
Description: Southern Natural Gas Co. submits Tenth Revised Sheet 26 *et al.* to FERC Gas Tariff, Seventh Revised Volume 1, to become effective 3/1/08.
Filed Date: 01/30/2008.
Accession Number: 20080131–0192.
Comment Date: 5 p.m. Eastern Time on Monday, February 11, 2008.

Docket Numbers: RP08–181–000.
Applicants: Southern LNG Inc.
Description: Southern LNG Inc submits Twentieth Revised Sheet 5 *et al.* to FERC Gas Tariff, Original Volume 1, to become effective 3/1/08.
Filed Date: 01/30/2008.
Accession Number: 20080131–0191.
Comment Date: 5 p.m. Eastern Time on Monday, February 11, 2008.

Docket Numbers: RP08–182–000.
Applicants: Williston Basin Interstate Pipeline Co.
Description: Williston Basin Interstate Pipeline Company submits Third Revised Sheet 202 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to become effective 3/2/08.
Filed Date: 01/31/2008.
Accession Number: 20080201–0102.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E8–2135 Filed 2–5–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–36–000]

Dominion Resources Services, Inc. Complainant, v. PJM Interconnection, LLC Respondent; Notice of Complaint, Request for Fast Track Processing

January 30, 2008.

Take notice that on January 28, 2008, Dominion Resources Services, Inc. filed a complaint under section 206 of the Federal Power Act alleging that the PJM Interconnection, LLC is violating the generator interconnection provisions of its tariff.

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, 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of answers, 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.
Comment Date: 5 p.m. Eastern Time on February 11, 2008.

Kimberly D. Bose,
Secretary.
[FR Doc. E8–2115 Filed 2–5–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

January 29, 2008.

	Docket Nos.
Reliant Energy Mandalay, Inc	EG08–1–000
Arlington Wind Power Project LLC.	EG08–2–000
Forked River Power LLC	EG08–3–000

	Docket Nos.
FPL Energy Oliver Wind II, LCC.	EG08–4–000
Marble River, LLC	EG08–5–000
Santa Rosa Energy Center, LLC.	EG08–6–000
Long Beach Peakers LLC	EG08–7–000
Plum Point Energy Associates, L.L.C.	EG08–8–000
Wharton County Generation, LLC.	EG08–9–000
Macquarie Bank Limited	FC08–1–000

Take notice that during the month of December 2007, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2109 Filed 2–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13054–000]

Nt Hydro; Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

January 30, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13054–000.

c. *Date filed:* October 22, 2007.

d. *Applicant:* NT Hydro.

e. *Name and Location of Project:* The proposed Abert Rim Pumped Storage Hydroelectric Project would be located in Lake County, Oregon and would utilize the existing Mule Lake and Lake Albert, both located on U.S. Bureau of Land Management (BLM) land.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Ted Sorenson, Sorenson Engineering, 5203 South 11th, East Idaho Falls, ID 83404, (208) 522–8069.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13054–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities and Proposed Project:* The proposed Abert Rim Pumped Storage Project will consist of the existing Mule Lake, which is an existing small lake, and Lake Abert, which is an existing alkali lake. Both water bodies are located on BLM lands. Under the proposed project, Mule Lake Reservoir and Lake Abert will be connected by a 6,200 foot-long pipeline consisting of two eight-foot-diameter steel pipes with a hydraulic capacity of approximately 700 cubic feet per second (cfs) each. The pipeline will include a 6,200-foot-long tunnel immediately below Abert Rim Wilderness Study Area. A powerhouse/pumphouse will be located near the shore of Lake Abert, containing two 67 megawatt (MW)/700 cfs pump-turbines, and appurtenant facilities. The powerhouse/pumphouse would be a metal building with a concrete foundation, approximately 120-foot-wide by 60-foot-long and 30-foot-high.

Mule Lake, which stores runoff from intermittent streams, has a normal maximum water surface elevation of approximately 5,605 feet above sea level (ASL). USGS topographic data indicate that Mule Lake occurs within a closed basin, with no outlet streams. Currently, Mule Lake has an approximate storage capacity of 1,600 acre-feet. Under the proposed project, storage in Mule Lake would be increased to about 4,000 acre-feet by increasing the lake level 20 feet. Because Mule Lake is in a closed basin, no new dam would be required to increase the lake level and storage. Lake Abert, which receives water from Chewaucan River, various springs and intermittent runoff streams, has a normal maximum water surface elevation of approximately 4,254 feet ASL. Currently, water entering Lake Abert remains in Lake Abert until it evaporates, i.e. Lake Abert occurs within a closed topographic basin with no outlets. Lake Abert has an approximate storage capacity of 400,000 acre-feet.

A new 45-mile-long 128-kV transmission line will be constructed to interconnect the proposed project with an existing Bonneville Power Administration 500-kV, AC transmission line located northwest of Lake Abert. This interconnection will link the proposed project with the both the California-Nevada and Pacific Northwest power grids. A new substation would be constructed at the point of interconnection. The proposed project would have an annual generation of 489.1 GWh.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an

application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2117 Filed 2–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–204, EL00–98–189]

San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Filing

January 30, 2008.

Take notice that on January 29, 2008, Conectiv Energy Supply, Inc. and the California Parties filed a joint compliance filing in response to the Commission's January 4, 2008 Order.

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, 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 and all the parties in this proceeding.

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.

Comment Date: 5 p.m. Eastern Time on February 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2114 Filed 2–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1951–151]

Georgia Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 29, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 1951–151.

c. *Date Filed:* October 1, 2007.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Sinclair Hydroelectric Project.

f. *Location:* On the Oconee River, in Hancock, Baldwin, and Putnam counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Lee Glenn, Lake Resources Manager, 125 Wallace Dam Road NE., Eatonton, GA 31024; (706) 485–8704.

i. *FERC Contact:* Gina Krump, Telephone (202) 502–6704, and e-mail: *Gina.Krump@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* February 29, 2008.

All documents (original and eight copies) should be filed with: Kimberly

D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Georgia Power Company is seeking Commission approval to issue a permit to Sinclair Development, LLC for the construction of a boat ramp, three docks, totaling 30 slips, and 100 feet of seawall on approximately 0.25 acre of project lands along the shore of Lake Sinclair. The proposed facilities would serve the residents of a residential development outside the project boundary. The proposal would require dredging of up to 500 cubic yards of material within the affected coves and shoreline. All proposed work is consistent with GPC's current permitting requirements and U.S. Army Corps of Engineers permits.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2107 Filed 2–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–46–000]

Tarpon Whitetail Gas Storage, LLC; Notice of Public Scoping Meeting and Site Visit for the Proposed Whitetail Natural Gas Storage Project

January 30, 2008.

The staff of the Federal Energy Regulatory Commission (Commission) will conduct a public scoping meeting and site visit for the Whitetail Natural Gas Storage Project involving construction and operation of natural gas storage, pipeline, and compressor station facilities by Tarpon Whitetail Gas Storage, LLC (Whitetail) in Monroe County, Mississippi.

We invite you to attend the public scoping meeting beginning at 7 p.m. (CST) on Thursday evening, February 14, 2008, to provide environmental comments on the proposed project. Your input will help us determine the issues that need to be evaluated in the environmental assessment. The public scoping meeting will be held at: Monroe County Court House, 201 W. Commerce, Aberdeen, Mississippi 39730, *Phone:* 662–369–8143.

The Commission staff will also conduct a site visit of the location of the proposed facilities. The site visit will begin at approximately 1 p.m. (CST) on February 14, 2008. Anyone interested in participating in the site visit may attend; however, they must provide their own transportation. The Commission staff, company representatives, and interested participants will meet in the parking lot at the following location: Shelaines Restaurant, 202 Hwy 145 North, Aberdeen, Mississippi 39730, *Phone:* 662–369–3352.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2118 Filed 2–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL08–33–000, QF87–483–003]

AES Hawaii, Inc.; Notice of Filing

January 29, 2008.

Take notice that on December 28, 2008, pursuant to subsection 209.205(c) of the regulations of the Federal Energy Regulatory Commission (Commission) implementing the amendments to section 3 of the Federal Power Act contained in section 201 of the Public Utility Regulatory Policies Act of 1978, 18 CFR 292.205(c), AES Hawaii, Inc. requests a limited waiver of the operating standard for a Topping Cycle Cogeneration Facility.

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, 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. On or before the comment date, it is not necessary to serve motions to intervene or protest 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.

Comment Date: 5 p.m. Eastern Time on February 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2110 Filed 2–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–54–000]

Columbia Gulf Transmission Company; Notice of Application

January 29, 2008.

Take notice that on January 15, 2008, Columbia Gulf Transmission Company (Columbia Gulf), 5151 San Felipe Suite 2500, Houston, Texas 77056, filed an abbreviated application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon: (1) By sale to Tennessee Gas Pipeline Company (Tennessee) certain natural gas facilities, most of which are jointly owned with Tennessee, located both offshore and onshore Louisiana; (2) the services currently provided through the facilities to be sold; (3) certain transportation/exchange agreements with Tennessee; and (4) Columbia Gulf's lease to Tennessee of a portion of Columbia Gulf's South Pass 77 System capacity (South Pass Lease), all as more fully set forth in the application. 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.

Specifically, Columbia Gulf requests authorization to abandon by sale to Tennessee of Columbia Gulf's ownership interest in: (a) The Blue Water System and all offshore laterals and appurtenant facilities contiguous thereto, and the onshore portion of the Blue Water System to Egan, Louisiana, together with the associated rights-of-way and appurtenances; (b) the South Timbalier System and all offshore laterals and appurtenant facilities contiguous thereto, together with the associated rights-of-way and appurtenances; and (c) the South Pass System and all offshore laterals and appurtenant facilities contiguous thereto, together with the associated rights-of-way and appurtenances. In addition, Columbia Gulf states that as a result of the proposed sale, Columbia Gulf requests abandonment of the interruptible transportation services provided through the facilities to be sold; abandonment of Rate Schedules X–8 and X–57 in Columbia Gulf's Volume No. 2 of its FERC Gas Tariff; and abandonment of the lease of capacity to Tennessee (South Pass Lease).

Any initial questions regarding Columbia Gulf's proposal in this application should be directed to counsel for Columbia Gulf, Fredric J. George, Lead Counsel, Columbia Gulf Transmission Company, P.O. Box 1273, Charleston, West Virginia 25325–1273; telephone: (304) 357–2359; fax: (304) 357–3206.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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.

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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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 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 the original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: February 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2112 Filed 2–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–55–000]

Tennessee Gas Pipeline Company; Notice of Application

January 29, 2008.

Take notice that on January 15, 2008, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed an abbreviated application pursuant to section 7(c) of the Natural Gas Act for authorization to acquire certain onshore and offshore natural gas facilities located in the Gulf of Mexico and Louisiana from Columbia Gulf Transmission Company (Columbia Gulf) and Columbia Deep Water Services Company, an affiliate of Columbia Gulf. The facilities include the Blue Water System, the South Timbalier System and the South Pass 77 System, as well as several contiguous pipeline laterals that are connected to these three systems and certain supply laterals, all as more fully set forth in the application. In addition, to the acquisition of facilities, Tennessee seeks authorization pursuant to section 7(b) of the Natural Gas Act to abandon Tennessee's lease of 115,000 Mcf per day of capacity to Columbia Gulf from the terminus of the South Pass 77 System to Columbia Gulf's mainline system at Egan, Louisiana; abandon Rate Schedules X–33 and X–56; and abandon two compressor units at the Pecan Island Facility, each with 20,000 horsepower, and one 4,000 horsepower compressor unit on the Vermilion Block 245 offshore platform. 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.

Any initial questions regarding Tennessee's proposal in this application should be directed to Jacquelyne M. Rocan, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002–2511; telephone: (713) 420–4544; fax: (713) 420–1601.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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.

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 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 the original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: February 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2108 Filed 2–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–1215–002]

Anthracite Power and Light Company; Notice of Filing

January 29, 2008.

Take notice that on October 25, 2007, pursuant to Order No. 697, Anthracite Power and Light Company (APL) filed a petition requesting the Commission to classify it as a Category 1 Seller and acknowledge APL as exempt from submitting Triennial Updated Market Analyses. APL also submits a revised tariff sheet pursuant to the Commission's requirements adopted in Order No. 697.

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, 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 and all the parties in this proceeding.

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.

Comment Date: 5 pm Eastern Time on February 8, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2111 Filed 2–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Washoe Project—Rate Order No. WAPA–136

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Non-Firm Power Formula Rate.

SUMMARY: The Western Area Power Administration (Western) is proposing a minor rate adjustment for non-firm energy from the Stampede Powerplant (Stampede), of the Washoe Project, located in Sierra County, California. The current rate expires September 30, 2010. The proposed formula rate will provide sufficient revenue to repay all annual costs, including interest expense, and repayment of required investment within the allowable period. Western will prepare a brochure that provides detailed information on the formula rate to all interested parties. The proposed formula rate, under Rate Schedule SNF–7, is scheduled to go into effect August 1, 2008, and will remain in effect through July 31, 2013. Publication of this **Federal Register** notice begins the formal process for the proposed rate.

DATES: The consultation and comment period begins today and will end March 7, 2008. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: Send written comments to Ms. Sonja A. Anderson, Power Marketing Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, e-mail *sanderso@wapa.gov.* Western will post information about the rate process on its Web site at *http://www.wapa.gov/sn/marketing/rates/*. Western will post official comments received via letter, facsimile, and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Sanderson, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4466, e-mail *sander@wapa.gov.*

SUPPLEMENTARY INFORMATION: The proposed formula rate for Stampede's non-firm power is designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power (if applicable), reimbursable operation and maintenance (O&M) expenses, and other expenses.

The Deputy Secretary of Energy approved Rate Schedule SNF–6, a non-firm power formula rate on August 16, 2005.[1]

The proposed formula rate for Stampede power is:

Stampede Annual Transferred PRR = Stampede Annual PRR—Stampede Revenue.

Where: Stampede Annual Transferred Power Revenue Requirement (PRR) = Stampede Annual PRR as identified as a cost transferred to the Central Valley Project (CVP).

Stampede Annual PRR = the total PRR for Stampede required to repay all annual costs, including interest, and the investment within the allowable period.

Stampede Revenue = Revenue from applying the Stampede Energy Exchange Account (SEEA) rate to project generation.

To serve project use loads and effectively market the energy from Stampede, Western has contracted with a third party (Contractor) that provides for an SEEA. The SEEA is an annual energy exchange account for Stampede energy. Under this contract, the Contractor accepts delivery of all energy generated from Stampede and integrates this generation into its resource portfolio. The monthly calculation of revenue from Stampede energy received by the Contractor is credited into the SEEA at the SEEA rate. Western can use the SEEA to benefit project use facilities and market energy from Stampede to CVP preference entities.

In the SEEA, the revenues from sales (generation revenues) made at the SEEA rate are reduced by the project use and station service power costs and SEEA administrative costs. Western applies the ratio of project use costs to the generation revenue recorded in the SEEA to determine a non-reimbursable percentage. One hundred percent minus this non-reimbursable percentage establishes a reimbursable percentage. This reimbursable percentage is then applied to the appropriate power-related costs to determine the reimbursable costs for repayment. The reimbursable costs are then netted against generation revenues made at the SEEA rate. As stipulated under the 2004 CVP Power Marketing Plan, any remaining reimbursable costs, to include interest and annual capital costs, are then transferred to the CVP for incorporation into the CVP PRR.

Since 1994, the Sierra Pacific Power Company (Sierra), through Contract 94–SAO–00010 (Contract 00010), has served as the Contractor for integrating Stampede generation into its resource portfolio and serving station service and project use loads in Sierra's service territory. The current rate schedule (SNF–6) links the current non-firm power formula rate to Contract 00010 and the management of the SEEA. In addition, the index that was used in Rate Schedule SNF–6 to set the ''floor rate'' was contained in Contract 00010.

[1] Rate Order No. WAPA–119, 70 FR 51035, August 29, 2005, and the Commission confirmed and approved the rate schedule on May 4, 2006, under FERC Docket EF05–5161–000 (115 FERC ¶ 62,137). Approval for Rate Schedule SNF–6 covered 5 years beginning October 1, 2005, and ending on September 30, 2010.

On May 10, 2007, the Truckee-Donner Public Utilities District (Truckee Donner) and the City of Fallon (Fallon), two preference customers located within Sierra's control area, entered into a contract with Western that replaces Contract 00010. This new contract with Truckee Donner and Fallon (TDF), Contract 07–SNR–01026 (Contract 01026), uses a market index methodology as the basis for valuing Stampede generation. The effective date of Contract 01026 was August 1, 2007. The change in contractors and the ''floor rate'' definition makes it necessary for Western to initiate a new rate case to revisit the formula rate. In this proposed rate design, Western is using a general term of ''Contractor'' in the development of the proposed formula rate and resulting rate schedule in order to provide flexibility in the event the contractor changes in the future.

As indicated above, the non-reimbursable portion of the annual O&M costs are defined as the ratio of project use costs (i.e., costs to serve project use loads) divided by the generation revenue from the Stampede Powerplant (annual generation valuation). Beginning in August 2007, due to the change in the SEEA rate, Western anticipates a reduction in the non-reimbursable percentage for the Washoe Project. This condition will subsequently increase reimbursable costs to the preference power customers. Western estimates that the reimbursable O&M costs could increase between $85,000 and $223,000 annually due to the change in generation revenues.

The proposed formula rate will materially increase the Stampede Revenue for repayment of the Washoe Project. As a general comparison, the floor rate under the terminated Sierra Contract 00010 was $17.89 per megawatt hour (MWh). Western estimates that the floor rate under the current TDF Contract would have ranged from $29.85 to $42.71 per MWh.[2] The table below provides further comparison of fiscal year (FY) 04–07 Stampede revenues between Sierra's terminated contract and the new TDF Contract. This information illustrates the significance of the change in the SEEA rate.

TABLE 1.—COMPARISON OF GENERATION REVENUES BETWEEN THE SIERRA AND TDF CONTRACT

FY	Total Stampede gen (MWh)	Sierra Contract 00010 (Terminated)	TDF Contract 01026 (current)			Difference between SEEA rate and floor rate revenues [1]
		Calculated floor rate revenue	Calculated SEEA rate revenue (on-peak)	Calculated SEEA rate revenue (off-peak)	Total calculated SEEA rate revenue	
2004	9,586	$171,500	$234,171	$152,256	$386,427	$214,927
2005	7,831	140,102	160,005	102,583	262,588	122,487
2006	16,142	288,788	334,916	193,352	528,268	239,480
2007	11,239	201,070	220,580	138,285	358,865	157,794

[1] For illustrative purposes, the Sierra contract calculations are presumed to exist for the entire year.

Annual Stampede generation usually creates sufficient revenues in the SEEA to pay project use and station service costs. Due to the low floor rate used to credit the SEEA under the Sierra contract, low Stampede generation resulted in insufficient funds in the SEEA in some fall and winter months to cover the payment of project use and station service costs. In these cases, the U.S. Fish and Wildlife Service (FWS) was required to use its Federal appropriation to pay for its project use loads' electric service bills. Under the new contract, Western anticipates that generation valuation will be greater than in the past, which will reduce FWS's burden of payment and protect project use loads from incurring additional costs as a result of its monthly power costs exceeding SEEA balances.

Estimates of revenues and expenses are listed in Table 2.

TABLE 2.—COMPARISON OF EXISTING AND PROPOSED NON-FIRM POWER FORMULA RATE COMPONENTS

([Based on a 5-year average for FY 2008–2012]) [1]

Component [2]	Existing floor rate ($)	Proposed SEEA rate [2] ($) (effective August 1, 2008)	Percent change
Stampede Revenue	214,680	560,064	161
Expenses:			
O&M (reimbursable only)	0	233,207	2332
Project Use	239,723	239,723	0
Interest	213,993	211,626	−1
Capital Repayment	584,164	584,508	0
Total Expenses	1,037,880	1,269,064	22
Stampede Annual Transferred PRR (Stampede Revenue—Total Expenses)	(832,200)	(709,000)	−14

[1] Existing and proposed rates are based on a historical generation average. The difference between the two rates is (1) different generation valuation rates and (2) different reimbursable percentages as a result of the generation value.

[2] Amounts represent the 5-year averages of each component.

[2] This estimated floor rate was calculated using historical hourly generation and market rate information.

Western will review the PRR for the Stampede Powerplant semiannually in or around March and September each year. According to the existing rate procedures for the CVP, Western will review the CVP PRR in March and September of each year (71 FR 45821). The CVP rate procedures stipulate that Western will analyze the CVP financial data from October through February, to the extent information is available, as well as forecasted data for March through September. In the case of Stampede, Western will use the most current Power Repayment Study (PRS) and the disposition of the SEEA account up through February and estimate March through September and other financial data, to the extent information is available, to determine the amount of costs to be included in the CVP PRR. In September, when the next review occurs, Western will use the same methodology to include costs in the CVP PRR for the following year. At the time Western makes a final decision regarding this proposed formula rate, to the extent that updated financial data is made available, Western will update the PRS supporting the proposed rate. Based on estimated expenses and projected Stampede revenues, the Stampede Annual Transferred PRR for October 2008 through September 2009 (FY 2009), the first full year of the proposed rate, is estimated to be $480,000.

A comparison of existing and proposed rates and revenue requirement follows:

TABLE 3.—COMPARISON OF EXISTING AND PROPOSED RATES AND REVENUE REQUIREMENT WASHOE PROJECT, STAMPEDE POWERPLANT

Non-firm energy rates and PRR	Existing rates	Proposed rates (effective 8/1/08)	Percent change
Floor Rate (Mills/kWh)	0.01789 $/kWh	N/A	N/A.
SEEA Rate—Average	N/A	0.04667 $/kWh	N/A.
Stampede Annual Transferred PRR (5-year average).	$823,200	$709,000	−14

Legal Authority

Stampede Powerplant is a feature of the Washoe Project authorized by Congress in 1956 and is located on the Little Truckee River in Sierra County, California (70 Stat.775 (1956)). The powerplant has a maximum operating capability of 3,650 kilowatts (kW) with an estimated annual generation over the past 12 years of 12-million KWh. Since Stampede Powerplant has an installed capacity of less than 20,000 kW and generates less than 100 million kWh annually for sale, the proposed rate constitutes a minor rate adjustment. Western has determined that it is not necessary to hold a public information or comment forum for this proposed minor rate adjustment as defined by 10 CFR part 903.23(a). After review of public comments, and possible amendments or adjustments, Western will recommend the Deputy Secretary of Energy approve the proposed rate on an interim basis.

Western is establishing the proposed non-firm power formula rate for non-firm energy for the Stampede Powerplant under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments are published in Title 10 of the Code of Federal Regulations in Part 903.

Pursuant to paragraph 1.5 of Delegation Order No. 00–037.00, Western's Administrator approved the power formula rate for the sale of short-term, non-firm power to Truckee Donner and Fallon effective August 1, 2007. The Administrator's approval provided interim rate authority between the effective date of the new contract (August 1, 2007) and the effective date of the proposed rate (August 1, 2008). The Administrator's approval will expire on July 31, 2008, or upon approval of this proposed rate that supersedes Rate Order No. WAPA–119, whichever occurs earlier.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Sierra Nevada Regional Office, located at 114 Parkshore Drive, Folsom, California. Many of these documents and supporting information are also available on the Web site under the ''Current Rates'' section located at http://www.wapa.gov/sn/marketing/rates/.

Regulatory Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR 1500–1508); and DOE NEPA Regulations Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined this action is categorically excluded from the preparation of an environmental assessment or environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: January 17, 2008.

Timothy J. Meeks,

Administrator.

[FR Doc. E8–2148 Filed 2–5–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2007–0888; FRL–8526–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Superfund Site Evaluation and Hazard Ranking System (Renewal); EPA ICR No. 1488.07, OMB Control No. 2050–0095

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 7, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2007–0888 to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Randy Hippen, Office of Superfund Remediation and Technology Innovation, Mail Code 5204–P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–603–8829; fax number: 703–603–9104; e-mail address: *hippen.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 4, 2007 (72 *FR* 50679), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2007–0888, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Superfund Site Evaluation and Hazard Ranking System (Renewal).

ICR Numbers: EPA ICR No. 1488.07, OMB Control No. 2050–0095.

ICR Status: This ICR is scheduled to expire on February 29, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 1980 and 1986) amends the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to include criteria prioritizing releases throughout the U.S. before undertaking remedial action at uncontrolled hazardous waste sites. The Hazard Ranking System (HRS) is a model that is used to evaluate the relative threats to human health and the environment posed by actual or potential releases of hazardous substances, pollutants, and contaminants. The HRS criteria take into account the population at risk, the hazard potential of the substances, as well as the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive ecosystems, damage to natural resources affecting the human food chain, contamination of surface water used for recreation or potable water consumption, and contamination of ambient air.

EPA Regional offices work with States and Tribes to determine those sites for which the State or Tribe will conduct the Superfund site evaluation activities and the HRS scoring. Under this ICR, State or Tribal authorities will apply the HRS throughout a multi-phase site evaluation process. Evaluation results are used to identify which sites brought to the attention of the Superfund Program may warrant cleanup work and to help determine whether a site is eligible to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions. EPA reimburses the States and Tribes 100 percent of their costs, except for record maintenance. Responses to this collection are required to obtain or retain a benefit.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 226.9 hours per response. 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 which have subsequently changed; 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.

Respondents/Affected Entities: States (including U.S. Territories) and Tribes.

Estimated Number of Respondents: 60.

Frequency of Response: On occasion, averaging 11 responses per year per respondent.

Estimated Total Annual Hour Burden: 148,873.

Estimated Total Annual Cost: $11,740,260, however all these costs are reimbursed by the Federal Government through cooperative agreements, resulting in no net cost to respondents for this ICR.

Changes in the Estimates: There is a decrease of 1,412 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease represents an adjustment to the estimates and is primarily due to a decline in the estimated number of assessment activities to be performed by respondents.

Dated: January 30, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–2155 Filed 2–5–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–1081; FRL–8351–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Tier 1 Screening of Certain Chemicals Under the Endocrine Disruptor Screening Program (EDSP); EPA ICR No. 2249.01, OMB Control No. 2070–new; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of December 13, 2007, announcing EPA's plan to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is entitled: ''Tier 1 Screening of Certain Chemicals Under the Endocrine Disruptor Screening Program (EDSP)'' and identified by EPA ICR No. 2249.01 and OMB Control No. 2070–new. The December 13, 2007 document provided for a 60 day public comment period ending February 11, 2008. EPA received several requests from the public to extend this comment period. This document extends the comment period for 30 days, from February 11, 2008, to March 12, 2008.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–1081, must be received on or before March 12, 2008.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of December 13, 2007.

FOR FURTHER INFORMATION CONTACT: William Wooge, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; e-mail address: *wooge.william@epa.gov*.

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** of December 13, 2007 (72 FR 70839) (FRL–8155–8). In that document, EPA solicited comments and information on its request for a new ICR entitled ''Tier 1 Screening of Certain Chemicals Under the Endocrine Disruptor Screening Program (EDSP).'' On December 17, 2007, EPA held a workshop to discuss the ICR. EPA intends to convene a second half-day public meeting to discuss this ICR and answer questions from the public. A separate **Federal Register** document will announce the details of the meeting. EPA is hereby extending the comment period, which was set to end on February 11, 2008, to March 12, 2008.

To submit comments, or access the public docket, please follow the detailed instructions as provided under **ADDRESSES** in the December 13, 2007 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: January 30, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8–2169 Filed 2–5–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0340; FRL–8350–1]

Disulfoton; Amendment to and Clarification of Order to Amend Registration to Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's amendment to and clarification of the order for the termination of uses, voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide disulfoton, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This amendment and clarification follows an October 10, 2007 **Federal Register** Notice of Order to Amend Registrations to Terminate Uses (72 FR 57571) of disulfoton (Di-Syston 15G) for multiple uses. The October 10, 2007 order and the December 15, 2004, Notice of Receipt of Request (69 FR 75061) that preceded the order were unclear as to whether the use of Di-Syston 15G on Fraser fir Christmas trees was terminated, except for use in the State of North Carolina. In addition, the registrant had withdrawn its request to terminate use of Di-Syston 15G on Christmas trees outside of North Carolina during the time allowed and EPA issued the order without having processed that withdrawal. Accordingly, EPA hereby is amending the order to clarify that use of disulfoton on Fraser fir Christmas trees is allowed nationwide.

DATES: This amendment is effective February 6, 2008.

FOR FURTHER INFORMATION CONTACT: Eric Miederhoff, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347-8028; fax number: (703) 308-7070; e-mail address: *miederhoff.eric@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2004-0340. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces the amendment and clarification of the October 10, 2007 order to amend registrations to terminate uses of certain end-use disulfoton products registered under section 3 of FIFRA. The registration number is listed in Table 1 of this unit.

TABLE 1.—DISULFOTON PRODUCT AFFECTED

EPA Registration Number	Product Name
264-723	Di-Syston 15G

Table 2 of this unit includes the name and address of record for the registrant of the product in Table 1 of this unit.

TABLE 2.—REGISTRANT OF AMENDED DISULFOTON PRODUCT

EPA Company Number	Company Name and Address
264	Bayer CropSciences, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709

On December 15, 2004, EPA published a Notice of Receipt of Request to Voluntarily Terminate Certain Uses (69 FR 75061). That notice contained the statement: ''The registrant will retain use of Di-Syston 15G on Fraser fir Christmas trees in North Carolina...'' On January 21, 2005, during the allowed timeframe set out in the December 15, 2004 notice, EPA received a withdrawal request from the registrant that replaced an exclusion from termination for Christmas trees in North Carolina with an exclusion from termination for Christmas trees nationwide. EPA did not make note of this withdrawal in its October 10, 2007 order and instead reiterated the statement''The registrant will retain use of Di-Syston 15G on Fraser fir Christmas trees in North Carolina'' without mention of how Christmas trees outside of North Carolina would be affected. Today's action is intended to clarify that no use of Di-Syston 15G on Fraser fir Christmas trees has been terminated.

III. Amended Order

Pursuant to FIFRA section 6(f), EPA hereby amends the October 10, 2007 order to clarify that EPA did not terminate use on Fraser fir Christmas trees outside of North Carolina of disulfoton registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the use of disulfoton products whose registration is identified in Table I of Unit II for use on Fraser fir Christmas trees is allowed nationwide.

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 24, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–2174 Filed 2–5–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–1080; FRL–8351–2]

Endocrine Disruptor Screening Program (EDSP); Draft Policies and Procedures for Initial Screening; Request for Comment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of December 13, 2007, announcing the availability of and soliciting public comment on EPA's draft policies and procedures for initial screening under the Agency's Endocrine Disruptor Screening Program (EDSP). The December 13, 2007, notice provided for a 60–day public comment period ending February 11, 2008. EPA received several requests from the public to extend this comment period. This document extends the comment period for 30 days, from February 11, 2008, to March 12, 2008.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–1080, must be received on or before March 12, 2008.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of December 13, 2007.

FOR FURTHER INFORMATION CONTACT: William Wooge, Office of Science Coordination and Policy (7201M), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; e-mail address: *wooge.william@epa.gov*.

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** of December 13, 2007 (72 FR 70842) (FRL–8340–3). In that document, EPA announced the availability of and solicited public comment on EPA's draft policies and procedures for initial screening under the Agency's EDSP. On December 17, 2007, EPA held a workshop to discuss the draft policies and procedures. EPA intends to convene a second half-day public meeting to discuss these draft policies and procedures and answer questions from the public. A separate **Federal Register** document will announce the details of the meeting. EPA is hereby extending the comment period, which was set to end on February 11, 2008, to March 12, 2008.

To submit comments, or access the public docket, please follow the detailed instructions as provided under **ADDRESSES** in the December 13, 2007, **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides and pests, Reporting and recordkeeping.

Dated: January 30, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8–2164 Filed 2–5–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008-0046; FRL–8350–9]

Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before March 7, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket identification (ID) number and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, 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 regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., 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. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

PP Number	Docket ID Number
PP 7E7258	EPA–HQ–OPP–2008-0049
PP 7E7286	EPA–HQ–OPP–2008-0049
PP 7E7268	EPA–HQ–OPP–2007–1199
PP 7E7287	EPA–HQ–OPP–2007–1159
PP 7E7298	EPA–HQ–OPP–2006-0875
PP 7E7300	EPA–HQ–OPP–2007–1202
PP 7F7289	EPA–HQ–OPP–2008-0066
PP 7F7304	EPA–HQ–OPP–2008-0065
PP 7E7239	EPA–HQ–OPP–2008-0039
PP 7E7241	EPA–HQ–OPP–2008-0040
PP 7E7309	EPA–HQ–OPP–2008-0044
PP 7E7261	EPA–HQ–OPP–2008-0043
PP 7E7303	EPA–HQ–OPP–2008-0060
PP 7F7179	EPA–HQ–OPP–2008-0041

III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

A. New Tolerances

1. *PP 7E7258* and *7E7286*. (EPA–HQ–OPP–2008–0049). Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, proposes to establish a tolerance for residues of triflumizole, [1-[1-((4-chloro-2-(trifluoromethyl) phenyl)imino)-2propoxyethyl]-1H-imidazole] in or on food commodities for *PP 7E7258*: Leafy greens except spinach (subgroup 4A) and cilantro, leaves at 35 parts per million (ppm); swiss chard at 18 ppm; pineapple at 4.0 ppm; papaya; sapote black; canistel; sapote, mamey; mango; sapodilla and star apple at 2.5 ppm; hop, dried cones at 50.0 ppm; and for *PP 7E7286*: *Brassica*, head and stem, subgroup 5A at 5.0 ppm. The analytical method is suitable for analyzing crops for residues of triflumizole and its aniline containing metabolites at the proposed tolerance levels. The analytical method has been independently validated. Residue levels of triflumizole are converted to FA-1–1 by acidic and alkaline reflux, followed by distillation. Residues are then extracted and subjected to SPE purification. Detection and quantitation are conducted by gas chromatograph equipped with nitrogen phosphorus detector, electron capture detector or mass spectrometry detection. The limit of quantitation of the method has been determined in the range of 0.01 ppm to 0.05 ppm for the combined residues of triflumizole and FA-1–1. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual (PAM II) Vol. II. Contact: Sidney Jackson, telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

2. *PP 7E7268*. (EPA–HQ–OPP–2007–1199). Valent USA Corporation, 1600 Riviera Avenue, Walnut Creek, CA 94596–8025, proposes to establish a tolerance for residues of the uniconazole, [(E)-(+)-(S)-1-(4-chlorophenyl)-4,4-dimethyl-2-(1,2,4-triazol-1-yl)-pent-1-ene-3-ol] in or on food commodity vegetables, fruiting, group 8 at 0.01 ppm. An adequate analytical enforcement method is available for the determination of residues of uniconazole in plants. The analytical method has been validated by an independent laboratory. Contact: Shaja R. Brothers, telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

3. *PP 7E7287*. (EPA–HQ–OPP–2007–1159). Interregional Research Project #4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance for residues of gamma-cyhalothrin ((S)-[alpha]-cyano-3-phenoxybenzyl (Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoripropenyl)-2,2-dimethylcyclopropanecarboxylate) in or on food commodities pistachio at 0.05 ppm and okra at 0.2 ppm. An adequate analytical method is available for enforcement purposes. In the **Federal Register** of April 8, 2004 (69 FR 18480) (FRL–7353–4), the ICI method 81 for lamda-cyhalothrin has been validated by EPA. Given the enantiomeric relation of gamma-cyhalothrin to lambda-cyhalothrin and the fact that the method does not provide chiral resolution, the method is also applicable to gamma-cyhalothrin. Contact: Susan Stanton, telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

4. *PP 7E7298*. (EPA–HQ–OPP–2006–0875). Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, proposes to establish a tolerance for residues of the insecticide fenpropathrin, alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate in or on food commodities caneberry subgroup 13–07A at 12 ppm and olives at 5 ppm. Adequate analytical methodology is available to detect and quantify fenpropathrin at residue levels in numerous matrices. The methods use solvent extraction and partition and/or column chromatography clean-up steps, followed by separation and quantitation using capillary gas liquid chromatography (GLC) with FID. The extraction efficiency has been validated using radiocarbon samples from the plant and animal metabolism studies. The enforcement methods have been validated at independent laboratories and by EPA. The limit of quantification (LOQ) for fenpropathrin in raw agricultural commodity samples is usually 0.01 ppm. Contact: Sidney Jackson, telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

5.*PP 7E7300*. (EPA–HQ–OPP–2007–1202). Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 05840, proposes to establish a tolerance for

residues of propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4,-dichlorobenzoic acid and expressed as parent compound in or on food commodities beet, garden, roots at 0.6 ppm; parsley, leaves at 13 ppm; parsley, dried leaves at 60 ppm; coriander, fresh at 13 ppm; vegetable, leaves of root and tuber, group 2 at 8.0 ppm; pineapple (post harvest) at 0.9 ppm; and turnip, roots at 0.2 ppm. Analytical methods AG-626 and AG-454A were developed for the determination of residues of propiconazole and its metabolites containing the DCBA moiety. Analytical method AG-626 has been accepted and published by EPA as the tolerance enforcement method for crops. The limit of quantitation (LOQ) for the method is 0.05 ppm. Contact: Shaja R. Brothers, telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

6. *PP 7F7289*. (EPA–HQ–OPP–2008–0066). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to establish a tolerance for residues of the herbicide fluazifop-p-butyl in or on food commodities dry beans at 25 ppm; dry beans at 25 ppm; peanuts at 1.5 ppm; soybean at 2.5 ppm; soybean meal at 2.5 ppm; and soybean refined oil at 0.01 ppm. The analytical method utilized in the studies supporting this action is based upon the Pesticide Analytical Method (PAM) Vol. II, Method II for the enforcement of tolerances for fluazifop-p-butyl residues of concern for oily and non-oily crops. Using this method, residues of fluazifop-p-butyl or fluazifop, and any ester or acid conjugates are extracted from crop samples using a mixture of acetonitrile and dilute acid. Residues are then hydrolyzed using hydrochloric acid to fluazifop and further cleaned up via solvent partitioning, and absorption chromatography. Once sufficiently cleaned up, the samples are subsequently derivatized to form the methyl ester derivative of fluazifop prior mass-selective detection using gas chromatography/mass spectrometry (GC/MS). It should be noted that this analytical method does not distinguish the optical isomers of fluazifop-butyl or fluazifop but instead, hydrolyzes these residues to a common moiety (fluazifop acid) and as such, the detected residues are reported as ''fluazifop'' residues. Contact: James M. Stone, telephone number: (703) 305–7391; e-mail address: *stone.james@epa.gov*.

7. *PP 7F7304*. (EPA–HQ–OPP–2008–0065). Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the herbicide propoxycarbazone, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl] benzoate and its metabolite, methyl 2-[[[(4,5-dihydro-3-(2-hydroxypropoxy)-4-methyl-5-oxo-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate (MKH–6561) in or on food commodities grass forage at 20 ppm, and grass hay at 25 ppm. The proposed tolerance expression is MKH–6561 and Pr–2–OH MKH–6561. An analytical method was developed to measure these two analytes in plant matrices. The method was validated in grass tissues and the analysis by high performance liquid chromatography-electrospray ionization/tandem mass spectrometry (LC/MS/MS). In animal matrices, the proposed tolerance expression is MKH–6561. The proposed tolerance expression is MKH–6561. An analytical method was developed to measure this analyte in animal tissues and milk. The method was validated in animal tissues and milk. MKH–6561 was extracted from the tissues with 0.05 M NH4OH using accelerated solvent extraction. Trifluoroacetic acid (0.5 mL) and an isotopically labeled internal standard were added to the extract which was then centrifuged at 2,000 rpm for 10 minutes. Approximately half of the sample was loaded onto a C–18 SPE cartridge. The C–18 SPE cartridge was washed with aqueous trifluoroacetic acid (0.1%) and aqueous acetic acid (0.1%). A three to one mixture of acetonitrile and aqueous acetic acid (0.1%) was used to elute the analytes from the C–18 SPE cartridge. Water and acetic acid were added to the sample which was analyzed by LC/MS/MS. Milk samples were analyzed by amending an aliquot of milk with trifluororacetic acid (0.5 mL) and isotopically labeled internal standard. The sample was purified by C–18 SPE as described above. The resultant sample was analyzed by LC/MS/MS. Contact: James M. Stone, telephone number: (703) 305–7391; e-mail address: *stone.james@epa.gov*.

B. Amendment to Existing Tolerance

PP 7F7304. (EPA–HQ–OPP–2008–0065). Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, proposes to amend the tolerances in 40 CFR 180.600 by increasing the established tolerances for residues of the herbicide propoxycarbazone, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate (Pr-2-OH MKH-6561) in or on the food commodities cattle, goat, horse, sheep meat from 0.05 ppm to 0.1 ppm; meat byproducts from 0.3 ppm to 1.0 ppm; and milk from 0.03 ppm to 0.05 ppm. The analytical method is described (see Unit III. A. 7). Contact: James M. Stone, telephone number: (703) 305–7391; e-mail address: *stone.james@epa.gov*.

C. New Exemption from Tolerances

1. *PP 7E7239*. (EPA–HQ–OPP–2008–0039). Whitmire Micro-Gen c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5136, proposes to amend 40 CFR 180 by establishing an exemption from the requirement of a tolerance under 40 CFR 180.930 for residues of acetone, when used as an inert ingredient in a pesticide product when used in accordance with good agricultural practice as a solvent or co-solvent in pesticide formulations applied to animals. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, telephone number: (703) 347–8825; e-mail address: *samek.karen@epa.gov*.

2. *PP 7E7241*. (EPA–HQ–OPP–2008–0040). Whitmire Micro-Gen c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5136, proposes to amend 40 CFR 180 by establishing an exemption from the requirement of a tolerance under 40 CFR 180.910 for residues of potassium benzoate, when used as an inert ingredient in a pesticide product when used in accordance with good agricultural practice as a preservative in pesticide products applied to growing crops or to raw agricultural commodities after harvest. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, telephone number: (703) 347–8825; e-mail address: *samek.karen@epa.gov*.

3. *PP 7E7309*. (EPA–HQ–OPP–2008–0044). Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409, proposes to amend 40 CFR 180 by establishing an exemption from the requirement of a tolerance under 40 CFR 180.910 for residues of 1,2-benzisothiazolin-3-one (BIT) as an inert ingredient in post-harvest applications at a maximum of 0.1% in an end-use product formulation. In September 2005, EPA published a Reregistration Eligibility Decision (RED) for BIT. This extensive document provides an overview of the available information for BIT. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, telephone number: (703) 347–

8825; e-mail address: *samek.karen@epa.gov*.

4. *PP 7E7261*. (EPA–HQ–OPP–2008–0043). Monsanto Company, 1300 ''I'' St., NW. Suite 450 East, Washington, DC 20005, proposes to amend 40 CFR 180 by establishing an exemption from the requirement of a tolerance for residues of sodium sulfite in or on any food or feed commodity when used as an inert ingredient in a pesticide product with the following limitations: Not to exceed 0.8% by weight in the formulated product. For use only in formulated products containing the active ingredient glyphosate and applied only to growing crops. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, telephone number: (703) 347–8825; e-mail address: *samek.karen@epa.gov*.

5. *PP 7E7303*. (EPA–HQ–OPP–2008–0060). LANXESS Corporation, 111 RIDC Park West Dr., Pittsburgh, PA 15275, proposes to amend 40 CFR 180 by establishing an exemption from the requirement of a tolerance under 40 CFR 180.910 for residues of methanol, (phenylmethoxy)- (CAS Reg. No. 14548–60–8) applied to growing crops and raw agricultural commodities after harvest at no more than 0.25% of the total pesticide formulation when used as either an in–can preservative or as a colorant in seed coatings. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, telephone number: (703) 347–8825; e–mail address: *samek.karen@epa.gov*.

D. Amendment to Existing Exemption from a Tolerance

PP 7F7179. (EPA–HQ–OPP–2008–0041). ETI H2O, 1725 Gillespie Way, El Cajon, CA 92020, proposes to amend the existing exemption from the requirement of a tolerance in 40 CFR 180.940(a) for residues of sodium lauryl sulfate, (CAS Reg. No. 151–21–3) as a component of food contact sanitizing solutions applied to all food contact surfaces in public eating places, dairy–processing equipment, and food–processing equipment and utensils at a maximum level in the end-use concentration of 350 ppm. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, telephone number: (703) 347–8825; e-mail address: *samek.karen@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E8–2172 Filed 2–5–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0061; FRL–8350–2]

Tribal Pesticide Program Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council will hold a 2-1/2 day meeting, beginning on March 5, 2008 and ending March 7, 2008. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on March 5–6, 2008 from 8:30 a.m. to 5:30 p.m. and March 7, 2008 from 8:30 a.m. to 12 noon.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA; 4th Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division, 7506P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *georgia.mcduffie@epa.gov* or Lillian Wilmore, TPPC Coordinator, PO Box 470329 Brookline Village, MA 02447; telephone number: (617) 232–5742; Fax: (617) 277–1656; e-mail address: *NAEcology@aol.com*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in TPPC information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process, you are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to: Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

B. How Can I Get Copies of this Document and Other RelatedInformation?

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2008–0061. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Tentative Agenda

1. TPPC State of the Council Report.
2. Tribal Presentations.
3. Pesticide Labeling/Tribal and State Authority.
4. Pesticide Labeling – Unenforceable Label Language.
5. Pesticide Labeling – E-Labeling Update.
6. Reports from the State FIFRA Issues Research Evaluation Group (SFIREG); Pesticide Program Dialogue Committee (PPDC); California Indian Basketweavers Association (CIBA); National Tribal Environmental Council (NTEC); and Alaska Intertribal Council.
7. US EPA Region Reports.
8. Container/Containment Rule, 19(f)
9. Endangered Species Implementation
10. Office of Pesticide Programs (OPP) and Office of Enforcement & Compliance Assurance (OECA)

List of Subjects

Environmental protection, [insert additional terms as appropriate].

Dated: January 28, 2008.

William R. Diamond,

Director, Field External Affairs Division, Office of Pesticide Programs

[FR Doc. E8–2086 Filed 2–5–08; 8:45 am]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act meeting

DATE AND TIME: Wednesday, February 13, 2008, 2 p.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Announcement of Notation Votes, and
2. FY 2008 State & Local Budget Allocations and Designation of Two New Fair Employment Practice Agencies

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. *Contact Person for More Information:* Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: February 4, 2008.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 08–558 Filed 2–4–08; 3:09 pm]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 08–721]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On February 1, 2008, the Commission released a public notice announcing the February 22, 2008 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

DATES: Friday, February 22, 2008, 9:30 a.m.

ADDRESSES: Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Suite 5–C162, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov.* The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: February 1, 2008. The North American Numbering Council (NANC) has scheduled a meeting to be held Friday, February 22, 2008, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda: Friday, February 22, 2008, 9:30 a.m.:*

1. Announcements and Recent News.
2. Approval of Transcript.

—Meeting of October 10, 2007.

3. Report of the North American Numbering Plan Administrator (NANPA).
4. Report of the National Thousands Block Pooling Administrator (PA).
5. Report of North American Numbering Portability Management (NAPM).
6. Status of the Industry Numbering Committee (INC).
7. Report of the Numbering Oversight Working Group (NOWG).
8. Status of the Industry Numbering Committee (INC) activities.
9. Report from the North American Numbering Plan Billing and Collection (NANP B&C) Agent.
10. Report of the Billing & Collection Working Group (B&C WG).
11. Report of the Local Number Portability Administration (LNPA) Working Group

—Implementation of FCC Number Portability Order.

12. CenturyTel Appeal of Number Portability Best Practice Issue 50/PIM–60.
13. Report of the Future of Numbering Working Group (FoN WG).
14. Special Presentations.
15. Update List of the NANC Accomplishments.
16. Summary of Action Items.
17. Public Comments and Participation (5 minutes per speaker).
18. Other Business.

Adjourn no later than 5 p.m.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Marilyn Jones,

Attorney, Wireline Competition Bureau.

[FR Doc. E8–2186 Filed 2–5–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2008–3]

Filing Dates for the Louisiana Special Election in the 6th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Louisiana has scheduled special elections to fill the U.S. House of Representatives seat in the Sixth Congressional District being vacated by Representative Richard H. Baker. There are three possible special elections, but only two may be necessary.

- *Primary Election:* March 8, 2008.
- *Possible Runoff Election:* April 5, 2008. In the event that one candidate

does not achieve a majority vote in his/her party's Special Primary Election, the top two vote-getters will participate in a Special Runoff Election.

• *General Election:* May 3, 2008. However, if a Special Runoff Election is not necessary, the Special General will instead be held on April 5, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

Special Primary Only

All principal campaign committees of candidates *only* participating in the Louisiana Special Primary shall file a 12-day Pre-Primary Report on February 25, 2008. (See chart below for the closing date for the report.)

Special Primary and General Without Runoff

If only two elections are held, all principal campaign committees of candidates participating in the Louisiana Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on February 25, 2008; a Pre-General Report on March 24, 2008; and a Post-General Report on May 5, 2008. (See chart below for the closing date for each report.)

Special Primary and Runoff Elections

If three elections are held, all principal campaign committees of candidates *only* participating in the Louisiana Special Primary and Special Runoff Elections shall file a 12-day Pre-Primary Report on February 25, 2008; and a Pre-Runoff Report on March 24, 2008. (See chart below for the closing date for each report.)

Special Primary, Runoff and General Elections

All principal campaign committees of candidates participating in the Louisiana Special Primary, Special Runoff and Special General Elections shall file a 12-day Pre-Primary Report on February 25, 2008; a Pre-Runoff Report on March 24, 2008; a Pre-General Report on April 21, 2008; and a Post-General Report on June 2, 2008. (See chart below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees that file on a quarterly basis during 2008 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Louisiana Special Primary, Runoff or General Elections by the close of books for the applicable report(s). Consult the chart below that corresponds to the committee's situation for close of books and filing date information.

Committees filing monthly that support candidates in the Louisiana Special Primary, Special Runoff or Special General Elections should continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Louisiana Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

Calendar of Reporting Dates for Louisiana Special Elections

COMMITTEES INVOLVED *Only* IN THE SPECIAL PRIMARY (03/08/08) MUST FILE:

Report	Close of books[1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Pre-Primary	02/17/08	02/22/08	02/25/08
April Quarterly	03/31/08	04/15/08	04/15/08

IF ONLY TWO ELECTIONS ARE HELD, COMMITTEES INVOLVED IN BOTH THE SPECIAL PRIMARY (03/08/08) AND THE SPECIAL GENERAL (04/05/08)[2] MUST FILE:

Report	Close of books[1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Pre-Primary	02/17/08	02/22/08	02/25/08
Pre-General	03/16/08	03/21/08	03/24/08
April Quarterly	03/31/08	04/15/08	04/15/08
Post-General	04/25/08	05/05/08	05/05/08
July Quarterly	06/30/08	07/15/08	07/15/08

IF TWO ELECTIONS ARE HELD, COMMITTEES INVOLVED IN *Only* THE SPECIAL GENERAL (04/05/08)[2]

Report	Close of books[1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Pre-General	03/16/08	03/21/08	03/24/08
April Quarterly	03/31/08	04/15/08	04/15/08
Post-General	04/25/08	05/05/08	05/05/08
July Quarterly	06/30/08	07/15/08	07/15/08

IF THREE ELECTIONS ARE HELD, COMMITTEES INVOLVED IN *Only* THE SPECIAL PRIMARY (03/08/08) AND SPECIAL RUNOFF (04/05/08) MUST FILE:

Report	Close of books[1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Pre-Primary	02/17/08	02/22/08	02/25/08
Pre-Runoff	03/16/08	03/21/08	03/24/08
April Quarterly	03/31/08	04/15/08	04/15/08

COMMITTEES INVOLVED IN *Only* THE SPECIAL RUNOFF (04/05/08) MUST FILE:

Report	Close of books[1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Pre-Runoff	03/16/08	03/21/08	03/24/08
April Quarterly	03/31/08	04/15/08	04/15/08

COMMITTEES INVOLVED IN THE SPECIAL PRIMARY (03/08/08), SPECIAL RUNOFF (04/05/08) AND THE SPECIAL GENERAL (05/03/08) MUST FILE:

Report	Close of books[1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Pre-Primary	02/17/08	02/22/08	02/25/08
Pre-Runoff	03/16/08	03/21/08	03/24/08
April Quarterly	——Waived——		
Pre-General	04/13/08	04/18/08	04/21/08
Post-General	05/23/08	06/02/08	06/02/08
July Quarterly	06/30/08	07/15/08	07/15/08

IF THREE ELECTIONS ARE HELD, COMMITTEES INVOLVED IN *Only* THE SPECIAL GENERAL (05/03/08) MUST FILE:

Report	Close of books[1]	Reg./Cert. & overnight mailing deadline	Filing deadline
April Quarterly	——Waived——		
Pre-General	04/13/08	04/18/08	04/21/08
Post-General	05/23/08	06/02/08	06/02/08
July Quarterly	06/30/08	07/15/08	07/15/08

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

[2] If a Special Runoff Election is necessary, it will be held April 5, 2008, and the Special General Election will be held on May 3, 2008.

Dated: January 29, 2008.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. E8–2149 Filed 2–5–08; 8:45 am]

BILLING CODE 6715–01–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 February 21, 2008.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. David E. Snyder; to acquire voting shares of Merchants Bancorp of Pennsylvania, Inc., and thereby indirectly acquire voting shares of Merchants National Bank of Kittanning, all of Kittanning, Pennsylvania.

B. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 PeachtreeStreet, N.E., Atlanta, Georgia 30309:

1. William Blanton Sr., Alpharetta, Georgia; to acquire additional voting shares of United Americas Bankshares, Inc., and thereby indirectly acquire additional voting shares of United

Americas Bank, N.A., both of Atlanta, Georgia.

C. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Kelly J. Schoen; to acquire voting shares of Freedom Bancshares, Inc., and thereby indirectly acquire voting shares of Freedom Bank, all of Overland Park, Kansas.

Board of Governors of the Federal Reserve System, February 1, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–2126 Filed 2–5–08; 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 applications 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 March 3, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. West Suburban Bancorp, Inc., Lombard, Illinois; to acquire 100 percent of the voting shares of G.R. Bancorp, Ltd., and thereby indirectly acquire voting shares of The First National Bank of Grand Ridge, both of Grand Ridge, Illinois.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. ENB Acquisition Corporation, Oklahoma City, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Exchange Bancshares of Moore, Inc., and thereby indirectly acquire Exchange National Bank of Moore, both of Moore, Oklahoma.

Board of Governors of the Federal Reserve System, February 1, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–2125 Filed 2–5–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E8–1202 published on page 4573 of the issue for Friday, January 25, 2008.

Under the Federal Reserve Bank of Kansas City heading, the entry for HOTC, Inc., Wray, Coloardo, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. HOTC, Investment Company, to become a bank holding company by acquiring 100 percent of the voting shares of Wray State Bank, both of Wray, Colorado.

Comments on this application must be received by February 19, 2008.

Board of Governors of the Federal Reserve System, February 1, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–2127 Filed 2–5–08 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Meeting

ACTION: Meeting announcement.

SUMMARY: This notice announces the meeting date for the 20th meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.). The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

DATES: *Meeting Date:* February 26, 2008, from 10:30 a.m. to 3 p.m. (Eastern time).

ADDRESSES: Rosen Centre Hotel, Salon 9 and 10, 9840 International Drive, Orlando, FL 32819. This meeting will be held in conjunction with the Healthcare Information and Management Systems Society (HIMSS) annual conference.

SUPPLEMENTARY INFORMATION: The meeting will include presentations by the Confidentiality, Privacy and Security Workgroup and the Personalized Healthcare Workgroup on Recommendations to the Community; an update on the Nationwide Health Information Network (NHIN); and an update on the AHIC Successor.

FOR FURTHER INFORMATION: Visit *http://www.hhs.gov/healthit/ahic.html.* A Web cast of the Community meeting will be available on the NIH Web site at: *http://www.videocast.nih.gov/.*

If you have special needs for the meeting, please contact (202) 690–7151.

Dated: January 29, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 08–516 Filed 2–5–08; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5014–N]

Medicare Program; Rural Community Hospital Demonstration Program; Solicitation of Additional Participants

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a solicitation for up to six additional hospitals to participate in the Rural Community Hospital Demonstration Program for the remainder of the 5-year time period allowed by section 410A of

the MMA that is currently scheduled to end in 2010.

DATES: *Application Submission Deadline:* Applications must be received by 5 p.m., e.s.t. on or before March 24, 2008. Only applications that are considered ''timely'' will be reviewed and considered by the technical panel.

ADDRESSES: The applications should be *MAILED* or sent by an overnight delivery service to the following address: Centers for Medicare & Medicaid Services, ATTN: Sid Mazumdar, Rural Community Hospital Demonstration, Medicare Demonstrations Program Group, Mail Stop C4–17–27, 7500 Security Boulevard, Baltimore, MD 21244.

Please allow sufficient time for mailed information to be received in a timely manner in the event of delivery delays. Because of staffing and resources limitations, and because we require an application containing an original signature, we cannot accept applications by facsimile (Fax) transmission.

FOR FURTHER INFORMATION CONTACT: Sid Mazumdar at (410) 786–6673 or by e-mail at: *Siddhartha.mazumdar@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 410A(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173) (MMA) requires the Secretary to establish a demonstration to test the feasibility and advisability of establishing ''rural community hospitals'' for Medicare payment purposes for covered hospital inpatient services furnished to Medicare beneficiaries. A rural community hospital, as defined in section 410A(f)(1) of the MMA, is a hospital that—

- Is located in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act (the Act) (42 U.S.C. 1395ww(d)(2)(D))) or treated as being so located pursuant to section 1886(d)(8)(E) of the Act (42 U.S.C. 1395ww(d)(8)(E));
- Has fewer than 51 acute care inpatient beds, as reported in its most recent cost report;
- Makes available 24-hour emergency care services; and
- Is not eligible for critical access hospital (CAH) designation, or has not been designated a CAH under section 1820 of the Act.

Section 410A(a)(4) of the MMA specifies that the Secretary is to select for participation no more than 15 rural community hospitals in rural areas of States that the Secretary identifies as having low population densities. Using 2002 data from the U.S. Census Bureau, we identified the 10 States with the lowest population densities in which rural community hospitals must be located to participate in the demonstration: Alaska, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming. (Source: U.S. Census Bureau, Statistical Abstract of the United States: 2003).

The demonstration is designed to test the feasibility and advisability of reasonable cost reimbursement for inpatient services to small rural hospitals. The demonstration is aimed at increasing the capability of the selected rural hospitals to meet the needs of their service areas.

Section 410A(a)(5) of the MMA states the Secretary shall conduct the demonstration program for a 5-year period. We originally solicited applicants for the demonstration in May 2004; 13 hospitals began participation with cost report years beginning on or after October 1, 2004. Four of these 13 hospitals have withdrawn from the program and have become CAHs. For the remaining 9 participating hospitals, the demonstration will end in 2010 when each hospital has completed its fifth cost report year.

II. Provisions of the Notice

This notice announces the solicitation for up to six additional hospitals to participate in the Rural Community Hospital Demonstration Program. Hospitals that enter the demonstration under this solicitation will be able to participate for no more than 2 years. We will adhere to the requirement under section 410A of the MMA to limit the demonstration to 5 years, that is, the program will end in 2010.

A. Demonstration Payment Methodology

Section 410A of the MMA requires that ''in conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented.'' In order to achieve budget neutrality for this demonstration program for FYs 2005, 2006, 2007, and 2008, we adjusted the national hospital inpatient prospective payment system (IPPS) rates by an amount sufficient to offset the added costs of this demonstration program. We will present an estimate of the amount needed to offset the additional costs incurred under the demonstration in FY 2009, including the cost of newly selected rural community hospitals, in the FY 2009 IPPS proposed rule.

Hospitals selected for participation in the demonstration will receive payment for covered inpatient services, with the exclusion of services furnished in a psychiatric or rehabilitation unit that is a distinct part of the hospital, using the following rules. For discharges occurring—

- In the first cost reporting period on or after the implementation of the program, their reasonable costs for covered inpatient services; or
- During the second or subsequent cost reporting period, the lesser of their reasonable costs or a target amount. The target amount in the second cost reporting period is defined as the reasonable costs of providing covered inpatient hospital services in the first cost reporting period, increased by the IPPS update factor (as defined in section 1886(b)(3)(B) of the Act) for that particular cost reporting period. The target amount in subsequent cost reporting periods is defined as the preceding cost reporting period's target amount increased by the IPPS update factor for that particular cost reporting period.

Covered inpatient hospital services means inpatient hospital services (defined in section 1861(b) of the Act) and including extended care services furnished under an agreement under section 1883 of the Act.

B. Participation in the Demonstration

To participate in this demonstration, a hospital must be located in one of the identified States and meet the criteria for a rural community hospital. Eligible hospitals that desire to participate in the demonstration must submit an application to CMS. Information about the demonstration and details on how to apply can be found on the CMS Web site at *http://www.cms.hhs.gov/DemoProjectsEvalRpts/downloads/2004_Rural_Community_Hospital_Demonstration_Program.pdf.*

III. Collection of Information Requirements

The information collection requirements contained in this notice are subject to the Paperwork Reduction Act of 1995 (PRA). As discussed in section II.B. of this notice, a hospital must submit the required information on the cover sheet of the CMS Medicare Waiver Demonstration Application to receive consideration by the technical review panel. The burden associated with voluntary requirement is the time and effort necessary to complete the Medicare Waiver Demonstration Application and submit the information

to CMS. The burden associated with this requirement is currently approved under OMB control number 0938–0880 with an expiration date of November 20, 2010.

Authority: Section 410A of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108–173. (Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: January 11, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 08–511 Filed 2–1–08; 10:00 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0079]

Guidance for Industry: Fish and Fisheries Products Hazards and Controls Guidance Third Edition June 2001: Letter to Seafood Processors that Purchase Grouper, Amberjack, and Related Predatory Reef Species Captured in the Northern Gulf of Mexico

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Fish and Fisheries Products Hazards and Controls Guidance, Third Edition June 2001: Letter to Seafood Processors that Purchase Grouper, Amberjack and Related Predatory Reef Species Captured in the Northern Gulf of Mexico.'' The guidance sets forth the agency's recommendations for ensuring the safety of grouper, amberjack, and related predatory reef species captured in the northern Gulf of Mexico with respect to ciguatera fish poisoning (CFP). The guidance is in response to recent cases of CFP that have occurred in the United States.

DATES: This guidance is final February 6, 2008. Submit written or electronic comments on the guidance document at any time.

ADDRESSES: Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Submit written requests for single copies of the guidance to the Office of Food Safety (HFS–317), Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist the office in processing your request, or fax your request to 301–436–2651. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Byron Truglio, Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1420.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled ''Fish and Fisheries Products Hazards and Controls Guidance, Third Edition June 2001: Letter to Seafood Processors that Purchase Grouper, Amberjack and Related Predatory Reef Species Captured in the Northern Gulf of Mexico.'' The purpose of the document is to revise guidance provided to industry for processing potentially ciguatoxic fish species captured in the northern Gulf of Mexico which are subject to the provisions of the Hazard Analysis and Critical Control Point regulation for seafood (21 CFR part 123) (the seafood HACCP regulation). This guidance is in response to recent CFP outbreaks that have been traced to fish captured in an area in the United States where ciguatera was previously extremely rare. CFP is caused by consumption of fish that have eaten toxic marine algae directly or that have eaten other toxin-contaminated fish. CFP can result in gastrointestinal, cardiovascular, and neurological symptoms. In severe cases, recurring neurological symptoms can persist for months to years.

FDA is issuing this guidance as level 1 guidance consistent with FDA's good guidance practices regulation (§ 10.115 (21 CFR 10.115)). Consistent with FDA's good guidance practices regulation, the agency will accept comment, but is implementing the guidance document immediately in accordance with § 10.115(g) (2) because the agency has determined that prior public participation is not feasible or appropriate in light of the need to respond expeditiously to the recent cases of CFP. The guidance represents the agency's current thinking on CFP from fish in the Northern Gulf of Mexico. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. This guidance modifies our previous guidance on this subject (See ''Fish and Fisheries Products Hazards and Controls Guidance, Third Edition June 2001'' *http://www.cfsan.fda.gov/guidance.html*). The recommendations in this guidance only pertain to grouper, amberjack, and related predatory reef species associated with CFP that have been captured in the Northern Gulf of Mexico. This guidance does not pertain to other species of fish that have not been associated with CFP.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

III. Electronic Access

Persons with access to the Internet may obtain the guidance document at *http://www.cfsan.fda.gov/guidance.html*.

Dated: January 31, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 08–537 Filed 2–1–08; 4:38 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA No. 225–07–8007]

Memorandum of Understanding Between the Food and Drug Administration and the National Institutes of Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the National Institutes of Health (NIH). This MOU establishes the terms of collaboration between the two Federal agencies to develop a unified Federal approach to adverse event (AE) reporting. Specifically, FDA and NIH will collaborate in development of a project that will result in a web-based method for consumers, health professionals, investigators, sponsors, and other parties to electronically submit AE reports. The project includes the development of at least two products: (1) A Rational Questionnaire, an interactive help system that will assist reporters of information in determining what specific data need to be submitted and to whom, and (2) a prototype to test the feasibility of a central, Federal web-based portal to provide direct, seamless, online submission of adverse event reports to appropriate agencies.

DATES: The agreement became effective September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Daryl Allis, OC/Office of Critical Path Programs, Food and Drug Administration, 5600 Fishers Lane (HF–18), Rockville, MD 20785, 301–827–7868.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: January 28, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

FDA No. 225-07-8007

MEMORANDUM OF UNDERSTANDING BETWEEN THE FOOD AND DRUG ADMINISTRATION AND NATIONAL INSTITUTES OF HEALTH

I. PARTIES

This Agreement is between the U.S. Department of Health and Human Services, U.S. Food and Drug Administration (FDA) and the U.S. Department of Health and Human Services, National Institutes of Health (NIH), collectively, "the Parties."

II. OVERVIEW

A. Introduction

The FDA and the NIH both recognize the need for a unified federal approach to adverse event (AE) reporting. Such a harmonized approach will facilitate and streamline submission of both pre- and post-market AE reports while improving data quality and analysis, as well as improving human subject protections. The FDA and NIH began discussions to determine the feasibility of combining efforts to develop web-based portals for AE reporting in order to leverage these efforts and develop a single product that could be used by both Agencies to improve report quality, lower costs, and reduce delivery time. This Agreement memorializes the joint efforts that will be undertaken to effectuate this goal.

B. Background

The FDA, as part of its ongoing work in improving the nation's safety surveillance system, has commenced work on a project, titled MedWatch^{Plus}, to create an Agency-wide portal through which adverse event, consumer complaint, and product problem reports are received and processed to make the information available to adverse event analysis systems. The FDA has invested resources over a period of three years to achieve American National Standards Institute (ANSI) approval of a technical standard for exchanging adverse event data, called the "HL7 – Individual Case Safety Report (ICSR)." The use of the HL7 ICSR standard as part of the MedWatch^{Plus} project enables FDA to implement the standard for all FDA-regulated products (e.g., animal and human food/feed (medicated and unmedicated), cosmetics, dietary supplements, animal and human drugs, biologics, devices, combination products, pet treats, vaccines, etc.). Currently, FDA's adverse event (AE) data collection needs in MedWatch^{Plus} are for adverse events associated with the use of marketed products. FDA expects to receive electronic submission of AE's in clinical trials in the future.

The NIH, through extensive consultation with more than 300 nationally recognized leaders in academia, industry, government, and the public, identified harmonization of clinical research requirements as the highest priority concern of investigators, IRBs, and others involved in clinical research. Furthermore, these stakeholders urged that the NIH assume as its first priority streamlining the highly diverse Federal requirements for the reporting of adverse events that occur during clinical trials. These requirements are imposed by the FDA, NIH, and other agencies of the Federal government.

At present, in reporting a given adverse event, an investigator typically has to submit separate reports to multiple agencies, using different forms, vocabularies, severity criteria, and reporting timeframes. Oversight bodies and agencies receiving this information are often faced with tremendous volumes of data reported in idiosyncratic ways, which often frustrates efforts to conduct meaningful aggregations and analyses of data, or to cull from reports information key to important safety concerns.

To address this problem, the NIH Director, along with the Director of the HHS Office of Human Research Protections (OHRP), established the Federal Adverse Event Task Force (FAET) as a collaborative effort among the FDA, the NIH, the OHRP, the Centers for Disease Control and Prevention, the Department of Veterans Affairs, the Department of Defense, and the Agency for Healthcare Research and Quality, collectively, the "FAET Agencies." Chaired and staffed by the NIH's CRpac Program, the FAET is charged with proposing specific means for promoting harmonized requirements and processes for reporting adverse events in clinical research to the relevant federal agencies.

To fulfill the adverse event reporting requirements and needs of the FAET Agencies, the FAET proposed a consensus standard, for data elements of a Basal Adverse Event Report (BAER). The value of this accomplishment can only be realized if it is translated into reporting tools for investigators and agencies alike.

To this end, NIH plans to develop a Web-based portal whereby investigators would prepare a single report using a standard format (the BAER). Investigators, sponsors, clinicians, and consumers will be able to convey instantaneously one report – utilizing, to the extent possible, a universally accepted vocabulary and format - to all agencies with oversight for that particularly study.

C. Purpose

FDA and NIH are agreeing to collaborate on a project of mutual interest, specifically the development of a "Rational Questionnaire" and a prototype to test the feasibility of a central web-based portal for AE reporting (together, the "Project").

Put broadly, NIH and FDA aim to develop a Project that will result in a web-based method for consumers, health professionals, investigators, sponsors, and other parties to electronically submit AE reports. The Project is expected to create tools that will allow any user to submit adverse event information that corresponds to a wide range of forms already in use by many agencies (e.g. FDA 3500 and 3500A forms, and NIH and other

agency specific forms). The Project includes the development of at least two products: (1) a "Rational Questionnaire" – an interactive help system that will assist reporters of information in determining what specific data need to be submitted and to whom, and (2) a prototype to test the feasibility of a central, Federal web-based portal to provide direct, seamless, online submission of adverse event reports to appropriate agencies. The Rational Questionnaire is a reporting method component dependent on a web-based portal technical infrastructure. The central, Federal web-based portal prototype will provide an opportunity for NIH and FDA to better understand the technology infrastructure that may be needed to support a broader group of federal agencies.

This Agreement describes the terms of collaboration between FDA and NIH on the Project. Information will be shared and transparent, as permitted by law, so that the Parties can maximize efficient use of government resources to reach the Project goals.

D. Priorities and Funding

The Project is critical to the missions of both MedWatch^{Plus} and the Federal Adverse Event Task Force. Successful completion of the project on schedule is vital. The FDA has a need to implement an electronic AE reporting system as soon as possible to satisfy several important mandates, including the requirement to receive mandatory AE reports for dietary supplements and to accommodate those reporters that prefer to submit electronically. FDA and NIH program needs will be prioritized as the Project and schedule for completion are developed.

The NIH has begun some work on the Project, including establishing contacts with technical experts and contractors to develop the two products described. The NIH will continue to serve as the primary point of contact for these contractors. The FDA will provide needed technical assistance but no funds will be transferred to NIH for these activities.

III. RESPONSIBILITIES OF THE PARTIES

A. General

The Parties agree as follows:

1. They will jointly participate in the Project (to develop the Rational Questionnaire and portal prototype), including all phases of project management.

2. Project results will be available to both Parties to implement as they individually see fit, consistent with law.

3. The NIH, or its contractor(s) will provide explicit training to FDA personnel in the technical architecture and implementation of the prototype and application developed in the Project. The issue of ongoing maintenance will be resolved during the Project's development.

4. The Project will follow the HHS Enterprise Performance Lifecycle (EPLC) standard, as applicable, including for the production of all required documents.

5. The scope of the Project will be further, and mutually, defined and documented early in the Project.

6. A unified Requirements Matrix will be prepared, and appropriate FDA and NIH technical representatives will approve it.

7. Any software developed in the course of the Project will be available for both FDA and NIH to continue to use, develop and extend as they individually see fit, without limitation but subject to applicable law.

8. The Project documents will be maintained using agreed upon tools, with access granted to FDA and NIH staff as needed.
   a. FDA will be responsible for providing resources to maintain and manage the Project documents for the marketed products portion of the project
   b. NIH will be responsible for providing resources to maintain and manage the Project documents for the clinical trials portion of the project

9. The technology stack chosen to implement the Project will be approved in advance by the designated technical representatives from FDA and NIH.

10. The prototype Rational Questionnaire will be jointly developed and deliverable at a mutually agreed-upon date. The system will be developed in an iterative or

multi-phase fashion to enable FDA and NIH end-users to evaluate and refine the system during the course of development. The common components of the Questionnaire will be developed first and the marketed products and clinical trials components will be developed next in parallel, with different timelines, and with appropriate contributions to each.

11. The prototype portal in which the Rational Questionnaire will reside and by which the Parties can test the feasibility of generating adverse event reports through the Questionnaire for submission to Federal agencies will be jointly developed.

12. Before conclusion of this agreement, the Parties will discuss and decide if an Independent Validation and Verification test plan is needed in order to ensure that the Project meets all relevant specifications.

13. User Acceptance Testing (UAT) will be performed to ensure that the project meets requirements.

B. FDA

The FDA agrees to perform the following activities and provide the following resources in support of the project:

1. Collaborate and provide non-monetary resources for the project management of the common components of the Questionnaire and the marketed products components as well as the development of the portal prototype.
2. Provide useful, actionable requirements for the Project to satisfy FDA needs.
3. Participate in all Project management meetings as scheduled.
4. Collaborate in the design of the Project.
5. Provide FDA resources as needed to learn the technical architecture.
6. Provide FDA resources for implementation of the Project.

C. NIH

The NIH agrees to perform the following activities and provide the following resources in support of the project:

1. Collaborate and provide resources for the project management of the common components of the Questionnaire, and the clinical trial components as well as the development of the portal prototype.
2. Provide useful, actionable requirements for NIH needs.

3. Participate in all Project management meetings as scheduled.
4. Collaborate in the design of the Project.
5. Direct the contractor(s) in performance of their duties with input and agreement from FDA.
6. Provide NIH resources for implementation of this project.

IV. PROJECT DURATION

The Project shall be considered finished when the key deliverables, the Rational Questionnaire and portal prototype are delivered and operational, but no later than three (3) months after the agreed-upon and scheduled completion date, which will be determined after work has begun.

V. ISSUE RESOLUTION

The FDA and NIH program staff working on the Project are committed to productive and collaborative activities to achieve the important public health goals of the Project. Consistent with Federal law and agency practice, staff will work together to resolve any programmatic disputes and communicate within agency chain-of-command any differences or other concerns as necessary. It is expected that the first line of communication above the project staff will be FDA's Executive Sponsor of MedWatch^{Plus} and NIH's Director for Science Policy, Office of the Director.

VI. INFORMATION SHARING

As sister public health agencies within the Department of Health and Human Services, there are no legal prohibitions that preclude FDA or NIH from sharing with each other most agency records in the possession of either agency. Both agencies recognize and acknowledge, however, that it is essential that any confidential information that is shared between FDA and NIH must be protected from unauthorized use or disclosure. See, e.g., 21 USC. sec. 331(j); 18 U.S.C. section 1905; 21 C.F.R. Parts 20 and 21; 42 C.F.R. Parts 5 and 5b. Safeguards will be followed to protect the interests of, among others, owners and submitters of trade secrets and confidential commercial information; patient identities and other personal privacy information; privileged and/or predecisional agency records; and information protected for national security reasons.

FDA No. 225-07-8007

VII. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This Agreement will become effective when signed by all Parties. The Agreement will continue for not more than five years thereafter, unless amended by mutual agreement of the Parties, until the Project is completed. It is expected that the Project will take not more than two years to complete. Either party may terminate this Agreement by providing one hundred twenty (120) days written notice to the other party. Consistent with the expectation that no funds will be transferred between the Parties, each party shall be solely responsible for the payment of any expenses it has incurred in the event this Agreement is terminated before completion. This Agreement is subject to the availability of funds.

9/26/07 9/27/07

Janet Woodcock, M.D.	Lana Skirboll, Ph.D.
Deputy Commissioner, Chief Medical Officer	Director for Science Policy
Office of the Commissioner	Office of the Director
Food and Drug Administration	National Institutes of Health
Department of Health and Human Services	Department of Health and Human Services

[FR Doc. 08–496 Filed 2–5–08; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Division of Independent Review Grant Reviewer Recruitment Form (OMB No. 0915–0295): Extension

HRSA's Division of Independent Review (DIR) is responsible for carrying out the independent and objective review of all eligible applications submitted to HRSA. DIR ensures that the independent review process is efficient, effective, economical, and complies with statutes, regulations, and policies. The review of applications is performed by experts knowledgeable in the field of endeavor for which support is requested and is advisory to individuals in HRSA responsible for making award decisions.

To streamline the selection and assignment of expert grant reviewers to objective review committees, HRSA utilizes a Web-based data collection form to gather critical reviewer information. The *Grant Reviewer Recruitment Form* standardizes pertinent categories of reviewer information, such as: Areas of expertise, occupations, work settings; reviewer experience, and allows maximum use of drop-down menus to simplify the data collection process. The Web-based system also permits reviewers to update their information as needed. HRSA maintains a pool of approximately 5,500 individuals that have previously served on HRSA objective review committees.

The estimated annual burden is as follows:

Grant recruitment form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
New reviewer	2,200	1	2,200	45 min.	1,650
Updating reviewer information	250	1	250	20 min.	84
Total	2,450		2,450		1,734

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: January 30, 2008.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E8–2157 Filed 2–5–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby 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 Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical Sciences—member conflict (PA06–510).

Date: February 26, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Martin H. Goldrosen, PhD, Director, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Ste. 106, Bethesda, MD 20892–5475, (301) 451–6331, *goldrosm@mail.nih.gov.*

Dated: January 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–507 Filed 2–5–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, February 20, 2008, 8 a.m. to February 21, 2008, 1 p.m., Courtyard Marriott, 2899 Jefferson Davis Highway, Arlington, VA, 22202 which was published in the **Federal Register** on January 28, 2008, FR08–298.

The meeting dates were changed from February 20–21, 2008 to February 21–22, 2008. The rest of the information remains the same. The meeting is closed to the public.

Dated: January 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–504 Filed 2–5–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Revolutionary Genome Sequencing Technologies.

Date: March 3–4, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel S.F. Airport (The Hilton Family), 835 Airport Boulevard, Burlingame, CA 94010.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Epidemiologic Investigation of Causal Genetic Variants-Coordinating Centers.

Date: March 19, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, Double Tree Name Changed, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–502 Filed 2–5–08: 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Division of Microbiology and Infectious Diseases: Regulatory Affairs Support.

Date: February 28–29, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Rd., NW., Tenleytown Ballroom, Washington, DC 20015.

Contact Person: Roberta Binder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–7966, *rbinder@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

January 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–499 Filed 2–5–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Doppler Ultrasound Probe for Risk Stratification and Treatment of UGI Hemorrhage.

Date: March 3, 2008

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Studies.

Date: March 19, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda, Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: D. G. Patel, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Renal Transport Program Projects.

Date: March 26, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Wellner, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Liver Development Ancillary Studies.

Date: March 27, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Wellner, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetes/Obesity Training Grant Applications.

Date: March 28, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Wellner, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Glomerular Studies Program Projects.

Date: April 2, 2008.

Time: 4 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Wellner, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–500 Filed 2–5–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 following meeting.

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 a 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 Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: March 5–6, 2008,

Open: March 5, 2008, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policy.

Place: Legacy Hotel & Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Closed: March 5, 2008, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel & Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Closed: March 6, 2008, 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel & Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: John F. Connaughton, PhD, Chef, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research, 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–501 Filed 2–5–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: February 28–29, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, PHD, MD, Chief, Office of Review, National Institute of Nursing Research, National Institutes of Health, 6707 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–3169, *yujing_liu@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–503 Filed 2–5–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: February 28–29, 2008.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Helen Lin, PhD, Scientific Review Administrator, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

Dated: January 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–505 Filed 2–5–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA–E New Investigator R01 SEP.

Date: February 15, 2008.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1432.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA–Conflicts A.

Date: March 4–5, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, Washington, DC 20036.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Health Services Research Members Conflict.

Date: March 4–5, 2008.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, Washington, DC 20036.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA–E Conflicts B.

Date: March 4, 2008.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Jury Washington Hotel, 1500 New Hampshire Ave., Washington, DC 20036.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–506 Filed 2–5–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–0008]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number: 1625–0003

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) requesting a revision of their approval for the following collection of information: 1625–0003, Coast Guard Boating Accident Report Form (CG–3865). Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before March 7, 2008.

ADDRESSES: To prevent duplicate submissions to the docket [USCG–2007–0008] or OIRA, please submit your comments and related material by only one of the following means:

(1) *Electronic submission.* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by e-mail to: *nlesser@omb.eop.gov.*

(2) *Mail or Hand delivery.* (a) To Docket Management Facility (DMF) (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) Fax. (a) To DMF at 202–493–2251 (b) To: OIRA at 202–395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk Officer for the Coast Guard.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will

become part of this docket and will be available for inspection or copying at Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

A copy of the complete ICR is available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street SW., Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary in the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMF or OIRA must contain the OMB Control Number of the ICR addressed. Comments to DMF must contain the docket number, [USCG 2007–0008]. For your comments to OIRA to be considered, it is best if they receive them on or before the March 7, 2008.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2007–0008], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Click on ''Search for Dockets,'' and enter the docket number [USCG–2007–0008] in the Docket ID box, and click enter. You may also visit the DMF in Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in 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 the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (72 FR 59101, October 18, 2007) required by 44 U.S.C. 3506(c)(2). That notice elicited comments from five individuals/organizations.

The Coast Guard issued an OMB Information Collection supporting statement for its Boating Accident Report form (CG–3865) for public comment on October 18, 2007. The proposed information collection activities are based on comments received on the currently approved form and input from state boat accident reporting authorities. To develop this new form, the Coast Guard consulted with a nationally known expert in forms design, who conducted a usability test to detect flaws. The test provided information on respondents' views on the present and recommended forms. The current proposed form is based on the results of the usability test and the comments received from the 60-day notice.

Following the initial 60-day period during which the public was able to comment on the ICR, the Coast Guard received five comments. We reviewed each of these comments with diligence, and made some changes to the form where it was deemed appropriate. A summary of the public comments, our responses to those comments, and the changes that were made to the form are summarized below.

Summary of General Comments From the Public

- Several commenters stated that this form is much longer than some of those from the state.
- Some commenters suggested combining ''Accident Details—Other Key People'' and ''Serious Injuries and Deaths'' sections.
- One commenter noted that the ''For State Agency Use Only'' section would not be used.
- One commenter suggested condensing the two ''Report Submitted'' (on pages one and six) sections into one.
- One commenter suggested there be separate areas that apply first to the accident itself (date, time, location, weather, type/cause of accident), and then areas that apply to the operator, vessel, and people on board.
- A commenter stated that mixing questions, of which some relate to all people on the vessel and some only to a single vessel, is confusing and inconsistent.
- A commenter noted that some of the choices in the ''Contributing Factors'' section need to be better defined to prevent confusion.
- One commenter suggested increasing the data collection fields for the second operator, which would provide additional information.

USCG Response to General Comments

We understand the concerns expressed in these comments, but all of the information is pertinent. The information provided on this form will be used for statistical and analysis purposes. Based on reporting requirements in 33 CFR part 173, the operator of vessel(s) involved in an accident is required to fill out a separate report form. In addition, this proposed form underwent a usability test, and

was consistently preferred to the present one.

Comments on Page One of the New Form

• Several commenters suggested including the operator/owner information found on the last page on the first one as well. *Response:* The first page already has a place for the operator/owner to provide their name and telephone number.

• A commenter proposed breaking out information regarding the number of people on board, towed, and wearing life jackets. *Response:* The form, as proposed, already collects all of this information.

• One commenter recommended increasing the size of the ''Accident Description'' box. *Response:* The instructions for completing this box allow an operator/owner to include additional pages if necessary to provide all necessary information.

• A commenter stated that the ''Report Submitted By'' section should include Boat Operator/Owner, or Accident Investigator, providing the latter a useful form if the former is the only one on board and dies in the accident. *Response:* We considered this. Therefore, the form allows for the selection of operator/owner, or other.

Comments on Page Two of the New Form

• One commenter proposed including engine make, serial number, and total number of engines in the ''Engine'' section. *Response:* We already included these on the form, except for the serial number(s). We do not feel we have the space to include this piece of information and what the benefit would be for capturing it. We also believe that the likelihood of the public providing engine serial numbers is low because this is not common knowledge.

• A commenter suggested that we should collect whether a fire extinguisher was used and what type. *Response:* We added the number and type of fire extinguishers used.

• One commenter stated that ''Size of Vessel'' information is not general knowledge and therefore, it should be deleted. *Response:* This is required under 33 CFR part 173; therefore, we must include it.

Comments on Page Three of the New Form

• A commenter expressed concern regarding the integrity of information regarding alcohol and drug usage as contributing factors. *Response:* We understand this concern. However, it is a requirement that the operator complete the form and this information be furnished.

• Several commenters suggested modifications to the ''Machinery/Equipment Failure'' and ''Contributing Factors'' sections. These included reorganizing the options/instructions regarding the sections. *Response:* We rearranged these sections so they follow one another. However, we did not edit the instructions since they provide adequate information.

• One commenter suggested including Pleasure Boating in the ''Operator/Passenger Activities'' section. *Response:* We believe the other options cover this suggestion.

• A commenter proposed listing Recreational above Commercial in the ''Operator/Passenger Activities'' section. *Response:* We agree and made this change.

• Another commenter suggested that in the ''Boat Operations'' section Cruising, Changing Direction, Changing Speed should be the first choices, and listed in that order. *Response:* We agree and made this change.

• A commenter stated that in the ''Accident Events'' section, there is no option for Person Struck by Own Boat. *Response:* There is an option for Other, where an operator could write in this accident description.

• A commenter suggested deleting the choice ''Drifting'' from the ''Operator/Passenger Activities'' section and consider the choices ''kite boarding, windsurfing, parasailing, and racing.'' *Response:* We appreciate the commenter's input regarding the Operator/Passenger activities. However, not all activities suggested are applicable nationwide, while others are already included in the activity choices. In addition, this section does include an 'Other' box allowing an operator to include these options. Finally, some of these choices are required in 33 CFR part 173.

Comments on Page Four of the New Form

• A commenter suggested that in addition to the ''Accident Details—Injured People Receiving or in Need of Treatment Beyond First Aid'' and ''Accident Details—Deaths/Disappearances,'' add ''people being towed by your boat,'' since this would clearly indicate those not being towed. *Response:* We agree and added the suggested language in the explanatory language relating to both of these sections.

• Several commenters proposed including more than one space for additional parties in the ''Injured Persons'' and the ''Person Who Died/Disappeared'' section. *Response:* The instructions for both the ''Injured Persons'' and the ''Person Who Died/Disappeared'' sections allow for inclusion of additional pages.

• One commenter expressed concern with allowing laypersons to determine cause of injuries as required in ''Injury Details'' and ''Nature of Primary Injury.'' *Response:* We understand the concern with laypersons making this determination, but, it is a requirement that the operator complete the form.

Comments on Page Five of the New Form

• One commenter suggested placing the ''Accident Details—Other Key People'' section prior to collection of data on the operator, owner, and injured parties makes the form confusing. *Response:* We do not agree with this suggestion and will leave all of the boat operator/owner information together.

• In the ''Operator Safety Measures'' section, a commenter proposed adding a ''Not Equipped'' option under ''An engine cut-off switch (Lanyard) if equipped.'' *Response:* Since there is currently no requirement for a boat to be equipped with an engine cut-off switch, we do not believe it is necessary to collect this information.

• A commenter expressed concern that the ''Operator Instruction'' section is confusing, expressing particular concern with the internet field.

• *Response:* The internet field is necessary, as there are many boating safety courses available online.

• A commenter suggested including ''Safety Lanyard'' or ''Wireless Emergency Shutoff Device'' to account for wireless instruments now being used for engine shutoff. *Response:* We agree and clarified the language in this section.

Comments on Page Six of the New Form

• One commenter suggested that the signature of ''Person Submitting this Report'' should be more obvious. *Response:* We believe having a signature block as the last item is consistent with many other forms that require a signature. We added more emphasis to the signature block section to draw attention to it.

• Several commenters proposed that the ''Boat Operator'' information be collected on page one and that the ''Boat Owner'' information be collected on both page one/six. *Response:* The first page of the form already collects the boat operator or owners' name and contact phone number.

Information Collection Request

Title: Coast Guard Boating Accident Report Form (CG–3865).

OMB Control Number: 1625–0003.

Type of Request: Revision of a currently approved collection.

Affected Public: Operators of vessels/subject equipment involved in occurrences where—

- A person dies or is injured and requires medical treatment beyond first aid;
- Damage is incurred to either the vessel or other property damages of $2,000 or more; or
- A person disappears from the vessel under circumstances indicating death or injury. *See* §§ 173.57 and 173.59.

Form: CG–3865.

Abstract: Section 6102(a) of 46 U.S.C. requires a uniform marine casualty system with regulations prescribing casualties to be reported, and the manner thereof. The statute requires a State to compile and submit to the Secretary (delegated to the Coast Guard) reports, information, and statistics on casualties reported. Implementing regulations are contained in 33 CFR part 173—Vessel Numbering and Casualty and Accident Reporting; subpart C—Casualty and Accident Reporting, and 33 CFR part 174—State Numbering and Casualty Reporting Systems; subpart C—Casualty Reporting System Requirements; and subpart D—State reports.

States are required to forward copies of the reports or electronically transmit accident data to the Coast Guard within 30 days of receipt as prescribed in 33 CFR 174.121. The accident report data and statistical information obtained from submissions by the State authorities are used by the Coast Guard in the compilation of national recreational boating accident statistics.

Burden Estimate: The estimated burden remains 2,500 hours a year.

Dated: January 30, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–2166 Filed 2–5–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5100–FA–15]

Announcement of Funding Awards for Fiscal Year 2007 for the Housing Choice Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of Fiscal Year 2007 awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2007 to housing agencies (HAs) under the Section 8 housing choice voucher program. The purpose of this notice is to publish the names, addresses, and the amount of the awards to HAs for non-competitive funding awards for housing conversion actions, public housing relocations and replacements, moderate rehabilitation replacements, and HOPE VI voucher awards.

FOR FURTHER INFORMATION CONTACT: David A. Vargas, Director, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410–5000, telephone (202) 708–2815. Hearing- or speech-impaired individuals may call HUD's TTY number at (800) 927–7589. (Only the ''800'' telephone number is toll-free.)

SUPPLEMENTARY INFORMATION: The regulations governing the housing choice voucher program are published at 24 CFR 982. The regulations for allocating housing assistance budget authority under Section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, Subpart D.

The purpose of this rental assistance program is to assist eligible families to pay their rent for decent, safe, and sanitary housing. The FY 2007 awardees announced in this notice were provided Section 8 funds on an as-needed, non-competitive basis, i.e., not consistent with the provisions of a Notice of Funding Availability (NOFAs). Tenant protection voucher awards made to PHAs for program actions that displace families living in public housing were made on a first-come, first-served basis in accordance with the non-competitive awards preference categories announced in PIH Notice 2007–10 Voucher Funding in Connection with the Demolition or Disposition of Occupied Public Housing Units. Announcements of awards provided under the NOFA process for mainstream housing and designated housing programs will be published in a separate **Federal Register** notice.

Awards published under this notice were provided (1) to assist families living in HUD-owned properties that are being sold; (2) to assist families affected by the expiration or termination of their project-based Section 8 and moderate rehabilitation contracts; (3) to assist families in properties where the owner has prepaid the HUD mortgage; (4) to provide relocation housing assistance in connection with the demolition of public housing; (5) to provide replacement housing assistance for single room occupancy (SRO) units that fail housing quality standards (HQS); and (6) to assist families in public housing developments that are scheduled for demolition in connection with a HUD-approved HOPE VI Revitalization or Demolition Grant. Administrative fees were added to each assignment for the administration of housing choice vouchers awarded under this notice. In addition, special housing fees were included for applicable Housing tenant protection awards.

A total of $149,146,013 in budget authority for 25,292 housing choice vouchers was awarded to recipients under all of the above-mentioned categories. Of the total amount awarded, $3,112,902 is provided from the HOPE VI account.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: January 29, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Office of Public and Indian Housing.

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2007

Housing agency	Address	Units	Award
Public Housing Tenant Protection Moderate Rehabilitation Replacements:			
HSG AUTH OF BESSEMER	P.O. BOX 1390, BESSEMER, AL 35021	121	567,608

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2007—Continued

Housing agency	Address	Units	Award
HSG AUTH OF NORTHPORT	P.O. DRAWER 349, NORTHPORT, AL 35476	26	99,913
COUNTY OF LOS ANGELES HSG AUTH	2 CORAL CIRCLE, MONTEREY PARK	31	281,366
COUNTY OF RIVERSIDE HSG AUTH	5555 ARLINGTON AVE, RIVERSIDE, CA 92504.	23	139,579
CITY OF OXNARD HSG AUTH	435 SO D ST, OXNARD, CA 93030	8	36,127
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA 92113	100	703,250
ALAMEDA COUNTY HSG AUTH	22941 ATHERTON ST, HAYWARD, CA 94541	1	12,935
BRIDGEPORT HSG AUTH	150 HIGHLAND AVE, BRIDGEPORT, CT 06604.	13	111,982
WATERBURY HSG AUTH	2 LAKEWOOD RD, WATERBURY, CT 06704	11	27,288
ENFIELD HSG AUTH	17 ENFIELD TERRACE, ENFIELD TOWN, CT 06082.	1	5,834
CITY OF HARTFORD	550 MAIN ST, HARTFORD, CT 06103	13	41,883
CONN DEPT OF SOCIAL SERVICES	25 SIGOURNEY ST, 9TH FL, HARTFORD, CT 06105.	12	68,309
HSG AUTH OF JACKSONVILLE	1300 BRD ST, JACKSONVILLE, FL 32202	84	331,014
MIAMI DADE HSG AUTH	1401 NW 7TH ST, MIAMI, FL 33125	130	771,151
HA WEST PALM BEACH GEN'L FUND	1715 DIVISION AVE, WEST PALM BEACH, FL 33407.	60	273,133
CITY OF DES MOINES MUN HSG	100 EAST EUCLID, STE 101, DES MOINES, IA 50313.	3	5,261
MADISON HSG AUTH	1609 OLIVE ST, COLLINSVILLE, IL 62234	22	57,921
LOUISVILLE HSG AUTH	420 SOUTH EIGHTH ST, LOUISVILLE, KY 40203.	6	17,191
NEW ORLEANS HSG AUTH	4100 TOURO ST, NEW ORLEANS, LA 70122	45	211,139
COMM DEV PROG COMM OF MA, EOCD	100 CAMBRIDGE ST, BOSTON, MA 02114	57	488,974
HSG AUTH OF BALTIMORE CITY	417 EAST FAYETTE ST, BALTIMORE, MD 21201.	50	30,441
BALTIMORE COUNTY HSG OFFICE	6401 YORK RD, 1ST FL, BALTIMORE, MD 21212.	63	308,400
MARYLAND DEPT OF HSG & COMM	100 COMMUNITY PLACE, CROWNSVILLE, MD 21032.	4	14,144
MAINE STATE HSG AUTH	353 WATER ST, AUGUSTA, ME 04330	19	38,571
ST. FRANCOIS COUNTY PH AGENCY	P.O. BOX N, PARK HILLS, MO 63601	3	11,067
MT DEPARTMENT OF COMMERCE	301 S. PARK, HELENA, MT 59620	9	15,042
RALEIGH HSG AUTH	P.O. BOX 28007, RALEIGH, NC 27611	3	14,106
MINOT HSG AUTH	108 EAST BURDICK EXPWY, MINOT, ND 58701.	14	23,290
NEW JERSEY DEPT OF COMM AFFAIRS	101 SOUTH BROAD ST, TRENTON, NJ 08625.	188	857,938
THE CITY OF NEW YORK, DHPD	100 GOLD ST, RM 501, NEW YORK, NY 10007.	128	868,114
CITY OF BUFFALO	470 FRANKLIN ST, BUFFALO, NY 14202	5	16,213
CINCINNATI METRO HSG AUTH	16 WEST CENTRAL PKWY, CINCINNATI, OH 45210.	4	6,315
MARION COUNTY HSG AUTH	P.O. BOX 14500, SALEM, OR 97309	5	22,869
HSG AUTH OF JACKSON COUNTY	2231 TABLE ROCK RD, MEDFORD, OR 97501.	2	3,666
NORTHWEST OREGON HSG AGENCY	147 SO MAIN AVE, WARRENTON, OR 97146	1	2,693
HSG AUTH OF THE CITY OF	200 ROSS ST, PITTSBURGH, PA 15219	5	22,621
DAUPHIN COUNTY HSG AUTH	501 MOHN ST, STEELTON, PA 17113	5	33,351
PUERTO RICO HSG FIN CORP	CALL BOX 71361–GPO, SAN JUAN, PR 00936.	41	171,296
HSG AUTH OF COLUMBIA	1917 HARDEN ST, COLUMBIA, SC 29204	17	80,538
CITY OF SPARTANBURG HSG AUTH	P.O. BOX 2828, SPARTANBURG, SC 29304	3	11,235
HSG AUTH OF LAKE CITY	P.O. BOX 1017, LAKE CITY, SC 29560	15	63,212
HSG AUTH OR NORTH CHARLESTON	P.O. BOX 70987, NO CHARLESTON, SC 29415.	17	70,977
SC STATE HSG FINANCE & DEV	300–C OUTLET POINTE BLVD, COLUMBIA, SC 29210.	25	110,655
SIOUX FALLS HSG & REDEV'T	630 SO MINNESOTA, SIOUX FALLS, SD 57104.	7	24,016
HSG AUTH OF JOHNSON CITY	P.O. BOX 59, JOHNSON CITY, TN 37605	15	65,457
HSG AUTH OF MORRISTOWN	P.O. BOX 497, MORRISTOWN, TN 37815	5	12,009
HSG DEV AGENCY ELIZABETHTON	910 PINE RIDGE CIRCLE, ELIZABETHTON, TN 37643.	12	13,971
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057.	18	79,085
MISSION HSG AUTH	906 E 8TH ST, MISSION, TX 78572	9	21,568
HSG AUTH OF PARIS	100 GEORGE W. WRIGHT HOMES, PARIS, TX 75461.	96	358,905

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2007—Continued

Housing agency	Address	Units	Award
HSG AUTH OF SALT LAKE CITY	1776 SW TEMPLE, SALT LAKE CITY, UT 84115.	15	54,982
RICHMOND REDEV'T & HSG AUTH	901 CHAMBERLAYNE PKWY, RICHMOND, VA 23220.	35	42,596
ROANOKE REDEV'T & HSG AUTH	2624 SALEM TRNPK, NW, ROANOKE, VA 24017.	5	6,499
CHARLOTTESVILLE REDEV'T & HA	605 EAST MAIN ST, RM A040, CHARLOTTESVILLE, VA 22902.	21	100,413
PETERSBURG REDEV'T & HSG AUTH	128 SOUTH SYCAMORE ST, PETERSBURG, VA 23803.	61	83,631
VIRGINIA HSG DEV'T AUTH	601 SOUTH BELVIDERE ST, RICHMOND, VA 23220.	45	26,731
CHARLESTON HSG AUTH	P.O. BOX 86, CHARLESTON, WV 25321	1	2,691
HSG AUTH OF MINGO COUNTY	P.O. BOX 120, DELBARTON, WV 25670	12	18,761
Total for Moderate Rehabilitation Replacements		1,750	$7,959,927
Public Housing Relocations:			
HSG AUTH OF HUNTSVILLE	P.O. BOX 486, HUNTSVILLE, AL 35804	22	65,468
OAKLAND HSG AUTH	1619 HARRISON ST, OAKLAND, CA 94612	75	282,219
CITY OF FRESNO HSG AUTH	1331 FULTON MALL, FRESNO, CA 93776	198	1,070,673
COUNTY OF MONTEREY HSG AUTH	123 RICO ST, SALINAS, CA 93907	35	222,672
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA 92113	1,354	251,167
HA OF THE CITY & CO OF DENVER	777 GRANT ST, DENVER, CO 80203	122	1,065,520
AURORA HSG AUTH	10745 E KENTUCKY AVE, AURORA, CO 80012.	70	445,320
ADAMS COUNTY HSG AUTH	7190 COLORADO BLVD, 6TH FL, COMMERCE CITY, CO 80022.	15	30,687
BOULDER COUNTY HSG AUTH	2040 14TH ST, BOULDER, CO 80306	56	124,967
JEFFERSON COUNTY HSG AUTH	7490 WEST 45TH AVE, WHEATRIDGE, CO 80033.	65	278,206
ANSONIA HSG AUTH	36 MAIN ST, ANSONIA, CT 06401	28	85,728
HSG AUTH OF TAMPA	1514 UNION ST, TAMPA, FL 33607	380	2,293,863
HSG AUTH OF SARASOTA	1300 BOULEVARD OF THE ARTS, SARASOTA, FL 34236.	43	88,019
HSG AUTH OF BREVARD COUNTY	615 KUREK COURT, MERRITT ISLAND, FL 32954.	70	497,570
HSG AUTH OF PALATKA	P.O. BOX 1277, PALATKA, FL 32078	45	58,189
HSG AUTH COLUMBUS, GA	P.O. BOX 630, COLUMBUS, GA 31902	69	123,313
HSG AUTH OF ATLANTA, GA	230 JOHN WESLEY DOBBS AVE, NE, ATLANTA, GA 30303.	1,182	5,889,071
HSG AUTH OF COLLEGE PARK	2000 W. PRINCETON AVE, COLLEGE PARK, GA 30337.	20	143,665
H/A DEKALB COUNTY	750 COMMERCE DR, STE 201, DECATUR, GA 30030.	238	1,245,543
IDAHO HSG & FINANCE ASSOC	565 W MYRTLE ST, BOISE, ID 83707	0	7,975
MADISON HSG AUTH	1609 OLIVE ST, COLLINSVILLE, IL 62234	34	110,147
ROCKFORD HSG AUTH	223 SO WINNEBAGO ST, ROCKFORD, IL 61102.	77	248,234
HSG AUTH OF JOLIET	6 SO BRDWAY ST, JOLIET, IL 60436	81	173,969
LOUISVILLE HSG AUTH	420 SO EIGHTH ST, LOUISVILLE, KY 40203	65	111,745
BOSTON HSG AUTH	52 CHAUNCY ST, BOSTON, MA 02111	40	664,318
DULUTH HRA	P.O. BOX 16900, DULUTH, MN 55816	0	10,675
NEWARK HSG AUTH	57 SUSSEX AVE, NEWARK, NJ 07103	0	20,701
PATERSON HSG AUTH	60 VAN HOUTEN ST, PATERSON, NJ 07505	323	2,098,523
HEMPSTEAD HSG AUTH	260 CLINTON ST, HEMPSTEAD, NY 11550	81	526,450
DAYTON METRO HA	400 WAYNE AVE, DAYTON, OH 45401	146	608,489
ERIE METRO HSG AUTH	322 WARREN ST, SANDUSKY, OH 44870	21	91,043
HSG AUTH OF JACKSON COUNTY	2231 TABLE ROCK RD, MEDFORD, OR 97501.	22	39,406
HSG AUTH OF WASHINGTON	111 NE LINCOLN ST, STE 200–L, MS63, HILLSBORO, OR 97124.	18	41,349
HSG AUTH OF PITTSBURGH	200 ROSS ST, PITTSBURGH, PA 15219	111	139,825
HSG AUTH OF JACKSON	P.O. BOX 3188, JACKSON, TN 38301	95	134,506
MCALLEN HSG AUTH	2301 JASMINE AVE, MCALLEN, TX 78501	73	160,786
HSG AUTH CITY OF DONNA	P.O. BOX 667, DONNA, TX 78537	20	68,022
HSG AUTH OF SALT LAKE CITY	1776 SW TEMPLE, SALT LAKE CITY, UT 84115.	313	796,563
SEATTLE HSG AUTH	120 SIXTH AVE NO, SEATTLE, WA 98109	18	50,243
KING COUNTY HSG AUTH	600 ANDOVER PARK WEST, SEATTLE, WA 98188.	324	1,151,383
Total for Public Housing Relocations		5,939	$21,516,212

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2007—Continued

Housing agency	Address	Units	Award
Public Housing Relocations Resulting from Disasters:			
NEW ORLEANS HSG AUTH	4100 TOURO ST, NEW ORLEANS, LA 70122	2,987	8,045,723
MISS REGIONAL H/A VIII	P.O. BOX 2347, GULFPORT, MS 39505	733	1,621,986
JACKSON HSG AUTH	2747 LIVINGSTON RD, JACKSON, MS 39283	110	538,155
THE BAY WAVELAND HSG AUTH	P.O. BOX 2219, BAY ST. LOUIS, MS 39521	15	21,878
Total for Public Housing Relocations Resulting from Disasters.		3,845	$10,227,742
Single RM Occupancy (SRO) Replacements:			
IDAHO HSG AND FINANCE ASSOC	565 W MYRTLE ST, BOISE, ID 83707	12	42,149
DULUTH HRA	P.O. BOX 16900, DULUTH, MN 55816	38	94,858
NEWARK HSG AUTH	57 SUSSEX AVE, NEWARK, NJ 07103	21	178,973
Total for Single Room Occupancy (SRO) Replacements.		71	$315,980
Witness Relocation:			
BARNSTABLE HSG AUTH	146 SO ST, HYANNIS, MA 02601	1	9,395
MONTGOMERY CO HSG AUTH	10400 DETRICK AVE, KENSINGTON, MD 20895.	3	42,998
HSG AUTH PRINCE GEORGE'S COUNTY	9400 PEPPERCORN PLACE, STE 200, LARGO, MD 20774.	4	70,912
MUNICIPALITY OF AGUADILLA	P.O. BOX 1008, AGUADILLA, PR 00605	1	6,705
Total for Witness Relocation		9	$130,010
Total for Public Housing Tenant Protection		11,614	$40,149,871
Housing Tenant Protection Preservations/Prepayments:			
MOBILE HSG BOARD	P.O. BOX 1345, MOBILE, AL 36633	64	370,133
DOTHAN HSG AUTH	P.O. BOX 1727, DOTHAN, AL 36302	100	480,652
HSG AUTH OF DECATUR	P.O. BOX 878, DECATUR, AL 35602	80	358,775
BENTON PUBLIC HSG AUTH	1200 WEST PINE ST, BENTON, AR 72015	8	42,394
WATERBURY HSG AUTH	2 LAKEWOOD RD, WATERBURY, CT 06704	34	284,280
CONN DEPT OF SOCIAL SERVICES	25 SIGOURNEY ST, 9TH FL, HARTFORD, CT 06105.	372	3,618,533
D.C. HSG AUTH	1133 NO CAPITOL ST, NE, WASHINGTON, DC 20002.	82	1,039,721
DELAWARE STATE HSG AUTH	18 THE GREEN, DOVER, DE 19901	3	18,231
ST. PETERSBURG H/A	3250 5TH AVE NO, ST. PETERSBURG, FL 33713.	207	1,625,720
HSG AUTH OF TALLAHASSEE	2940 GRADY RD, TALLAHASSEE, FL 32312	41	312,261
HSG AUTH OF MACON	2015 FELTON AVE, MACON, GA 31208	47	275,580
WATERLOO HSG AUTH	620 MULBERRY ST, STE 102, WATERLOO, IA 50703.	16	83,150
IDAHO HSG & FINANCE ASSOC	565 W MYRTLE ST, BOISE, ID 83707	39	203,007
WAUKEGAN HSG AUTH	215 S. MARTIN LUTHER KING, JR. AVE, WAUKEGAN, IL 60085.	125	1,082,695
ST CLAIR COUNTY HSG AUTH	1790 SO 74TH ST, BELLEVILLE, IL 62223	0	15,800
OLATHE HSG AUTH	300 W. CHESTNUT, OLATHE, KS 66061	87	526,063
LOUISVILLE HSG AUTH	420 SO EIGHTH ST, LOUISVILLE, KY 40203	50	353,632
LEXINGTON FAYETTE URBAN CO	300 NEW CIRCLE RD, LEXINGTON, KY 40505.	180	84,745
LEXINGTON-FAYETTE COUNTY HSG	300 NEW CIRCLE RD, LEXINGTON, KY 40505.	0	43,250
KENTUCKY HSG CORP	1231 LOUISVILLE RD, FRANKFORT, KY 40601.	50	228,272
RUSTON (CITY) SEC. 8 HSG. AGENCY	P.O. BOX 2069, RUSTON, LA 71273	57	285,349
SPRINGFIELD HSG AUTH	25 SAAB COURT, SPRINGFIELD, MA 01101	42	303,633
SALEM HSG AUTH	27 CHARTER ST, SALEM, MA 01970	223	2,288,791
COMM DEV PROG COMM OF MA, E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA 02114	79	971,706
HSG AUTH OF BALTIMORE CITY	417 EAST FAYETTE ST, BALTIMORE, MD 21201.	152	1,135,838
HSG AUTH PRINCE GEORGE'S COUNTY	9400 PEPPERCORN PLACE, STE 200, LARGO, MD 20774.	25	309,138
YPSILANTI HSG COMMISSION	601 ARMSTRONG DR, YPSILANTI, MI 48197	19	162,650
LIVONIA HSG COMMISSION	19300 PURLINGBROOK RD, LIVONIA, MI 48152.	46	376,333
FERNDALE HSG COMMISSION	415 WITHINGTON, FERNDALE, MI 48220	56	377,776
DOWAGIAC HSG COMMISSION	100 CHESTNUT ST, DOWAGIAC, MI 49047	13	58,698
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	369	2,292,937
WINONA HRA	1756 KRAEMER DR, STE #100, WINONA, MN 55987.	23	104,249
WORTHINGTON HRA	819 TENTH ST, WORTHINGTON, MN 56187	35	123,180

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2007—Continued

Housing agency	Address	Units	Award
HSG AUTH OF THE CITY OF	502 S 10TH ST, ST JOSEPH, MO 64502	60	246,782
PLEASANTVILLE HSG AUTH	156 NO MAIN ST, PLEASANTVILLE, NJ 08232.	70	627,427
THE MUNICIPAL HSG AUTH	1511 CENTRAL PARK AVE, YONKERS, NY 10710.	178	1,956,603
ALBANY HSG AUTH	200 SO PEARL, ALBANY, NY 12202	289	1,519,828
VILLAGE OF NYACK HSG AUTH	15 HIGHVIEW COURT, NYACK, NY 10960	55	618,517
CITY OF POUGHKEEPSIE	P.O. BOX 300, POUGHKEEPSIE, NY 12602	11	87,557
NEW YORK STATE HSG FIN	25 BEAVER ST, RM 674, NEW YORK, NY 10004.	139	882,702
NEW YORK STATE HSG FIN	25 BEAVER ST, RM 732, NEW YORK, NY 10004.	1,665	18,519,054
AKRON METRO HSG AUTH	100 W. CEDAR ST, AKRON, OH 44307	143	938,235
ERIE METRO HSG AUTH	322 WARREN ST, SANDUSKY, OH 44870	19	103,669
PORTAGE METRO HSG AUTH	2832 STATE ROUTE 59, RAVENNA, OH 44266.	18	121,086
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126.	267	1,522,628
WOONSOCKET HSG AUTH	679 SOCIAL ST, WOONSOCKET, RI 02895	17	135,294
RHODE ISLAND HSG MORT FIN CORP	44 WASHINGTON ST, PROVIDENCE, RI 02903.	95	763,899
TENNESSEE HSG DEV AGENCY	404 J. ROBERTSON PKWY, STE 1114, NASHVILLE, TN 37243.	52	300,061
SAN ANTONIO HSG AUTH	818 S. FLORES ST, SAN ANTONIO, TX 78295.	5	34,844
CORPUS CHRISTI HSG AUTH	3701 AYERS ST, CORPUS CHRISTI, TX 78415.	74	528,659
TARRANT COUNTY HSG ASSISTANCE	2100 CIRCLE DR, STE 200, FORT WORTH, TX 76119.	63	466,283
VIRGINIA HSG DEV'T AUTH	601 SO BELVIDERE ST, RICHMOND, VA 23220.	79	578,922
SEATTLE HSG AUTH	120 SIXTH AVE NO, SEATTLE, WA 98109	15	170,475
HSG AUTH OF CITY OF TACOMA	902 SO "L" ST, STE 2C, TACOMA, WA 98405.	19	145,490
KELSO HSG AUTH	1415 S 10TH, KELSO, WA 98626	0	300
WAUSAU CDA	550 EAST THOMAS ST, WAUSAU, WI 54403	40	136,510
Total for Preservations/Prepayments		6,097	$50,241,997
Property Disposition Relocations:			
ELLIS COUNTY HSG AUTH	P.O. BOX 1016, HAYS, KS 67601	16	54,077
KENTUCKY HSG CORPORATION	1231 LOUISVILLE RD, FRANKFORT, KY 40601.	19	86,301
HSG AUTH OF SYRACUSE	516 BURT ST, SYRACUSE, NY 13202	232	1,403,823
TULSA HSG AUTH	P.O. BOX 6369, TULSA, OK 74148	55	344,425
PHILADELPHIA HSG AUTH	12 SO 23RD ST, PHILADELPHIA, PA 19103	110	1,003,195
Total for Property Disposition Relocations		432	$2,891,821
Rent Supplements:			
CITY OF DES MOINES MUN HSG	100 EAST EUCLID, STE 101, DES MOINES, IA 50313.	3	16,612
NORTH IOWA REGIONAL HSG AUTH	202 1ST ST SE, STE 203, MASON CITY, IA 50401.	2	7,023
HSG AUTH OF BILLINGS	2415 1ST AVE NO, BILLINGS, MT 59101	6	33,755
MT DEPARTMENT OF COMMERCE	301 S. PARK, HELENA, MT 59620	1	4,774
LINN-BENTON HSG AUTH	1250 SE QUEEN AVE, ALBANY, OR 97322	8	48,860
BROOKINGS HSG & REDEV'T	1310 MAIN AVE. SO, BROOKINGS, SD 57006.	30	158,684
Total for Rent Supplements		50	$269,708
Terminations and Optouts:			
AK HSG FINANCE CORP	P.O. BOX 101020, ANCHORAGE, AK 99510	54	405,443
CITY OF PHOENIX	251 W. WASHINGTON ST, PHOENIX, AZ	68	537,627
COUNTY OF LOS ANGELES HSG AUTH	2 CORAL CIRCLE, MONTEREY PARK, CA	166	1,801,040
OAKLAND HSG AUTH	1619 HARRISON ST, OAKLAND, CA 94612	100	1,461,116
CITY OF FRESNO HSG AUTH	1331 FULTON MALL, FRESNO, CA 93776	195	1,229,271
HSG AUTH COUNTY OF KERN	601 24TH ST, BAKERSFIELD, CA 93301	93	492,609
COUNTY OF RIVERSIDE HSG AUTH	5555 ARLINGTON AVE, RIVERSIDE, CA 92504.	125	1,030,210
YOLO COUNTY HSG AUTH	P.O. BOX 1867, WOODLAND, CA 95776	21	139,194
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA 92113	137	1,503,140
CITY OF HAWTHORNE HSG AUTH	4455 W 126TH ST, HAWTHORNE, CA 90250	27	250,379

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2007—Continued

Housing agency	Address	Units	Award
EAST HARTFORD HSG AUTH	546 BURNSIDE AVE, EAST HARTFORD, CT 06108.	119	1,002,780
D.C. HSG AUTH	1133 NO CAPITOL ST, NE, WASHINGTON, DC 20002.	318	4,035,607
NEW CASTLE COUNTY HSG AUTH	87 READ'S WAY, NEW CASTLE, DE 19720	99	958,273
HSG AUTH OF DAYTONA BEACH	211 N. RIDGEWOOD AVE, STE 200, DAYTONA BEACH, FL 32114.	10	66,098
HA WEST PALM BEACH GEN FUND	1715 DIVISION AVE, WEST PALM BEACH, FL 33407.	84	744,002
CITY OF LAKELAND HSG AUTH	430 S. HARTSELL AVE, LAKELAND, FL 33815.	42	224,636
HIALEAH HSG AUTH	75 EAST 6TH ST, HIALEAH, FL 33010	86	738,327
HSG AUTH OF TALLAHASSEE	2940 GRADY RD, TALLAHASSEE, FL 32312	26	194,059
HSG AUTH OF SAVANNAH	200 EAST BRD ST, SAVANNAH, GA 31402	28	190,147
HSG AUTH OF ATLANTA, GA	230 JOHN WESLEY DOBBS AVE, NE, ATLANTA, GA 30303.	498	4,922,998
FORT DODGE HSG AGENCY	700 SO 17TH ST, FORT DODGE, IA 50501	10	40,330
UPPER EXPLORERLAND REG'L HA	134 W. GREENE ST, POSTVILLE, IA 52162	16	57,835
SOWESTERN IDAHO COOP	1108 WEST FINCH DR, NAMPA, ID 83651	15	91,589
IDAHO HSG AND FIN ASSOC	565 W MYRTLE ST, BOISE, ID 83707	49	248,984
CHICAGO HSG AUTH	60 EAST VAN BUREN ST, 11TH FL, CHICAGO, IL 60605.	604	6,773,306
HSG AUTH OF COOK COUNTY	310 SO MICHIGAN AVE, 15TH FL, CHICAGO, IL 60604.	29	283,393
INDIANAPOLIS HSG AGENCY	1919 N. MERIDIAN ST, INDIANAPOLIS, IN 46202.	87	579,667
INDIANA HSG & COMMUNITY	30 SO. MERIDIAN ST, STE 1000, INDIANAPOLIS, IN 46204.	96	529,789
ECKAN	P.O. BOX 100, OTTAWA, KS 66067	0	1,400
COVINGTON HSG AUTH	638 MADISON AVE, COVINGTON, KY 41011	35	209,958
JEFFERSON PARISH HSG AUTH	1718 BETTY ST, MARRERO, LA 70072	99	638,388
CHELSEA HSG AUTH	54 LOCKE ST, CHELSEA, MA 02150	6	73,619
FRAMINGHAM HSG AUTH	1 JOHN J. BRADY DR, FRAMINGHAM, MA 01702.	5	62,562
SOMERVILLE HSG AUTH	30 MEMORIAL RD, SOMERVILLE, MA 02145	4	61,665
WICOMICO COUNTY HSG AUTH	911 BOOTH ST, SALISBURY, MD 21801	10	62,154
HSG AUTH PRINCE GEORGE'S COUNTY	9400 PEPPERCORN PLACE, STE 200, LARGO, MD 20774.	183	2,248,154
HOWARD COUNTY HSG COMMISSION	6751 COLUMBIA GATEWAY DR, 3RD FL, COLUMBIA, MD 21046.	27	278,715
PORT HURON HSG COMMISSION	905 SEVENTH ST, PORT HURON, MI 48060	32	205,416
VIRGINIA HRA	P.O. BOX 1146, VIRGINIA, MN 55792	16	64,090
ST. LOUIS HSG AUTH	4100 LINDELL BLVD, ST. LOUIS, MO 63108	86	605,696
ST. LOUIS COUNTY HSG AUTH	8865 NATURAL BRIDGE, ST. LOUIS, MO 63121.	51	342,608
ST. CLAIR COUNTY HSG AUTH	P.O. BOX 125, APPLETON CITY, MO 64724	25	131,339
HSG AUTH OF WINSTON-SALEM	500 WEST FOURTH, STE 300, WINSTON-SALEM, NC 27101.	50	333,218
MORTON COUNTY HSG AUTH	1500 3RD AVE NW, MANDAN, ND 58554	10	38,979
COOPERSTOWN HSG AND	P.O. BOX 208, COOPERSTOWN, ND 58425	7	22,041
OMAHA HSG AUTH	540 SO 27TH ST, OMAHA, NE 68105	51	356,144
SAN JUAN COUNTY HSG AUTH	7450 E. MAIN ST, STE C, FARMINGTON, NM 87402.	14	61,402
CITY OF LAS VEGAS HSG AUTH	420 N. 10TH ST, LAS VEGAS, NV 89125	100	938,452
COUNTY OF CLARK HSG AUTH	5390 EAST FLAMINGO RD, LAS VEGAS, NV 89122.	246	2,069,970
NEW YORK CITY HSG AUTH	90 CHURCH ST, 9TH FL, NEW YORK, NY 10007.	31	300,615
ALBANY HSG AUTH	200 SOUTH PEARL, ALBANY, NY 12202	75	421,998
HSG AUTH OF MECHANICVILLE	HARRIS AVE, MECHANICVILLE, NY 12118	21	121,584
NEW YORK STATE HSG FIN	25 BEAVER ST, RM 732, NEW YORK, NY 10004.	75	865,365
CUYAHOGA METRO HSG AUTH	1441 WEST 25TH ST, CLEVELAND, OH 44113.	110	791,428
CINCINNATI METRO HSG AUTH	16 WEST CENTRAL PKWY, CINCINNATI, OH 45210.	13	86,841
AKRON METRO HSG AUTH	100 W CEDAR ST, AKRON, OH 44307	9	59,006
TULSA HSG AUTH	P.O. BOX 6369, TULSA, OK 74148	230	1,460,574
MUSKOGEE HSG AUTH	220 N 40TH, MUSKOGEE, OK 74401	32	138,850
HSG AUTH OF JACKSON COUNTY	2231 TABLE ROCK RD, MEDFORD, OR 97501.	60	353,843
JOSEPHINE HSG COMMUNITY	P.O. BOX 1630, GRANTS PASS, OR 97528	10	48,563

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2007—Continued

Housing agency	Address	Units	Award
CENTRAL OREGON REGIONAL HSG	405 SW 6TH ST, REDMOND, OR 97756	13	81,880
HSG AUTH OF CITY OF PITTSBURGH	200 ROSS ST, PITTSBURGH, PA 15219	20	127,609
PHILADELPHIA HSG AUTH	12 SO 23RD ST, PHILADELPHIA, PA 19103	59	538,424
MUNICIPALITY OF YAUCO	P.O. BOX 6270, SAN JUAN, PR 00698	70	353,318
PUERTO RICO DEPT OF HSG	P.O. BOX 21365, SAN JUAN, PR 00928	284	1,800,843
CITY OF SPARTANBURG H/A	P.O. BOX 2828, SPARTANBURG, SC 29304	24	145,006
HA OF SOUTH CAROLINA REG NO 3	P.O. BOX 1326, BARNWELL, SC 29812	42	239,040
KNOXVILLE COMM DEVEL CORP	P.O. BOX 3550, KNOXVILLE, TN 37927	81	435,676
METRO DEVELOPMNT & HSG	701 SO SIXTH ST, NASHVILLE, TN 37202	61	373,471
SAN ANTONIO HSG AUTH	818 S. FLORES ST, SAN ANTONIO, TX 78295.	82	541,935
HSG AUTH OF DALLAS	3939 N. HAMPTON RD, DALLAS, TX 75212	86	831,592
MERCEDES HSG AUTH	1098 W. EXPRESSWAY 83, MERCEDES, TX 78570.	48	253,893
TEXAS CITY HSG AUTH	817 SECOND AVE NO, TEXAS CITY, TX 77590.	53	400,022
HSG AUTH OF ODESSA	124 E. SECOND ST, ODESSA, TX 79761	19	118,895
MARSHALL HSG AUTH	1401 POPLAR ST, MARSHALL, TX 75670	49	270,440
DALLAS COUNTY HSG ASSISTANCE	2377 N. STEMMONS FRWY, STE 200–LB 16, DALLAS, TX 75207.	10	76,061
NEWPORT NEWS REDEV'T & HA	P.O. BOX 797, NEWPORT NEWS, VA 23607	41	288,094
HOPEWELL REDEV'T & HSG AUTH	350 E. POYTHRESS ST, HOPEWELL, VA 23860.	98	581,387
VIRGINIA HSG DEV'T & HSG AUTH	601 SOUTH BELVIDERE ST, RICHMOND, VA 23220.	15	109,922
ST ALBANS HSG AUTH	65 MAIN ST, BURLINGTON, VT 05401	10	67,927
KELSO HSG AUTH	1415 S 10TH, KELSO, WA 98626	25	126,592
HA OF THE CITY OF MILWAUKEE	809 NORTH BRDWAY, MILWAUKEE, WI 53201.	6	36,560
DODGEVILLE HSG AUTH	100 E. FOUNTAIN ST, DODGEVILLE, WI 53533.	14	64,636
KENOSHA HSG AUTH	625 52ND ST, KENOSHA, WI 53140	4	25,664
Total for Terminations and Optouts		6,139	$51,875,373
Total for Housing Tenant Protection		12,718	$105,278,899
HOPE VI Vouchers:			
HSG AUTH OF ATLANTA, GA	230 JOHN WESLEY DOBBS AVE, NE, ATLANTA, GA 30303.	528	2,582,158
HSG AUTH OF PORTLAND	135 SW ASH ST, PORTLAND, OR 97204	13	29,984
EASTON HSG AUTH	157 SO FOURTH ST, EASTON, PA 18044	165	393,929
CITY OF SPARTANBURG HSG AUTH	P.O. BOX 2828, SPARTANBURG, SC 29304	114	336,759
KINGSPORT HSG AUTH	P.O. BOX 44, KINGSPORT, TN 37662	87	271,528
HSG AUTH OF BEAUMONT	4925 CONCORD RD, BEAUMONT, TX 77708	53	102,885
Total for Hope VI		960	$3,717,243
Grand Total		25,292	$149,146,013

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Protection Act; Stock Assessment Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft revised marine mammal stock assessment reports for three stocks of northern sea otters in Alaska; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), the Fish and Wildlife Service (Service) has developed draft revised marine mammal stock assessment reports for the three stocks of northern sea otters (Enhydra lutris kenyoni) in Alaska, which are available for public review and comment.

DATES: Comments must be received by May 6, 2008.

ADDRESSES: Copies of the draft revised stock assessment reports for northern sea otters in Alaska are available from the Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503 (800) 362–5148.

If you wish to submit comments on the draft revised stock assessment reports for northern sea otters in Alaska, you may do so by either of the following methods:

1. You may submit written comments to the Manager, U.S. Fish and Wildlife Service, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

2. You may hand-deliver written comments to our Marine Mammals Management Office at the above address during normal business hours from 8 a.m. to 4:30 p.m. Monday through Friday, or you may fax your comments to 907/786–3816.

SUPPLEMENTARY INFORMATION: One of the goals of the MMPA is to ensure that stocks of marine mammals occurring in waters under the jurisdiction of the United States do not experience a level of human-caused mortality and serious injury that is likely to cause the stock to be reduced below its optimum sustainable population level (OSP). OSP is defined as ''* * * the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.''

To help accomplish the goal of maintaining marine mammal stocks at their OSPs, section 117 of the MMPA (16 U.S.C. 1361–1407) requires the Service and the National Marine Fisheries Service (NMFS) to prepare stock assessment reports for each marine mammal stock that occurs in waters under the jurisdiction of the United States. These stock assessments are to be based on the best scientific information available and are, therefore, prepared in consultation with established regional scientific review groups. Each stock assessment must include: (1) A description of the stock and its geographic range; (2) minimum population estimate, maximum net productivity rate, and current population trend; (3) estimate of human-caused mortality and serious injury; (4) commercial fishery interactions; (5) status of the stock; and (6) potential biological removal level (PBR). The PBR is defined 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 OSP.'' The PBR is the product of the minimum population estimate of the stock (N_{min}), one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0, which is intended to compensate for uncertainty and unknown estimation errors.

Section 117 of the MMPA also requires the Service and the NMFS to review and revise the stock assessment reports: (a) At least annually for stocks that are specified as strategic stocks; (b) at least annually for stocks for which significant new information is available; and (c) at least once every 3 years for all other stocks.

A strategic stock is defined in the MMPA as a marine mammal stock: (A) For which the level of direct human-caused mortality exceeds the potential biological removal level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), within the foreseeable future; or (C) which is listed as a threatened or endangered species under the Endangered Species Act, or is designated as depleted under the MMPA.

A summary of the draft revised stock assessment reports is presented in Table 1. The table lists the stock=s N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and the status. After consideration of any public comments received, the Service will revise the stock assessments, as appropriate. We will publish a notice of availability and summary of the final stock assessments, including responses to the comments received.

In accordance with the MMPA, a list of the sources of information or public reports upon which the assessment is based is included in this notice.

TABLE 1.—SUMMARY OF DRAFT REVISED STOCK ASSESSMENT REPORTS FOR THREE U.S. NORTHERN SEA OTTER STOCKS.

Stock	Nmin	Rmax	Fr	PBR	Serious injury	Annual 5-year estimated human-caused mortality		Stock status
						Fishery/ Other	Subsistence	
Northern sea otters (Southeast AK)	9,136	0.20	1.0	914	0	0	322	Non-strategic
Northern sea otters (Southcentral AK).	12,774	0.20	1.0	1,277	0	0	346	Non-strategic
Northern sea otters (southwest AK)	38,703	0.20	0.25	968	0	0.2	91	Strategic

List of References

Agler, B.A., S.J. Kendall, P.E. Seiser, and J.R. Lindell. 1995. Estimates of marine bird and sea otter abundance in southeast Alaska during summer 1994. Migratory Bird Management, U.S. Fish and Wildlife Service, Anchorage, Alaska. 90pp.

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Dated: January 29, 2008.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. 08–498 Filed 2–5–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Privacy Act of 1974; as Amended; Creation of a New System of Records

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed addition of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new system of records, INTERIOR, BLM–40, to be maintained by the Bureau of Land Management (BLM).

The Department of the Interior is establishing a new system of records to manage the consolidated database of qualifications of Federal, State, local, contractor, volunteer, and special group wildland firefighters. This system will provide a single consolidated database for access to determine if personnel are qualified for specific positions on incident response teams. The typical incident for which the information would be used is on wildland fire support. However, other types of incidents do occur in which qualified personnel are needed and requested by other Federal Agencies, such as the Federal Emergency Management Agency, and by states for emergency situations such as hurricanes, floods, and human-caused disasters.

The creation and the maintenance of this system are authorized in accordance with provisions of 43 U.S.C. 1811e, 42 U.S.C. 1856a, 15 U.S.C. 2201, 5 U.S.C. 4118, 5 U.S.C. 3101, 16 U.S.C. 551C, 43 U.S.C. 1457, EO 10561, 620 DM 1.

EFFECTIVE DATES: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30 day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10 day period (for a total of

40 days) in which to make these comments. Any persons interested in commenting on this proposed system of records may do so by submitting comments in writing to Laura Bell, BLM Privacy Act Administrator, 1849 C Street, NW., 725 LS, Washington, DC 20240, or e-mail: *lfbell@blm.gov*. Comments received within 40 days of the publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received that would require a contrary determination. The Department will publish a revised notice if changes are made upon review of comments received.

FOR FURTHER INFORMATION CONTACT: Michael Morgen, Business Steward, Bureau of Land Management, Incident Qualifications and Certification System, 3833 S. Development Avenue, Boise, Idaho 83705–5354.

SUPPLEMENTARY INFORMATION: This system will integrate information from systems currently maintained by agencies involved with incident support and emergency management (Department of Agriculture, Department of the Interior, and state and local agency systems) that maintain qualification data on individuals involved in firefighting. This system will provide a time-efficient method for the participating agencies and offices for determining qualifications and status of personnel to insure that qualified personnel are assigned to incidents in order to protect lives and property. This means that when a resource order is sent out requesting a Division Supervisor, that only persons with current qualifications that have met all of the prerequisite training will be identified and referred to the requesting agency.

Laura F. Bell,

FOIA/PA Program Analyst, Policy and Records Group, Bureau of Land Management.

Interior/BLM–40

SYSTEM NAME:

Incident Qualification and Certification System (IQCS)—Interior, BLM–40.

SYSTEM LOCATION:

(1) The consolidated central database is located at the U.S. Department of Agriculture (USDA) hosting facility, National Information Technology Center, 8930 Ward Parkway, Kansas City, Missouri 64114. Information from this system is accessed by cooperating agencies and field offices through Web secured Web links.

(2) Records from this system (paper and electronic) are managed by the bureau and office sites listed below, located at the National Interagency Fire Center, and involved in the Federal fire program:

(a) Bureau of Indian Affairs, 3833 S. Development Avenue, Boise, Idaho 83705–5354.

(b) U.S. Fish and Wildlife Service, 3833 S. Development Avenue, Boise, Idaho 83705–5354.

(c) Bureau of Land Management, 3833 S. Development Avenue, Boise, Idaho 83705-5354.

(d) National Park Service, 3833 S. Development Avenue, Boise, Idaho 83705–5354.

(e) U.S. Forest Service, 3833 S. Development Avenue, Boise, Idaho 83705–5354.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All federal, state, local, special interest group members, and contractor employees with wild land fire qualifications who voluntarily provide information to qualify for fire assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee; date of birth, Social Security Number, office address and phone number, physical clearance status, pertinent education history, pertinent work or skills experience; listing of special qualifications; licenses and certificates held; and training completed. Firefighters with certain qualifications and past a certain age must have a medical clearance before they can take the fitness test. The IQCS only stores the status of the medical test and whether the firefighter has ''cleared'' or ''not cleared'' the medical test. Training scores may be entered as ''pass'' or ''fail'' or the letter grade for the class—this is an optional field.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4118, 3101; 16 U.S.C. 551C; 43 U.S.C. 1457; EO 10561.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To support management officials for any agency responsible for managing an incident by insuring that only qualified personnel are assigned to wild and prescribed fires, natural disasters, and responses to terrorist acts, in positions that they are qualified to perform, thus reducing the potential for loss of property or life due to having unqualified personnel assigned to incident positions. The participating agencies are the USDA-Forest Service, four DOI bureaus; the Bureau of Land Management, National Park Service, Fish and Wildlife Service and Bureau of Indian Affairs (BIA), and The Nature Conservancy. Some Tribal information is included in accordance with BIA agreements. No states participate in the application.

(2) To support home unit (employing unit) coordinators updating the database with information about training course completion, task book completion, qualifications obtained, and positions that individuals are no longer qualified to perform. Each participating agency or bureau maintains their own portion of the information within IQCS.

The IQCS database contains data elements that require review under the Privacy Act (PA) disclosure requirements at 5 U.S.C. 552a (b) and the Freedom of Information Act (FOIA), 5 U.S.C. 552, before any information will be released. Rules of Behavior documentation is in accordance with BLM policy and is available from the specific project files. Applicable Privacy Act warning statements are placed on all information printouts of data from the system. Since each cooperating agency has access to the records of their personnel contained in the system, any requests for that information is the responsibility of the agency to which the data in question belongs.

DISCLOSURES OUTSIDE THE DEPARTMENT OF THE INTERIOR MAY BE MADE UNDER THE ROUTINE USES LISTED BELOW WITHOUT THE CONSENT OF THE INDIVIDUAL IF THE DISCLOSURE IS COMPATIBLE WITH THE PURPOSES FOR WHICH THE RECORD WAS COLLECTED:

(1)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee:

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or

pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir or such individual if the covered individual is deceased, has made to the office.

(3) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, territorial, local, tribal, or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(4) To an official of another federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(5) To federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant, or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(6) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(7) To state and local governments and tribal organizations to provide information needed in response to court orders and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(8) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(9) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(10) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(11) To the Department of Treasury to recover debts owed to the United States.

(12) To the news media when the disclosure is compatible with the purpose for which the records were compiled.

Disclosure to consumer reporting agencies: Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders, in locked file cabinets until data input is verified. Any paper records that are not input into the system will be maintained in secured files. Electronic records are stored on disk, system hard drive, tape or other appropriate media. Individual data is retained for a minimum of three years in an Active status—during which an individual employee is being deployed in the position(s) for which he or she is qualified. After three years of inactivity (no deployments), the individual's identifying information is moved into an Inactive repository. Upon two additional years of inactivity (for a total of five years), the individual's information is moved into a Data Archive.

RETRIEVABILITY:

Records can be retrieved by the name or a system-generated employee identifier for the individual, and only by the agency responsible for that individual.

SAFEGUARDS:

Access to records is limited to authorized personnel. Paper records are maintained in locked file cabinets. Electronic records are maintained with safeguards meeting minimum security requirements of 43 CFR 2.51. A security plan was developed to prevent unauthorized access to the system and in transmission of the data. A Privacy Impact Assessment was completed and signed in April 2004, and reviewed for validity in October 2005. This Assessment evaluated the privacy risks and ensured appropriate safeguards were in place.

RETENTION AND DISPOSAL:

BLM Manual 1220, Appendix 2, Schedule 1, Item 43, provides the disposition instructions for these records.

SYSTEM MANAGER(S) AND ADDRESSES:

(1) Fire IT Business Systems Unit Leader, National Interagency Fire Center, Bureau of Land Management, U.S. Department of the Interior, 3833 S. Development Avenue, Boise, ID 83705–5354.

(2) Bureau fire or personnel officers:

(a) Director of Fire and Aviation Management, Bureau of Indian Affairs, 3833 S. Development Avenue, Boise, ID 83705–5354.

(b) Personnel Officer, U.S. Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

(c) Director of Fire Management, U.S. Fish and Wildlife Service, 3833 S. Development Avenue, Boise, ID 83705–5354.

(d) Labor Relations Officer, Bureau of Reclamation, P.O. Box 25001, Denver, CO 80225.

(e) Deputy Assistant Director, Fire and Aviation, Bureau of Land Management, 3833 S. Development Avenue, Boise, ID 83705–5354.

(f) Chief, Fire and Aviation Division, National Park Service, 3833 S. Development Avenue, Boise, ID 83705–5354.

(g) Personnel Officer, Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(h) Personnel Officer, Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue, NW., Washington, DC 20245.

(i) Director of Operations, U.S. Forest Service, 3833 S. Development Avenue, Boise, ID 83705–5354.

NOTIFICATION PROCEDURE:

An individual requesting notification of the existence of records on him or her, should address his/her request to the appropriate System Manager above. The request must be in writing, contain the requester's original signature, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her,

should address his/her request to the appropriate System Manager above. The request must be in writing, contain the requester's original signature, and comply with the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her, should address his/her request to the appropriate System Manager above. The request must be in writing, contain the requester's original signature, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information collected and stored in this system is submitted by the individuals to whom the records pertain.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–2136 Filed 2–5–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–08–1310FI; TXNM 106958]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease TXNM 106958

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, the Bureau of Land Management (BLM) received a Petition for Reinstatement of Oil and Gas Lease TXNM 106958 from the lessee, Sun-West Oil and Gas Inc., for lands in Trinity County, Texas. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, at (505) 438–7586.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16 ⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease TXNM 106958, effective the date of termination, September 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 31, 2008.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. E8–2129 Filed 2–5–08; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–08–1310FI; TXNM 106959]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease TXNM 106959

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, the Bureau of Land Management (BLM) received a Petition for Reinstatement of Oil and Gas Lease TXNM 106959 from the lessee, Sun-West Oil and Gas Inc., for lands in Trinity County, Texas. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, at (505) 438–7586.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affect the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease TXNM 106959, effective the date of termination, September 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 31, 2008.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. E8–2130 Filed 2–5–08; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–910–07–7122–PN–C002]

Notice of Proposed Supplementary Rules for Public Land Administered by the Bureau of Land Management (BLM) in Colorado, Relating to Camping and Occupancy of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules for public lands within the State of Colorado.

SUMMARY: The Bureau of Land Management (BLM) is proposing these supplementary rules for public lands within the State of Colorado, relating to camping. These rules extend the time period and distance the camping public must move once the current 14-day stay limit is reached. These supplementary rules are needed to protect natural resources and provide for public health and safety. They are based upon existing regulations that address camping and residency, and update existing supplementary rules specific to camping stay limits. These supplementary rules further promote consistency between the BLM and similar rules of other natural resource agencies, including the U.S. Forest Service.

DATES: You should submit your comments by March 7, 2008.

ADDRESSES: You may submit comments by the following methods:

Mail or hand-delivery: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215. Internet e-mail: *http://www.co_proposed_rule@blm.gov* (Include Attn: Dorothy Bensusan in your subject line).

FOR FURTHER INFORMATION CONTACT: State Staff Ranger Dorothy Bensusan, 303–239–3893 or *dorothy_bensusan@blm.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

You may mail or deliver comments to Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

You may also comment via the Internet to *http://www.co_proposed_rule@blm.gov*. Please also include your name and return address in your Internet message, and include ''attn: Dorothy Bensusan.''

You also may comment via the Internet by accessing the Federal eRulemaking Portal at *http://www.regulations.gov* and following the instructions there.

Written comments on the proposed amended supplementary rules should be specific, confined to issues pertinent to the proposed amendments, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal that the comment addresses. The BLM may not necessarily consider or include in the Administrative Record for the supplementary rules comments that BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at 2850 Youngfield Street, Lakewood, CO 80215, during regular business hours (7:45 a.m. to 3:45 p.m.), Monday through Friday, except Federal holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

II. Discussion

The current camping stay limit was published in 1990, and while it limited occupancy of any location to 14 days, it only required departure for 7, or removal to a new location not less than 3 miles away. As a result, certain users have taken advantage of the existing language and established long term residency under the pretext of camping. Public concern about this unauthorized residential occupancy has necessitated that the BLM develop stronger regulations to address the issue. These uses often interfere with legitimate recreation use of public lands, create sanitation and other potential health concerns, cause damage to the resources by illegal campfire use, vegetation trampling, vehicle use, and trash dumping, and occasionally pose public dangers.

These regulations replace the statewide 14-Day Camping Limit established by the Colorado BLM through **Federal Register** notice issued April 11, 1990 (55 FR 13672). The amended language increases the distance campers must move after reaching the 14-day limit from 3 to 30 miles. These supplementary rules also require that once campers have camped for 14 consecutive days, they must move away from a particular location for at least 30 days before returning, rather than 7 days, as the existing rule provides. Additional language is included to limit the occurrence of unattended campsites which are being established for the purpose of securing campsite locations for later use. These supplementary rules apply to all the public lands within the State of Colorado. In keeping with the BLM's performance goal to reduce threats to public health, safety, and property, these rules are necessary to protect the natural resources, provide for safe public recreation and public health, reduce the potential for damage to the environment, and enhance the safety of public land users.

Individual Field Offices may issue separate regulations relating to camping and occupancy that are more, but not less, restrictive. This notice does not affect more restrictive camping limits that may already be in place for certain areas.

III. Procedural Information

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The supplementary rules will not have an effect of $100 million or more on the economy. They are directed at preventing unlawful personal behavior on public lands, in order to protect public health and safety. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. The supplementary rules merely enable BLM law enforcement personnel to enforce regulations pertaining to unlawful occupancy and health, building, sanitation, and fire codes in a manner consistent with current Colorado state and county laws, where appropriate on public lands.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that the proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). Again, the supplementary rules pertain only to individuals who may wish to occupy public lands for residential purposes or maintain, construct, place, occupy or use any structure in violation of state or county health, building, sanitation or fire codes. In this respect, the regulation of such use is necessary to protect the public lands and facilities and those, including small business concessionaires and outfitters, who use them. The supplementary rules have no

effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These proposed supplementary rules do not impose an unfunded mandate on state, local or tribal governments or the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*)

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules 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. The supplementary rules apply in only one state, Colorado, and do not address jurisdictional issues involving the Colorado State government. Therefore, in accordance with Executive Order 13132, BLM has determined that the supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with E.O. 13175, we have found that these proposed supplementary rules do not include policies that have tribal implications. Since the supplementary rules do not change BLM policy and do not involve Indian reservation lands or resources, we have determined that the government-to-government relationships should remain unaffected. The supplementary rules only prohibit the unauthorized occupancy of public lands and the unauthorized maintaining, construction, placing, occupying, or use of any structure in violation of any state and/or county health, building, sanitation, or fire code on public lands.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, Colorado State Office of the BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules will enable BLM law enforcement personnel to cite persons for unlawful camping, and the use of public land for residential purposes. The BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The BLM invites the public to review these documents and suggests that anyone wishing to submit comments do so in accordance with the Public Comment Procedures section, above.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed supplementary rules do not comprise a significant energy action. The supplementary rules will not have an adverse effect on energy supplies, production, or consumption. They only address unauthorized occupancy and violations of state or county health, building, sanitation or fire codes on public lands, and have no conceivable connection with energy policy.

Author

The principal author of these proposed supplementary rules is State Staff Ranger Dorothy Bensusan, Bureau of Land Management.

For the reasons stated in the Preamble, and under the authority for supplementary rules found under 43 CFR 8365.1–6, 43 CFR 8364.1, 43 U.S.C. 1740, 16 U.S.C. 670h(c)(5) and 43 U.S.C. 315a, the Colorado State Director, Bureau of Land Management, proposes to issue these supplementary rules for public lands managed by the BLM in Colorado, to read as follows:

Supplementary Rules for Colorado

Definitions

Camping: The erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel, for the apparent purpose of overnight occupancy while engaged in recreational activities such as hiking, hunting, fishing, bicycling, sightseeing, off-road vehicle activities, or other generally recognized forms of recreation.

Campground: Any area specifically designated for overnight camping.

Developed Campgrounds: Campgrounds that have been improved specifically for camping purposes and may include designated campsites, delineated spaces, structures or improvements typically provided for camping purposes. These may include but are not limited to picnic tables, grills or fire rings, sanitary facilities, trash receptacles, potable water, controlled access, information kiosks, and user fees may be charged.

Day Use Area: Any areas open for public access only during daylight hours, typically between sunrise and sunset, or where specific hours of operation have been identified. Overnight use in these areas is specifically prohibited.

Designated Recreation Area: An area officially designated by official order or notice, or identified in planning documents for which the BLM has determined the resources require special management and control measures for resource protection.

Occupancy: Full or part-time residence on public lands for non-recreational purposes, such as temporary residence in connection with, or while seeking, employment in the vicinity, or because another permanent residence is not available. It also means activities that involve residence; the construction, presence, or maintenance of temporary or permanent structures

that may be used for such purposes; or the use of a watchman or caretaker for the purpose of monitoring activities. Residence or structures include, but are not limited to, barriers to access, fences, tents, motor homes, trailers, cabins, houses, buildings, and storage of equipment or supplies.

Prohibited Acts

Unless otherwise authorized, the following acts are prohibited on public lands within Colorado:

A. Camping and Occupancy

1. You must not camp longer than 14 consecutive days at any one location on public land.

2. After the 14 days have been reached, you must not return to that location for 30 days, and/or you must move at least 30 air miles away from the previously occupied location.

3. You must not leave any personal property or refuse after vacating the campsite. This includes any property left for the purposes of use by another camper or occupant.

4. You must not leave personal property unattended in a day use area, campground, designated recreation area, or on any other public lands, for more than 24 hours.

5. You must not establish occupancy, take possession of, or otherwise use public lands for residential purposes except as allowed under 43 CFR 3715.2, 3715.2–1, 3715.5, 3715.6, or with prior written authorization from the BLM.

6. You must not block, restrict, place signs, or otherwise interfere with the use of a road, trail, gate or other legal access to and through public lands.

7. You must not camp in any area posted as closed to camping. Closure must be attained through a final land use planning decision, **Federal Register** notification, temporary closure order, or posting or positioning of a hazardous condition notice or barrier.

8. If a camping area charges fees, you must register and pay camping fees within 30 minutes of occupying any campsite.

9. Whenever camping in a developed campground or designated recreation area with established campsites, you must camp in a designated campsite.

B. Other Acts

You must not violate any state or county laws or regulations relating to public health, safety, sanitation, building or fire codes.

Exemptions: Persons who are exempt from these rules include: any Federal, state, or local officer or employee in the scope of their duties; members of any organized rescue or fire-fighting force in performance of an official duty; and any person authorized in writing by the Bureau of Land Management.

Penalties:

a. On public lands in grazing districts (*see* 43 U.S.C. 315a) and on public lands leased for grazing under 43 U.S.C. 315m, any person who violates any of these supplementary rules may be tried before a U.S. Magistrate and fined no more than $500.00. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

b. On public lands subject to the Federal Lands Policy and Management Act of 1976, 43 U.S.C. 1701, *et seq.*, any person who violates any of these supplementary rules may be tried before a U.S. Magistrate and fined no more than $1000 or imprisoned for no more than 12 months, or both. 43 U.S.C. 1733(a); 43 CFR 8360.07. Such violations may also be subject to the enhanced fines provided by 18 U.S.C. 3571.

Jamie E. Connell,

Acting State Director, Colorado.

[FR Doc. E8–2137 Filed 2–5–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–66348; 8–08807: TAS: 14X5232]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes of Public Lands in Clark County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Recreation and Public Purposes (R&PP) Act request for lease and subsequent conveyance of approximately 55 acres of public land in the City of Las Vegas, Clark County, Nevada. The City of Las Vegas proposes to use the land for a public park.

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance of the lands until March 24, 2008.

ADDRESSES: Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130–2301.

FOR FURTHER INFORMATION CONTACT: Kim Liebhauser, (702) 515–5088.

SUPPLEMENTARY INFORMATION: The following described public land in Clark County, Nevada has been examined and found suitable for lease and subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq*). The parcel of land is located between the Interstate 215 Beltway and Centennial Parkway at Grand Canyon Drive, Las Vegas, Nevada, and is legally described as:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
sec. 19, N½SE¼SW¼, E½SW¼SE¼SW¼, SE¼SE¼SW¼, S½SW¼SE¼. The area described contains 55 acres, more or less.

In accordance with the R&PP Act, the City of Las Vegas has filed an application to develop the above described land as a public park with related facilities to meet the park space needs of this rapidly growing area. Related facilities include four soccer fields, three baseball diamonds, a children's play area with shade canopy, picnic shelters, restrooms, concession area, large grass open play area, landscaping, and parking lot. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–66348, which is located in the BLM Las Vegas Field Office at the above address.

Cities are a common applicant under the public purposes provision of the R&PP Act. The City of Las Vegas is a political subdivision of the State of Nevada and is therefore a qualified applicant under the Act. The land is not required for any Federal purpose. The lease/conveyance is consistent with the BLM Las Vegas Resource Management Plan, dated October 5, 1998, and would be in the public interest. The lease/conveyance, when issued, will be subject to the provisions of the R&PP 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.

The lease/conveyance will be subject to:

1. Valid existing rights;

2. A right-of-way for gas pipeline granted to Kern River Transmission Company, its successors and assigns, by right-of-way N–42581, pursuant to the Act of February 25, 1920, 041 Stat. 0437, 30 U.S.C. 185 Sec. 28;

3. A right-of-way for road granted to Clark County, its successors and assigns,

by right-of-way N–54102, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

4. A right-of-way for an underground distribution line granted to Nevada Power Company, its successors or assigns, and those rights granted to Central Telephone Company, its successors or assigns, by right-of-way N–54331, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

5. A right-of-way for an underground distribution line granted to Nevada Power Company, its successors and assigns, by right-of-way N–55341, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

6. A right-of-way for road granted to Clark County, its successors and assigns, by right-of-way N–57092, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

7. A right-of-way for road granted to Clark County, its successors and assigns, by right-of-way N–58559, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

8. A right-of-way for road granted to Clark County, its successors and assigns, by right-of-way N–59744, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

9. A right-of-way for road granted to Clark County, its successors and assigns, by right-of-way N–60079, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

10. A right-of-way for construction staging granted to Las Vegas Valley Water District, its successors and assigns, by right-of-way N–61176–01, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761.

11. A right-of-way for the north segment of the Interstate 215 Beltway granted to Clark County, its successors and assigns, by right-of-way N–61323, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

12. A right-of-way for an underground distribution line granted to Nevada Power Company, its successors and assigns, by right-of-way N–61629, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

13. A right-of-way for an underground distribution line granted to Nevada Power Company, its successors and assigns, by right-of-way N–61910, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

14. A right-of-way for a water pipeline granted to Las Vegas Valley Water District, its successors and assigns, by right-of-way N–62096, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

15. A right-of-way for a water line granted to Las Vegas Valley Water District, its successors and assigns, by right-of-way N–62751, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

16. A right-of-way for an underground distribution line granted to Central Telephone Company, its successors or assigns, by right-of-way N–63045, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

17. A right-of-way for a natural gas line granted to Southwest Gas Corporation, its successors or assigns, by right-of-way N–75767, pursuant to the Act of February 25, 1920, 041 Stat. 0437, 30 U.S.C. 185 Sec. 28;

18. A right-of-way for underground electrical conduit granted to Nevada Power Company, its successors or assigns, by right-of-way N–76736, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761; and

19. A right-of-way for a natural gas line granted to Southwest Gas Corporation, its successors or assigns, by right-of-way N–81742, pursuant to the Act of February 25, 1920, 041 Stat. 0437, 30 U.S.C. 185 Sec. 28.

Upon publication of this notice in the **Federal Register**, the land described above 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 R&PP Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

Interested parties may submit written comments regarding the specific use proposed in the application and plan of development, whether BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use. Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

In the absence of any adverse comments, the decision will become effective April 7, 2008. The lands will not be available for lease/conveyance until after the decision becomes effective.

(Authority: 43 CFR 2741.5)

Dated: January 30, 2008.

Kimber Liebhauser,

Acting Assistant Field Manager, Non-Renewable Resources, Las Vegas, Nevada.

[FR Doc. E8–2132 Filed 2–5–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–410–1430–EU; IDI–35797]

Notice of Realty Action; Proposed Direct Sale of Public Land, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: A parcel of public land totaling 5.07 acres in Shoshone County, Idaho, is being considered for direct sale to Sunshine Precious Metals Inc. under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA), at no less than the appraised fair market value.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by March 24, 2008.

ADDRESSES: Address all comments concerning this Notice to Field Manager, Bureau of Land Management (BLM), Coeur d'Alene Field Office, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Janna Paronto, Realty Specialist, at the above address or phone (208) 769–5037.

SUPPLEMENTARY INFORMATION: The following-described public land in Shoshone County, Idaho, is being considered for sale under the authority of section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750, 43 U.S.C. 1713):

Boise Meridian

T. 48 N., R. 3 E.,
sec. 10, E½SE¼SW¼SW¼;
sec. 15, lot 24.

The area described contains 5.07 acres in Shoshone County.

The 2007 BLM Coeur d'Alene Resource Management Plan identifies this parcel of public land as suitable for

disposal. Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to section 209 of the FLPMA will be analyzed during processing of the proposed sale.

On February 6, 2008, the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously-filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or February 8, 2010, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments

For a period until March 24, 2008, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to Field Manager, BLM Coeur d'Alene Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Comments transmitted via e-mail will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Coeur d'Alene Field Office during regular business hours, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment-including your personal identifying information-may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization.

(Authority: 43 CFR 2711.1–2)

Dated: January 22, 2008.

Eric R. Thomson,

Coeur d'Alene Field Manager.

[FR Doc. 08–485 Filed 2–5–08; 8:45am]

BILLING CODE 4310–GG–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 22, 2007 and published in the **Federal Register** on March 29, 2007, (72 FR 14832), Roche Diagnostics Operation, Inc., Attn: Regulatory Compliance, 9115 Hauge Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Alphamethadol (9605)	I
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II
Ecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import the listed controlled substances for the manufacture of diagnostic 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 952(a) and determined that the registration of Roche Diagnostics Operations, Inc. to import the basic class of 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 Roche Diagnostics Operations, 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. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: January 30, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–2141 Filed 2–5–08; 8:45 am]

BILLING CODE 4410–09–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on February 21–22, 2008.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on February 21–22, 2008, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's

Delegation of Authority dated July 19, 1993.

The agenda for the sessions on February 21, 2008 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9 a.m.–10:30 a.m. Education Programs—Room M–07. Federal/State Partnership—Room 510A. Preservation and Access & Digital Humanities Initiative—Room 415. Public Programs—Room 420. Research Programs—Room 315.

(Closed to the Public)

Discussion of Specific Grant

Applications and Programs Before the Council

10:30 a.m. until Adjourned : Education Programs—Room M–07. Federal/State Partnership—Room 510A. Preservation and Access Digital Humanities Initiative—Room 415. Public Programs—Room 420. Research Programs—Room 315.

The morning session of the meeting on February 22, 2008 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting

B. Reports

1. Introductory Remarks.
2. Staff Report.
3. Congressional Report.
4. Budget Report.
5. Reports on Policy and General Matters.

a. Education Programs.
b. Federal/State Partnership.
c. Preservation and Access.
d. Digital Humanities Initiative.
e. Public Programs.
f. Research Programs.

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Heather C. Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E8–2138 Filed 2–5–08; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Task Force on Sustainable Energy; Roundtable Discussion on Science and Engineering (S&E) Challenges Related to the Development of Sustainable Energy

DATE AND TIME: February 8, 2008; 8 a.m. to 3 p.m.

LOCATION: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. This roundtable discussion will be open to the public.

FOR FURTHER INFORMATION CONTACT: Tami Tamashiro, National Science Board Office, Tel: (703) 292–7853, E-mail: *ttamashi@nsf.gov*. Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for an updated agenda.

Provisional Agenda

8 a.m. Welcoming Remarks
- Dr. Steven C. Beering, Chairman, National Science Board.

8:05 a.m. Overview, Purpose, and Goals of the Roundtable Discussion
- Dr. Dan E. Arvizu and Jon C. Strauss, Co-Chairmen, Task Force on Sustainable Energy.

8:15 a.m. Process and Logistics for Board Roundtable Discussions
- Dr. Craig Robinson, Acting Executive Officer, National Science Board.

8:20 a.m. Introduction of Participants

8:30 a.m. Keynote Address (*followed by Q&A*)
- Congressman Jay Inslee.

9:30 a.m. Presentation: TBD

9:50 a.m. Discussion Session 1: Role of Science and Engineering in the Development of Sustainable Energy

Discussion Co-Moderators: Dr. Arvizu and Dr. Strauss.

Focus Questions

(1) How can science and engineering advancements help address some of the key uncertainties in the development of sustainable energy, as well as, bring new technologies to the market?

(2) How must transformation take place in science and engineering throughout our education, research, and corporate infrastructure?

(3) Where are the next big breakthroughs likely to occur in sustainable energy?

11 a.m. Break

11:15 a.m. Presentation: Dr. Robert Corell

11:35 a.m. Lunch and Discussion Session 2: Role of NSF in a Nationally Coordinated S&E Research and Education Initiative

Discussion Co-Moderators: Dr. Arvizu and Dr. Strauss.

Focus Question

(1) How can NSF best support establishing and sustaining a nationally coordinated S&E research and education initiative on sustainable energy?

12:45 p.m. Break

1 p.m. Presentation: TBD

1:25 p.m. Discussion Session 3: Recommendations for a Nationally Coordinated S&E Research and Education Initiative on Sustainable Energy

Discussion Co-Moderators: Dr. Arvizu and Dr. Strauss.

Focus Questions

(1) How do we as a nation build the capability, the policy, and the regulatory environment to effect change in the energy sector sufficiently and rapidly?

(2) What specific actions are needed to establish and sustain a nationally coordinated S&E research and education initiative on sustainable energy?

(3) What is the potential role of the U.S. Government, private industry, and NGOs in addressing the science and engineering (S&E) challenges related to the development of sustainable energy described in the task force charge?

2:45 p.m. Summary and Next Steps for the Task Force
- Dr. Arvizu and Dr. Strauss.

Note: This roundtable discussion will not involve National Science Board deliberations and is not subject to 5 U.S.C. 552b.

Russell Moy,

Attorney-Advisor.

[FR Doc. E8–2106 Filed 2–5–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Independent External Review Panel To Identify Vulnerabilities in the U.S. Nuclear Regulatory Commission's Materials Licensing Program: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: NRC will convene a meeting of the Independent External Review Panel To Identify Vulnerabilities in the U.S. Nuclear Regulatory Commission's (NRC) Materials Licensing Program on February 19 through 21, 2008. A copy of the agenda for the meeting can be obtained by e-mailing Mr. Aaron T.

McCraw at the contact information below.

Purpose: To initiate the Panel's discussions and deliberations in developing their final report and to allow members of the public an opportunity to provide comments to the Panel on its draft report. The Panel's draft report will be publicly available no later than Monday, February 11, 2008, and will be located in the NRC's Agencywide Document Access and Management System (ADAMS) using Accession Number ML080230554.

Date and Time for Closed Sessions: There will be no closed sessions during this meeting.

Date and Time for Open Session: February 19, 2008, from 2 p.m. to 4:30 p.m; February 20, 2008, from 9 a.m. to 4:30 p.m.; and February 21, 2008, from 9 a.m. to 12 p.m.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, 11545 Rockville Pike, Rockville, Maryland 20852. Specific room locations will be indicated on the agenda.

Public Participation: Any member of the public who wishes to participate in the meeting should contact Mr. McCraw using the information below.

FOR FURTHER INFORMATION CONTACT: Aaron T. McCraw, e-mail: *atm@nrc.gov,* telephone: (301) 415–1277.

Conduct of the Meeting

Mr. Thomas E. Hill will chair the meeting. Mr. Hill will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Mr. McCraw at the contact information listed above. All submittals must be received by February 15, 2008, and must pertain to the topics on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland 20852–2738, telephone (800) 397–4209, on or about June 1, 2008.

4. Persons who require special services, such as those for the hearing impaired, should notify Mr. McCraw of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations,* Part 7.

Dated: January 31, 2008.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E8–2144 Filed 2–5–08; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Notice of New Systems of Records

SUMMARY: The Presidio Trust is providing notice of seven systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The publication of these systems notices is required under 5 U.S.C. 552a(e)(4).

DATES: This action will be effective without further notice on April 15, 2008, unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052.

FOR FURTHER INFORMATION CONTACT: Steven Carp (415.561.5300), The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052.

SUPPLEMENTARY INFORMATION: As required by Privacy Act of 1974, the Presidio Trust has reviewed all systems of records and identified seven new systems of records.

This notice identifies points of contact for inquiring about the systems, accessing the records, and requesting amendments to the records.

The categories of new systems are: PT–1, Utility Billing Systems; PT–2, Rentals of Special Event Venues; PT–3, Billing and Accounts Receivable; PT–4, Non-Residential Tenant Database; PT–5, Residential Leasing Wait List Files; PT–6, Rejected Residential Leasing Applicant Files; and PT–7, Inactive Residential Leasing Files.

In accordance with 5 U.S.C. 552a(r), a report concerning these record systems has been sent to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

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PT–1 Utility Billing Systems.
PT–2 Rentals of Special Event Venues.
PT–3 Billing and Accounts Receivable.
PT–4 Non-Residential Tenant Database.
PT–5 Residential Leasing Wait List Files.
PT–6 Rejected Residential Leasing Applicant Files.
PT–7 Inactive Residential Leasing Files.

PT–1

SYSTEM NAME:

Utility Billing Systems.

SYSTEM LOCATION:

Presidio Trust Controller's Office, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Presidio Trust residential and non-residential tenants who have contracted for utilities services (electric, gas, water, sewer, refuse and/or telecommunications).

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer files may contain the individual's name, address, phone numbers and billable utility services. Invoice files may contain the individual's name, address and amounts due for services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, Omnibus Parks Public Lands Act of 1996, Public Law 104–333, 110 Stat. 4097.

PURPOSE(S):

To manage the Presidio Trust's Billing/Accounts Receivable system(s) to issue invoices and collect payments. Name and addresses are needed to mail invoices and customer correspondence. Phone numbers are needed for customer service and past due collections.

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), all or a portion of the records or information contained in this system may be disclosed outside the Presidio Trust as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

to administer and facilitate leasing and utilization of the Presidio; to administer and facilitate accounts relating to the Presidio Trust;

to administer and facilitate service contracts relating to the Presidio Trust;

to an agency, organization, or individual for the purposes of performing audit or oversight operations as authorized by law;

to the U.S. Department of Justice and to legal counsel when related to litigation or anticipated litigation;

to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a

subpoena, or in connection with criminal law proceedings;

to a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains; or

to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

See also 36 CFR 1008.9.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

As permitted by 5 U.S.C. 552a(b)(12), and in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)), all or a portion of the records or information contained in this system may be disclosed to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated (computerized) records.

RETRIEVABILITY:

By name of individual or address.

SAFEGUARDS:

Access to records is limited to the custodian of the records or by persons responsible for servicing the records in the performance of their official duties. Records and computer workstations are stored in locked cabinets or supervised office areas. Access to computerized data is controlled by password.

RETENTION AND DISPOSAL:

Paper records are destroyed six years and three months after period covered by the account. Electronic records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Presidio Trust Controller, Presidio Trust Controller's Office, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.11, .16.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.13–.14, .16–.17.

CONTESTING RECORD PROCEDURES:

Requests to amend a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.18–.19, .22, .24.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains and Presidio Trust property management companies.

PT–2

SYSTEM NAME:

Rentals of Special Event Venues.

SYSTEM LOCATION:

Presidio Trust Special Events Office, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Presidio Trust clients who have contracted for special events permits or rentals of event venues.

CATEGORIES OF RECORDS IN THE SYSTEM:

Client files may contain the individual's name, address, phone numbers and Social Security number. Event files include details of the event and deposit and refund amounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, Omnibus Parks Public Lands Act of 1996, Public Law 104–333, 110 Stat. 4097.

PURPOSE(S):

To manage the Presidio Trust's special events bookings. Names, addresses and phone numbers are used to coordinate the event with the client. Deposit and refund information is used to manage the client's billing. Social Security numbers are required to issue a refund from remaining deposit amounts.

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), all or a portion of the records or information contained in this system may be disclosed outside the Presidio Trust as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

to administer and facilitate leasing and utilization of the Presidio;

to administer and facilitate accounts relating to the Presidio Trust;

to administer and facilitate service contracts relating to the Presidio Trust;

to an agency, organization, or individual for the purposes of performing audit or oversight operations as authorized by law;

to the U.S. Department of Justice and to legal counsel when related to litigation or anticipated litigation;

to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings;

to a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains; or

to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

See also 36 CFR 1008.9.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

As permitted by 5 U.S.C. 552a(b)(12), and in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)), all or a portion of the records or information contained in this system may be disclosed to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated (computerized) records.

RETRIEVABILITY:

By name of individual or address.

SAFEGUARDS:

Access to records is limited to the custodian of the records or by persons responsible for servicing the records in the performance of their official duties. Records and computer workstations are stored in locked cabinets or supervised office areas. Access to computerized data is controlled by password.

RETENTION AND DISPOSAL:

Paper records are destroyed six years and three months after period covered by the account. Electronic records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Presidio Trust Special Events Manager, Presidio Trust Special Events Office, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.11, .16.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.13–.14, .16–.17.

CONTESTING RECORD PROCEDURES:

Requests to amend a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.18–.19, .22, .24.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, Special Events Coordinator.

PT–3

SYSTEM NAME:

Billing and Accounts Receivable.

SYSTEM LOCATION:

Presidio Trust Controller's Office, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Presidio Trust residential and non-residential tenants who have contracted for utilities services (electric, gas, water, sewer, refuse and/or telecommunications).

Presidio Trust customers for other services such as rental of special event venues, and other miscellaneous services.

Presidio Trust tenants with past due amounts deemed uncollectible by the Presidio Trust's property management companies (for rent, utilities and/or damages to the property).

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer files may contain the individual's name, Social Security number, address and phone numbers. For past due debts, these files may also contain past due notices, including a final Treasury demand letter. Invoice files may contain the individual's name, address and amounts due for services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, Omnibus Parks Public Lands Act of 1996, Public Law 104–333, 110 Stat. 4097.

PURPOSE(S):

To manage the Presidio Trust's Billing/Accounts Receivable systems to issue invoices and collect payments. Names and addresses are needed to mail invoices and customer correspondence. Phone numbers are needed for customer service and past due collections. Social Security numbers are required to assist in the collection of past due amounts.

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), all or a portion of the records or information contained in this system may be disclosed outside the Presidio Trust as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

to administer and facilitate leasing and utilization of the Presidio;

to administer and facilitate accounts relating to the Presidio Trust;

to administer and facilitate service contracts relating to the Presidio Trust;

to an agency, organization, or individual for the purposes of performing audit or oversight operations as authorized by law;

to the U.S. Department of Justice and to legal counsel when related to litigation or anticipated litigation;

to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings;

to a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains; or

to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

See also 36 CFR 1008.9.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

As permitted by 5 U.S.C. 552a(b)(12), and in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)), all or a portion of the records or information contained in this system may be disclosed to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated (computerized) records.

RETRIEVABILITY:

By name of individual or address.

SAFEGUARDS:

Access to records is limited to the custodian of the records or by persons responsible for servicing the records in the performance of their official duties. Records and computer workstations are stored in locked cabinets or supervised office areas. Access to computerized data is controlled by password.

RETENTION AND DISPOSAL:

Paper records are destroyed six years and three months after period covered by the account. Electronic records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Presidio Trust Controller, Presidio Trust Controller's Office, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.11, .16.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.13–.14, .16–.17.

CONTESTING RECORD PROCEDURES:

Requests to amend a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.18–.19, .22, .24.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, Presidio Trust property management companies, Special Events Coordinator.

PT–4

SYSTEM NAME:

Non-Residential Tenant Database.

SYSTEM LOCATION:

CB Richard Ellis Management Office, P.O. Box 29546, 103 Montgomery Street, San Francisco, CA 94129.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Presidio Trust non-residential tenants who lease Presidio buildings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to tenant leases, which may include tenant name, Social Security number (for individuals), address, phone numbers, type of business, rental rates, contact and security deposit information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, Omnibus Parks Public Lands Act of 1996, Public Law 104–333, 110 Stat. 4097.

PURPOSE(S):

To assist in the property management of Presidio Trust non-residential buildings.

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), all or a portion of the records or information contained in this system may be disclosed outside the Presidio Trust as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

to administer and facilitate leasing and utilization of the Presidio;

to administer and facilitate accounts relating to the Presidio Trust;

to administer and facilitate service contracts relating to the Presidio Trust;

to officers and employees of CB Richard Ellis who have a need for the records or information in the performance of their duties for the purposes described above;

to an agency, organization, or individual for the purposes of performing audit or oversight operations as authorized by law;

to the U.S. Department of Justice and to legal counsel when related to litigation or anticipated litigation;

to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings;

to a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains; or

to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

See also 36 CFR 1008.9.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

As permitted by 5 U.S.C. 552a(b)(12), and in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)), all or a portion of the records or information contained in this system may be disclosed to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized records.

RETRIEVABILITY:

By name of individual, tenant or address.

SAFEGUARDS:

Access to records is limited to the custodian of the records and persons who require use of the records in the performance of their official duties.

Computer workstations are stored in supervised office areas. Access to computerized data is controlled by password.

RETENTION AND DISPOSAL:

Paper records are destroyed six years and three months after period covered by the account. Electronic records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

CB Richard Ellis Management Office, P.O. Box 29546, 103 Montgomery Street, San Francisco, CA 94129.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.11, .16.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.13–.14, .16–.17.

CONTESTING RECORD PROCEDURES:

Requests to amend a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.18–.19, .22, .24.

RECORD SOURCE CATEGORIES:

Individual or entity to whom the record pertains.

PT–5

SYSTEM NAME:

Residential Leasing Wait List Files.

SYSTEM LOCATION:

558 Presidio Boulevard, San Francisco, CA 94129. 1504 Pershing Drive, Suite E, San Francisco, CA 94129.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons applying to become Presidio Trust residential tenants who would lease Presidio Trust buildings. Prospective applicants for Presidio Trust residential leases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information regarding applicants and prospective applicants, including name, address, phone number, desired location, desired date of move and contact history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, Omnibus Parks Public Lands Act of 1996, Public Law 104–333, 110 Stat. 4097.

PURPOSE(S):

To locate and contact persons interested in Presidio Trust residential leases.

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), all or a portion of the records or information contained in this system may be disclosed outside the Presidio Trust as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

to administer and facilitate leasing and utilization of the Presidio;

to administer and facilitate accounts relating to the Presidio Trust;

to administer and facilitate service contracts relating to the Presidio Trust;

to officers and employees of John Stewart Co. who have a need for the records or information in the performance of their duties for the purposes described above;

to an agency, organization, or individual for the purposes of performing audit or oversight operations as authorized by law;

to the U.S. Department of Justice and to legal counsel when related to litigation or anticipated litigation;

to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings;

to a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains; or to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

See also 36 CFR 1008.9.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

As permitted by 5 U.S.C. 552a(b)(12), and in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)), all or a portion of the records or information contained in this system may be disclosed to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated (computerized) records.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Access to records is limited to the custodian of the records and persons who require use of the records in the performance of their official duties.

Paper records are stored in file cabinets in supervised office areas or in locked storage areas.

Computer workstations are stored in supervised office areas. Access to computerized data is controlled by password.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

John Stewart Co., 558 Presidio Boulevard, San Francisco, CA 94129.

John Stewart Co., 1504 Pershing Drive, Suite E, San Francisco, CA 94129.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.11, .16.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.13–.14, .16–.17.

CONTESTING RECORD PROCEDURES:

Requests to amend a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.18–.19, .22, .24.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains.

PT–6

SYSTEM NAME:

Rejected Residential Leasing Applicant Files.

SYSTEM LOCATION:

558 Presidio Boulevard, San Francisco, CA 94129. 1504 Pershing Drive, Suite E, San Francisco, CA 94129.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who were denied Presidio Trust residential leases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant name, current and prior addresses, Social Security number, income, prior landlords, verifications for landlord and employer reference, consumer credit check, civil background report and criminal background report.

Applications for housing in the Baker Beach, South Baker Beach, North Fort Scott and West Washington neighborhoods are located at 1504 Pershing Drive, Suite E. Applications for the remainder of the neighborhoods are located at 558 Presidio Boulevard.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, Omnibus Parks Public Lands Act of 1996, Public Law 104–333, 110 Stat. 4097.

PURPOSE(S):

To document why an applicant for a Presidio Trust residential lease was rejected or why an applicant declined a Presidio Trust residential lease.

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), all or a portion of the records or information contained in this system may be disclosed outside the Presidio Trust as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

to administer and facilitate leasing and utilization of the Presidio;

to administer and facilitate accounts relating to the Presidio Trust;

to administer and facilitate service contracts relating to the Presidio Trust;

to officers and employees of John Stewart Co. who have a need for the records or information in the performance of their duties for the purposes described above;

to an agency, organization, or individual for the purposes of performing audit or oversight operations as authorized by law;

to the U.S. Department of Justice and to legal counsel when related to litigation or anticipated litigation;

to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings;

to a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains; or to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

See also 36 CFR 1008.9.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

As permitted by 5 U.S.C. 552a(b)(12), and in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)), all or a portion of the records or information contained in this system may be disclosed to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Access to records is limited to the custodian of the records and persons who require use of the records in the performance of their official duties.

Records are stored in file cabinets in supervised office areas or in locked storage areas.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

John Stewart Co., 558 Presidio Boulevard, San Francisco, CA 94129.

John Stewart Co., 1504 Pershing Drive, Suite E, San Francisco, CA 94129.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.11, .16.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.13–.14, .16–.17.

CONTESTING RECORD PROCEDURES:

Requests to amend a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.18–.19, .22, .24.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, credit reporting agencies, county records, current or former landlords.

PT–7

SYSTEM NAME:

Inactive Residential Leasing Files.

SYSTEM LOCATION:

558 Presidio Boulevard, San Francisco, CA 94129.

1504 Pershing Drive, Suite E, San Francisco, CA 94129.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Presidio Trust residential leaseholders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Former tenant files containing tenant name, address, lease documents, correspondence, applications for housing, consumer credit reports, criminal background reports, civil background reports, Social Security numbers, income and landlord references, employer information, accounting records, parking agreements, rules and regulations, move-in and move-out records, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, Omnibus Parks Public Lands Act of 1996, Public Law 104–333, 110 Stat. 4097.

PURPOSE(S):

To retain documentation for former residential tenants.

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), all or a portion of the records or information contained in this system may be disclosed outside the Presidio Trust as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

to administer and facilitate leasing and utilization of the Presidio;

to administer and facilitate accounts relating to the Presidio Trust;

to administer and facilitate service contracts relating to the Presidio Trust;

to officers and employees of John Stewart Co. who have a need for the records or information in the performance of their duties for the purposes described above;

to an agency, organization, or individual for the purposes of performing audit or oversight operations as authorized by law;

to the U.S. Department of Justice and to legal counsel when related to litigation or anticipated litigation;

to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings;

to a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains; or to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

See also 36 CFR 1008.9.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

As permitted by 5 U.S.C. 552a(b)(12), and in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)), all or a portion of the records or information contained in this system may be disclosed to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name of individual or address.

SAFEGUARDS:

Access to records is limited to the custodian of the records and persons who require use of the records in the performance of their official duties.

Records are stored in file cabinets in supervised office areas or in locked storage areas.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

John Stewart Co., 558 Presidio Boulevard, San Francisco, CA 94129.

John Stewart Co., 1504 Pershing Drive, Suite E, San Francisco, CA 94129.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.11, .16.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.13–.14, .16–.17.

CONTESTING RECORD PROCEDURES:

Requests to amend a record shall be addressed to Privacy Act Officer, The Presidio Trust, 34 Graham St., P.O. Box 29052, San Francisco, CA 94129–0052, as provided in 36 CFR 1008.18–.19, .22, .24.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, credit reporting agencies, county records, current or former landlords, officers and employees of John Stewart Co.

Dated: January 31, 2008.

Karen A. Cook,

General Counsel.

[FR Doc. E8–2128 Filed 2–5–08; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28139; 812–13436]

MLIG Variable Insurance Trust and Roszel Advisors, LLC; Notice of Application

January 31, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts that are within and outside the same group of investment companies.

Applicants: MLIG Variable Insurance Trust (the ''Trust'') and Roszel Advisors, LLC (''Roszel Advisors'') (together, the ''Applicants'').

Filing Dates: The application was filed on October 9, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the 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 February 25, 2008, 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, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: c/o Barry G. Skolnick, Secretary, MLIG Variable Insurance Trust, 1700 Merrill Lynch Drive, Pennington, NJ 08534.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Nadya Roytblat, Assistant Director, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust, organized as a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust is currently comprised of twenty-four separate Portfolios (as defined below), each of which pursues a distinct investment objective(s).[1] The shares of the Portfolios currently are offered and sold through registered separate accounts (''Registered Separate Accounts'') of Merrill Lynch Life Insurance Company and ML Life Insurance Company of New York, both insurance companies that are unaffiliated with Roszel Advisors. In the future, shares of the Portfolios may be offered and sold through Registered Separate Accounts of insurance companies that are affiliates of Roszel Advisors and may be offered and sold through unregistered separate accounts of insurance companies that either are or are not affiliates of Roszel Advisors (''Unregistered Separate Accounts,'' and together with the Registered Separate Accounts, the ''Separate Accounts'').

2. Roszel Advisors is a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). Roszel Advisors is a wholly-owned indirect subsidiary of Merrill Lynch & Co., Inc. Pursuant to an investment management agreement and subject to the authority of the Trust's board of trustees, Roszel Advisors serves as the Trusts' investment adviser and conducts the business and affairs of the Trust. Roszel Advisors has engaged at least one subadviser for each Portfolio (each a ''Subadviser'') to act as that Portfolio's investment adviser to provide day-to-day portfolio management. Each Subadviser is and any future Subadviser will be registered under the Advisers Act.[2]

3. Applicants request relief to permit: (a) The Portfolios to acquire shares of registered open-end management investment companies that are not part of the same group of investment companies, as defined in Section 12(A)(i)(G)(ii) of the Act, as the Portfolios (the ''Unaffiliated Underlying Funds''); (b) the Portfolios to acquire shares of unit investment trusts (''UITs'') that are not part of the same group of investment companies as the Portfolios (''Unaffiliated Underlying Trusts''); (c) the Unaffiliated Underlying Funds and Trusts (collectively, the ''Unaffiliated Funds'') to sell their shares to the Portfolios; (d) the Portfolios to acquire shares of other registered open-end investment companies in the same group of investment companies as the Portfolios (the ''Affiliated Funds,'' and together with the Unaffiliated Funds, the ''Underlying Funds'') and (e) the Affiliated Funds to sell their shares to the Portfolios. Unaffiliated Underlying Trusts or Unaffiliated Underlying Funds may be registered under the Act as either UITs or open-end management investment companies and that have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices (''ETFs''). Currently, the Portfolios invest in various types of securities that are not issued by registered investment companies and other financial instruments. Applicants are seeking to provide the Portfolios with the ability to invest in Underlying Funds for broader diversification and the ability to gain exposure to types of securities in which they would otherwise be unable to invest because of inadequate trade size or lack of liquidity.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total

[1] Applicants request that the order also extend to any future series of the Trust, and any other existing or future registered open-end management investment companies and any series thereof that are part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust and are, or may in the future be, advised by Roszel Advisors or any other investment adviser controlling, controlled by, or under common control with Roszel Advisors (together with the existing series of the Trust, the ''Portfolios''). The Trust is the only registered investment company that currently intends to rely on the requested order. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] Any investment adviser to the Portfolios that meets the definition of section 2(a)(20)(A) of the Act is referred to as Roszel Advisors. Any investment adviser to the Portfolios that meets the definition in section 2(a)(20)(B) of the Act is referred to as the Subadviser.

assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to the extent necessary to permit the Portfolios to acquire shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and to permit the Underlying Funds, their principal underwriters and any broker or dealer to sell their shares to the Portfolios in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B) which include concerns about undue influence by a fund of funds or its affiliated persons over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, Applicants believe that the requested exemptions are consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by the Portfolios or their affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with the Portfolios' investment in the Affiliated Funds, since they are part of the same group of investment companies. Applicants further propose condition 1 which provides that: (a) Roszel Advisors and any person controlling, controlled by or under common control with Roszel Advisors, any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by Roszel Advisors or any person controlling, controlled by or under common control with Roszel Advisors (collectively, the ''Group''), and (b) any Subadviser to the Portfolios and any person controlling, controlled by or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised by the Subadviser or any person and any person controlling, controlled by or under common control with the Subadviser (collectively, the ''Subadviser Group'') will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 precludes the Portfolios or Roszel Advisors, any Subadviser, promoter or principal underwriter of the Portfolios, as well as any person controlling, controlled by or under common control with any of those entities (each, a ''Portfolio Affiliate'') from taking advantage of an Unaffiliated Fund, with respect to transactions between the Portfolios or a Portfolio Affiliate and the Unaffiliated Fund or the Unaffiliated Fund's investment adviser(s), sponsor, promoter, and principal underwriter and any person controlling, controlled by or under common control with any of those entities (each, an ''Unaffiliated Fund Affiliate''). No Portfolio or Portfolio Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund or sponsor to an Unaffiliated Underlying Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, trustee, advisory board member, investment adviser, Subadviser, or employee of the Portfolio, or a person of which any such officer, director, trustee, investment adviser, Subadviser, member of an advisory board, or employee is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. To further assure that an Unaffiliated Underlying Fund understands the implications of an investment by a Portfolio under the requested order, prior to the Portfolios' investment in the shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Portfolio and the Unaffiliated Underlying Fund will execute an agreement stating, without limitation, that their boards of directors or trustees (''Boards'') and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). Applicants note that an Unaffiliated Fund (other than an ETF whose shares are purchased by a Portfolio in the secondary market) will retain its right at all times to reject any investment by the Portfolio.[3]

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. To assure that the investment advisory or management fees are not duplicative, Applicants state that, prior to the approval of any investment advisory or management contract under section 15 of the Act, the Board of each Portfolio, including a majority of the Disinterested Trustees will find that the management or advisory fees charged under the Portfolio's advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that Roszel Advisors will waive fees otherwise payable to them by a Portfolio in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Underlying Fund pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by Roszel Advisors, or an affiliated person of Roszel Advisors, other than any advisory fees paid to Roszel Advisors or an affiliated person of Roszel Advisors by the Unaffiliated Fund, in connection with the investment by the Portfolio in the Unaffiliated Fund.

8. Applicants state that with respect to Registered Separate Accounts that invest in the Portfolios, no sales load will be charged at the Portfolios' level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rule 2830''), will only be charged at the Portfolio level or at the Underlying

[3] An Unaffiliated Fund, including an ETF, would retain its right to reject any initial investment by a Portfolio in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Portfolio.

Fund level, not both.[4] With respect to other investments in the Portfolios, any sales charges and/or service fees charged with respect to shares of the Portfolios will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.

9. Applicants state that the proposed arrangement will not create an overly complex fund structure because no Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions. Applicants also represent that the Portfolios' prospectus and sales literature will contain clear, concise, ''plain English'' disclosure designed to inform investors about the unique characteristics of the proposed arrangement, including, but not limited to, the expense structure and the additional expenses of investing in Underlying Funds.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated persons of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Portfolios and the Affiliated Funds might be deemed to be under common control of Roszel Advisors and therefore affiliated persons of one another. Applicants also state that the Portfolios and the Underlying Funds might be deemed affiliated persons of one another if the Portfolios acquire 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from the Portfolios.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants believe that the proposed transactions satisfy the requirements for relief under sections 17(b) and 6(c) of the Act, as the terms are fair and reasonable and do not involve overreaching.[5] Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from the Portfolios will be based on the net asset value of each Underlying Fund.[6] Applicants also state that the proposed transactions will be consistent with the policies of the Portfolios and Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of the Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group or a Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, then the Group or the Subadviser Group (except for any member of the Group or the Subadviser Group that is a Separate Account) will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This Condition 1 will not apply to a Subadviser Group with respect to an Unaffiliated Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Underlying Fund) or as the sponsor (in the case of an Unaffiliated Trust).

A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares of an Unaffiliated Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either: (i) Vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Portfolio or Portfolio Affiliate will cause any existing or potential

[4] Applicants represent that each Portfolio will represent in the Participation Agreement that no insurance company sponsoring a Registered Separate Account funding variable insurance contracts will be permitted to invest in the Portfolio unless the insurance company has certified to the Portfolio that the aggregate of all fees and charges associated with each contract that invests in the Portfolio, including fees and charges at the separate account, Portfolio, and Underlying Fund levels, will be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

[5] Applicants acknowledge that receipt of compensation by (a) an affiliated person of the Portfolios, or an affiliated person of such person, for the purchase by the Portfolios of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to the Portfolios is subject to section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[6] Applicants note that the Portfolios generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. The Portfolios could seek to transact in ''Creation Units'' directly with an ETF pursuant to the requested section 17(a) relief.

investment by the Portfolio in an Unaffiliated Fund to influence the terms of any services or transactions between the Portfolio or a Portfolio Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Portfolio, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that Roszel Advisors and any Subadviser are conducting the investment program of the Portfolio without taking into account any consideration received by the Portfolio or Portfolio Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Portfolio in the securities of an Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Underlying Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Unaffiliated Underlying Fund to the Portfolio or a Portfolio Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Underlying Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Portfolio or Portfolio Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund or sponsor to an Unaffiliated Underlying Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Underlying Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Underlying Fund in an Affiliated Underwriting once an investment by a Portfolio in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether or not the purchases were influenced by the investment by the Portfolio in the Unaffiliated Underlying Fund. The Board of the Unaffiliated Underlying Fund will consider, among other things: (a) Whether or not the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether or not the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of an Unaffiliated Underlying Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Underlying Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Portfolio in the securities of an Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the: (a) Party from whom the securities were acquired, (b) identity of the underwriting syndicate's members, (c) terms of the purchase, and (d) information or materials upon which the determinations of the Board of the Unaffiliated Underlying Fund were made.

8. Prior to its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Portfolio and the Unaffiliated Underlying Fund will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), the Portfolio will notify the Unaffiliated Underlying Fund of the investment. At such time, the Portfolio will also transmit to the Unaffiliated Underlying Fund a list of the names of each Portfolio Affiliate and Underwriting Affiliate. The Portfolio will notify the Unaffiliated Underlying Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Portfolio will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Portfolio, including a majority of the Disinterested Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Portfolio may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Portfolio.

10. Roszel Advisors will waive fees otherwise payable to it by a Portfolio in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Underlying Fund pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by Roszel Advisors, or an affiliated person of Roszel Advisors, other than any advisory fees paid to Roszel Advisors or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Portfolio in the Unaffiliated Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Portfolio in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, from an Unaffiliated Fund, other than any advisory fees paid to the Subadviser or its affiliated person by the Unaffiliated Underlying Fund, in connection with the investment by the Portfolio in the Unaffiliated Underlying Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of

the waiver will be passed through to the Portfolio.

11. With respect to Registered Separate Accounts that invest in a Portfolio, no sales load will be charged at the Portfolio level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Portfolio level or at the Underlying Fund level, not both. With respect to other investment in a Portfolio, any sales charges and/or service fees charged with respect to shares of the Portfolio will not exceed the limits applicable to a funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2120 Filed 2–5–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57248; File No. SR–Amex–2007–25]

Self-Regulatory Organizations; American Stock Exchange, LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Allow Register Options Traders to Submit Electronic Quotations and Orders From Off the Amex's Trading Floor on a Limited Basis

January 31, 2008.

I. Introduction

On February 27, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposal to amend its rules to allow registered options traders to submit electronic quotations and orders from off the Amex's trading floor on a limited basis. The Amex filed Amendment No. 1 to the proposal on December 13, 2007.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 28, 2007.[4] The Commission received no comments regarding the proposed rule change, as amended. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Amex proposes to amend Amex Rule 958–ANTE, ''Options Transactions of Registered Options Traders and Supplemental Registered Options Traders and Remote Registered Options Traders,'' to allow registered options traders to submit electronic quotations and orders from off the Amex's trading floor on a temporary basis for a maximum of 20 days during a calendar year.[5] According to the Amex, the proposal is designed to accommodate registered options traders when they are temporarily unable to be present on the Amex's physical trading floor. For purposes of the ''in-person'' requirements set forth in Amex Rule 958–ANTE, a registered options trader's transactions through this limited remote quoting program will be deemed to occur on the floor.

A registered options trader must notify the Amex's Division of Regulation and Compliance immediately following the day or days during which he or she submits quotes from off the floor.[6] The Amex notes that it has an independent means to monitor when a register options trader is off the floor because all members must scan in.

The Amex states that it will use its existing surveillance procedures to monitor registered options traders' temporary off-floor trading. In addition, the Amex represents that it will be able to monitor for compliance with the Amex's trading rules and the federal securities laws and the rules and regulations thereunder.

III. Discussion

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.[7] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is designed to provide registered options traders with the flexibility to trade from off the Amex's floor on a limited basis when they are temporarily unable to be present on the floor. The Commission notes that the Amex has stated that it will use its existing surveillance procedures to monitor the off-floor trading permitted under the proposal, and that the Amex has represented that it will be able to monitor for compliance with the Amex's trading rules and the federal securities laws and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–2007–25), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2139 Filed 2–5–08; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supersedes and replaces the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 57011 (December 20, 2007), 72 FR 73910.

[5] *See* Amex Rule 958–ANTE, Commentary .01(c). Under the proposal, quoting and submitting orders from off the trading floor for less than an entire day would qualify as one day.

[6] *See* Amex Rule 958–ANTE, Commentary .01(c).

[7] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57228; File No. SR–FINRA–2007–040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change to Delay Implementation of Certain FINRA Rule Changes Approved in SR–NASD–2004–183

January 29, 2008.

I. Introduction

On December 21, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to delay the effective date of paragraph (c) of NASD Rule 2821 until August 4, 2008. The Commission published the proposed rule change for comment in the **Federal Register** on January 3, 2008.[3] The Commission received fourteen comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Commission approved NASD Rule 2821 on September 7, 2007.[4] Rule 2821 created recommendation requirements (including a suitability obligation), principal review and approval requirements, and supervisory and training requirements tailored specifically to transactions in deferred variable annuities.

On November 6, 2007, FINRA published *Regulatory Notice* 07–52, which announced the Commission's approval of Rule 2821 and established May 5, 2008 as the effective date of the rule. FINRA is proposing to delay the effective date of paragraph (c), which addresses principal review and approval, until August 4, 2008.

According to FINRA, several firms requested that the effective date of the rule be delayed to allow firms additional time to make necessary systems changes. Firms also raised various concerns regarding paragraph (c) of the rule. With respect to the timing of principal review, firms stated that seven business days beginning from the time when the customer signs the application may not allow for a thorough principal review in all cases. These firms have asked that a different timing mechanism be used. Firms also questioned whether broker-dealers that do not make any recommendations to customers should be subject to paragraph (c) of the Rule. And finally, firms asked FINRA to reconsider its statement in Regulatory Notice 07–53 that Rule 2821(c) does not permit the depositing of a customer's funds in an account at the insurance company prior to completion of principal review.

FINRA staff believes it is prudent to give further consideration to paragraph (c) of Rule 2821 and the interpretation addressed in the *Regulatory Notice* to determine whether certain unintended and harmful consequences might ensue upon the currently scheduled effective date of May 5, 2008. If, based on this review, FINRA concludes that further rulemaking is warranted, it stated that it will file a separate rule change with the Commission.

III. Summary of Comments

The Commission received fourteen comments on the proposed rule change. All commenters supported FINRA's proposal to extend the effective date of the principal review and approval requirements contained in paragraph (c) of Rule 2821 until August 4, 2008.[5] Commenters agreed that additional time is needed to consider the impact those requirements will have on member firms and for FINRA to consider suggested alternatives.[6]

In addition to supporting the extended effective date of paragraph (c), commenters also expressed concerns and proposed alternatives with respect to three aspects of the principal review and approval requirements of paragraph (c). Some commenters suggested that FINRA eliminate the principal review requirement for non-recommended transactions.[7] According to commenters, some broker-dealers do not solicit purchases of deferred variable annuities and do not recommend any transactions.[8] For broker-dealers with this type of business model, commenters believed principal review and approval is unnecessary and does not further the purposes of the rule.[9] One commenter stated that an exemption from the principal review requirements only for those broker-dealers that do not make any recommendations to customers would disadvantage broker-dealers who have various business models, some models allowing recommendations and others that do not.[10] This commenter suggested that FINRA require a broker-dealer that offers recommendations to some customers and not to others to institute policies and procedures ensuring that the broker-dealer perform a principal review for recommended transactions.[11]

Six commenters also believed that FINRA should allow broker-dealers to forward customer checks to the issuing insurance company and allow the issuing insurance company to deposit customer funds into a suspense account prior to the completion of principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 57050 (Dec. 27, 2007); 73 FR 0531 (Jan. 3, 2008) (SR–FINRA–2007–040).

[4] *See* Order Approving FINRA's NASD Rule 2821 Regarding Members' Responsibilities for Deferred Variable Annuities (''Approval Order''), Securities Exchange Act Release No. 56375 (Sept. 7, 2007), 72 FR 52403 (Sept. 13, 2007) (SR–NASD–2004–183); Corrective Order, Securities Exchange Act Release No. 56375A (September 14, 2007), 72 FR 53612 (Sept. 19, 2007) (SR–NASD–2004–183) (correcting the rule's effective date).

[5] *See, e.g.*, Letters from Darrell Braman and Sarah McCafferty, T. Rowe Prince Investment Services, Inc. (Jan. 23, 2008) (''T. Rowe Price Letter''); Michael P. DeGeorge, General Counsel NAVA (Jan. 24, 2008) (''NAVA Letter''); Cifford Kirsch and Eric Arnold, Partners, Sutherland Asbill & Brennan LLP on behalf of the Committee of Annuity Insurers (Jan. 24, 2008) (''Comm. Annuity Insurers Letter''); Stuart Kaswell, Partner, Dechert LLP on behalf of TIAA-CREF (Jan. 24, 2008) (''Dechert Letter''); Heidi Stam, Managing Director and General Counsel, Vanguard (Jan. 24, 2008) (''Vanguard Letter''); David E. Stone, Vice President and Associate General Counsel, Charles Schwab & Co., Inc. (Jan. 24, 2008) (''Schwab Letter''); Heather Traeger, Assistant Counsel, Investment Company Institute (Jan. 24, 2008) (''ICI Letter''); Dale E. Brown, President and Chief Executive Officer, Financial Services Institute (Jan. 25, 2008) (''FSI Letter''); Carl B. Wilkerson, Vice President, American Council of Life Insurers (Jan. 28, 2008) (''ACLI Letter''); Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (Jan. 29, 2008) (''SIFMA Letter'').

One commenter stated, however, that waiting until August to determine the principal review and approval standard could cost the industry millions of dollars in unnecessary expenditures if FINRA revises the rule. *See* Letter from Douglas A. Wright, CCO, The Investment Center, Inc. (Jan. 14, 2008). This commenter believed a delay in enacting Rule 2821(c) would be welcomed by most firms to allow for systems upgrades, but firms do not want to begin paying for one system only to have FINRA alter the rule. *Id.* Another commenter addressed his broker-dealer's individual situation regarding net capital obligations. *See* Letter from Jeremiah O'Connell (Jan. 4, 2008).

[6] *See, e.g.*, Comm. Annuity Insurers Letter; Dechert Letter; FSI Letter; SIFMA Letter; Vanguard Letter.

[7] *See* ACLI Letter; Dechert Letter; ICI Letter; NAVA Letter; SIFMA Letter; Vanguard Letter.

[8] *See* Dechert Letter; ICI Letter; NAVA Letter; T. Rowe Price Letter; Vanguard Letter.

[9] *See* Dechert Letter; ICI Letter; NAVA Letter; Vanguard Letter. Some commenters emphasized that under these types of business models, firms do not pay commissions. *See* Dechert Letter; Vanguard Letter. One commenter also noted that its policies and procedures prohibit registered representatives from recommending any transactions. Vanguard Letter.

[10] *See* Dechert Letter

[11] *Id.*

review.[12] Commenters stated customer funds could be held in these accounts and would not result in the issuance of a contract until principal review has been completed.[13] Some commenters also stated that customer funds could be refunded in the event a contract is not issued.[14]

Eight commenters suggested that FINRA revise the timing of principal review requirement.[15] Paragraph (c) requires a registered principal to review a transaction and determine whether he or she approves of it prior to transmitting the customer's application to the issuing insurance company for processing, but no later than seven business days after the customer signs the application.[16] Commenters stated that beginning the seven business day review period from the time when the customer signs the application is problematic because often the customer signs and mails the application, leaving the broker-dealer no control over the timing.[17] Commenters also stated that they have no control over which means a customer uses to mail an application and how long it takes for that application to arrive at the broker-dealer.[18] Some commenters suggested that the principal review process be required to be completed seven business days after the broker-dealer has received an application ''in good order.'' [19] Other commenters suggested that the seven-day period should begin when the broker-dealer receives the application and the broker-dealer reasonably deems the application is complete.[20]

Two commenters requested that FINRA propose a single implementation date for the entire rule.[21] These commenters stated that establishing two different compliance dates would create confusion when implementing the proposed rule as well unnecessary and redundant system design costs.[22] Paragraph (d) requires members to establish supervisory procedures reasonably designed to achieve compliance with the rule and paragraph (e) require members to develop training policies and programs to ensure compliance with the rule. One of these commenters believed imposing two separate compliance dates would require broker-dealers to provide duplicate sets of supervisory procedures to account for what the rule requires on May 5, 2008 and for what it requires on August 4, 2008.[23] It also stated broker-dealers would have to implement one training program for the part of rule becoming effective on May 5, 2008 and another training program for principal review starting on August 4, 2008.[24]

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and the comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act, which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[25]

The proposed rule change does not change any of the substantive provisions of Rule 2821. It allows broker-dealers additional time to comply with one portion of the rule and provides FINRA with additional time to further consider its members' concerns. It is consistent with the requirements of the Act for FINRA to further consider paragraph (c) of Rule 2821 and its related Regulatory Notice to determine whether any unintended or harmful consequences might ensue upon the current effective date.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (SR–FINRA 2007–040) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2074 Filed 2–5–08; 8:45 am]

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[12] *See* Letter from MaryAnn Lamendola, Chief Compliance Officer, Chase Investment Services Corporation (Jan. 24, 2008) (''Chase Letter''); ACLI Letter; Comm. of Annuity Insurers Letter; Dechert Letter; NAVA Letter; SIFMA Letter. One of these commenters believes that both the broker-dealer and the issuing insurance company should be allowed to negotiate checks upon receipt. *See* Dechert Letter. This commenter noted that customers may send back an application and one check to cover a variable annuity and other investment options, including mutual funds. *Id.* In this situation, the commenter stated there is a conflict between NASD Rule 2830(m), which requires the prompt purchase of mutual fund shares, and Rule 2821(c), which requires the broker-dealer to hold the customer's check pending principal review. *Id.*

[13] *See* ACLI Letter; Comm. of Annuity Insurers Letter; Dechert Letter. One commenter noted this could be accomplished by the broker-dealer developing controls to ensure that a variable annuity is not issued until after the completion of principal review. Chase Letter.

[14] *Id.*

[15] *See* Letter from Barbara Gill, Deputy Director of Regulatory Affairs, Stifel, Nicolaus & Company, Inc. (Jan. 22, 2008) (''Stifel Letter''); Comm. of Annuity Insurers Letter; Dechert Letter; FSI Letter; ICI Letter; NAVA Letter; SIFMA Letter; Schwab Letter.

[16] *See* NASD Rule 2821(c).

[17] *See, e.g.*, Comm. of Annuity Insurers Letter; Dechert Letter; SIFMA Letter; Stifel Letter.

[18] *Id.*

[19] *See, e.g.*, ACLI Letter; ICI Letter; T. Rowe Price Letter.

[20] *See* Comm. of Annuity Insurers Letter; Dechert Letter; FSI Letter; NAVA Letter; Schwab Letter. Three commenters also specified that the seven days should not begin to run until a complete application is specifically received by the broker-dealer's Office of Supervisory Jurisdiction. *See* Comm. of Annuity Insurers Letter; Dechert Letter; SIFMA Letter.

[21] *See* ACLI Letter; Dechert Letter.

[22] *Id.*

[23] *See* Dechert Letter.

[24] *Id.*

[25] 15 U.S.C. 78o–3(b)(6).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57247; File No. SR–FINRA–2008–002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Reflect That the NASD/NYSE Trade Reporting Facility Does Not Support the Three-Party Trade Report Functionality

January 31, 2008.

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 January 28, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a the National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by FINRA. FINRA has filed this proposal pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[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)(iii).

[4] 4 17 CFR 240.19b–4(f)(6).

[5] FINRA has asked the Commission to waive the 30-day operative delay provided in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to amend the rules governing the NASD/NYSE Trade Reporting Facility (''NASD/NYSE TRF'') to delete NASD Rule 4632E(d), relating to three-party trade reports, because the NASD/NYSE TRF currently does not support the three-party trade report functionality. In addition, FINRA proposes to modify NASD Rule 4632E(c), relating to two-party trade reports, to conform NASD Rule 4632E(c) to the two-party trade report rules of FINRA's other Trade Reporting Facilities (''TRFs'').[6]

The text of the proposed rule change is available at *http://www.finra.org*, the principal office of FINRA, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The TRFs, including the NASD/NYSE TRF, provide FINRA members with mechanisms for reporting trades in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act,[7] executed otherwise than on an exchange. When the NASD/NYSE TRF was established, it was contemplated that members would be able to report trades to the NASD/NYSE TRF using either two- or three-party trade reports.[8] A three-party trade report is a single trade report that denotes one Reporting Member (*i.e.*, the member with the obligation to report the trade under FINRA's rules) and two contra parties.

However, the NASD/NYSE TRF has not implemented the three-party trade report functionality and members currently are able to submit reports to the NASD/NYSE TRF only in the two-party trade report format.[9] Accordingly, for its rules to accurately reflect the functionality of the NASD/NYSE TRF, FINRA proposes to delete NASD Rule 4632E(d) relating to three-party trade reports. In addition, FINRA proposes to replace the two-party trade report provisions currently found in paragraph (c) of NASD Rule 4632E with a new paragraph (c), which is identical to the two-party trade report provisions of the NASD/Nasdaq TRF and the NASD/NSX TRF. According to FINRA, this will conform, to the extent practicable, the rules relating to the three TRFs.[10] Finally, FINRA proposes technical changes to paragraphs (c), (d), and (h) of NASD Rule 6130E to reflect the deletion of NASD Rule 4632E(d) and the resulting renumbering of paragraphs in NASD Rule 4632E.

FINRA has asked the Commission to waive the 30-day operative delay and to make the proposed rule change operative on the date of filing.

2. *Statutory Basis*

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that by deleting rules that apply to a functionality that is not currently supported by the NASD/NYSE TRF, the proposed rule change will prevent member confusion and trade reporting errors.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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

FINRA has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b–4(f)(6)(iii),[12] FINRA provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

Pursuant to Rule 19b–4(f)(6)(iii) under the Act, a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay to expedite the deletion of rules relating to the three-party trade report functionality, which currently is not supported by the NASD/NYSE TRF, and the adoption of conforming changes to the NASD/NYSE TRF's two-party trade report provisions. FINRA believes that these changes will prevent potential member confusion and trade reporting errors. FINRA notes, in addition, that the proposal amends the NASD/NYSE TRF's trade reporting rules to accurately reflect the current functionality of the NASD/NYSE TRF, but does not affect members' reporting obligations or current capability.

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[6] Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. Accordingly, the NASD/NYSE TRF is now doing business as the FINRA/NYSE TRF. In addition to the NASD/NYSE TRF, there are two other TRFs in operation: The NASD/Nasdaq Trade Reporting Facility (the ''NASD/Nasdaq TRF'') and the NASD/NSX Trade Reporting Facility (the ''NASD/NSX TRF''). The formal name change of each TRF is pending and, once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual.

[7] 17 CFR 242.600(b)(47).

[8] *See* NASD Rules 4632E(c) and 4632E(d), respectively. Current NASD Rules 4632E(c) and (d) are substantially similar to the reporting requirements relating to two- and three-party trade reports for FINRA's Alternative Display Facility (the ''ADF''). *See* NASD Rules 4632A(c) and (d).

[9] The NASD/NYSE TRF may implement this functionality at a later date, in which case FINRA would submit a proposed rule change to amend its rules accordingly.

[10] Neither the NASD/Nasdaq TRF nor the NASD/NSX TRF supports three-party trade reports. Accordingly, members may submit trades to a TRF only in the two-party trade report format. Members may submit trades in the three-party trade report format to the ADF.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the deletion of the three-party trade report provisions is designed to ensure that the rules governing the NASD/NYSE TRF accurately reflect the operation of the NASD/NYSE TRF, which currently does not support the three-party trade report functionality.[15] Similarly, the proposed changes to conform the NASD/NYSE TRF's two-party trade report rules to the two-party trade report rules of the NASD/Nasdaq TRF and the NASD/NSX TRF [16] will provide consistency among the rules of the TRFs and does not raise new regulatory issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal to be operative upon filing with the Commission.

At any time within 60 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–FINRA–2008–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FINRA–2008–002. 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 FINRA. 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 No. SR–FINRA–2008–002 and should be submitted on or before February 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2134 Filed 2–5–08; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] *See* NASD Rules 4632(c) and 4632C(c).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57237; File No. SR–ISE–2007–124]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Equity Fees

January 30, 2008.

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 December 31, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by ISE. On January 28, 2007, ISE submitted Amendment No. 1 to the proposed rule change.[3] ISE filed the proposal pursuant to section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) [5] thereunder, as establishing or changing a due, fee, or other charges applicable to a member, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE is proposing to amend its Schedule of Fees with respect to equity transactions. The text of the proposed rule change is available at ISE, *http://www.ise.com,* and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees to: (1) Distinguish between transaction fees related to equity orders and equity orders submitted on an order delivery basis; (2) to increase the rebate for equity orders that add liquidity for securities that trade at or above $1.00 from $0.0025 to $0.0032; (3) to increase the rebate for equity orders submitted on an order delivery basis that add liquidity for securities that trade at or above $1.00 from $0.0025 to $0.0027 (these orders are submitted by Order Delivery Equity Electronic Access Members (''Order Delivery Equity EAMs'')); and (4) to cease sharing market data revenues except with respect to orders submitted on an order delivery basis. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made clarifying changes to the purpose section of the filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

Exchange proposes to implement these changes on January 2, 2008.

The Exchange proposes to restructure its Schedule of Fees and allocation of market data rebates to provide Equity Electronic Access Members (''Equity EAMs'') that submit equity orders an efficient method of calculating the exact cost of trading on the ISE Stock Exchange. Specifically, rather than providing these Equity EAMs with a lump sum market data rebate every quarter, the Exchange proposes to increase the rebate for execution of equity orders that provide liquidity from $0.0025 to $0.0032 for securities that trade at or above $1.00. This change will allow Equity EAMs to perform a precise cost benefit analysis in determining where to route their order flow.

The Exchange proposes to increase the rebate for the execution of equity orders submitted on an order delivery basis that provide liquidity from $0.0025 to $0.0027 for securities that trade at or above $1.00, but to leave the allocation of market data rebates the same for these orders. The Exchange has determined that increasing the maker rebate, discussed above, and continuing to rebate 50% of its quote and trade revenue to Order Delivery Equity EAMs is necessary for competitive reasons, particularly in light of the fact that other markets have similar maker rebates and provisions in their market data revenue rebate program.[6]

The Exchange believes that these fee changes will not impair its ability to carry out its regulatory responsibilities. Furthermore, the Exchange intends that this rule change will not have an overall effect on the amounts rebated to Equity EAMs, except that payments will occur on a monthly instead of quarterly basis. The monies rebated to Order Delivery Equity EAMs on a quarterly basis remain unchanged.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(4),[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 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–ISE–2007–124 on the subject line.

Paper comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–124. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. 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–ISE–2007–124 and should be submitted on or before February 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2124 Filed 2–5–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57239; File No. SR–NYSE–2007–98]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Reduce From Six Months to Three Months the Period for Which a Company's Average Global Market Capitalization Must Exceed the Levels Established by the Exchange's Pure Valuation/Revenue Test

January 30, 2008.

I. Introduction

On October 29, 2007, the New York Stock Exchange LLC (''NYSE'' or

[6] *See* Securities Exchange Act Release No. 56890 (December 4, 2007), 72 FR 70360 (December 11, 2007) (SR–NSX–2007–13).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce from six months to three months the period for which the average global market capitalization of companies seeking to list on the Exchange must exceed the levels established by the Exchange's ''pure valuation/revenue'' test contained in Section 102.01C of the Exchange's Listed Company Manual (the ''Manual''). On December 14, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 26, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Section 102.01C of the Exchange's Manual requires companies listing under the Exchange's ''pure valuation/revenue'' test to have a global market capitalization of $750 million. In the case of companies listing other than in connection with an initial public offering or a spin-off or upon emergence from bankruptcy, Section 102.01C provides that the market capitalization valuation will be determined on the basis of a six-month average.

The Exchange now proposes to reduce from six months to three months the period over which prospective companies seeking to list on the Exchange must have had an average global market capitalization that meets the required level of $750 million. In addition, the Exchange proposes to amend the rule to specify that in considering the suitability for listing of a company pursuant to this standard, the Exchange will consider whether the company's business prospects and operating results indicate that the company's market capitalization value is likely to be sustained or increase over time.

III. Discussion

After careful review, 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 Section 6(b)(5) of the Act,[4] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.[5]

The Commission notes that the proposed rule change does not change the quantitative global market capitalization requirement under the Exchange's ''pure valuation/revenue'' test. This requirement will remain at $750 million global market capitalization. Rather, the Exchange is shortening the time period over which the average global market capitalization of a prospective listed company must meet this level. The Commission notes that the proposed rule change requires the Exchange to look not only at the average three month market capitalization of the company but to also consider whether the company's market capitalization is likely to be sustained or increase over time based on the company's business prospects and operation results. The Commission therefore believes that the proposed rule change may allow the earlier listing of companies, but at the same time, it is designed to ensure that the Exchange does not list companies on the basis of a market capitalization valuation that is unlikely to be sustained. In this regard, the Commission expects that the Exchange will scrutinize companies to ensure that it will only list companies that should be able to continue to meet the market capitalization standard.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–2007–98), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2073 Filed 2–5–08; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56976 (December 17, 2007), 72 FR 73055.

[4] 15 U.S.C. 78f(b)(5).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57236; File No. SR–NYSE–2008–03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Rescind Rule 97 (Limitation on Member's Trading Because of Block Positioning)

January 30, 2008.

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 January 11, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to rescind NYSE Rule 97 (Limitation on Member's Trading Because of Block Positioning). The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange seeks to rescind Exchange Rule 97. Exchange Rule 97 prevents a member organization that holds a long position in a security that resulted from a block transaction with a customer from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

effecting, within twenty minutes of the close of trading on the Exchange, a purchase on a ''plus'' tick in that security at a price higher than the lowest price at which any block was acquired in a previous transaction on that day, if the person responsible for the entry of such order to purchase the security had knowledge of the block position.

The Exchange has from time to time reviewed the applicability of the rule and made amendments in an attempt to maintain the rule's relevance as the nature of trading has significantly evolved over the years. Notwithstanding those efforts, the Exchange believes that the practical application of the rule in today's market no longer addresses the concerns that prompted its implementation. The Exchange therefore proposes to rescind Exchange Rule 97 in its entirety.

Background

Exchange Rule 97 focuses on the trading of member organizations while they hold positions in a security as a result of a block transaction with customer(s). The rule was originally adopted to address concerns that a member organization might engage in manipulative practices by attempting to ''mark-up'' the price of a stock to enable the position acquired in the course of block positioning to be liquidated at a profit, or to maintain the market at the price at which the position was acquired.

In 2002, the rule was amended to narrow the scope of the prohibitions solely to transactions executed within the last twenty minutes of the trading day, and to provide exceptions to the rule for member organizations that establish information barriers and for certain hedging transactions.[3] The rationale behind the rule change was to limit the rule's ''tick'' restriction to the most sensitive part of the trading day (where it was thought that manipulation was most likely to occur so that the member firm could unwind its position at the opening of trading the next day).

The implementation of Regulation NMS in March 2007 necessitated an additional amendment to the rule in July 2007 to create an exemption to resolve a conflict between compliance with Rule 97 and Regulation NMS.[4] Specifically, if during the last 20 minutes of trading a member organization facilitates a customer order that trades through protected bids or offers, and in compliance with Rules 600(b)(30)(ii) and 611(b)(6) of Regulation NMS,[5] the member organization simultaneously routes proprietary intermarket sweep orders to execute against the full displayed size of any protected quotation in that security (''ISO facilitation''), the ISO facilitation could violate Rule 97 if the ISO orders would trade on a plus tick, at a price above the lowest facilitation price. In essence, the implementation of Regulation NMS required firms to choose between violating Regulation NMS or violating Rule 97. The exemption to Rule 97 was added so that when facilitating a customer order that would otherwise require a member organization to either violate Rule 97 or trade through protected quotations, member organizations can comply with their Regulation NMS obligations without also violating Rule 97.[6]

Rescision of Rule 97

NYSE states that this proposed rescision of the rule highlights the extent to which trading has changed and how the operation of Rule 97 hinders the ability of member organizations to legitimately conduct their business and facilitate their customers' orders. Today, compliance with Regulation NMS means that the liquidation of a block position typically occurs on many different market centers. Additionally, the Exchange believes that, in active and volatile market conditions, incremental movements of a penny or more occur almost instantaneously, lessening the ability to influence the closing price of a security.

Rule 97 was established at a time when the majority of block transactions were executed on the Exchange. However, in the present competitive trading environment, there are now many other venues available for market participants to effect block position transactions without the strictures of such a rule. The Exchange believes that, in order to encourage consistency throughout the industry with respect to the execution of block positions and to encourage market participants to continue to effect their block transactions on the Exchange, Rule 97 should be rescinded. NYSE represents that NYSE Regulation, Inc. will continue to surveil in NYSE-listed securities for possible manipulative activity, including marking the close, which could be in violation of federal securities laws or Exchange Rules, including Rule 10b–5 under the Act,[7] section 9(a) of the Act,[8] and Exchange Rules 476(a) and 435.[9]

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and the requirement in Section 6(b)(5) of the Act,[11] in particular, that the rules of an exchange are, among other things, designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. NYSE asserts that the proposed rule change also is designed to support the principles of section 11A(a)(1)[12] in that it seeks to assure economically efficient execution of securities transactions, and make it practicable for brokers to execute investors' orders in the best market.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[3] *See* Securities Exchange Act Release No. 46566 (September 27, 2002), 67 FR 62278 (October 4, 2002) (SR–NYSE–2001–24).

[4] *See* Securities Exchange Act Release No. 56024 (July 6, 2007), 72 FR 38643 (July 13, 2007) (SR–NYSE–2007–61).

[5] 17 CFR 242.600(b)(30)(ii) and 17 CFR 242.611(b)(6).

[6] This exemption would be available only when: (1) The firm has acquired a proprietary position as a result of a previous block facilitation for a customer; (2) the facilitation trade during the last 20 minutes of trading would cause the firm to trade through a better priced offer on another market, such that the firm is obligated by Regulation NMS Rule 611 to send proprietary ISOs when it facilitates the customer's order; (3) the customer has declined better-priced ISO executions; and (4) the better-priced offers in away markets are such that NYSE Rule 97 would prohibit the firm from sending a proprietary buy order. *See* NYSE Information Memo 07–67 (July 6, 2007).

[7] 17 CFR 240.10b–5.

[8] 15. U.S.C. 78i(a).

[9] *See* e-mail from Gillian Rowe, Senior Counsel, NYSE, to Jennifer Dodd, Special Counsel, Division of Trading and Markets, Commission, dated January 29, 2008.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1).

longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NYSE consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the 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–NYSE–2008–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–03. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. 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–2008–03 and should be submitted on or before February 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2075 Filed 2–5–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57249; File No. SR–NYSE–2008–10]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 36 (Communication Between Exchange and Exchange Members' Offices)

January 31, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2008, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 Exchange seeks to extend its current portable phone pilot (the ''Pilot'') operating pursuant to Exchange Rule 36 from its scheduled January 31, 2008 expiration date to April 30, 2008.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to extend the Pilot operating pursuant to Exchange Rule 36 from the Pilot's scheduled January 31, 2008 expiration date to April 30, 2008. Pursuant to the Pilot, Floor brokers and Registered Competitive Market Makers (''RCMM'') are permitted to use an Exchange authorized and provided portable telephone on the Exchange Floor provided certain conditions are met.

Background

The Commission originally approved the Pilot to be implemented for a six-month period[5] beginning no later than June 23, 2003.[6] Since the inception of the Pilot, the Exchange has extended the Pilot eight times, with the current Pilot expiring on January 31, 2008.[7] Exchange

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (SR–NYSE–2002–11) (''Original Order'').

[6] *See* Securities Exchange Act Release No. 47992 (June 5, 2003), 68 FR 35047 (June 11, 2003) (SR–NYSE–2003–19) (delaying the implementation date for portable phones from on or about May 1, 2003 to no later than June 23, 2003).

[7] *See* Securities Exchange Act Release Nos. 48919 (December 12, 2003), 68 FR 70853 (December 19, 2003) (SR–NYSE–2003–38) (extending the Pilot for an additional six months ending on June 16, 2004); 49954 (July 1, 2004), 69 FR 41323 (July 8, 2004) (SR–NYSE–2004–30) (extending the Pilot for an additional five months ending on November 30, 2004); 50777 (December 1, 2004), 69 FR 71090 (December 8, 2004) (SR–NYSE–2004–67) (extending the Pilot for an additional four months ending March 31, 2005); 51464 (March 31, 2005), 70 FR 17746 (April 7, 2005) (SR–NYSE–2005–20) (extending the Pilot for additional four months ending July 31, 2005); 52188 (August 1, 2005), 70 FR 46252 (August 9, 2005) (SR–NYSE–2005–53) (extending the Pilot for an additional four months ending January 31, 2006); 53277 (February 13, 2006), 71 FR 8877 (February 21, 2006) (SR–NYSE–2006–03) (extending the Pilot for an additional six months ending July 31, 2006); 54276 (August 4, 2006), 71 FR 45885 (August 10, 2006) (SR–NYSE–2006–55) (extending the Pilot for an additional six months ending January 31, 2007); and 55218 (January 31, 2007), 72 FR 6025 (February 8, 2007) (SR–NYSE–2007–05) (extending the Pilot for an additional twelve months ending January 31, 2008). Also, the Exchange has incorporated RCMMs into the Pilot and subsequently amended the Pilot to allow RCMMs to use an Exchange authorized and provided portable telephone on the Exchange Floor to call to and receive calls from their upstairs offices, the upstairs offices of their clearing firm, and their booth locations on the Exchange Floor.

Rule 36 governs the establishment of telephone or electronic communications between the Exchange Floor and any other location. Prior to the Pilot, Exchange Rule 36 prohibited the use of portable telephone communication between the Exchange Floor and any off-Floor location.

During the operation of the Pilot, Floor brokers and RCMMs may use Exchange authorized and issued portable telephones on the Exchange Floor. Floor brokers are permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications permit the broker to accept orders consistent with Exchange rules governing the entry of orders on the Exchange Floor;[8] provide status and oral execution reports as to orders previously received, as well as ''market look'' observations as have historically been routinely transmitted from a broker's booth location.

Both incoming and outgoing calls are allowed, provided the requirements of all other Exchange rules have been met. A Floor broker is not permitted to represent and execute any order received as a result of such voice communication unless the order is first properly recorded by the member and entered into the Exchange's Front End Systemic Capture (FESC) electronic database (Exchange Rule 123(e)).[9] In addition, Exchange rules require that any Floor broker receiving orders from the public over portable phones must be properly qualified to engage in such direct access business under Exchange Rules 342 and 345, among others.[10]

The Pilot also allows RCMMs to use an Exchange authorized portable phone solely to call and receive calls from their booths on the Exchange Floor, to communicate with their or their member organizations' off-Floor office, and to communicate with the off-Floor office of their clearing member organization to enter off-Floor orders and to discuss matters related to the clearance and settlement of transactions, provided the off-Floor office uses a wired telephone line for these discussions. RCMMs, who trade for their own accounts on the Exchange Floor subject to the requirements of Exchange Rule 107A, are currently not allowed to use a portable phone to conduct any agency business.[11] For both RCMMs and Floor brokers, use of a portable telephone on the Exchange Floor other than one authorized and issued by the Exchange is prohibited.

Specialists are subject to separate restrictions in Exchange Rule 36 on their ability to engage in voice communications from the specialist post to an off-Floor location.[12] The Pilot does not apply to specialists, who would continue to be prohibited from speaking from the post to upstairs trading desks or customers.[13]

Pilot Program Results

Currently, there are approximately 400 portable phone subscribers.[14] For a sample week of October 15 through October 19, 2007, an average of 2,518 calls/day was outgoing calls from portable phones issued to Floor brokers and RCMMs. An average of 960 calls/day was incoming calls to the portable phones. Of the outgoing calls from portable phones, an average of 1,026 calls/day was internal calls to the booth by Floor brokers and RCMMs, and 1,492 calls/day was external calls by RCMMs to the upstairs offices of their member organization and their clearing member organization and external calls of Floor brokers. Thus, approximately 47% of the outgoing calls from portable phones were internal calls to the booth by Floor brokers and RCMMs.

Of the 960 average incoming calls/day received, an average of 337 calls/day was external calls to RCMMs from the upstairs offices of their member organization and their clearing member organization and external calls to Floor brokers. An average of 623 calls/day was internal calls received from the booth. Thus, approximately 65% of all incoming calls received were from the booth and the remaining 35% of incoming calls received were external calls to RCMMs from the upstairs offices of their member organization and their clearing member organization and external calls to Floor brokers.[15]

The Exchange believes that the Pilot is operating successfully in that there is a reasonable degree of usage of portable phones. During the period of January 31, 2007 through January 31, 2008, there have been no significant regulatory concerns identified with their usage.[16] Moreover, there have been no administrative or technical problems, other than routine telephone maintenance issues, that have resulted from the operation of the Pilot over the past few months.

Conclusion

The Exchange proposes to extend the operation of the current Pilot for an additional three months to April 30, 2008. The Exchange believes that the approval of the Pilot's continuation for an additional three months will enable the Exchange to continue to provide more direct, efficient access to its trading crowds and customers, increase the speed of transmittal of orders and the execution of trades, and provide an enhanced level of service to customers in an increasingly competitive environment.[17] Therefore the Exchange believes it is appropriate to extend the Pilot for an additional three months, expiring on April 30, 2008.

See Securities Exchange Act Release Nos. 53213 (February 2, 2006), 71 FR 7103 (February 10, 2006) (SR–NYSE–2005–80), and 54215 (July 26, 2006), 71 FR 43551 (August 1, 2006) (SR–NYSE–2006–51).

[8] Floor brokers receiving orders from the public over portable phones must be properly qualified to engage in such ''direct access'' business under Exchange Rules 342 and 345, among others. *See also* note 10 *infra*.

[9] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR–NYSE–98–25). *See also* Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR–NYSE–2001–39) (discussing certain exceptions to FESC, such as orders to offset an error, or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed).

[10] For more information regarding Exchange requirements for conducting a public business on the Exchange Floor, *see* Information Memos 01–41 (November 21, 2001), 01–18 (July 11, 2001) (available on *www.nyse.com/regulation/*) and 91–25 (July 8, 1991).

[11] Allowing RCMMs acting as Floor brokers to use portable phones would involve further discussions with the Commission and would be the subject of a separate filing with the Commission.

[12] *See* Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR–NYSE–00–31) (discussing restrictions on specialists' communications from the post).

[13] Exchange Rule 36.30 provides that, with the approval of the Exchange, a specialist unit may maintain a telephone line at its stock trading post location to the off-Floor offices of the specialist unit or the unit's clearing firm. Such telephone connection shall not be used for the purpose of transmitting to the Exchange Floor orders for the purchase or sale of securities but may be used to enter options or futures hedging orders through the unit's off-Floor office or the unit's clearing firm or through a member (on the Exchange Floor) of an options or futures exchange.

[14] This data includes both Floor brokers and RCMMs.

[15] The Exchange has received records of incoming and outgoing telephone calls from January 31, 2007 through December 31, 2007 for Floor brokers and RCMMs and will continue to receive records of such telephone calls on a monthly basis.

[16] With respect to regulatory actions concerning the Pilot, in October 2007, there were two matters concerning the receipt of a phone call from an unauthorized number by RCMMs that were each investigated and closed with no action by NYSE Regulation, Inc.

[17] *See* Securities Exchange Act Release No. 43493 (October 30, 2000), 65 FR 67022 (November 8, 2000) (SR–CBOE–00–04), cited by Securities Exchange Act Release No. 43836 (January 11, 2001), 66 FR 6727 (January 22, 2001) (discussing and approving the Chicago Board Options Exchange's and the Pacific Exchange's proposals to remove current prohibitions against Floor brokers' use of cellular or cordless phones to make calls to persons located off the trading floor).

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [18] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The amendment to Exchange Rule 36 supports the mechanism of free and open markets by providing for increased means by which communications to and from the Exchange Floor may take place.

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. 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 [19] and Rule 19b–4(f)(6) thereunder.[20] At any time within 60 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.

The Exchange requests that the Commission waive the 30-day operative period under Rule 19b–4(f)(6)(iii) of the Act.[21] The Exchange believes that the continuation of the Pilot is in the public interest as it will avoid inconvenience and interruption to the public. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective.[22] The Commission believes that the waiver of the 30-day operative delay will allow the Exchange to continue, without interruption, the existing operation of its Pilot until April 30, 2008.

The Commission notes that proper surveillance is an essential component of any telephone access policy to an exchange trading floor. Surveillance procedures should help to ensure that Floor brokers and RCMMs use portable phones as authorized by Exchange Rule 36 and that orders are being handled in compliance with Exchange rules.[23] The Commission expects the Exchange to actively review these procedures and address any potential concerns that have arisen during the Pilot. In this regard, the Commission notes that the Exchange should address whether telephone records are adequate for surveillance purposes.

The Commission also requests that the Exchange report any problems, surveillance, or enforcement matters associated with the Floor brokers' and RCMMs' use of an Exchange authorized and provided portable telephone on the Exchange Floor. As stated in the Original Order, NYSE should also address whether additional surveillance would be needed because of the derivative nature of the ETFs. Furthermore, in any future additional filings on the Pilot, the Commission would expect that NYSE submit information documenting the usage of the phones, any problems that have occurred, including, among other things, any regulatory actions or concerns, and any advantages or disadvantages that have resulted.[24]

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–NYSE–2008–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–10. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2008–10 and should be submitted on or before February 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2140 Filed 2–5–08; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Exchange provided the Commission written notice of its intent to file the proposed rule change at least five business days prior to filing.

[23] *See* note 10 *supra* and accompanying text for other NYSE requirements that Floor brokers be properly qualified before doing public customer business.

[24] In any request for a permanent approval of the Pilot, the Commission would expect the information to distinguish between Floor brokers' and RCMMs' usage of the phones.

[25] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before April 7, 2008.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Rachel Newman-Karton, Program Analyst, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street SW., 6th Floor, Wash., DC 20416.

FOR FURTHER INFORMATION CONTACT: Rachel Newman-Karton, Program Analyst, Office of Small Business Development Centers, 202–619–1816 *rachel.newman-karton@sba.gov* or Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: *Title:* ''Quarterly Reports filed by Grantees of the Drug Free Workplace Program''.

Description of Respondents: Eligible Intermediaries who have received a Drug Free Workplace Program grant.

Form No: N/A.

Annual Responses: 52.

Annual Burden: 1,344.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E8–2102 Filed 2–5–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 7, 2008. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION: *Title:* Personal Financial Statement

No: 413

Frequency: On occasion

Description of Respondents: Applicants for SBA Loan

Responses: 148,788

Annual Burden: 223,182

Title: Secondary Participation Guaranty Agreement

No's: 1502, 1086

Frequency: On occasion

Description of Respondents: SBA Participating Lenders

Responses: 14,000

Annual Burden: 42,000

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E8–2103 Filed 2–5–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11160 and # 11161]

Indiana Disaster # IN–00017

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of INDIANA (FEMA–1740–DR), dated 01/30/2008.

Incident: Severe Storms and Flooding.

Incident Period: 01/07/2008 and continuing.

EFFECTIVE DATE: 01/30/2008.

Physical Loan Application Deadline Date: 03/31/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 10/30/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/30/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Carroll, Cass, Elkhart, Fulton, Jasper, Marshall, Pulaski, Tippecanoe, White.

Contiguous Counties (Economic Injury Loans Only):

Indiana

Benton, Clinton, Fountain, Howard, Kosciusko, Lagrange, Lake, Laporte, Miami, Montgomery, Newton, Noble, Porter, St. Joseph, Starke, Wabash, Warren.

Michigan

Cass, St. Joseph.

The Interest Rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 5.875.

Homeowners Without Credit Available Elsewhere: 2.937.

Businesses With Credit Available Elsewhere: 8.000.

Other (Including Non-Profit Organizations) With Credit Available Elsewhere: 5.250.

Businesses And Non-Profit Organizations Without Credit Available Elsewhere: 4.000.

For Economic Injury

Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000.

The number assigned to this disaster for physical damage is 11160B and for economic injury is 111610.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–2152 Filed 2–5–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6091]

Culturally Significant Objects Imported for Exhibition Determinations: ''Terra Cotta Warriors: Guardians of the First Emperor''

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, Delegation of Authority No. 236 of October 19, 1999, 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 ''Terra Cotta Warriors: Guardians of the First Emperor'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Bowers Museum, Santa Ana, California, from on or about May 18, 2008, until on or about October 12, 2008; at the High Museum of Art, Atlanta, Georgia, from on or about November 15, 2008, until on or about April 26, 2009; at the Houston Museum of Natural Sciences, Houston, Texas, from on or about May 18, 2009, until on or about September 27, 2009; and at the National Geographic Society, Washington, DC, from on or about November 19, 2009, until on or about March 31, 2010; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 30, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–2159 Filed 2–5–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–01]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before February 26, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–0105 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pat Nininger (816) 329–4129, FAA Central Regional Office, 901 Locust St. Kansas City, MO 64106 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 30, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2007–0105.

Petitioner: Cessna Aircraft Company.

Section of 14 CFR Affected: § 23.855(c)(2).

Description of Relief Sought: The petitioner requests relief from the requirements of § 23.855(c)(2) for a smoke or fire detector in the baggage compartments of the Cessna Model 525C aircraft. If granted, the petitioner would be allowed to obtain a type certificate for the Cessna Model 525C without a smoke or fire detector in the forward or aft baggage compartments.

[FR Doc. E8–2098 Filed 2–5–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–03]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket

number involved and must be received on or before February 11, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0146 using any of the following methods:

- *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:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Docket No.: FAA–2008–0146.

Petitioner: Iditarod Committee and Iditarod Air Force.

Section of 14 CFR Affected: §§ 119.21(a)(1), 61.3(c), 61.23(a), and 61.113(a).

Description of Relief Sought: The Iditarod Committee, Iditarod Air Force (IAF), and pilots request relief from §§ 61.3(c), 61.23(a), 61.113(a), and 119.21(a)(1) to the extent necessary to allow the petitioners to accept monetary and non-monetary compensation in return for transportation of people or property, and the use of fuel, food and equipment either purchased by the Committee/IAF or otherwise made by private donations. The compensation considered includes any money or donations made to or charged by the Committee/IAF to transport people or property associated with the operation of the Iditarod Race, and any fuel, insurance, housing, food or other support costs paid to individual pilot-aircraft owners.

[FR Doc. E8–2261 Filed 2–5–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–0008]

Agency Information Collection Activities: Request for Comments for Change to and Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of changes to and extension of a currently approved information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on October 23, 2007. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 7, 2008.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–0008.

FOR FURTHER INFORMATION CONTACT: Gary Jensen, 202–366–2048, Office of Planning, Environment and Realty, HEP–2, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Scenic Byway Program.

OMB Control #: 2125–0611.

Form #: FHWA–1569, FHWA–1570, FHWA–1577.

Background: The National Scenic Byways Program was established under the Intermodal Surface Transportation Efficiency Act of 1991, and reauthorized in 1998 under the Transportation Equity Act for the 21st Century. Under the program, the U.S. Secretary of Transportation recognizes certain roads as National Scenic Byways or All-American Roads based on their archaeological, cultural, historic, natural, recreational, and scenic qualities. There are 126 such designated Byways in 44 states, which the FHWA promotes as the America's Byways. It is a voluntary, grassroots program that recognizes and supports outstanding roads while providing resources to help manage the intrinsic qualities within the broader Byway corridor to be treasured and shared. The vision of the FHWA's National Scenic Byways Program is ''to create a distinctive collection of American roads, their stories, and treasured places.'' The program's mission is to provide resources to the byway community in creating a unique travel experience and enhanced local quality of life through efforts to preserve, protect, interpret, and promote the intrinsic qualities of designated byways. Title 23, Section 162 of the United States Code describes the creation of the National Scenic Byways Program. This legislation was most recently amended in 2005 upon passage of the Public Law 109–59 Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU). The legislation includes provisions for review and dissemination of grant monies by the U.S. Secretary of Transportation. Grant applications are

solicited on an annual basis. Eligible projects are on State designated byways, National Scenic Byways, All-American Roads, or Indian tribe scenic byways.

Applications are completed by Federal, State, or local governmental agencies; Tribal governments; and non-profit organizations. The application information is collected electronically via the online Grant system (*http://www.grants.gov*) and is used to determine project eligibility.

The legislation also includes information about the nomination of scenic byways to become one of America's Byways, a collection of distinct and diverse roads designated by the U.S. Secretary of Transportation. America's Byways include the National Scenic Byways and All-American Roads. Additional information on the National Scenic Byways Program, its grant program, and the nomination process is available at *http://www.bywaysonline.org.*

The total number of burden hours for this collection has changed. The grants applications forms were decreased to include only those forms that were created specifically for www.grants.gov. Also, the nominations cycle burden hours have been added.

Respondents

Grants Application Respondents: In a typical grants cycle, it is estimated that 400 applications will be received. Respondents include: 50 State Departments of Transportation, the District of Columbia and Puerto Rico (Right-of-Way Department), Federal Land Management Agencies, State and local governments, non-profit agencies, and Tribal Governments.

Frequency: Annual.

Estimated Average Burden per Response: 16 hours.

Nomination Respondents: Based on previous nomination cycles, it is estimated that a total of 75 nominations will be received, originating from any local government, including Indian tribal governments, or any private group or individual. Nominations may also originate from the U.S. Forest Service, the National Park Service, the Bureau of Land Management, or the Bureau of Indian Affairs.

Frequency: Every 2–3 years.

Estimated Average Burden per Response: 200 hours.

Estimated Total Annual Burden Hours: 11,400 hours.

Electronic Access: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 30, 2008.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E8–2168 Filed 2–5–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2007–0012]

National Transit Database: Strike Adjustments for Urbanized Area Apportionments

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final Strike Adjustment Policy for Urbanized Area Apportionments.

SUMMARY: This notice announces the Federal Transit Administration's (FTA) National Transit Database (NTD) policy on strike adjustments. On March 12, 2007, FTA provided notice to NTD reporters that it was changing its policy on strikes, to permit transit agencies to request an adjustment to their NTD data that are used in the apportionment of Urbanized Area Formula Grants to offset the effect of strikes, retroactive to the 2005 Report Year. This policy was also announced in the **Federal Register** Notice of the Urbanized Area Formula Apportionments for Fiscal Year 2007, which was published on March 23, 2007. FTA then formally invited the public to comment on this policy change through a notice published in the **Federal Register** on November 21, 2007. FTA received one comment on this policy change, and is now formally adopting the new policy.

DATES: *Effective Date:* February 6, 2008.

FOR FURTHER INFORMATION CONTACT: For program issues, John D. Giorgis, Office of Budget and Policy, (202) 366–5430 (telephone); (202) 366–7989 (fax); or *john.giorgis@dot.gov* (e-mail). For legal issues, Richard Wong, Office of the Chief Counsel, (202) 366–0675 (telephone); (202) 366–3809 (fax); or *richard.wong@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The National Transit Database (NTD) is the Federal Transit Administration's (FTA's) primary database for statistics on the transit industry. Congress established the NTD to ''help meet the needs of * * * the public for information on which to base public transportation service planning * * *'' (49 U.S.C 5335). Currently, over 650 transit agencies in urbanized areas report to the NTD through an Internet-based reporting system. Each year, performance data from these submissions are used to apportion over $4 billion of FTA funds under the Urbanized Area Formula Grants Program. These data are also used in the annual National Transit Summaries and Trends report, the biennial Conditions and Performance Report to Congress, and in meeting FTA's obligations under the Government Performance and Results Act.

For many years, it was FTA's policy to not adjust performance data submitted to the NTD to offset the effect of strikes. On March 12, 2007, FTA provided notice to NTD reporters that it was changing its policy on strikes, to permit transit agencies to request an adjustment to their NTD data that are used in the apportionment of Urbanized Area Formula Grants to offset the effect of strikes, retroactive to the 2005 Report Year. This policy was also announced in the **Federal Register** Notice of the Urbanized Area Formula Apportionments for Fiscal Year 2007, which was published on March 23, 2007. FTA invited the public to comment on this policy change through a notice published in the **Federal Register** on November 21, 2007.

FTA proposes to allow urbanized area transit agencies to request that their NTD data submissions be adjusted to offset the effects of strikes for purposes of the apportionment of Urbanized Area Formula Program Grants. Requesting transit agencies must provide FTA with documentation for the duration of the strike. FTA will then use the transit agency's NTD submissions to project performance data for the time period in question. These projections would then be added to the transit agency's NTD submission in the data sets used by FTA for the calculation of the apportionments of Urbanized Area Formula Program Grants (Section 5307 and Section 5309 Grants). In all publicly-available data sets and data products, an agency's NTD data would remain unadjusted and would reflect the actual NTD submission for the agency.

FTA proposes this policy change because the Section 5307 and Section 5309 Grant Programs are fundamentally designed to support the capital needs of transit agencies in urbanized areas. As such, various performance data are used to approximate the relative capital needs of the various urbanized areas. These capital needs are unaffected by strikes, even though strikes may

produce a substantial decrease in the performance data for an urbanized area.

Further, FTA proposes to make this policy retroactive to the FY 2005 Report Year, to allow urbanized areas that were negatively impacted by strikes in the 2005 and 2006 Report Years in the formula apportionment to avail themselves of this new policy.

II. Comments and FTA Response to Comments

FTA received one comment on this proposed policy change, inquiring as to how retroactive strike adjustments will be handled.

FTA Responds: FTA has made its new strike adjustment policy retroactive to the FY 2005 Report Year. Transit agencies that experienced a reduction in service reported to the NTD due to a strike in FY 2005, FY 2006, or FY 2007 may request an offsetting adjustment in their service data for purposes of the FY 2009 Urbanized Area Formula Apportionment by May 1, 2008. (Service data for FY 2007 will be adjusted in these cases.) Transit agencies experiencing a strike-related service reduction in subsequent years must submit their request for an adjustment along with their original NTD submission.

Issued in Washington, DC, this 1st day of February 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–2162 Filed 2–5–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0018; Notice 1]

Nissan North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Nissan North America, Inc. (Nissan), has determined that certain vehicles that it manufactured during the period of April 5, 2007 to July 25, 2007, did not fully comply with paragraph S4.3(b) of 49 CFR 571.110 (Federal Motor Vehicle Safety Standards (FMVSS) No. 110 *Tire Selection and Rims for Motor Vehicles With a GVWR of 4,536 Kilograms (10,000 Pounds) or Less).* Nissan has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Nissan has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Nissan's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 321 Model Year 2008 Nissan Titan E-Grade trucks manufactured from April 5 to July 25, 2007. Paragraph S4.3(b) of 49 CFR 571.110 requires in pertinent part that:

> S4.3 Placard. Each vehicle * * * shall show the information specified in S4.3 (a) through (g) * * * on a placard permanently affixed to the driver's side B-pillar * * *
>
> (b) Designated seated capacity (expressed in terms of total number of occupants and number of occupants for each front and rear seat location)

Nissan explains that E-grade Titan trucks can be equipped with two front bucket seats as an option, which means it has two seats in the front and three in the back for a total of five seating positions. The space between the two front bucket seats is occupied by a hard plastic console with cup holders that cannot be used or mistaken for a seating position. The second row has 3 seating positions. On the subject vehicles, the tire information placard incorrectly states that the total vehicle seating capacity is 6, with 3 seats in the front row, and 3 seats in the second row. All other applicable requirements of FMVSS No. 110 are met.

Nissan states that it believes the noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The front center console area of this vehicle cannot be mistaken for a seating position because the center console is low to the floor, has molded-in cup holders, has no padded/cushioned area, and has no provisions for seatbelts. It is apparent to any observer that there are only two front seating positions. Even if an occupant referenced the tire information placard to determine the vehicle's front seating capacity, it is readily apparent that the total capacity is five and not six and front row capacity is two and not three.

2. Because the subject vehicle cannot be occupied by more than five people, there is no risk of vehicle overloading.

3. The vehicle capacity weight (expressed as a total weight for passengers and cargo) on the placard is correct. The seating capacity error has no impact on the vehicle capacity weight.

Nissan also states that there have been no customer complaints, injuries, or accidents related to the incorrect seating capacity of the subject tire information placard.

Additionally, Nissan stated that it believes that because the noncompliance is inconsequential to motor vehicle safety that no corrective action is warranted.

After receipt of the petition, Nissan also informed NHTSA that it has corrected the problem that caused these errors so that they will not be repeated in future production.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. *By hand delivery to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 7, 2008.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: January 30, 2008.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E8–2099 Filed 2–5–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Schedule of Excess Risks

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and Request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''Schedule of Excess Risks.''

DATES: Written comments should be received on or before April 7, 2008.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rose Miller, Manager, Surety Bond Branch, 3700 East West Highway, Room 632F, Hyattsville, MD 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Schedule of Excess Risk.

OMB Number: 1510–0004.

Form Number: FMS 285–A.

Abstract: This information is collected to assist the Treasury Department in determining whether a certified or applicant company is solvent and able to carry out its contracts, and whether the company is in compliance with Treasury excess risk regulations for writing Federal surety bonds.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,066 (with 30 apps).

Estimated Time per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 5,780.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 29, 2008.

Scott H. Johnson,

Assistant Commissioner, Management (CFO).

[FR Doc. 08–509 Filed 2–5–08; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: List of Data (A) and List of Data (B)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and Request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''List of Data (A) and List of Data (B).''

DATES: Written comments should be received on or before April 7, 2008.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of form(s) and instructions should be directed to Rose Miller, Manager, Surety Bond Branch, 3700 East West Highway, Room 632F, Hyattsville, MD 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: List of Data (A) and List of Data (B).

OMB Number: 1510–0047.

Form Number: TFS 2211.

Abstract: This information is collected from insurance companies to assist the Treasury Department in determining acceptability of the companies applying for a Certificate of Authority to write or reinsure Federal surety bonds.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Time per Respondent: 18 hours.

Estimated Total Annual Burden Hours: 540.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 29, 2008.

Scott H. Johnson,

Assistant Commissioner, Management (CFO).

[FR Doc. 08–510 Filed 2–5–08; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Wednesday,
February 6, 2008

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 91, and 135

Special Federal Aviation Regulation No. 108—Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 91, and 135

[Docket No. FAA–2006–24981; Amendment Nos. 61–117, 91–298, and 135–111]

RIN 2120–AI82

Special Federal Aviation Regulation No. 108—Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation (SFAR) creates new pilot training, experience, and operating requirements for persons operating the Mitsubishi MU–2B series airplane (MU–2B). These requirements follow an increased accident and incident rate in the MU–2B and are based on a Federal Aviation Administration safety evaluation of the MU–2B. This SFAR mandates additional training, experience, and operating requirements to improve the level of operational safety for the MU–2B.

DATES: This final rule is effective April 7, 2008. Affected parties, however, do not have to comply with the information collection requirements until the FAA publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) for these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Ron Baker, General Aviation and Commercial Division, Commercial Operations Branch, AFS–800, Federal Aviation Administration, Room 835, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8212; facsimile (202) 267–5094.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The Federal Aviation Administration's (FAA's) authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106, describes the authority of the FAA to issue, rescind, and revise the rules. This rulemaking is promulgated under the authority described in Subtitle VII, Aviation Programs, Part A, Air Commerce and Safety, Subpart III, Safety, section 44701, General Requirements. Under section 44701 the FAA is charged with prescribing regulations setting the minimum standards for practices, methods, and procedures necessary for safety in air commerce. This regulation is within the scope of that authority because it will set the minimum level of safety to operate the Mitsubishi MU–2B.

Background

In response to the increasing number of accidents and incidents involving the Mitsubishi Heavy Industries (MHI) MU–2B series airplane, the FAA performed a safety evaluation of the MU–2B starting in July 2005. The safety evaluation provided an in-depth review and analysis of MU–2B accidents, incidents, safety data, pilot training requirements, and maintenance. During the safety evaluation, the FAA also convened an FAA Flight Standardization Board (FSB) to evaluate proposed training, checking, and currency requirements for pilots operating the MU–2B.

The notice of proposed rulemaking (NPRM) published on September 28, 2006 (71 FR 56905) was based on the recommendations of the safety evaluation and the FSB report. A copy of both the safety evaluation and the FSB report are in the Rules Docket (FAA–2006–24981) for this rulemaking action. In the NPRM, the FAA proposed new requirements for ground and flight training that would apply to all persons who manipulate the controls or act as pilot-in-command (PIC) of the MU–2B. The proposed SFAR also would apply to those persons who provide pilot training for the Mitsubishi MU–2B. Operational requirements, such as a requirement for a functioning autopilot for single pilot instrument flight rules (IFR) and night visual flight rules (VFR) operations, a requirement to obtain and carry a copy of the latest available revision of the airplane flight manual, and a requirement to use a new pilot checklist were part of the proposal. The requirements of the proposed SFAR would be in addition to the requirements in 14 CFR parts 61, 91, and 135.

The FAA proposed that all training conducted in the Mitsubishi MU–2B be done using the standardized MHI training program and a checklist accepted by the FAA's MU–2B FSB. Copies of a training program and a checklist were placed in the Rules Docket for this rulemaking so that interested persons could comment on them. In addition, the FAA requested comment on additional paperwork requirements of the proposed rule.

The FAA proposed a 180-day compliance date for the final rule. However, when published in the **Federal Register** a printing error indicated the compliance date would be March 27, 2007. This date is incorrect. The FAA intended that operators comply with this rule within 180 days of the final rule's publication.

On January 3, 2007 (72 FR 55) the FAA published a supplemental NPRM (SNPRM). The FAA had been monitoring implementation of the MHI MU–2B training program and determined that some pilots with little or no experience flying the MU–2B were requesting training at the requalification level when it was the FAA's intention that these pilots receive training at the initial/transition level. The FAA needed to clarify our intent with regard to the phrase ''operating experience'' as used in the training program. A lack of specificity led to the public not being properly advised as to the circumstances under which the FAA expected a pilot to undergo initial/transition training, requalification training, or recurrent training. In the SNPRM, the FAA proposed experience qualifications for initial/transition training, requalification training, and recurrent training. The comment period for the SNPRM closed on February 2, 2007.

Comments on the Proposed Rule

The FAA received over 90 comments on the proposed SFAR. Commenters included commercial operators, general aviation pilots, organizations representing owners and operators of the MU–2B, and the manufacturer. Most commenters applauded the FAA's requirement for additional pilot training in the MU–2B airplane, but also took issue with the total number of program hours required for pilot training or qualification as a flight instructor. Several commenters noted that the MU–2B, by the FAA's own admission, is a safe airplane and questioned why pilots of other makes and models of airplanes are not required to receive additional training. In general, commenters noted that the MU–2B airplane is safe if ''flown by the book.''

Several commenters stated that the SFAR is well thought out and will address the majority of MU–2B accidents that have arisen out of the lack of pilot training or inadequate pilot training. Other commenters stated that the additional training will not address accidents that occur from bad pilot judgment, such as the two recent

accidents involving pilots who flew into severe thunderstorms. Others commented that the SFAR enhanced the regulatory environment and will improve safety within the population of MU–2B operators.

The Aircraft Owners and Pilot Association (AOPA) supported the idea of an SFAR to address the special challenges of flying an MU–2B, but stated that the proposed requirements are burdensome and go beyond what is reasonable for safety. The National Air Transportation Association (NATA) commended the FAA for the course of action the agency took in developing the NPRM, but expressed concern that the narrow compliance window and burdensome aeronautical experience requirements would reduce available instructors. The National Business Aviation Association (NBAA) praised the FAA for maintaining a data-driven safety focus. After reviewing the FAA's proposal, NBAA concluded that the issuance of an SFAR is the most appropriate regulatory solution in light of a number of possible options. The Regional Air Cargo Carriers Association (RACCA) applauded the FAA's efforts to take a measured approach involving the manufacturer, the operators, and the FAA in developing means to address perceived safety issues with the aircraft. There was a general consensus among many of the commenters that the rulemaking effort benefited from the collaborative process prior to the NPRM that involved the airplane's users, manufacturer, and regulators.

The FAA received 20 comments to the SNPRM. Numerous comments on the SNPRM addressed issues on language in the NPRM. All comments are summarized in this preamble by issue.

Applicability

The FAA proposed that this rule apply to a PIC, second in command (SIC), or any other person who manipulates the controls of the MU–2B airplane. The FAA received many comments asking who would be allowed to manipulate the controls of the Mitsubishi MU–2B airplane. The commenters argued that there are legitimate reasons why a person who is not the PIC and who does not meet the training requirement of the proposed SFAR should be allowed to manipulate the controls. Some of these reasons included flights for the purposes of providing pilot training, maintenance flights, pre-employment pilot proficiency evaluations, and demonstration flights related to aircraft sales. One commenter was concerned that the rule would prohibit a ''pinch hitter'' from manipulating the controls. Pinch hitter courses are often given to provide non-certificated persons with basic piloting skills in order to assist in an emergency, such as the medical incapacitation of the PIC.

The FAA agrees that the proposed restrictions would make it difficult to receive flight training in the MU–2B. The FAA did not intend to prohibit the use of the MU–2B during flight training if the PIC had successfully completed the flight training requirements of the proposed rule.

Some commenters provided valid reasons for a less restrictive regulation. The FAA recognizes that certain maintenance test flights are best performed with two pilots or a pilot and a mechanic. For example, the level of safety when performing an in-flight Negative Torque Sensor Check is greatly enhanced when done by a two-pilot crew or a pilot and mechanic. The FAA has revised the rule language to allow manipulation of the controls by certain persons who have not received the SFAR's required training. The revised rule requires that the PIC must have completed the required MU–2B training and occupy a pilot station, and the flight may not be conducted with passengers or cargo onboard. A nonqualified pilot may manipulate the controls in the three circumstances described in section 2, paragraph (b) of the SFAR.

The FAA considers a pinch hitter course to be a form of flight instruction. The FAA also considers pre-employment pilot proficiency evaluations to be a function of flight training if such evaluations are conducted by qualified instructors meeting the training and experience requirements of this SFAR. The FAA notes that the responsibility and authority of a PIC allows the PIC to deviate from the rules to the extent required in an in-flight emergency requiring immediate action.

Time Allowed for Compliance With the Rule

The FAA proposed that all persons who operate the MU–2B airplane or train in the airplane would meet the requirements of the rule within 180 days of the effective date of the final rule. We felt that an expedited compliance period was necessary because of the potential safety risk identified by the safety evaluation. Based on comments and other actions that have mitigated these risks, such as voluntary compliance with the training program, the FAA has extended the compliance period to 1 year.

Many commenters expressed concern that 180 days is too short a time period for compliance. Two commercial training providers (SIMCOM and Howell Enterprises) and the airplane manufacturer (MHI) suggested 365 days as an alternative. One commenter noted the scarcity of flight instructors for the large number of pilots who would need training, stating that there are only three qualified instructors in the United States and only one simulator. Another commenter noted that some pilots are delaying recurrent training to see what the final rule will mandate; thus there will be a rush to training. Most persons commenting on this issue suggested a 365-day compliance period. Commenters also noted that if all pilots are trained in the proposed 180 days, the instructors would have nothing to do the other half of the year. They also posited that a one-time compliance window would make everyone's recurrent training in following years fall within the same 180 days.

Many commenters noted that commercial operators and most general aviation pilots are already receiving some sort of annual training. The commenters believe a longer (1 year) implementation period will allow these pilots to retain their current training cycle. The NATA believes a 1-year compliance time is more economically efficient, as it will allow MU–2B pilots flying under part 135 to complete the training defined in the SFAR in conjunction with currently required part 135 checks. They also argued that longer compliance time will have a minimal impact on safety.

The FAA agrees that a 180-day implementation period is too short. The SFAR will allow pilots to match existing annual training cycles whenever possible to reduce compliance costs. The final rule will take effect 60 days after publication in the **Federal Register**. The compliance period will be 305 days from the effective date. Therefore, the operators and trainers for the MU–2B will have 365 days from the date of publication of the final rule to comply.

Pilot Training

Many commenters agreed with the need for specialized training but raised concerns with the type and length of training. Some commenters felt that the SFAR did not go far enough, especially for initial training and part 135 operations.

Minimum Program Hours

The FAA proposed to adopt the hours of training determined by the FSB and incorporated in the MU–2B Training Program. We have decided to reformat the proposed training program and include it as Appendices A through D

to the SFAR. We have not added any additional requirements to the training program in the appendix, and it is fundamentally the same as the training program that we placed in the rules docket for comment.

One commercial training provider commented that the training program reduces ground training hours below what is currently provided and should be increased. Another commenter asserted that 8 hours of recurrent training is excessive for already proficient pilots. Several persons commented that 6, rather than 8, hours of requalification training is more reasonable. One commenter stated that a PIC should have at least 10 hours of in-flight training in the MU–2B before taking a check ride. Two commenters stated that the required training hours are arbitrary.

The FAA established the minimum required ground and flight training program hours after carefully reviewing all FAA-approved training programs and the proposed MHI training program. A team of pilots representing a cross section of the airplane's user demographics received the training. Proficiency levels and completion times were closely tracked. Additionally, the FAA has monitored the completion times for training conducted using the MHI training program since its approval. This monitoring has validated the number of training hours proposed. Accordingly, the FAA has determined that the program hour requirements represent the minimum number of hours required to reach an acceptable level of safety and proficiency. The FAA notes that training providers can add additional hours to the program if they feel it is needed.

A commenter stated that the 4 hours of recurrent training, followed by a check ride, is too exhausting. This person suggested that the training be broken into two, 2-hour training sessions, each 6 months apart. The FAA clarifies that the recurrent training requirement must be completed annually. The SFAR does not prohibit the division of the training into segments. Thus, the requirement may be met in two or more training sessions in order to align with existing training cycles.

Training to Proficiency

The FAA proposed to adopt the hours of training determined by the FSB and incorporated in the MU–2B training program, which vary depending on whether the pilot is receiving initial/transition, requalification, recurrent, or differences training.

Several commenters suggested training to proficiency rather than imposing a set number of hours of training. The commenters also noted that the number of hours proposed is too much training for some and too little for others.

The FAA points out that the MU–2B training program requires that the student complete a minimum number of program hours and that the student is trained to an acceptable level of proficiency as defined in the training program. Additionally, although the training program addresses pilot proficiency and skill, the training program also provides a body of knowledge addressing best practices, procedures, and operational techniques, as learned throughout the safety evaluation and the FSB process. Therefore, the FAA has determined that the program hours represent the minimum amount of training time needed. The FAA will continue to monitor the time required for completion of the training and may adjust the required training program hours if necessary.

Credit for Part 135 Training

The FAA stated in the proposed rule that the hours of training in the MU–2B training program are in addition to other training required by parts 61 and 135. Based on comment, we realize that some training maneuvers may be redundant. In this case, the maneuver is only performed once, but credit is given in both training programs.

A commenter stated that the FAA should recognize part 135 training that is already required (i.e., § 135.293 aircraft competency check, § 135.297 instrument proficiency check, § 135.299 line check). Part 135 operators already receive a total of 3 hours of in-flight testing each year, plus the training that will be required by the SFAR. The commenter does not think the SFAR considered the part 135 training.

In drafting the NPRM, the FAA did consider training already conducted under part 61 and part 135. Maneuvers covered under the Final Phase Check required by the training program may not satisfy all the requirements of a § 135.293, § 135.297, or § 135.299 check. Many maneuvers listed on the FAA Form 8410–3, *Airman Competency/Proficiency Check*, are not required under the final phase check of the training program. In the event that maneuvers or other training requirements appear in both training programs, credit should be given for the training under both programs. To the extent the training is conducted in an MU–2B airplane, and the maneuvers are identical, credit will be given for both program hours and completion of maneuvers. Such actions should be well documented, as this allowance does not eliminate any of the recordkeeping requirements within either training program. Operators must ensure that all requirements of part 135 are met. However, operators are not required to perform the same maneuvers twice (i.e., once for the Final Phase Check and again during a § 135.293 proficiency check). All items for both programs must be completed, even if that results in exceeding the minimum number of program hours.

Credit for Prior Training

The FAA did not allow credit for prior training in the proposed rule because it determined that much of the training lacked standardization and had differing procedures.

Some commenters felt that pilots with a high level of experience, previous factory training, or 'third party annual training' for insurance purposes, should be exempt (grandfathered) or have a reduced number of training hours. The FAA also received comments that the proposed training program as presently defined is the only approved training program. This single program means the entire MU–2B community is required to use the proposed training program. Another commenter suggested that existing approved training programs are adequate. Several commenters requested exemption from the SFAR training requirements because of participation in other approved training programs.

During the MU–2B safety evaluation, the FAA reviewed 23 approved training programs. There was little standardization among these training programs. Many taught techniques and procedures that were contrary to those published in the airplane flight manual (AFM). Therefore it was the conclusion of the safety evaluation and the FSB, that in order for training to be effective, there must be one standardized training program. The FAA will not allow persons to be grandfathered from the SFAR based on previous training. However, as explained later in this document, training conducted between July 27, 2006, and the effective date of this rule, using Mitsubishi Heavy Industries MU–2B Training Program, Part number YET 05301, Revision Original, dated July 27, 2006, or Revision 1, dated September 19, 2006, is considered to be compliant with this SFAR.

Demonstration of Proficiency

The FAA's safety evaluation and the FSB both recommended that

standardized training conclude with a demonstration of proficiency. This demonstration was a part of the proposed training program and allows for simultaneous training and checking during requalification and recurrent training.

The AOPA believes that pilots should not be required to pass a formal checkride at the end of their training. Instructors should be allowed to evaluate or ''check'' a pilot's performance during the course of training.

The final phase check of the training program is different from a formal checkride. During a formal checkride, where the pilot has made application for a certificate or rating, the inability to satisfactorily demonstrate proficiency will result in a failed checkride. During a final phase check required by the MU–2B training program, if the pilot cannot satisfactorily demonstrate proficiency he or she has not failed a checkride. Those pilots that do not perform to an acceptable level of proficiency may need additional training in order to complete the training program. The requirement of a final phase check ensures that all pilots not only receive the training, but also have acquired the skills and proficiency necessary to safely operate the airplane. The final phase check is also different from a formal checkride because the training program allows for simultaneous training and checking during requalification or recurrent training. Students can be given credit for successfully completing maneuvers while receiving the training. However, simultaneous training and checking is not allowed by the training program during initial/transition training.

Training Satisfying a Flight Review

The proposed rule did not specifically address the part 61 flight review in conjunction with the proposed training program. The final rule accommodates part 61 flight training, but only if the training is done in the MU–2B airplane.

The AOPA commented that the recurrent training should satisfy the requirements for a flight review as described in 14 CFR 61.56. The FAA notes that § 61.56(a) requires a flight review that includes at least 1 hour of flight time. The MU–2B training program requires a minimum of 6 hours of flight training in the MU–2B airplane for initial/transition training. Those pilots that opt to conduct requalification or recurrent training in the MU–2B airplane instead of a flight training device are required to receive a minimum of 4 or 8 hours respectively of flight training in the MU–2B airplane. Those pilots that attend initial/transition training, or conduct requalification or recurrent training in the airplane, easily satisfy the minimum amount of flight training required by § 61.56(a). Additionally, the ground training requirements for initial, requalification, and recurrent training covers the subjects required in § 61.56 (a)(1) and (a)(2). Therefore, the FAA agrees that successful completion of the flight and ground training requirements for initial/transition, requalification, or recurrent training meets the requirements of § 61.56 provided that at least 1 hour of the flight training was conducted in the Mitsubishi MU–2B airplane. Therefore, the FAA will recognize those persons that document successful completion of the applicable portions of the training program in the Mitsubishi MU–2B airplane as having met the applicable requirements of § 61.56. In this circumstance, no separate endorsement for the flight review will be required.

Grace Month for Training

The AOPA and two other commenters asked that we allow training conducted in the month before or after (a grace month) it is due to be considered as accomplished in the month it was due (the base month). The FAA agrees that completing training in the month before or after the month in which compliance is required can be considered as completed in the month it is due. However, this allowance does not re-establish a pilot's base month. This practice is allowed in other training requirements, such as in part 135 training. The rule language has been adjusted to reflect this allowance. The FAA notes that the grace month only applies to the training required by this SFAR.

Training Profiles

The FAA proposed incorporating by reference the training profiles in the proposed MU–2B training program. These were developed by the manufacturer while working with the FSB. Commenters expressed concern with some of the profiles.

One commenter felt that the engine inoperative non-precision and missed approach procedure, as published in the proposed training profiles, is dangerous. The commenter stated that requiring the pilot to extend the landing gear only when landing is assured invites training accidents, and if performed during actual instrument conditions, is contrary to the accepted instrument procedures of having the aircraft configured and stabilized inside of the final approach fix (FAF). The FAA recognizes that the profile as published, for a single-engine non-precision approach, deviates from common practices. However, during the FSB's evaluation, FAA test pilots flew a variety of makes and models of the MU–2B. They flew the MU–2B at various weights positioned throughout the airplane's center-of-gravity (CG) envelope. This included the maximum allowable take-off weight at the rearward limits of CG envelope. The drag penalty induced by configuring the airplane for landing at the FAF made it difficult to maintain a number of non-precision approach profiles. Airspeed often deteriorated below a safe speed while trying to maintain the profile in the landing configuration. Maintaining adequate airspeed became especially difficult when a circle-to-land maneuver was required. As a result of these findings, the FAA modified the single-engine non-precision approach procedures to delay deployment of the landing gear until landing is assured. This procedure has been included in the MU–2B training program in the applicable MU–2B model checklists.

The FAA notes that several elements of the training program have been revised since the training program was placed in the docket. The MU–2B Training Program now provides the profile for Take-Off Engine Failure Flaps 5° or Flaps 20° and the profile for the One Engine Inoperative Non-precision and Missed Approach. Corresponding changes were also made to the training program checklist to reflect the changes to the maneuver profiles. The FAA has determined that these changes are within the scope of the notice. There are no other substantive changes to the MU–2B Training Program except as modified by the proposal in the SNPRM.

Simulator Training

A commenter suggested a one-time training requirement in a simulator for those failures that cannot be safely simulated in the airplane. This training would include engine failure at rotation and the in-flight Negative Torque Sensor Check. The FAA considered this option but recognizes that there are no FAA-approved MU–2B simulators in operation and only two FAA-approved, Level 5, flight training devices (FTD). Both of these devices are located at a single facility in Florida. The FAA determined that it would pose an economic hardship to make the entire MU–2B community travel to Florida to train at this facility. Additionally, although the FAA embraces the use of simulators and FTD, not all training providers have them available, nor are

they the only method for delivering effective training.

A commenter also posited that the annual recurrent training should include three takeoffs and landings in the actual MU–2B airplane under the supervision of a qualified check airman or flight instructor. The FAA notes that safety can be enhanced by use of FTD during recurrent training. Therefore, the SFAR allows recurrent training to be conducted in an FTD or the MU–2B airplane.

In-House Training

Another commenter stated that part 135 companies should not be allowed to train in-house but should require their pilots to attend professional training companies to satisfy the SFAR requirements. The commenter also stated that there is too much latitude when part 135 companies conduct the training. The FAA considered this option but we are not changing existing part 135 regulations and guidance that allow commercial operators to conduct in-house training. Since there are no FAA-approved part 142 training centers for the MU–2B airplane, requiring commercially provided training for part 135 operators is not possible. Commercial operators can contract with training facilities to provide some types of instruction if the curriculum is approved by their Principal Operations Inspector, but this is not a requirement.

Monitoring Training Implementation and Training Quality

A commenter asked if the FAA will ensure that all MU–2B owners and pilots are trained to at least the proposed levels. The commenter also asked where the FAA plans to get the personnel to do surveillance on the SFAR training. The FAA is confident that pilots will be trained to at least the proposed levels. The FAA determined that successful completion of the training program requires a demonstration of proficiency to carefully defined performance standards. The FAA's Commercial Pilot Practical Test Standards are used as a guide to determine the pilot's level of proficiency under the MU–2B training program. Successful completion will be documented by a flight instructor meeting the experience requirements of the SFAR. A substantial amount of training has already been conducted using the FAA-approved MHI training program. Many pilots have voluntarily attended this training in anticipation of the issuance of the SFAR. The FAA has monitored this training and is satisfied with the quality and effectiveness of the program and its instructors. At the time of closure of the public comment period for the NPRM, approximately 6 percent of the MU–2B pilot community had received the new training. The FAA also held a workshop to ensure a smooth implementation of the FSB report for commercial training providers and part 135 operators.

The FAA will continue to monitor the training and SFAR implementation and conduct surveillance as part of its annual work program for field inspectors. Additionally, FAA guidance material was updated to assist inspectors and operators.

A commenter asked how the increase in training will prepare pilots for a loss-of-control of the airplane during an emergency. The FAA has determined that the mandatory training will provide the pilot with the knowledge and skill to fly the airplane safely within its designed operational limits under normal, abnormal, and emergency conditions, including operations with one engine inoperative. Many of the MU–2B accidents involved loss of directional control or stalling the airplane due to poor airspeed management or excessive bank angles when maneuvering. The training program emphasizes proper airspeed management, low-speed maneuvering, and the risks associated with excessive bank angles. The training also specifically addresses the loss-of-control accidents that have occurred in the MU–2B. Additionally, pilots must annually demonstrate proficiency in the flight maneuvers to commercial pilot practical test standards. Therefore, the training program focuses on prevention of unsafe conditions while also providing instruction for recovery from them.

Pilot Experience

The FAA proposed that a pilot must have logged 100 hours of PIC experience in multi-engine airplanes in order to operate the MU–2B airplane. That requirement is retained in the final rule.

One commenter questioned why the FAA would require a pilot to receive 100 hours experience in a multi-engine airplane prior to being able to serve as PIC of the MU–2B. This commenter believes that such an experience requirement would be confusing during the MU–2B training. The FAA finds that a pilot needs to have a basic level of experience and understanding of multi-engine airplanes prior to advancing to more complex airplanes. This threshold is consistent with experience requirements of SFAR 73, which describes additional operating experience requirements for the Robinson R–22/44.

Credit for Previous Operating Experience

In the SNPRM the FAA proposed that a person have a minimum level of previous operating experience of 50 hours within the previous 24 months to be exempt from initial/transition training. Based on comments, the FAA has modified this experience requirement in the final rule to also exempt pilots from initial training pilots who have a total of 500 hours previous operating experience. Most of the commenters requested that the FAA consider prior operating experience in the MU–2B. Some commenters noted that the proposed definitions in the SNPRM treat a pilot with significant, but not recent experience (i.e., last 24 months), the same as one with no experience. The AOPA and seven other commenters recommended that the FAA exempt experienced pilots from the initial training requirement if that pilot has at least 500 hours of documented MU–2B PIC experience. Other commenters also requested an exemption from initial training based on experience, although they suggested different determining thresholds. Two commenters suggested a threshold of 250 hours, and one commenter suggested 1,000 hours. One commenter stated that forcing an otherwise qualified pilot to attend initial training on the basis of the last 24 months flying is unfair. The commenter recommended a further qualification be added that states: ''or has logged a total of 500 hours of PIC in the MU–2.'' The commenter added that a pilot meeting this criteria should be able to re-qualify with the training specified in the requalification course.

The FAA agrees that pilots with significant previous experience should be exempt from participating in initial training. These pilots would instead be allowed to attend requalification training. The FAA also agrees that by allowing a form of the above proposed language, the original intent of the proposed rule is retained without penalizing those that have not flown the MU–2B within the past 24 months. Therefore, pilots with at least 500 hours of documented flight time manipulating the controls while serving as PIC of an MU–2B will not be required to attend initial/transition training, but will be required to satisfactorily complete requalification training.

Operating Experience in the Previous 24 Months

In the SNPRM, the FAA proposed that pilots with less than 50 hours of operating experience within the

previous 24 months would be required to attend initial training even if that pilot had already successfully completed initial training in the past. We have modified the final rule to make completion of initial training a one-time requirement.

The NATA commented that the association is in agreement with the FAA that pilots with little or no recent experience in the MU–2B should be required to train in the aircraft in order to obtain sufficient proficiency and experience. The association was not opposed to the FAA's proposed requirement for at least 50 hours of operating experience within the previous 24 months in order to bypass initial training. The NATA stated that with the existing part 135 currency and training requirements, and the level of on-demand charter activity, the 50-hour limit should not be cumbersome or add costly training to the typical part 135 operator. The NATA was sensitive to the fact that some part 91 operators do not support this requirement, and stated that they have no specific position on this requirement as it would apply to that industry segment. The NATA also stated that they appreciate the FAA's efforts to respond to MU–2B concerns with a rational, methodic, and participatory approach.

One commenter asked that we clarify that the 50 hours in the previous 24 months is not a continuing qualification limitation, but is intended to determine the pilot's level of entry into this new program. Another commenter stated the 50-hour requirement in the original NPRM was only intended for new entrants into the training program.

The FAA notes the SNPRM did propose a continuing look-back requirement of 50 hours within the preceding 24 months. Many commenters did not support this requirement, finding it unnecessary and burdensome. The FAA agrees with the comments that a continuing look-back requirement is not needed. The FAA has reviewed the FAA-approved training program and determined that the NPRM did not include such a provision. Furthermore, the FAA notes that after completing initial or requalification training, a pilot must still satisfactorily complete recurrent training annually, which includes an annual demonstration of proficiency. Therefore, the FAA has concluded that a continuing look-back requirement is not necessary.

In response to the comments and further FAA review, the FAA has revised the MU–2B training program and the rule language to include the following operating experience thresholds for determining pilot qualification for the various training options:

A person is required to complete ''Initial/transition training'' if that person has fewer than:

(i) 50 hours of documented flight time manipulating the controls while serving as pilot-in-command of an MU–2B in the preceding 24 months; or

(ii) 500 hours of documented flight time manipulating the controls while serving as pilot-in-command of an MU–2B.

A person is eligible to receive *Requalification training* in lieu of initial/transition training if that person has at least:

(i) 50 hours of documented flight time manipulating the controls while serving as pilot-in-command of an MU–2B in the preceding 24 months; or

(ii) 500 hours of documented flight time manipulating the controls while serving as pilot-in-command of an MU–2B.

A person is required to complete *Recurrent training* within the preceding 12 months. Successful completion of initial/transition or requalification training within the preceding 12 months satisfies the requirement of recurrent training. A person must successfully complete initial/transition training or requalification training before being eligible to receive recurrent training.

Successful completion of initial/transition training or requalification training is a one-time requirement. A person may elect to retake initial/transition training or requalification training in lieu of recurrent training and receive credit for recurrent training for that year.

These definitions have been included in the Compliance and Eligibility section of the SFAR.

Type Rating vs. SFAR

In the NPRM, the FAA discussed why it determined that an SFAR is more appropriate for the safe operation of the MU–2B than a type rating alone. This decision was based on the recommendations of the safety evaluation and the FSB.

Bankair, Inc. did not agree that it is necessary to mandate training that goes beyond the requirements of a type rating for this airplane. Another commenter said the FAA has failed to adequately consider a type rating for the aircraft or to adequately justify having an entirely special and new pilot competency program.

The MU–2B safety evaluation and the FSB found that a portfolio of corrective actions are required that go well beyond the reach of a type rating or pilot training alone are needed to significantly reduce the accident rate of the MU–2B. The SFAR allows the FAA to mandate actions that are far more stringent and broader in scope than what would be achieved through a type rating alone.

The FAA has determined that there is a need for annual recurrent training and an annual demonstration of proficiency. A type rating would not require recurrent training or additional checks because the aircraft is not required to be operated by a two-pilot crew as part of its certification basis. However, the FAA notes that some part 135 operations do require a two-pilot crew. An SFAR can mandate the conditions under which the aircraft may be operated, such as, in compliance with the new manufacturer's data (including new checklists or use of an autopilot), or other operational requirements determined necessary by the FSB. None of these requirements would be addressed by the issuance of a type rating. An SFAR can also impose higher experience requirements for those instructing or administering tests in the MU–2B than is presently required by existing regulations. Therefore, this SFAR provides a higher level of safety than would be achieved by issuance of a type rating alone.

Training Monopoly

A commenter stated that it does not make sense that he should forego all other flight training except at a flight school A commenter also suggested the FAA was supporting a commercial training monopoly. The FAA does not agree. This standardized training can be provided by any instructor or commercial training organization that meets the experience requirements for instructors as described within this SFAR. This rule does not require that all SFAR compliant training be conducted at a commercial training center or flight school.

Availability of Training Program

One commenter expressed concern about access and availability of the training program. Another commenter requested that the FAA reopen the comment period, claiming that Mitsubishi will not release the training program to the public and the public cannot comment on the proposal without evaluating it. This commenter requested that the FAA have Mitsubishi publish all of their information and then re-open the comment process. A commenter also noted the manufacturer requires a Memorandum of Understanding (MOU) to be signed by the recipient before being provided a

copy of the training program. This commenter felt that he should not be required to sign the MOU.

The FAA posted a copy of the MHI training program to Rules Docket FAA–2006–24981 prior to the NPRM comment period opening. This training program remains in the Rules Docket and may be downloaded by interested parties. As previously noted, the FAA has decided to place the requirements of the MU–2B Training Program in Appendices A through D to the SFAR. The SFAR will be published in the Code of Federal Regulations making the MU–2B Training Program publicly available. The FAA has determined that the public has reasonable access to the training program.

Procedures Not Covered by the Training Program

One commenter noted that a pilot cannot operate the MU–2B contrary to the training program and wondered about other procedures not in the training program such as IFR holds, GPS approaches and DME arcs. With this SFAR, the FAA does not intend to change operational procedures that are not contained in the MU–2B training program. The FAA notes that such procedures are already covered by existing FAA regulations and guidance.

Revisions to the Training Program

Although no comments were received about the proposed rule provisions related to future training program revisions, the FAA notes that absent future rulemaking that makes a later revision of the training program exclusive and mandatory, operators must use the MU–2B Training Program contained in the SFAR The FAA has added a new section 8 to the SFAR to give credit for use of certain prior versions of the MHI training program for a specific time period. Section 8 states that ''Initial/transition or requalification training conducted between July 27, 2006, and the effective date of this rule, using Mitsubishi Heavy Industries MU–2B Training Program, Part number YET 05301, Revision Original, dated July 27, 2006, or Revision 1, dated September 19, 2006, is considered to be compliant with this SFAR, if the student met the eligibility requirements for the applicable category of training and the student's instructor met the experience requirements of this SFAR.'' This addition was made to allow those pilots who have already completed the MHI training program during the rulemaking process to receive credit for initial/transition training.

Requirements for Flight Instructors

The FAA proposed a variety of experience requirements for flight instructors who conduct training in the MU–2B airplane, depending on whether the instruction is in the airplane, in a simulator, or in an FTD.

One commenter stated that the SFAR adequately addresses the need for flight instructors to be trained and current in the MU–2B airplane. One training provider suggested that the experience requirements for pilot examiners and check airmen be increased from 100 hours to 300 hours. Another commenter felt that the experience requirements for instructors, pilot examiners, and check airmen should be increased to 500 hours. The FAA notes that existing regulations allow instruction and checking in the MU–2B to be conducted with as little as 5 hours PIC time in make and model. The requirement that this be increased to 300 hours for instructors and 100 hours for examiners is a substantial increase over what is now required. The experience requirements in this SFAR are also consistent with thresholds established by other prior rulemaking for certain aircraft, such as SFAR 73 for the Robinson R–22/R–44 helicopter (62 FR 16298), and the recommendations of the FSB Report.

Another commenter stated that the 50 hours of operating experience within the previous 12 months for instructors, whether in the airplane or simulator, is not enough experience for someone who provides training in the MU–2B. The FAA notes that existing regulations allow flight instruction in the MU–2B to be conducted with as little as 5 hours PIC time in make and model. The increase to 50 hours within the previous 12 months significantly increases the experience requirements for MU–2B instructors. Furthermore, this 50-hour requirement is just one of many experience requirements for MU–2B instructors. Other experience requirements for an instructor such as the currency requirement of § 61.57, the flight review of § 61.56, the 2,000 hours of PIC time, and 800 hours PIC in multi-engine airplanes, combine to set a high experience level for MU–2B instructors. The specific purpose of the 50-hour requirement is to ensure that instructors have recent experience in the MU–2B airplane, training device, or simulator. The 50 hours must be obtained within the past 12 months.

A commenter also found that the 100 hours of PIC time required for a designated pilot examiner was too little time. The FAA notes this is only part of the total requirement. That examiner is also required to have the training required by this SFAR and to maintain currency in the MU–2B. The 100 hours is based on the FSB recommendations, other aircraft training requirements, a previous SFAR, and the FAA's experience in checking and evaluation.

A commenter noted that under part 135, a flight instructor does not have to hold a valid and current certificated flight instructor certificate (CFI). The commenter commented that, for part 135 operations, a flight instructor should hold a valid CFI certificate with multi-engine and instrument ratings for at least 2 years. In addition, the check airman or CFI should have 300 hours as PIC acquired while the sole manipulator of the controls as described in 14 CFR 61.51(e)(1)(i).

The FAA does not intend to change the general qualification requirements for part 135 flight instructors, but rather to establish minimum experience requirements for all instructors who provide training in an MU–2B. Additionally, requiring 300 hours as PIC as sole manipulator of the controls or requiring that instructors for part 135 operations hold a certificated flight instructor certificate would be beyond the scope of the FAA's proposal.

A commenter stated it will be difficult for an instructor to have 50 hours of PIC MU–2B time annually, that 50 hours is not useful if it is only flown in ''straight and level'' flight, and that proficiency is what is useful for a flight instructor. The FAA has determined that the recency of experience and the amount of flight time in the airplane are important qualifications for a flight instructor who provides instruction in the MU–2B. This level of experience was also recommended by the FSB Report.

The NATA commented that the total flight time and PIC flight time requirements for instructors are burdensome and could significantly limit the number of instructors qualified to provide training to MU–2B pilots. Additionally, the proposed rule would require designated pilot examiners to have an excessive amount of aeronautical experience in the MU–2B but would not require the same of FAA inspectors.

The FAA has determined that although the rule will increase the experience requirements for MU–2B instructors, the rule will not significantly reduce the number of instructors that are presently teaching in the MU–2B. In order to maximize the number of instructors available to provide training in the airplane, the FAA revised section 5 to allow the Flight Instructor Airplane experience requirements to be met using a

combination of PIC time and experience acquired while providing instruction in a FAA-approved MU–2B flight training device or simulator. The FAA has also extended the compliance period by 6 months to allow a more orderly implementation of this rule. The training and checking requirements for FAA inspectors are the same as for the public when the inspector is acting as the PIC, administering check rides, or otherwise manipulating the controls.

One commenter stated that safety would be diminished because local instructors would no longer be allowed to conduct an Instrument Competency Check (ICC) for the MU–2B. This SFAR does not require that instrument currency be maintained exclusively in the MU–2B. Also, the SFAR does not prohibit local instructors from giving an ICC. The only requirement is that the instructor meets the qualifications of the SFAR in order to give instruction in an MU–2B.

One operator commented that part 135 pilots, in commercial operations, do not carry logbooks or present logbooks during training. The logbook requirement is only applicable to part 91 operators. The commenter also stated a part 135 operator keeps records in compliance with 14 CFR 135.63(c) to include the completion date and result of every phase of training and checking for 5 years after the pilot's employment ends. Logbook endorsements are generally used as provided in part 61 at the student and private pilot level. The commenter requested that the references to pilot logbooks should be changed to ''logbook or other permanent pilot record.''

The FAA notes that § 135.63(c) addresses the recordkeeping requirement for multiengine load manifest and does not address documentation of pilot training. Section 135.63(a)(vi) addresses recordkeeping requirements for initial and recurrent competency tests, proficiency, and route checks required by §§ 135.293, 135.297, and 135.299. Section 135.63(a)(vii) addresses recordkeeping requirements for determining compliance with flight time limitations found within part 135. However, none of the above referenced rules address the documentation requirements of part 61. Additionally, 14 CFR 61.51 requires that all pilots, regardless of which regulations of 14 CFR under which they operate, keep a logbook and within it, document and record training and experience used to meet the requirements for a certificate, rating, flight review, aeronautical experience, or recent flight experience. This SFAR does not change the applicability or requirements of the existing § 61.51 rule. The requirements of this SFAR are not limited to part 135 operations. Pilots that operate the MU–2B will need to be able to demonstrate compliance with this SFAR whether or not they are employed by a part 135 operator. This documentation is best accomplished through a logbook endorsement, which is consistent with existing regulations.

A commenter stated that the proposed SFAR requires endorsement of the pilot logbook by a ''certificated flight instructor.'' The commenter posited that this text should be changed to ''instructor'' or ''flight instructor'' since part 135 does not require the use of a CFI. The FAA notes that the eligibility, requirements, and privileges of a flight instructor are described in detail by existing rules under 14 CFR parts 61 and 135. The FAA also acknowledges these requirements may be different for training conducted under part 61 as compared to part 135. Part 135 operators can use a CFI but can also use an instructor authorized by the FAA in lieu of a CFI. The FAA has changed this language accordingly.

Autopilot Requirement

The FAA proposed that no one could operate the MU–2B airplane under IFR, IFR conditions (i.e., instrument meteorological conditions (IMC)), or night VFR unless that airplane has a functional autopilot. That requirement is retained in the final rule. However, the FAA has described the requirement in a simplified form. The final rule does not require a functional autopilot for day VFR or when operating under IFR in daytime VMC conditions when maintenance of an inoperable autopilot has been deferred using an approved minimum equipment list (MEL).

Most persons commenting on the autopilot requirement did not see the need for this requirement. Some persons commented that the autopilot is unnecessary and rarely used; one cited that no other airplane is restricted when the autopilot is nonfunctioning. Experienced pilots commented that they prefer to ''hand fly'' the airplane. Another commented that, if the autopilot is mandated, a pilot may become dependent on it.

Several of the MU–2B accidents involved single pilot night-time VFR and IFR operations in high-density terminal areas with high pilot workloads. The flight training profiles flown by FSB members during the safety evaluation included a human factors workload evaluation. One airplane was equipped with several cameras that allowed post-flight evaluation of the pilot's workload. The FSB pilots completed numerous questionnaires developed by human factors specialists to measure task saturation. Questionnaires and flight video reviews were completed during post-flight interviews with a human factors specialist. Using techniques developed by the National Aeronautics and Space Administration, testing showed a significant reduction in single pilot workload and stress and improved performance when an autopilot was used in actual flight conditions. The FAA recognizes that in some conditions use of the autopilot may be inappropriate or even prohibited, such as during flights into icing conditions. The FAA also recognizes some pilots routinely hand-fly the airplane. The SFAR does not mandate the use of the autopilot during any particular phase of flight. That decision remains solely with the PIC. The SFAR does require that a functioning autopilot be installed for certain types of operations (IFR, IFR conditions, and night VFR). This requirement provides the pilot with access to a significant safety enhancing tool if he or she should need it to reduce pilot work load, during normal, abnormal, and emergency conditions.

The AOPA requested that the FAA eliminate the requirement to have a functioning autopilot for night VFR and for IFR in visual meteorological conditions (VMC) and allow an instrument and multiengine rated pilot to act as the safety pilot for an MU–2B PIC flying in IMC. Flightline/AmeriCheck, Inc., also requested that operators be allowed to conduct operations with two pilots, either two PICs or one PIC and one SIC in lieu of a functioning autopilot. Instead of grounding the airplane when the autopilot is not functioning, one commenter suggested the flight be limited to two qualified pilots; one of which meets the part 135 training and checking requirements as a SIC. In addition, one person commented that safety would be enhanced by a person in the right seat who could assist the PIC with minor duties even though he or she may not be MU–2B qualified.

The MU–2B safety evaluation and the FSB recommended that all operators of the MU–2B attend standardized pilot training. Therefore, the FAA has determined that a second pilot must meet the training requirements of this SFAR in order to provide the equivalent level of safety of a functional autopilot. Operators can conduct IFR and night VFR operations without a functioning autopilot when using a properly trained second-in-command meeting the applicable requirements of this SFAR.

We also received comments that requested relief from the autopilot through the use of a minimum equipment list (MEL). The NBAA commented they have long held that two qualified and trained pilots are one of the best safety investments in an aircraft and thus support the autopilot requirement. But, the NBAA also stated that FAA should consider allowing the use of an MEL for a nonfunctioning autopilot. Flightline/AmeriCheck, Inc. requested that they be allowed to maintain their authorization to defer repair of an inoperative autopilot by using their existing FAA-approved MEL.

The FAA notes that experience has shown the normal operation of every system or installed component may not be necessary when the remaining operative equipment or other mitigating conditions can provide an acceptable level of safety. The FAA also acknowledged that operations with inoperative equipment are possible while maintaining an acceptable level of safety by requiring appropriate conditions and limitations.

Therefore, the FAA will allow, when provided by existing rules, single pilot IFR in VMC conditions under the SFAR with the autopilot inoperative under certain conditions. The deferred maintenance and repair of the autopilot must be completed in accordance with the repair category and provisions specified in the operator's FAA-approved Mitsubishi MU–2B MEL, and the operator must obtain FAA approval to use a MEL for his or her airplane. This relief does not supersede any existing crew requirements for an SIC, including but not limited to operations described in 14 CFR 135.99, 135.105, and 135.111. This relief will allow operators time to locate parts and facilities for repairs, ferry aircraft to repair stations, and complete trips. Under certain conditions, the aircraft with an approved MEL will not be immediately grounded due to an inoperative autopilot, and operators will have a reasonable period of time to make repairs. The FAA has changed the rule language to specifically allow for the use of an MEL under the SFAR.

One person stated that if IFR flight is not an option due to a non-functioning autopilot, the pilot may push the limits of VFR rules to an unsafe situation. Another person noted that on long trips, one leg of the flight may be delayed if the airplane without a functioning autopilot must wait for good weather to avoid flying in IFR conditions. The FAA does not agree with the comments that pilots will fly in marginal VFR weather (scud run), or delay their trips when their autopilots are inoperative. Deferred maintenance and repair of the autopilot using an approved MEL will provide an alternative to choosing to fly in marginal VFR weather.

Additional commenters noted that parts for installed autopilots are difficult to obtain. The FAA recognizes that parts for the autopilots are becoming increasingly scarce and support for the existing autopilots may someday end. However, to date, the FAA is unable to identify autopilots that cannot be repaired. Additionally, the FAA notes new autopilots are under development for the MU–2B.

One commenter suggested that requiring a functioning autopilot modifies the airplane type certification basis. Another commenter stated that to require an autopilot defies the certification basis for the MU–2B because the airplane was type certificated for single pilot operations.

The FAA notes that the autopilot requirement is an operational requirement and not a certification requirement. Furthermore, in most of today's modern cockpits, aircraft that are permitted to be operated with a single pilot are required to have a functional autopilot installed. Requiring an autopilot does not change or modify the airplane's original type certification basis.

Some commenters asked which aspects of the autopilot must be functional or, if one facet is not functioning, how the airplane could be flown to a repair facility. A commenter said grounding the airplane due to a non-functioning autopilot is excessive. The FAA disagrees. A functional autopilot is one in which the system and components are operative and working properly to accomplish the intended purpose. That autopilot is consistently functioning within its approved operating limits and design tolerances. Operators have many ways to verify that their autopilot is functioning properly including conducting the preflight check as described by the manufacturer. Operators can find this information in the Supplemental AFM.

Another pilot recommended additional specific instruction in autopilot inoperative strategies during recurrent training.

The MU–2B training program provides instruction for operation of the airplane with and without the autopilot operational. The training program requires the pilot to demonstrate proficiency while hand-flying the airplane.

Airplane Flight Manual

The FAA proposed that operators of the MU–2B airplane have on board the most recent revision to the AFM. One commenter noted that an out-of-date AFM is a common problem for many MU–2B airplanes, and was confident that the SFAR solves this problem. The SFAR requires the operator to have the appropriate AFM on board the airplane and accessible during the flight.

The FAA notes there may be differences between checklist, procedures, and techniques found in the MU–2B training program required by this SFAR and procedures found in the AFM procedures sections (Normal, Abnormal, and Emergency). Until the AFM is updated, a person operating the MU–2B must operate the airplane in accordance with the required pilot training specified in section 3, paragraphs (a), (b), and (g) and the operating requirements of section 7, paragraphs (d) and (e). If the AFMs are updated, the FAA may initiate additional rulemaking. At that time the FAA may mandate that the operators obtain and use the latest version of the AFM. The chart below shows the current versions of the AFMs as of the date of publication of the SNPRM.

MHI DOCUMENT NUMBER AND REVISION LEVEL FOR MU–2B SERIES AIRPLANE—AIRPLANE FLIGHT MANUAL

Model	Marketing designation	Type certificate	Applicable AFM revision level		
			Document No.	Revision No.	Date issued
MU–2B–60	Marquis	A10SW	MR–0273–1	14	July 11, 2005.
MU–2B–40	Solitaire	A10SW	MR–0271–1	12	July 11, 2005.
MU–2B–36A	N	A10SW	MR–0196–1	14	July 11, 2005.
MU–2B–36	L	A2PC	YET 74122A	12	August 9, 2004.
MU–2B–35	J	A2PC	YET 70186A	13	August 9, 2004.
MU–2B–30	G	A2PC	YET 69013A	13	August 9, 2004.

MHI DOCUMENT NUMBER AND REVISION LEVEL FOR MU–2B SERIES AIRPLANE—AIRPLANE FLIGHT MANUAL—Continued

Model	Marketing designation	Type certificate	Applicable AFM revision level		
			Document No.	Revision No.	Date issued
MU–2B–26A	P	A10SW	MR–0194–1	12	July 11, 2005.
MU–2B–26	M	A2PC	YET 74129A	12	August 9, 2004.
MU–2B–26	M	A10SW	MR–0160–1	10	July 11, 2005.
MU–2B–25	K	A10SW	MR–0156–1	10	July 11, 2005.
MU–2B–25	K	A2PC	YET 71367A	12	August 9, 2004.
MU–2B–20	F	A2PC	YET 68034A	12	August 9, 2004.
MU–2B–10	D	A2PC	YET 86400	12	August 9, 2004.
MU–2B	B	A2PC	YET 67026A	12	August 9, 2004.

Checklist

The FAA proposed and the final rule requires that all operators of the MU–2B have a copy of an MU–2B checklist appropriate for the MU–2B model being operated on board the airplane, accessible for each flight at the pilot station, and used by the flight crewmembers when operating the airplane. These checklists must be accepted by the FAA's MU–2B FSB. The manufacturer has developed make and model specific checklists for each MU–2B model. These checklists have been already accepted by the FAA's MU–2B FSB and are appropriate for unmodified versions of the models listed. A list of the checklists for the various models of the MU–2B series airplane are in section 3 (g), table 1, of this final rule.

A commenter was pleased to see a standardized checklist and added that it will result in improved safety. Another commenter stated that the checklist should be aircraft specific, which could be accomplished by providing a checklist template to be customized to fit the specific aircraft.

During the safety evaluation, FAA test pilots evaluated a standardized checklist developed by MHI and found it to be a significant safety improvement. A standardized cockpit checklist that emphasizes proper operational procedures is critical to the safe operation of the MU–2B. The FAA and MHI engineers and test pilots carefully considered cockpit layout, flow patterns, crew resource management, and pilot work load when determining the checklist items. This rule requires that any MU–2B checklist used be accepted by the FAA's MU–2B FSB. Operators with airplane configurations different from the airplane as originally delivered, or later modified, may submit other checklists for review by the FSB.

Another commenter who has installed an aural checklist in his MU–2B asked if this would be prohibited under the SFAR. Yet another suggested that the checklist be customized to allow for individual configurations.

In accordance with existing FAA guidance and procedures, the MU–2B FSB is responsible for reviewing, and accepting or rejecting any checklists submitted by the manufacturer or the public. For the purpose of this rule, the term ''approved or accepted'' means the FAA has received the proposed checklist, reviewed the checklist content, and determined it to be safe for use while operating the MU–2B airplane.

The MU–2B FSB will review all submitted checklists, including aural checklists or those not produced by the manufacturer, if an operator has an airplane configuration that is different from that originally delivered. This review will conclude with a determination of whether the submitted checklist can be accepted. An operator may submit their proposed checklist to the MU–2B FSB at the address in the footnote and request that the FSB review the checklist for acceptance.[1] The rule language has been changed to reflect this process.

One commenter said he had reviewed the checklist, and at 162 pages it is too long for a pilot to run through before takeoff. Another commenter said that the checklist should flow from system to system, not as things are arranged in the cockpit.

The FAA posted to Rules Docket FAA–2006–24981 a sample of the manufacturer's checklist for comment. This is one, but not the only, possible format that the FAA may accept. This 162-page document includes checklists for normal, abnormal, and emergency procedures, but also includes instructions for checklist use, an expanded section that describes in greater detail the actions required, warnings, notes, and cautions. In the back of the binder, there are also performance charts that were not previously contained in the AFM. These charts include the following: ''Weight for Positive Gradient After Takeoff with Flaps at 5 or 20 degrees'' and ''Single Engine Rate of Climb with Flaps at 5 or 20 Degrees.'' These charts are important pre-flight decision making tools and using them can enhance safe operation of the airplane. The FAA notes that the manufacturer's checklist is comparable in size to those of airplanes of similar complexity.

The FAA stated in the NPRM that we would publish specific checklists for each MU–2B model and seek public comment. A checklist for each model of the MU–2B airplane has been approved by the FSB. These are listed in section 3(g) of the rule.

Costs of the Rule

Some commenters indicated the costs of the proposed rule are higher than those estimated by the FAA. These comments are discussed below by issue. For a more complete discussion of costs and benefits, see the Final Regulatory Evaluation, which has been placed in Rules Docket FAA–2006–24981.

Compliance Date

As discussed earlier in this document, compliance with this final rule is required 1 year after publication in the **Federal Register**.

Extending the compliance date decreases the requalification training for all MU–2B pilots currently receiving training. The baseline training cost is the cost of the existing recurrent training (rather than zero). In addition, the actual final cost estimate of requalification training for those pilots currently getting training is reduced by the travel costs and value of travel time to the training facility. As a result of extending the compliance date to 1 year, the total cost estimate for this SFAR decreases $3 million to $4 million.

Although some part 135 operators send their MU–2B pilots to commercial training providers, many part 135 operators have in-house training

[1] The MU–2B FSB is located at FAA Central Region Headquarters, Aircraft Evaluation Group MKC–AEG, Room 332, 901 Locust, Kansas City, MO 64106; telephone 816–329–3233.

programs and would not incur any travel, lodging, or per diem costs. The analysis in the final regulatory evaluation does not reflect this potential lower cost, but recognizes that the cost estimate is a potential overestimate of the actual costs because many MU–2B pilots flying under part 135 would not incur travel, lodging, or per diem costs.

Value of Aircraft

One commenter stated the FAA will ''kill'' the value of the MU–2B, and he could not afford to walk away from a $400,000 investment he could not use or sell. In related comments, other persons stated the loss of value could be more than $100,000 per airplane. In contrast, another commenter stated he ''welcomed the FAA intervention'' in hope that we might be able to put the safety issue behind us and restore lost value to the MU–2B fleet.

The FAA is requiring MU–2B pilots (with a minimum of either 50 hours PIC time in the MU–2B in the last 2 years or 500 total hours in the MU–2B) to receive requalification training. This will entail a total additional cost including lodging, meals, incidental expenses, and value of time of approximately $5,000 for pilots currently getting training, or $13,000 for pilots not currently getting training. Pilots will also be required to receive annual recurrent training in the future, at a total additional cost of about $2,000 per year for pilots currently getting training or $10,000 per year for pilots not currently getting training. Such a safety expense is very small compared with a $400,000 airplane.

The MU–2B price was falling before the proposed rule was issued. Several factors, including the poor MU–2B safety record, higher maintenance costs, less availability of parts, and newer products with better capabilities, may help explain the falling price of MU–2Bs.

Impact of Aircraft Value Loss on Business

A commenter complained, ''Our fleet value has dropped significantly. Our MU–2Bs are a standalone division of the company. If the MU–2B division can not turn a profit, the business division will be shut down. Pilots and mechanics will be let go.''

The decision to shut down a certain division is a business decision that is not based on the value of the MU–2B. The value of existing capital is not relevant in the decision to continue to provide current services. The value of capital is relevant in the determination of the shutdown value of a business. The FAA does not believe this rule will force companies out of business. As shown in Regulatory Flexibility Analysis, found in the Final Regulatory Evaluation, the pilot training cost is estimated to be greater than 2 percent of annual revenues for one small entity operator, and greater than 1 percent of annual revenues for five small entity operators. (Refer to Table RF–5 in the Final Regulatory Evaluation in Rules Docket FAA–2006–24981.)

Recurrent Training Cost

A commenter stated that the cost of recurrent training should be reviewed. He found the price of recurrent training not $1,937 per pilot as estimated in the NPRM, but $4,100 at SimCom.

In the NPRM, the FAA estimated that the average additional cost per pilot for recurrent training would be $1,937. This is in addition to the current cost the pilot is paying for recurrent training. ($4,100 + $1,937 = $6,037) The existing 3-day recurrent training course at SimCom costs $4,100 (refer to Table 3 in the Regulatory Evaluation of the NPRM). The FAA estimated that the future recurrent training cost at SimCom would be $4,600 and that the training would spill over into a 4th day (refer to Table 4 in the NPRM's Initial Regulatory Evaluation). So the total additional cost for the recurrent training course alone is $500 ($4,600 − $4,100 = $500). The average per diem costs (i.e., lodging, meals, and incidental expenses) in Orlando, FL is $137 per day based on the 2006 federal government per diem rates (refer to Tables 5 and 6). The total additional cost for the recurrent training course plus the additional day of lodging, meals, and incidental expenses would be $637 ($500 + $137 = $637). The additional costs due to travel (round trip travel costs and the value of travel time) are zero because the student would incur the same travel costs to attend the training. Since student pilots would be spending an additional day in recurrent training, the estimated value of time for the additional day is $288.51 (8 hours × $36.06 average hourly value of time = $288.51). The $36.06 average hourly value of time is an average of the hourly value of travel time savings for general aviation purposes [2] and the mean annual wage of Commercial Pilots of small fixed or rotary winged aircraft.[3] Hence, the total additional cost for an existing student in the recurrent training program at SimCom would be about $925 ($637 + $288.51 = $925.51).

The FAA conducted a similar analysis for existing students at Howell Enterprises and at Professional Flight Training, and then conducted a weighted average of the additional costs per pilot at these 3 training facilities and arrived at an average additional cost of $1,937 per pilot. The total per pilot costs of training at Howell Enterprises and at Professional Flight Training are higher than at SimCom because these training facilities conduct the training in the customer's airplane. Hence, the FAA included the additional MU–2B variable operating cost of $900 per hour, which is based on a cost study of the Mitsubishi Marquise conducted by Howell Enterprises. In contrast, SimCom provides recurrent training in simulators, and students at SimCom would not incur any additional MU–2B operating costs.

Training Cost Estimates

Several commenters stated that the estimates in the SFAR are unrealistic. They said the real costs for requalification training will be in excess of $20,000 and the annual recurrent training cost would be in excess of $8,000.

The estimates in the initial regulatory evaluation were the additional costs that a pilot would incur due to this rule. If a pilot has been getting recurrent training, the FAA estimated that his additional cost for recurrent training due to this rule would be $1,937. If a pilot has not been getting recurrent training, and will be forced to do so now, the FAA estimates that the cost of recurrent training for this pilot would be $9,889. Hence, the existing cost of recurrent training is approximately $8,000 ($9,889 − $1,937 = $7,952). The FAA estimated in the NPRM that the average total costs for requalification training would be $12,604. (Refer to Table 8 in the NPRM's Initial Regulatory Evaluation.) Requalification training is more expensive than recurrent training, but it is not 2.5 times the cost of recurrent training. The commenters have not provided any supporting justification to show that the cost of requalification training is really $20,000 plus.

After accounting for the increased compliance time and other revisions to the rule, the FAA estimates that the additional cost of requalification training for pilots currently getting training would be around $5,000 per pilot. (Refer to Table 8 in the Final Regulatory Evaluation of the Final Rule.)

[2] Economic Values for FAA Investment and Regulatory Decisions—A Guide, Draft Final Report, December 31, 2004.

[3] Bureau of Labor Statistics, Occupational Employment and Wages, May 2005.

Instructor Costs

A commenter stated MU–2B instructors cost $100 per hour, not $50 per hour. Also this commenter claimed there were costs associated with fuel, related airplane costs, and housing related to the training.

The FAA agrees that MU–2B instructor rates are approximately $100 per hour. However, the additional costs for pilots to attend the training program are not based on an instructor hourly rate. Instead, they are based on the costs of the training programs. (Refer to Table 3 in the Regulatory Evaluation.) As explained above, the FAA estimated total per pilot costs including training costs, MU–2B operating costs (if training is done in the airplane), lodging, food and incidental expenses, transportation to the training venue, the value of training time, and the value of travel time. The FAA estimated the MU–2B variable operating costs to be $900 per hour. This figure includes the cost of fuel, maintenance, avionics, engine reserve for overhaul and hot section, and propeller reserve. This figure does not include fixed costs and other costs such as hangar rent, crew costs, interest, or insurance costs.

The $50 per hour instructor rate used on page 24 in the Initial Regulatory Evaluation of the NPRM is the average instructor rate for an inexpensive multi-engine airplane, such as a Piper Seneca. This rate was used to estimate the costs of the proposed rule requiring pilots to log at least 100 hours of pilot-in-command (PIC) time in multi-engine airplanes. Because the operating cost of the MU–2B is $900 per hour and the rental rate for a Piper Seneca is about $200 per hour, the FAA estimated that any pilot who needed to meet the requirement of 100 hours of PIC time in multi-engine airplanes could do so in a lower cost Piper Seneca, and also pay a lower Piper Seneca instructor rate of $50 per hour.

The FAA notes that the $50 per hour instructor rate was used incorrectly in the Paperwork Reduction Act Assessment, and has made the appropriate changes to reflect the MU–2B instructor rate of $100 per hour in the PRA Assessment.

Autopilot Cost

Some commenters found the autopilot costs to be underestimated. They stated that maintaining an autopilot would cost $18,000 per 1,500 flight hours. Other commenters stated the cost of an autopilot would be between $50,000 and $120,000 per airplane. MU–2 Aircraft Owners and Pilots Association and other commenters stated the average cost of an autopilot would be $75,000. The FAA received a single comment from one operator who stated he does not have an autopilot installed.

In the Initial Regulatory Evaluation, the FAA estimated the proposed rule would impose no additional costs with regard to the purchase or maintenance of autopilots. Based on information from industry, all MU–2Bs currently had functioning autopilots, and the FAA estimated these MU–2B owners would continue to maintain their autopilots in the future. The FAA was unaware that one part 135 operator did not have an autopilot, and would need to install and maintain an autopilot in order to fly single pilot IFR. The FAA has made the appropriate changes to reflect this new information in the Final Regulatory Evaluation and in the Regulatory Flexibility Assessment using an average autopilot cost of $75,000 and maintenance costs of $18,000 per 1,500 flight hours. The FAA also states that this operator still has the option of flying with two MU–2B pilots or not flying single pilot IFR or night VFR.

One commenter (a part 135 operator) stated that the FAA did not include an economic impact analysis of the cost (and weight penalty) of a second crewmember.

Under the existing part 135 regulations, a second crewmember is required for passenger-carrying operations. In contrast, only one crewmember is required to carry cargo. This new rule would require that an airplane flown under part 135 regulations have an autopilot, which is less expensive than the cost of a second crewmember. A part 135 operator may choose to have a second crewmember for a cargo operation, but the FAA is not requiring it.

Other commenters stated autopilots and parts will not be supported by the manufacturer for much longer, certain parts are in short supply, and a replacement autopilot is very expensive.

The FAA believes if the supply of replacement parts for autopilots were to become extremely scarce, a new company would produce replacement parts to meet the increased demand.

Some commenters stated that without being able to use existing MEL relief when autopilots must be deferred, the associated additional costs could easily make continued operation of these aircraft economically unfeasible.

The FAA is clarifying that MU–2B owner/operators will still have the ability to MEL the autopilot.

Discounting Method

One commenter stated the 7% discounting method used in the SFAR economic impact analysis does not work in the real world where companies adjust their cost for inflation.

The Office of Management and Budget (OMB) permits benefit-cost analyses to be conducted in either nominal/current dollars or in constant dollars of a particular year.[4] Effects of inflation are excluded by choosing either nominal/current dollars or constant dollars and avoiding mixing-up both in the same analysis and by using a nominal discount rate if the analysis is conducted in nominal dollars and a real discount rate if the analysis is conducted in constant dollars. OMB implies a preference for the use of constant dollars unless most of the underlying values are initially available in nominal dollars. Because we use constant dollars in this Regulatory Evaluation, we apply a real discount rate of 7 percent (in accordance with OMB Circular A–94).

The present value methodology accounts for the characteristic that benefits and costs occur over a number of years. It explicitly recognizes that otherwise equal benefits or costs which occur at different points in time will not be equal when viewed from a common point in time. Generally, the present value of a benefit will be worth more the sooner it is received, and the present value of a cost will be less the longer it is deferred.

Part 135 Checks (§§ 135.293, 135.297, and 135.299)

One commenter stated that the 135 pilot qualified in a single aircraft type receives a minimum of 3 hours of in-flight testing a year, and the number of hours of training as needed. Part 135 operations require one § 135.293 aircraft competency check within the preceding 12 months, two § 135.297 instrument proficiency checks in a 12-month period, and one § 135.299 line check within the preceding 12 months. Credit for the successful completion of the § 135.293 check is not allowed in the proposed rule (although § 135.351(c) allows it to satisfy the recurrent flight training requirement). This creates an unnecessary economic burden for businesses that make their living flying the MU–2B.

The FAA agrees with the commenter and will allow checks for §§ 135.293, 135.297, and 135.299 to count also for the corresponding requirements under this SFAR. Up to 3 hours can be double-counted as training under this SFAR. However, the checker must sign those elements of the MU–2B Final Phase

[4] ''OMB Circular A–94'' (Revised—October 29, 1992) p. 8.

Check in accordance with the training program requirements in order for those hours to count. In addition, the pilot must still meet all of the other training requirements under this SFAR, even if that pilot exceeds the minimum number of training hours required.

Simultaneous Training and Checking

Several commenters wanted the FAA to allow for simultaneous training and checking, and to allow all SFAR training to satisfy requirements for the biennial flight review.

The FAA will allow for simultaneous training and checking in requalification and recurrent training. Regarding the biennial flight review, SFAR training completed in an MU–2B airplane would satisfy requirements for the biennial flight review. The Regulatory Evaluation states that there are no additional costs for the flight review requirement because pilots are already required to comply with 14 CFR 61.56. Furthermore, Howell Enterprises already provides a flight review as part of the recurrent training course.

Training to Proficiency

Many commenters wanted to train to proficiency instead of training to a set number of hours of training. The commenters also noted that the number of hours proposed is too much for some pilots and too little for others.

The FAA recognizes that for current and proficient MU–2B pilots, the proposal could be more expensive than training to proficiency. However, the FAA is adopting the proposal for these reasons. (1) After carefully reviewing existing training programs and the proposed MHI training program, the FAA determined that the training program hour requirements represent the minimum number of hours required to reach an acceptable level of safety and proficiency. (2) The MU–2B training program requires that the student complete a minimum number of program hours and that the student is trained to commercial pilot practical test standards (the FAA's Commercial Pilot Practical Test Standards is used as a guide to determine pilot proficiency under the MU–2B training program). (3) The FAA has monitored the completion times for training conducted using the MHI training program since it was approved, and this monitoring validated the number of training hours proposed.

A commenter stated although he can continue to receive training in the simulator (FTD), none of the approved training providers will provide training in a self-insured aircraft. This commenter finds completion of a § 61.56 flight review in an MU–2B will impose a significant additional economic cost on self-insured operators as they will be forced either to rent a commercially insured aircraft for the flight review or to insure their aircraft in the commercial market at a cost that may well render it economically unfeasible to continue to own an MU–2B.

The FAA is not requiring that MU–2B owners/operators buy insurance. It is the MU–2B owner/operator's choice to obtain insurance or not. A self-insured MU–2B owner/operator can still obtain a § 61.56 flight review in that owner/operator's MU–2B from a flight instructor, a designated pilot examiner, a check airman, or a FAA FSDO Principal Operations Inspector that is MU–2B current. The commenter is not limited to using the services of the three training providers named in the regulatory evaluation.

New Training Program Costs

A commenter noted Reece Howell's requalification tuition is currently $4,000. SimCom's new initial course is 9 days long.

The FAA has verified this new information on the Web sites for Howell Enterprises and SimCom. The FAA also notes that Howell Enterprises is charging $7,000 for a 7-day initial training course, $3,000 for a 3-day recurrent training course, and $4,000 for a 4-day requalification course. The FAA has revised the cost estimates accordingly in the Regulatory Evaluation, and costs increased about $600,000 due to these revisions.

One commenter thinks the SFAR would have prevented approximately 4 accidents in the past 20 years, would cause an additional 2 accidents over the next 20 years, and would have a net reduction of 2 fatal accidents over the next 20 years.

The FAA disagrees. FAA safety inspectors, pilots, and mechanics examined the MU–2B accident history along with root causes and determined that 15 MU–2B accidents over 10 years could have been prevented if this SFAR had been in place.

Effect of the SFAR on the Environment

One commenter noted that each additional hour of mandated flight training would burn valuable jet fuel. A qualified MU–2B pilot can fly the new procedures in a little over 2 hours. This SFAR mandated training would mean that 600+ pilots would burn 324,000 gallons of jet fuel with accompanying jet fumes unnecessarily entering our environment. Part 91 pilots and an unknown number of MU–2B qualified check airmen could double this number. This commenter finds such a large misuse of any fuel in an age of dependency on foreign oil absurd, and believes that the FAA has not addressed this problem.

FAA Order 1050.1E identifies FAA actions that are categorically excluded from the National Environmental Policy Act for preparation of an environmental assessment or environmental impact statement in the absence of extraordinary circumstances. The FAA has reviewed paragraph 304 of this Order, Extraordinary Circumstances, before deciding to categorically exclude this rulemaking. During this review, the FAA determined that there are no extraordinary circumstances that would prevent a categorical exclusion. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraphs 307a, 312d, and 312f. The FAA also notes that all part 135 operators and most part 91 operators are already receiving annual pilot training. The training required by this SFAR standardizes this training and experience requirements of those conducting the training but does not significantly increase the amount of training already being done.

Expiration Date

One commenter said the FAA should make the SFAR expire in 5 years and review the SFAR after 4 years to see if it is effective and still needed. The FAA will monitor the implementation of the SFAR and its effectiveness on a regular basis and at intervals much shorter than the 4 years proposed by the commenter.

Airworthiness Directives

Three commenters questioned whether it makes sense to add the economic costs of this training rule to the recently imposed financial burden that the MU–2B operators will incur from the 7 ADs issued in 2006. The FAA's 2005 Safety Evaluation concluded that the existing ADs were not issued to address the training and operational experience requirements that the FAA found necessary to lower the accident rate.

Comments Not Directly Related to the Proposed Rule

Several comments were submitted that did not address the proposed requirements in the NPRM. Some commenters offered suggestions that are outside the scope of the proposal and cannot be adopted without a reopening of the comment period in a new NPRM.

Mitsubishi Heavy Industries of America (MHIA) stated its opposition to descriptions of emergency procedures that compared their airplane to other

airplane models contained in the preamble of the NPRM. The final rule preamble omits this general comparison.

A commenter submitted questions about a workshop held for commercial MU–2B operators addressing implementation of the FSB report for part 135 operations. The FAA responded only to the portions of this letter that directly addressed the content of the proposed rule.

One commenter stated that the FAA should do an ''unintended consequences study'' for the proposed rule, considering such issues as devaluing the airplane, change in pilot population, forcing flights into low level VFR environment, and oversight costs. The FAA has addressed these issues within various sections of the preamble. The FAA is not aware of any unintended consequences and the commenters did not raise any. The FAA does not intend to conduct a specific study.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full final regulatory evaluation, a copy of which we have placed in the rules docket for this rulemaking (FAA–2006–24981).

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' for the OMB but is ''significant'' for the DOT because of its impact on small entities; (4) will have a significant economic impact on a substantial number of small entities; (5) will not have a significant effect on international trade; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Costs and Benefits of This Rule

The estimated cost of this final rule is about $25.9 million ($17.4 million in present value terms), and the estimated benefit is about $76.0 million ($49.3 million in present value terms). More detailed benefit and cost information is provided below.

Who Is Potentially Affected by This Rule

All pilots and operators of the Mitsubishi MU–2B are affected by this rulemaking. (This also includes flight instructors, designated pilot examiners, training center evaluators, and check airmen.)

Assumptions:

- Discount rate—7%. Sensitivity analysis was performed on 3% and 7%.
- Period of Analysis—2008 through 2017.

Benefits of This Rule

We estimate the final rule will provide benefits of $76.0 million ($49.3 million in present value) from 2008 through 2017. In the absence of the requirements contained in this final rule, future accidents will occur on MU–2B airplanes in a manner similar to what has happened in the past. A key benefit of the final rule will be the avoidance of these accidents. Details of the benefit analysis are found in Section V of the Final Regulatory Evaluation in Rules Docket FAA–2006–24981.

Costs of This Rule

The FAA estimates the compliance costs of this final rule to be about $25.9 million ($17.4 million in present value). The table below shows a breakdown of these total costs by category.

Category	Total
Pilot Training Costs	$24,978,000
Aeronautical Experience	755,000
Instruction, Checking and Evaluating	0
Currency Requirements and Flight Review	0
Operating Requirements	157,000
Grand Total Costs (undiscounted)	25,890,000

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a final regulatory flexibility analysis.

The FAA believes that this final rule will result in a significant economic impact on a substantial number of small entities. The purpose of this analysis is to provide the reasoning underlying the FAA determination.

Under Section 604 of the RFA, each final regulatory flexibility analysis (FRFA) shall contain:

(1) A succinct statement of the need for, and objectives of, the rule;

(2) A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) A description of the steps the agency has taken to minimize the

significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

In accordance with section 604, we address each component for this FRFA.

(1) *A succinct statement of the need for, and objectives of, the rule*

Under Title 49 of the United States Code, the FAA Administrator is required to consider the following matters, among others, as being in the public interest:

- Assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. [See 49 U.S.C. 40101(d)(1).]
- Promoting the safe flight of civil aircraft in air commerce by prescribing regulations that are necessary for safety. [See 49 U.S.C. 44701(a)(5).]
- Additionally, it is the FAA Administrator's statutory duty to carry out his or her responsibilities ''in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation.'' [See 49 U.S.C. 44701(c).]

This Special Federal Aviation Regulation (SFAR) creates new pilot training, experience, and operating requirements for persons operating the Mitsubishi MU–2B series airplane (MU–2B). These requirements follow an increased accident and incident rate in the MU–2B and are based on a Federal Aviation Administration safety evaluation of the MU–2B. This SFAR mandates additional training, experience, and operating requirements to improve the level of operational safety for the MU–2B.

(2) *A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments*

1. Almost all commenters stated that the proposed compliance date of 180 days after the effective date of the final rule would adversely impact all pilots and training providers, and requested that the compliance date be extended to one year from the date of the final rule.

The FAA agrees and has made the appropriate changes in the final rule. A one-year compliance date provides a substantially longer transition period for both pilots and training providers, which reduces compliance costs.

2. One commenter stated that the FAA will kill the value of the MU–2B, and that he could not afford to walk away from a $400,000 investment that he could not use or sell. In related comments, other people stated that the loss of value could be more than $100,000 per airplane.

The commenter's concern would be completely valid if the FAA grounded the MU–2B because of the high accident rate. While that was seriously considered, we concluded that the training program will solve the accident problem.

The training program contained in this final rule includes ground and flight training for four different categories: Initial/transition, requalification, recurrent, and differences training. The estimated cost for Initial/transition training is approximately $25,000. Requalification cost for pilots currently getting training is roughly $5,000, and $13,000 for pilots not currently getting training. The recurrent training is about $2,000 per year additional for pilots currently getting training or $10,000 per year for pilots not currently getting training. Such an expense is very small compared with a $400,000 airplane and the accident rates that accompany the current deficiencies.

Lastly, the MU–2B price was falling before the rule was proposed. Several factors including the MU–2B safety record, higher maintenance costs, less availability of parts, and newer products with better capabilities may help explain the falling price of MU–2Bs.

3. A commenter indicated that the fleet value dropped significantly and that the MU–2Bs are a standalone division of the company. If the MU–2B division can not turn a profit, the business division will be shut down. Pilots and mechanics will be let go.

Again, the training costs are substantially lower than the value of the aircraft. The decision to shut down a certain division is a business decision that is not based solely on the value of the MU–2B. Although the value of a piece of capital equipment is useful in determining the assets of a business, the value of existing capital equipment is not relevant in a firm's decision to continue operations. The FAA does not believe this rule will force companies out of business.

4. A commenter stated that although we can continue to receive training in the simulator (FTD), none of the approved training providers will provide training in a self-insured aircraft. Requiring completion of a § 61.56 flight review in a MU–2B will, at best, impose a significant additional economic cost on self-insured operators as they will be forced either to rent a commercially insured aircraft for the flight review or to insure their aircraft in the commercial market at a cost that may well render it economically unfeasible to continue to own an MU–2B.

The FAA is not requiring that MU–2B owner/operators get insurance. It is the MU–2B owner/operator's choice to get insurance or not. A self-insured MU–2B owner/operator can still obtain a § 61.56 flight review in that owner/operator's MU–2B from a flight instructor, a designated pilot examiner, a check airman, or a FAA FSDO Principal Operations Inspector that is MU–2B current.

(3) *A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available*

In conducting this final regulatory flexibility analysis we incorporate the most recent data from the aircraft registry (December, 2007). The size standards from the Small Business Administration for Air Transportation and Aircraft Manufacturing, specifies companies as small entities if they have fewer than 1,500 employees.

In conducting our analysis, we considered the economic impact on small-business entities. While there are no scheduled commercial operators (part 121) of the MU–2B airplane, there are small business owners of MU–2Bs who operate under part 91 or 135.

The part 91 operations of the MU–2B are either as a personal-use airplane or are for companies that operate them where aviation is not their primary business. Part 91 operations are not for hire or flown for profit. Part 135 operations are commuter or ''on demand'' operations.

In many cases employee data for owners and operators of aircraft (especially the aircraft operated in part 91), affected by this rule is not public.

Using publicly available data, there are 14 U.S. MU–2B operators, with less than 1,500 employees, who operate 61 airplanes. This equates to roughly 4 aircraft per operator.

Corporations are the registered owners of 306 MU–2Bs. Based upon the publicly available data, the total number of affected small entities ranges from 77 (4 airplanes/firm) to 245. The majority of the corporations operate the MU–2B in part 91 service, meaning aviation is not the primary business, and the airplane is not for hire. Publicly available information is scarce about these corporations. For this analysis we

assume the worst case scenario that each of these firms are small businesses and will incur compliance costs as a result of this final rule.

In addition to the owners of the affected aircraft, companies that train pilots will themselves have to train their current MU–2B instructors to this new standard. The FAA has determined that it is essential that all flight training be conducted per a single standardized training program that reflects piloting procedures as found in the MU–2B training program. Based on our discussions with MU–2B pilot training centers we established that they will continue providing their MU–2B instructors with the latest training available. We believe that most MU–2B pilot training centers are small businesses but this final rule will result in offsetting training revenue exceeding their training costs.

(4) *A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record*

Reporting & Recordkeeping Requirements: A flight instructor must complete the form ''Training Course Final Phase Check'' at the end of each training course. The FAA estimates that it will take an instructor five minutes per pilot to complete the form.

An instructor must endorse a MU–2B pilot's logbook upon successful completion of training. The FAA estimates that it will take an instructor five minutes per pilot to endorse a pilot's logbook.

A copy of the airplane checklist must be accessible during each flight at the pilot station. The FAA estimates that the cost of a checklist will be about $200 and that the checklist will be ordered over a 2-year period.

Training Requirements: Depending on a pilot's current training, the rule will require a training program that includes ground and flight training in different categories. The following table summarizes potential per pilot costs and the associated categories:

Pilot category	Initial training cost	Requalification training cost	Recurrent cost per year
Additional Costs for MU–2 pilots with training		$4,930	$1,875
Costs for MU–2 pilots without training		12,882	9,826
Costs for Initial/Transition pilots	$25,376		9,826

(5) *A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected*

We considered the following alternatives:

Alternative One: This alternative would prohibit all operations of the MU–2B series airplane within the National Airspace System. Although legislation requiring this alternative was not passed, it was an alternative explored by Congress. Upon our examination, we have determined that there is not sufficient justification to ground the airplane if the requirements contained in the rule become final. The airplane meets its original type certification basis as found in three type certification analyses (Special Certification Reviews conducted in 1984, 1997, and the Safety Evaluation of 2005 that found that the airplane complies with the applicable certification regulations).

Alternative Two: This alternative would have kept the requirements contained in the final rule, except that it would require an aircraft type rating for the MU–2B, but remove requalification training. This alternative would not fully accomplish our safety objective and would not meet the FAA's goal of ensuring that all MU–2B pilots receive continued training in the accepted procedures for normal, abnormal, and emergency operations.

Alternative Three: This alternative would have kept the proposed SFAR, and in addition, require a second pilot. Requiring a second pilot for all MU–2B airplanes would be a substantially more costly option than the SFAR training and autopilot requirements (single-pilot IFR operations and night VFR operations will be required to have a functioning autopilot). In addition, the FAA has determined that use of an autopilot provides a level of safety comparable to a two-pilot crew and therefore does not propose requiring a second crew member. An operator has the option of running a two-pilot crew to enhance safety, but the FAA will not require it.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it responds to a domestic safety objective and is not considered an unnecessary barrier to trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

One commenter stated that ''taken as a whole'' the requirements of Title II of the Unfunded Mandates Reform Act of 1995 did apply. The FAA disagrees because the rule involves a value less than $128.1 million. This final rule does not contain such a mandate; therefore, the requirements of Title II do not apply.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of the new (or amended) information collection requirements(s) in this final rule to the Office of Management and Budget for its review. Affected parties, however, do not have to comply with the information collection requirements until the FAA publishes in the **Federal Register** the control number assigned by

the Office of Management and Budget (OMB) for these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

• A certificated flight instruction (CFI) must complete the form ''Training Course Final Phase Check'' at the end of each training course. The FAA estimates that it will take a CFI 5 minutes per pilot to complete the form. Since there are about 600 MU–2B pilots, this will take a total of 50 hours per year. At an average MU–2B CFI hourly rate of $100 and an average value of time at $36.06 per hour, the total yearly cost of this requirement is $6,806 (600 pilots × 5/60 hours × ($100 per hour + $36.06 value of time per hour) = $6,806).

• A CFI must endorse an MU–2B pilot's logbook upon successful completion of training. The FAA estimates that it will take a CFI 5 minutes per pilot to endorse a pilot's logbook. Since there are about 600 MU–2B pilots, this will take a total of 50 hours per year. At an average MU–2B CFI hourly rate of $100 and an average value of time at $36.06 per hour, the total yearly cost of this requirement is $6,806 (600 pilots × 5/60 hours × ($100 per hour + $36.06 value of time per hour) = $6,806).

• A copy of the airplane checklist must be accessible during each flight at the pilot station. The FAA estimates that the cost of a checklist will be about $200 and that the checklist will be ordered over a 2-year period. We assume it takes an operator 10 minutes to order a checklist, and the cost of the checklist will be about $64,069 (311 MU–2B airplanes × $200/checklist × ($36.06 hourly value of time × 10/60 hours)). Annually, this cost would be $32,031 ($64,069 ÷ 2 years).

Total PRA Results for the Final Rule:

Average Total Annual Cost Burden: Approximately $45,641.

Average Total Annual Hour Burden: Approximately 101 hours.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when changing regulations in title 14 of the CFR in manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. The FAA received no comments specific to Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f of the Order and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact a local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at: *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Aviation Safety, Incorporation by reference, Reporting and recordkeeping requirements, Safety measures.

14 CFR Part 91

Aircraft, Airmen, Airports, Aviation safety, Freight, Incorporation by reference, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Incorporation by reference, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Add SFAR No. 108 to part 61 to read as follows: Special Federal Aviation Regulation No 108.

Note: For the text of the SFAR No. 108, see part 91 of this chapter.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 4. Amend part 91 by adding SFAR No. 108.

Special Federal Aviation Regulation (SFAR) No. 108—Mitsubishi MU–2B Series Special Training, Experience, and Operating Requirements

1. *Applicability.* After February 5, 2009, this Special Federal Aviation Regulation (SFAR) applies to all persons who operate the Mitsubishi MU–2B series airplane including those who act as pilot-in-command, act as second-in-command, or other persons who manipulate the controls while under the supervision of a pilot-in-command. This SFAR also applies to those persons who provide pilot training for the Mitsubishi MU–2B series airplane. The requirements in this SFAR are in addition to the requirements of 14 CFR parts 61, 91, and 135 of this chapter.

2. *Compliance and Eligibility.* (a) Except as provided in paragraph (b) of this section, no person may manipulate the controls, act as pilot-in-command, act as second-in-command, or provide pilot training for the Mitsubishi MU–2B series airplane unless that person meets the applicable requirements of this SFAR.

(b) A person, who does not meet the requirements of this SFAR, may manipulate the controls of the Mitsubishi MU–2B series airplane if a pilot-in-command meeting the applicable requirements of this SFAR is occupying a pilot station, and the flight is being conducted for one of the following reasons—

(1) The pilot-in-command is providing pilot training to the manipulator of the controls, and no passengers or cargo are carried on board the airplane;

(2) The pilot-in-command is conducting a maintenance test flight with a second pilot or certificated mechanic, and no passengers or cargo are carried on board the airplane; or

(3) The pilot-in-command is conducting simulated instrument flight and is using a safety pilot other than the pilot-in-command who manipulates the controls for the purposes of 14 CFR 91.109(b), and no passengers or cargo are carried on board the airplane.

(c) A person is required to complete *Initial/transition training* if that person has fewer than—

(1) 50 hours of documented flight time manipulating the controls while serving as pilot-in-command of a Mitsubishi MU–2B series airplane in the preceding 24 months; or

(2) 500 hours of documented flight time manipulating the controls while serving as pilot-in-command of a Mitsubishi MU–2B series airplane.

(d) A person is eligible to receive *Requalification training* in lieu of Initial/transition training if that person has at least—

(1) 50 hours of documented flight time manipulating the controls while serving as pilot-in-command of a Mitsubishi MU–2B series airplane in the preceding 24 months; or

(2) 500 hours of documented flight time manipulating the controls while serving as pilot-in-command of a Mitsubishi MU–2B series airplane.

(e) A person is required to complete *Recurrent training* within the preceding 12 months. Successful completion of Initial/transition or Requalification training within the preceding 12 months satisfies the requirement of Recurrent training. A person must successfully complete Initial/transition training or Requalification training before being eligible to receive Recurrent training.

(f) Successful completion of Initial/transition training or Requalification training is a one-time requirement. A person may elect to retake Initial/transition training or Requalification training in lieu of Recurrent training.

(g) A person is required to complete Differences training if that person operates more than one MU–2B model. Differences training between the K and M models of the MU–2B airplane, and the J and L models of the MU–2B airplane, may be accomplished with Level A training. All other Differences training must be accomplished with Level B training. Persons that are operating two models of the MU–2B airplane are required to receive 1.5 hours of Differences training. Persons that are operating three or more models of the MU–2B airplane are required to receive 3.0 hours of Differences training. An additional 1.5 hours of Differences training is required for each model added at a later date. Differences Training is not a recurring annual requirement. Once a person has received Differences training between the applicable different models, no additional Differences training between those models is required.

3. *Required Pilot Training.* (a) Except as provided in section 2 paragraph (b) of this SFAR, no person may manipulate the controls, act as pilot-in-command, or act as second-in-command of a Mitsubishi MU–2B series airplane for the purpose of flight unless—

(1) The applicable requirements for ground and flight training on Initial/transition, Requalification, Recurrent, and Differences training have been completed, as specified in this SFAR, including Appendices A through D of this SFAR; and

(2) That person's logbook has been endorsed in accordance with paragraph (f) of this section.

(b) No person may manipulate the controls, act as pilot-in-command, or act as second-in-command, of a Mitsubishi MU–2B series airplane for the purpose of flight unless—

(1) That person satisfactorily completes, if applicable, annual Recurrent pilot training on the *Special Emphasis Items,* and all items listed in the *Training Course Final Phase Check* as specified in Appendix C of this SFAR; and

(2) That person's logbook has been endorsed in accordance with paragraph (f) of this section.

(c) Satisfactory completion of the competency check required by 14 CFR 135.293 within the preceding 12 calendar months may not be substituted for the Mitsubishi MU–2B series airplane annual recurrent flight training of this section.

(d) Satisfactory completion of a Federal Aviation Administration sponsored pilot proficiency award program, as described in 14 CFR 61.56(e) may not be substituted for the Mitsubishi MU–2B series airplane annual recurrent flight training of this section.

(e) If a person complies with the requirements of paragraph (a) or (b) of this section in the calendar month before or the calendar month after the month in which compliance with these paragraphs are required, that person is considered to have accomplished the training requirement in the month the training is due.

(f) The endorsement required under paragraph (a) and (b) of this section must be made by—

(1) A certificated flight instructor meeting the qualifications of section 5 of this SFAR; or

(2) For persons operating the Mitsubishi MU–2B series airplane for a part 119 certificate holder within the last 12 calendar months, the 14 CFR part 119 certificate holder's flight instructor if authorized by the FAA and if that

flight instructor meets the requirements of section 5 of this SFAR.

(g) All training conducted for the Mitsubishi MU–2B series airplane must be completed in accordance with the applicable MU–2B series checklist listed in table 1 of this SFAR or an MU–2B series airplane checklist that has been accepted by the Federal Aviation Administration's MU–2B Flight Standardization Board.

TABLE 1 TO SFAR 108.—MU–2B SERIES AIRPLANE MANUFACTURER'S CHECKLISTS

Model	Type certificate	Cockpit checklist	Date the checklist was accepted by the FSB
		MHI document No.	
MU–2B–60	A10SW	YET06220C	2/12/2007
MU–2B–40	A10SW	YET06256A	2/12/2007
MU–2B–36A	A10SW	YET06257B	2/12/2007
MU–2B–36	A2PC	YET06252B	2/12/2007
MU–2B–35	A2PC	YET06251B	2/12/2007
MU–2B–30	A2PC	YET06250A	3/2/2007
MU–2B–26A	A10SW	YET06255A	2/12/2007
MU–2B–26	A2PC	YET06249A	3/2/2007
MU–2B–26	A10SW	YET06254A	3/2/2007
MU–2B–25	A10SW	YET06253A	3/2/2007
MU–2B–25	A2PC	YET06248A	3/2/2007
MU–2B–20	A2PC	YET06247A	2/12/2007
MU–2B–15	A2PC	YET06246A	3/2/2007
MU–2B–10	A2PC	YET06245A	3/2/2007
MU–2B	A2PC	YET06244A	3/2/2007

4. *Aeronautical Experience.* No person may act as pilot-in-command of a Mitsubishi MU–2B series airplane for the purpose of flight unless that person holds an airplane category and multi-engine land class rating, and has logged a minimum of 100 flight hours of pilot-in-command time in multi-engine airplanes.

5. *Instruction, Checking and Evaluation.* (a) *Flight Instructor (Airplane).* No flight instructor may provide instruction or conduct a flight review in a Mitsubishi MU–2B series airplane unless that flight instructor meets the requirements of this paragraph.

(1) Each flight instructor who provides flight training in the Mitsubishi MU–2B series airplane must meet the pilot training and documentation requirements of section 3 of this SFAR before giving flight instruction in the Mitsubishi MU–2B series airplane.

(2) Each flight instructor who provides flight training in the Mitsubishi MU–2B series airplane must meet the currency requirements of paragraphs (a) and (c) of section 6 of this SFAR before giving flight instruction in the Mitsubishi MU–2B series airplane.

(3) Each flight instructor who provides flight training in the Mitsubishi MU–2B series airplane must have a minimum total pilot time of 2,000 pilot-in-command hours, 800 pilot-in-command hours in multiengine airplanes.

(4) Each flight instructor who provides flight training in the Mitsubishi MU–2B series airplane must have—

(i) 300 pilot-in-command hours in the Mitsubishi MU–2B series airplane, 50 hours of which must have been within the preceding 12 months; or

(ii) 100 pilot-in-command hours in the Mitsubishi MU–2B series airplane, 25 hours of which must have been within the preceding 12 months, and 300 hours providing instruction in a FAA-approved Mitsubishi MU–2B simulator or FAA-approved Mitsubishi MU–2B flight training device, 25 hours of which must have been within the preceding 12 months.

(b) *Flight Instructor (Simulator/ Flight Training Device).* No flight instructor may provide instruction for the Mitsubishi MU–2B series airplane unless that instructor meets the requirements of this paragraph.

(1) Each flight instructor who provides flight training for the Mitsubishi MU–2B series airplane must meet the pilot training and documentation requirements of section 3 of this SFAR before giving flight instruction for the Mitsubishi MU–2B series airplane.

(2) Each flight instructor who provides flight training for the Mitsubishi MU–2B series airplane must meet the currency requirements of paragraph (c) of section 6 of this SFAR before giving flight instruction for the Mitsubishi MU–2B series airplane.

(3) Each flight instructor who provides flight training for the Mitsubishi MU–2B series airplane must have—

(i) A minimum total pilot time of 2000 pilot-in-command hours and 800 pilot-in-command hours in multiengine airplanes; and

(ii) Within the preceding 12 months, either 50 hours of Mitsubishi MU–2B series airplane pilot-in-command experience or 50 hours providing simulator or flight training device instruction for the Mitsubishi MU–2B.

(c) *Checking and Evaluation.* No person may provide checking or evaluation for the Mitsubishi MU–2B series airplane unless that person meets the requirements of this paragraph.

(1) For the purpose of checking, designated pilot examiners, training center evaluators, and check airmen must have completed the appropriate training in the Mitsubishi MU–2B series airplane in accordance with section 3 of this SFAR.

(2) For checking conducted in the Mitsubishi MU–2B series airplane, each designated pilot examiner and check airman must have 100 hours pilot-in-command flight time in the Mitsubishi MU–2B series airplane and maintain currency in accordance with section 6 of this SFAR.

6. *Currency Requirements and Flight Review.* (a) The takeoff and landing currency requirements of 14 CFR 61.57 must be maintained in the Mitsubishi MU–2B series airplane. Takeoff and landings in other multiengine airplanes do not meet the takeoff landing currency requirements for the Mitsubishi MU–2B series airplane. Takeoff and landings in either the short-body or long-body Mitsubishi MU–2B model airplane may be credited toward takeoff and landing

currency for both Mitsubishi MU–2B model groups.

(b) Instrument experience obtained in other category and class of aircraft may be used to satisfy the instrument currency requirements of 14 CFR 61.57 for the Mitsubishi MU–2B series airplane.

(c) Satisfactory completion of a flight review to satisfy the requirements of 14 CFR 61.56 is valid for operation of a Mitsubishi MU–2B series airplane only if that flight review is conducted in a Mitsubishi MU–2B series airplane. The flight review for Mitsubishi MU–2B series airplanes must include the *Special Emphasis Items,* and all items listed in the *Training Course Final Phase Check* of Appendix C of this SFAR.

(d) A person who successfully completes the Initial/transition, Requalification, or Recurrent training requirements, as described in section 3 of this SFAR, also meets the requirements of 14 CFR 61.56 and need not accomplish a separate flight review provided that at least 1 hour of the flight training was conducted in the Mitsubishi MU–2B series airplane.

7. *Operating Requirements.* (a) Except as provided in paragraph (b) of this section, no person may operate a Mitsubishi MU–2B airplane in single pilot operations unless that airplane has a functional autopilot.

(b) A person may operate a Mitsubishi MU–2B airplane in single pilot operations without a functional autopilot when—

(1) Operating under day visual flight rule requirements; or

(2) Authorized under a FAA approved minimum equipment list for that airplane, operating under instrument flight rule requirements in daytime visual meteorological conditions.

(c) No person may operate a Mitsubishi MU–2B series airplane unless a copy of the appropriate Mitsubishi Heavy Industries MU–2B Airplane Flight Manual is carried on board the airplane and is accessible during each flight at the pilot station.

(d) No person may operate a Mitsubishi MU–2B series airplane unless an MU–2B series airplane checklist, appropriate for the model being operated and accepted by the Federal Aviation Administration MU–2B Flight Standardization Board, is accessible for each flight at the pilot station and is used by the flight crewmembers when operating the airplane.

(e) No person may operate a Mitsubishi MU–2B series airplane contrary to the MU–2B training program in the Appendices of this SFAR.

(f) If there are any differences between the training and operating requirements of this SFAR and the MU–2B Airplane Flight Manual's procedures sections (Normal, Abnormal, and Emergency) and the MU–2B airplane series checklist specified in section 3(g), table 1, the person operating the airplane must operate the airplane in accordance with the training specified in section 3(g), table 1.

8. *Credit for Prior Training.* Initial/transition or requalification training conducted between July 27, 2006, and April 7, 2008, using Mitsubishi Heavy Industries MU–2B Training Program, Part number YET 05301, Revision Original, dated July 27, 2006, or Revision 1, dated September 19, 2006, is considered to be compliant with this SFAR, if the student met the eligibility requirements for the applicable category of training and the student's instructor met the experience requirements of this SFAR.

9. *Incorporation by Reference.* You must proceed in accordance with the Mitsubishi Heavy Industries MU–2B Checklists as listed in Table 1 of this SFAR which are incorporated by reference. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. section 552(a) and 1 CFR part 51. The Mitsubishi Heavy Industries MU–2B Checklists are distributed by Turbine Aircraft Services, Inc. You may obtain a copy from Turbine Aircraft Services Inc., 4550 Jimmy Doolittle Drive, Addison, Texas 75001, USA. You may inspect a copy at U.S. Department of Transportation, Docket Management Facility, Room W 12–140, West Building Ground Floor, 1200 New Jersey Ave., SE., Washington, DC 20590–0001, or at the National Archives and Records Administration at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

10. *Expiration.* This SFAR will remain in effect until further notice.

Appendix A to SFAR 108—MU–2B General Training Requirements

(a) The Mitsubishi MU–2B Training Program consists of both ground and flight training. The minimum pilot training requirement hours are shown in Table 1 of this appendix for ground instruction and Table 2 of this appendix for flight instruction. An additional ground training requirement for Differences Training is shown in Table 3.

(b) The MU–2B is certificated by the Federal Aviation Administration (FAA) as a single pilot airplane. No training credit is given for second in command (SIC) training and no credit is given for right seat time under this program. Only the sole manipulator of the controls of the MU–2B airplane, Flight Training Device (FTD), or Level C or D simulator can receive training credit under this program.

(c) The training program references the applicable MU–2B airplane flight manual (AFM) in several sections. There may be differences between sequencing of procedures found in the AFM's procedures sections and the checklists, procedures, and techniques found within this training program. The FAA's Mitsubishi MU–2B SFAR requires that if there are any differences between the AFM's procedures sections (Normal, Abnormal, and Emergency) and the training and operating requirements of the Mitsubishi MU–2B SFAR, the person operating the airplane must operate the airplane in accordance with the training specified in the SFAR and this MU–2B training program.

(d) Minimum Programmed Training Hours

TABLE 1 TO APPENDIX A OF SFAR 108

Ground instruction		
Initial/transition	Requalificaton	Recurrent
20 hours	12 hours	8 hours.

TABLE 2 TO APPENDIX A OF SFAR 108

Flight instruction		
Initial/transition	Requalification	Recurrent
12 hours with a minimum of 6 hours at Level E	8 hours Level C or Level E	4 hours at Level E, or 6 hours at Level C.

TABLE 3 TO APPENDIX A OF SFAR 108

Differences training	
2 models currently	1.5 hours at Level A or B.
More than 2 models currently	3 hours at Level A or B.
Each additional model added	1.5 hours at Level A or B.

(e) Definitions of Levels of Training as Used in This Appendix

(1) LEVEL A Training—Training that is conducted through self instruction by the pilot.

(2) LEVEL B Training—Training that is conducted in the classroom environment with the aid of a qualified instructor who meets the requirements of this SFAR.

(3) LEVEL C Training—Training that is accomplished in an FAA-approved Level 5, 6, or 7 Flight Training Device (FTD). In addition to the basic FTD requirements, the FTD must be representative of the MU–2B cockpit controls and be specifically approved by the FAA for the MU–2B airplane.

(4) LEVEL E Training—Training that must be accomplished in the MU–2B airplane, Level C simulator, or Level D simulator.

Appendix B to SFAR 108—MU–2B Ground Training Curriculum Contents

All items in the ground training curriculum must be covered. The order of presentation is at the discretion of the instructor. The student must satisfactorily complete a written or oral exam given by the training provider based on this MU–2B Training Program.

I. Aircraft General
- A. Introduction
- B. Airplane (Structures/Aerodynamics/Engines) Overview
- 1. Fuselage
- 2. Wing
- 3. Empennage
- 4. Doors
- 5. Windshield and Windows
- C. Airplane Systems
- 1. Electrical Power
- 2. Lighting
- 3. Fuel System
- 4. Powerplant
- 5. Environmental
- 6. Fire Protection
- 7. Ice and Rain Protection
- 8. Landing Gear and Brakes
- 9. Flight Controls and Trim
- 10. Pilot Static System/Flight Instruments
- 11. Oxygen System
- D. Operating Limitations
- 1. Weights
- 2. Center of Gravity and Loading
- 3. Airspeeds
- 4. Maneuvering Load Factors
- 5. Takeoff And Landing Operations
- 6. Enroute Operations
- E. Required Placards
- F. Instrument Markings
- G. Flight Characteristics
- 1. Control System
- 2. Stability and Stall Characteristics
- 3. Single Engine Operation
- 4. Maneuvering and Trim
- 5. Takeoff and Landing

II. Electrical Power
- A. General Description
- B. DC Electrical System
- 1. DC Power Generation
- 2. DC Power Distribution
- 3. Battery System
- 4. External Power System
- C. AC Electrical System
- 1. AC Power Generation
- 2. Controls and Indicators
- 3. AC Power Distribution
- D. Limitations
- 1. General Limitations
- 2. Instrument Markings

III. Lighting
- A. Exterior Lighting System
- 1. Navigation Lights
- 2. Anti-Collision Lights
- 3. Wing Inspection Lights
- 4. Taxi Lights
- 5. Landing Lights
- 6. Rotating Beacon
- 7. Operation
- B. Interior Lighting System
- 1. Flight Compartment Lights
- 2. Passenger Compartment Lights
- C. Emergency Lighting System
- 1. Cockpit Emergency Lighting
- 2. Aircraft Emergency Lighting
- D. Procedures
- 1. Normal
- 2. Abnormal
- 3. Emergency

IV. Master Caution System
- A. System Description and Operation
- 1. Master Caution Light and Reset Switch
- 2. Annunciator and Indicator Panels
- 3. Operation Lights
- 4. System Tests
- B. Procedures

V. Fuel System
- A. Fuel Storage
- 1. Refueling/Balancing
- 2. De-Fueling and Draining
- 3. Tank Vent System
- B. Fuel Distribution
- 1. Fuel Transfer
- 2. Fuel Balancing
- 3. Boost Pump Operation
- C. Fuel Indicating
- 1. Fuel Quantity
- 2. Low Fuel Warning
- D. Fuel System Limitations
- 1. Approved Fuels
- 2. Fuel Anti-Icing Additives
- 3. Fuel Temperature Limitations
- 4. Fuel Transfer and Fuel Imbalance
- 5. Fuel Pumps
- 6. Refueling
- 7. Capacity
- 8. Unusable Fuel

VI. Powerplant
- A. Engine Description
- 1. Major Sections
- 2. Cockpit Controls
- 3. Instrumentation
- 4. Operation
- B. Engine Systems
- 1. Lubrication
- 2. Fuel
- 3. Ignition
- 4. Engine Starting
- 5. Anti-Ice
- C. Propeller System
- 1. Ground Operations
- 2. In-Flight Operations
- 3. Synchronization
- 4. De-Ice
- D. Ground Checks
- 1. Overspeed Governor
- 2. SRL and Delta P/P
- 3. NTS and Feather Valve
- 4. Supplementary NTS
- E. In Flight Post Maintenance Checks
- 1. NTS In-Flight
- 2. Flight Idle Fuel Flow
- F. Limitations
- 1. Powerplant
- 2. Engine Starting Conditions
- 3. Airstart Envelope
- 4. Engine Starting
- 5. Oil
- 6. Fuel
- 7. Starter/Generator
- 8. External Power
- 9. Instrument Markings (as applicable)
- a. TPE331–10–511M
- b. TPE331–5/6–252/251M
- c. TPE331–1–151M
- G. Engine Malfunctions and Failures
- 1. Propeller Coupling
- 2. Torque Sensor
- 3. Engine Overspeed
- 4. Fuel Control Spline

VII. Fire Protection
- A. Introduction
- B. Engine Fire Detection
- 1. System Description

2. Annunciator
C. Portable Fire Extinguishers
VIII. Pneumatics
A. System Description
B. System Operation
1. Air Sources
2. Limitations
C. Wing and Tail De-Ice
1. System Description
2. Controls
D. Entrance and Baggage Door Seal
1. Air Source
2. Operation
IX. Ice and Rain Protection
A. General Description
B. Wing De-Ice
1. System Description
2. Operation
3. Controls and Indications
C. Engine Anti-Ice
1. System Description
2. Operation
3. Controls and Indications
D. Window Defog
1. Controls
2. Operation
E. Tail De-Ice
1. Horizontal Stabilizer De-Ice
2. Vertical Stabilizer De-Ice
F. Pitot Static System Anti-Icing
1. Pitot Tube Heating
2. Static Port Heating
3. AOA Transmitter Heating
G. Windshield De-Ice/Anti-Ice
1. System Description
2. Controls and Indications
H. Windshield Wiper
1. System Description
2. Control and Operation
I. Propeller De-Ice
1. System Description
2. Controls and Indications
J. Ice Detector
1. System Description
2. Controls and Indications
3. Operation
K. Limitations
1. Temperatures
2. Cycling
X. Air Conditioning
A. System Description and Operation
1. Refrigeration Unit (ACM)
2. Air Distribution
3. Ventilation
4. Temperature Control
5. Water Separator
B. Limitations
XI. Pressurization
A. General
B. Component Description
1. Cabin Pressure Controller
2. Altitude Pressure Regulator
3. Ram Air
4. Outflow Safety Valves
5. Air Filters
6. Manual Control Valve
7. Pneumatic Relays
8. Venturi
C. System Operation
1. Ground Operation
2. Takeoff Mode
3. In-Flight Operation
4. Landing Operation
D. Emergency Operation
1. High Altitude
2. Low Altitude
E. Limitations
1. Maximum Differential
2. Landing Limitations
XII. Landing Gear and Brakes
A. General Description
1. Landing Gear Doors
2. Controls and Indicators
3. Warning Systems
4. Emergency Extension
B. Nosewheel Steering
C. Landing Gear/Brakes/Tires
D. Limitations
1. Airspeed (with flaps)
2. Emergency Extension
3. Tire Speed
4. Brake Energy
XIII. Flight Controls
A. Primary Flight Controls (Elevator/Rudder/Spoilers)
1. Description
2. Operations
B. Trim Systems
1. System Description
2. Roll Trim
a. Normal Operation
b. Emergency Operation
3. Rudder Trim
4. Pitch Trim
a. General
b. Operations
c. Trim-in-Motion Alert System
C. Secondary Flight Controls
1. System Description
2. Flaps
D. Limitations
1. Instrument Markings
2. Placards
E. Flight Characteristics
1. Control Systems
2. Stability and Stall Characteristics
3. Single Engine Operation
5. Maneuvering and Trim
6. Takeoff and Landing
XIV. Avionics
A. Pitot-Static System
1. System Description
2. Pilot's System
3. Co-Pilot's System
4. Alternate Static
B. Air Data Computer
C. Attitude Instrument Displays (EFIS and Standard)
1. EADI
2. Standard Attitude Gyro
D. AHRS
1. System Description
2. Controls and Indications
E. Navigation
1. Nav Systems Descriptions
2. Compass System Descriptions
3. Display Systems
4. Terrain Awareness System
5. Traffic Avoidance System
F. Communications
1. VHF Communications Systems
2. Audio Control
G. Standby Flight Instruments
1. System Description
2. Controls and Indications
H. Automatic Flight Control System
1. Controls and Indications
2. Yaw Damper
3. Trim-in-Motion Alert System
4. Autopilot Automatic Disconnect
5. Aural Alert System
I. Angle of Attack (AOA) System
1. System Description
2. Controls and Indications
J. Limitations
XV. Oxygen System
A. System Description
B. Crew Oxygen
1. Oxygen Cylinder Assembly
2. Pressure Gauge
3. Outlet Valves
4. Duration
C. Passenger Oxygen
1. System Description
2. Duration
D. Limitations
XVI. Performance and Planning
A. Takeoff Performance Charts
1. Runway Requirements
2. Normal and with One Engine Inoperative
B. Climb Performance
1. Normal and with One Engine Inoperative
2. Obstacle Clearance
3. Power Assurance Charts
C. Cruise Performance
1. Power Charts
2. Maximum Practical Altitude
3. Cruise Speeds/Engine Health
4. Buffet Boundary
D. Landing Performance
1. Runway Requirements
a. Dry Runway
b. Wet Runway
2. Go-Around
a. One Engine Inoperative
b. All Engines
XVII. Weight and Balance
A. Aircraft Loading Procedures
B. Limitations
1. Weight Limits
2. C.G. Limits
C. Plotter
1. Description
2. Use
D. Calculations
1. AFM Procedures
2. Examples
XVIII. General Subjects
A. Controlled Flight into Terrain Awareness
B. CRM/SPRM
1. Crew Resource Management
2. Single Pilot Resource Management
C. MU–2B Flight Standardization Board Report

Appendix C to SFAR 108—MU–2B Final Phase Check and Flight Training Requirements

(I) MU–2B Final Phase Check Requirements

(A) Completion of the MU–2B Training Program in this appendix requires successful completion of a final phase check taken in the MU–2B airplane or a Level C or D simulator for Initial/Transition training. The final phase check for Requalification or Recurrent Training may be taken in the MU–2B airplane, a Level C or D simulator, or in a Level 5, 6, or 7 FAA-approved MU–2B Flight Training Device (FTD). The final phase check must be conducted by a qualified flight instructor who meets the requirements of the MU–2B SFAR. Simultaneous training and checking is not allowed for Initial/Transition training.

(B) For pilots operating under 14 CFR part 135, checking must be done in accordance with applicable regulations. For the purpose of recurrent testing in 14 CFR 135.293(b), the MU–2B is considered a separate type of aircraft.

(C) The final phase check must be conducted using the standards contained in the FAA Commercial Pilot—Airplane Multi-Engine Land, and Instrument Rating—Airplane Practical Test Standards (PTS).

(D) The final phase check portion of the training is comprised of the following tasks for *all* airmen (instrument rated and non instrument rated). An (*) indicates those maneuvers for Initial/Transition training which must be completed in the MU–2B airplane, or a Level C or D simulator.

(1) Preflight Check.

(2) Start and Taxi Procedures.

(3) * Normal Takeoff (X-Wind) (Two Engine).

(4) * Takeoff Engine Failure.

(5) Rejected Takeoff.

(6) * Steep Turns.

(7) * Approach to Stalls (3) (must include Accelerated Stalls).

(8) * Maneuvering with One Engine Inoperative—Loss of Directional Control (V_{mc}).

(9) Abnormal and Emergency Procedures—To include MU–2B operation in icing conditions without the autopilot or without trim-in-motion or automatic autopilot disconnect.

(10) * Precision Approach (One Engine Inoperative).

(11) Go Around/Rejected Landing.

(12) Normal Landing (X-Wind).

(13) * Landing with One Engine Inoperative.

(14) * Landing with Non-Standard Flap Configuration (0 or 5 degrees).

(15) Postflight Procedures.

(E) The following additional tasks are required for those airmen who possess an instrument rating. An (*) indicates those maneuvers for Initial/Transition training which must be completed in the MU–2B airplane, or a Level C or D simulator.

(1) Preflight Check.

(2) Unusual Attitudes.

(3) Abnormal and Emergency Procedures.

(4) Basic Instrument Flight Maneuvers.

(5) Area Arrival and Departure.

(6) Holding.

(7) Precision Approach (Two Engine).

(8) * Non-Precision Approaches (2)—Must include a Non-Precision Approach with One Engine Inoperative.

(9) Missed Approach from either Precision or Non Precision Instrument Approach (Two Engine).

(10) Landing from a Straight-In or Circling Approach.

(11) Circling Approach.

(12) Postflight Procedures.

(F) A form titled ''Training Course Final Phase Check'' has been included in this appendix for use in creating a training and final check record for the student and the training provider.

(II) MU–2B Required Flight Training Tasks

(A) General Flight Training Requirements: All flight training maneuvers must be consistent with this training program and the applicable MU–2B checklist accepted by the FAA. The maneuver profiles shown in Appendix D to this SFAR No. 108 are presented to show the required training scenarios. Profiles conducted in flight require planning and care on the part of both the instructor and student in order to provide the highest level of safety possible. The maneuver profiles shown in Appendix D to this SFAR No. 108 do not account for local geographic and flight conditions. The instructor and student must consider local conditions when performing these maneuvers in flight.

(B) Special Emphasis Items: Certain aspects of pilot knowledge, skills and abilities must be emphasized and evaluated during the training and checking process of the MU–2B Training Program.

(1) Accelerated stall awareness and recovery procedures with emphasis on configuration management. Awareness of the margin to stall in all flight operations and configurations must be emphasized throughout training.

(2) V_{mc} awareness and early recognition must be trained and checked. Minimum airspeeds for one engine inoperative must be emphasized in all configurations.

(3) Airspeed management and recognition of airspeed deterioration below recommended speeds and recovery methods in this training program must be emphasized throughout training and checking.

(4) Knowledge of icing conditions and encounters must be emphasized throughout training and checking including: Equipment requirements, certification standards, minimum airspeeds, and the use of the autopilot and other applicable AFM procedures.

(5) Airplane performance characteristics with all engines operating and with one engine inoperative must be emphasized.

(C) MU–2B Flight Training Program Proficiency Standards.

(1) Each pilot, regardless of the level of pilot certificate held, must be trained to and maintain the proficiency standards described below.

(a) General VFR/IFR.

(i) Bank Angle—± 5 degrees of prescribed bank angle
(ii) Heading—± 10 degrees
(iii) Altitude—± 100 feet
(iv) Airspeed—± 10 knots

(b) Instrument Approach—Final Approach Segment.

Precision Approach

(i) Heading—± 10 degrees
(ii) Altitude—± 100 feet
(iii) Airspeed—± 10 knots prior to final
(iv) Airspeed—± 10 knots after established on final
(v) Glide Slope (GS)/Localizer Deviation—Within ¾ scale—not below GS

Non-Precision Approach

Straight In

(vi) Initial Approach Altitude—± 100 feet
(vii) Heading—± 10 degrees
(viii) Altitude (MDA)— + 100, − 0 feet
(ix) Airspeed— + 10 knots
(x) Course Deviation Indicator—Within ¾ scale or ± 10 degrees on RMI

Circling Approach

(xi) Maximum Bank—30 degrees
(xii) Heading—Within 10 degrees
(xiii) Altitude— +100, − 0 feet
(xiv) Airspeed—Within 10 knots but not less than V_{ref}

(c) In all cases, a pilot must show complete mastery of the aircraft with the outcome of each maneuver or procedure never seriously in doubt.

(D) Maneuvers and Procedures. All flight training maneuvers and procedures must be conducted as they are applicable to the MU–2B and each type of operations involved.

Preflight

(1) Preflight Inspection—The pilot must—

(a) Conduct an actual visual inspection of the exterior and interior of the airplane, locating each item and explaining briefly the purpose of inspecting it; and

(b) Demonstrate the use of the appropriate checklist, appropriate control system checks, starting procedures, radio and electronic equipment checks, and the selection of proper navigation and communications radio facilities and frequencies prior to flight.

(2) Taxiing—this maneuver includes taxiing in compliance with instructions issued by the appropriate ATC facility or by the person conducting the check.

(3) Pre-Takeoff Checks—The pilot must satisfactorily complete all pre-takeoff aircraft systems and powerplant checks before takeoff.

Takeoff and Departure

(1) Normal—One normal takeoff, which for the purpose of this maneuver, begins when the airplane is taxied into position on the runway to be used.

(2) Instrument Takeoff—Takeoff with simulated instrument conditions at or before reaching an altitude of 200 feet above the airport elevation and visibility of 1800 RVR.

(3) Crosswind—One crosswind takeoff, if practical, under the existing meteorological, airport and traffic conditions.

(4) Powerplant Failure—One takeoff with a simulated failure of the most critical powerplant at a point after Vlof. In the MU–2B airplane, all simulated powerplant failures must only be initiated when the person conducting the training or checking determines that it is safe under the prevailing conditions. The instructor must assure that the power lever does not move beyond the flight idle gate.

(5) Rejected Takeoff—A rejected takeoff performed in an airplane during a normal takeoff run after reaching a reasonable speed determined by giving due consideration to aircraft characteristics, runway length, surface conditions, wind direction and velocity, brake heat energy, and any other pertinent factors that may adversely affect safety or the airplane.

(6) Area departure—Demonstrate adequate knowledge of departure procedures, establishing appropriate ATC communications and following clearances.

Flight Maneuvers and Procedures

(1) Steep bank turns—Each steep turn must involve a bank angle of 50 degrees with a heading change of at least 180 degrees but no more than 360 degrees.

(2) Approaches to stalls—Must be performed in each of the following configurations; takeoff, clean, and landing. One approach to a stall must be performed in either the takeoff, clean, or landing configuration while in a turn with a bank angle between 15 degrees and 30 degrees.

(3) Accelerated stalls—must be done in the flaps 20 and flaps 0 configurations.

(4) Recovery procedures must be initiated at the first indication of a stall.

Normal and Abnormal Procedures and Operations

(1) Runway trim.

(2) Normal and abnormal operations of the following systems:

(a) Pressurization.

(b) Pneumatic.

(c) Air conditioning.

(d) Fuel.

(e) Electrical.

(f) Flight control.

(g) Anti-icing and de-icing.

(h) Autopilot.

(i) Stall warning devices, as applicable.

(j) Airborne radar and weather detection devices.

(k) Other systems, devices or aids available.

(l) Electrical, flight control and flight instrument system malfunction or failure.

(m) Landing gear and flap system malfunction or failure.

(n) Failure of navigation or communications equipment.

Flight Emergency Procedures

(1) Powerplant failure.

(2) Powerplant, cabin, flight deck, wing and electrical fires.

(3) Smoke control.

(4) Fuel jettisoning, as applicable.

(5) Any other emergency procedures outlined in the appropriate AFM or FAA-accepted checklist.

Instrument Procedures

(1) Area departure.

(2) Use of navigation systems including adherence to assigned course and/or radial.

(3) Holding procedures.

(4) Aircraft approach category airspeeds.

(5) Approach procedures: Each instrument approach must be performed according to all procedures and limitations approved for that facility. An instrument approach procedure begins when the airplane is over the initial approach fix for the approach procedure being used and ends when the airplane touches down on the runway or when transition to missed approach configuration is completed.

(a) ILS, ILS/DME, approach.

(i) A manually controlled ILS with a powerplant inoperative; occurring before initiating the final approach course and continuing to full stop or through the missed approach procedure.

(ii) A manually controlled ILS utilizing raw data to 200 feet or decision height (DH).

(iii) An ILS with the autopilot coupled.

(b) Non-precision approaches.

(i) NDB, NDB/DME approach, straight in or circle.

(ii) VOR, VOR/DME, straight in or circle.

(iii) LOC, LOC/DME, LOC backcourse.

(iv) GPS approach (If the aircraft/FTD/flight simulator has a GPS installed, the applicant must demonstrate GPS approach proficiency.)

(v) ASR approach.

(c) Missed approach procedure: One missed approach procedure must be a complete approved missed approach procedure as published or as assigned by ATC.

(i) From a precision approach.

(ii) From a non-precision approach.

(iii) With a simulated powerplant failure.

(d) Circling approach.

(i) The circling approach must be made to the authorized MDA and followed by a change in heading and the necessary maneuvering (by visual reference) to maintain a flight path that permits a normal landing on the runway.

(ii) The circling approach must be performed without excessive maneuvering and without exceeding the normal operating limits of the airplane and the angle of bank must not exceed 30°.

Landings and Approaches to Landings

(1) Airport orientation.

(2) Normal landings with stabilized approach.

(3) Crosswind landings.

(4) From a precision instrument approach.

(5) From a precision instrument approach with a powerplant inoperative.

(6) From a non-precision instrument approach.

(7) From a non-precision instrument approach with a powerplant inoperative.

(8) From a circling approach or VFR traffic pattern.

(9) Go Around/Rejected landings—a normal missed approach procedure or a visual go-around after the landing is rejected. The landing should be rejected at approximately 50 feet and approximately over the runway threshold.

(10) Zero flap landing.

(a) Runway requirements.

(b) Airspeeds.

TRAINING COURSE FINAL PHASE CHECK				
NAME OF AIRMAN *(last, first, middle initial)*		GRADE OF CERTIFICATE	CERTIFICATE NUMBER	
DATE OF CHECK	LOCATION OF CHECK	TYPE OF CHECK	MU-2B MODEL	FTD MODEL
SCHOOL NAME	INSTRUCTOR NAME	CFI NUMBER	EXPIRES	
FLIGHT MANEUVERS GRADE *(S-Satisfactory U-Unsatisfactory)*				

MANEUVERS REQUIRED FOR ALL AIRMEN	A/C	FTD
PREFLIGHT CHECK		
START AND TAXI PROCEDURES		
*NORMAL TAKEOFF (X WIND) (TWO ENGINE)		
*TAKEOFF ENGINE FAILURE		
REJECTED TAKEOFF		
*STEEP TURNS		
*APPROACH TO STALL (3)		
*MANEUVERING WITH ONE ENGINE INOP (VMC)		
ABNORMAL AND EMERGENCY PROCEDURES - TO INCLUDE THE MU-2 OPERATIOIN IN ICING CONDITIONS WITHOUT THE AUTOPILOT OR WITHOUT TRIM-IN-MOTION/AUTOMATIC AUTOPILOT DISCONNECT.		
*PRECISION APROACH (ONE ENGINE INOPERATIVE)		
GO AROUND / REJECTED LANDING		
NORMAL LANDING (X WIND)		
*LANDING WITH ONE ENGINE INOPERATIVE		
*LANDING WITH NON-STANDARD FLAP CONFIG		
POST FLIGHT PROCEDURES		
ADDITIONAL MANEUVERS REQUIRED FOR INSTRUMENT RATED AIRMEN	A/C	FTD
PREFLIGHT CHECK		
UNUSUAL ATTITUDES		
ABNORMAL AND EMERGENCY PROCEDURES		
BASIC INSTRUMENT FLIGHT MANEUVERS		
AREA ARRIVAL AND DEPARTURE		
HOLDING		
PRECISION APPROACH (TWO ENGINE)		
*NON-PRECISION APPROACHES (2)		
MISSED APPROACH FROM EITHER PRECISION OR NON-PRECISION APPROACH (TWO ENGINE) MUST INCLUDE AN APPROACH WITH ONE ENGINE INOP		
LANDING FROM A STRAIGHT-IN/CIRCLING APPROACH		
CIRCLING APPROACH		
POST FLIGHT PROCEDURES		

RESULTS OF CHECK	SATISFACTORY		FLIGHT TIMES	AIRCRAFT	FTD
	UNSATISFACTORY				
INSTRUCTOR SIGNATURE			AIRMAN SIGNATURE		

Appendix D to SFAR 108—MU–2B Maneuver Profiles

(A) The Maneuver Profiles are provided to develop pilot proficiency with the procedures and techniques contained within this MU–2B Flight Training Program.

(B) Though constructed for use in the airplane they may also be used in the Flight Training Device (FTD). When an FTD is used, a maneuver may be performed at lower altitudes or carried to its completion. When training is conducted in the MU–2B airplane, all maneuvers must be performed in a manner sufficient to evaluate the performance of the student while never jeopardizing the safety of the flight.

(C) The maneuvers profiles are broken down into three sections by similar aircraft model groups. The three sections of this program are:

(1) Marquise (−60), Solitaire (–40), N (–36A), P (–26A)—Figures A–1 through A–28

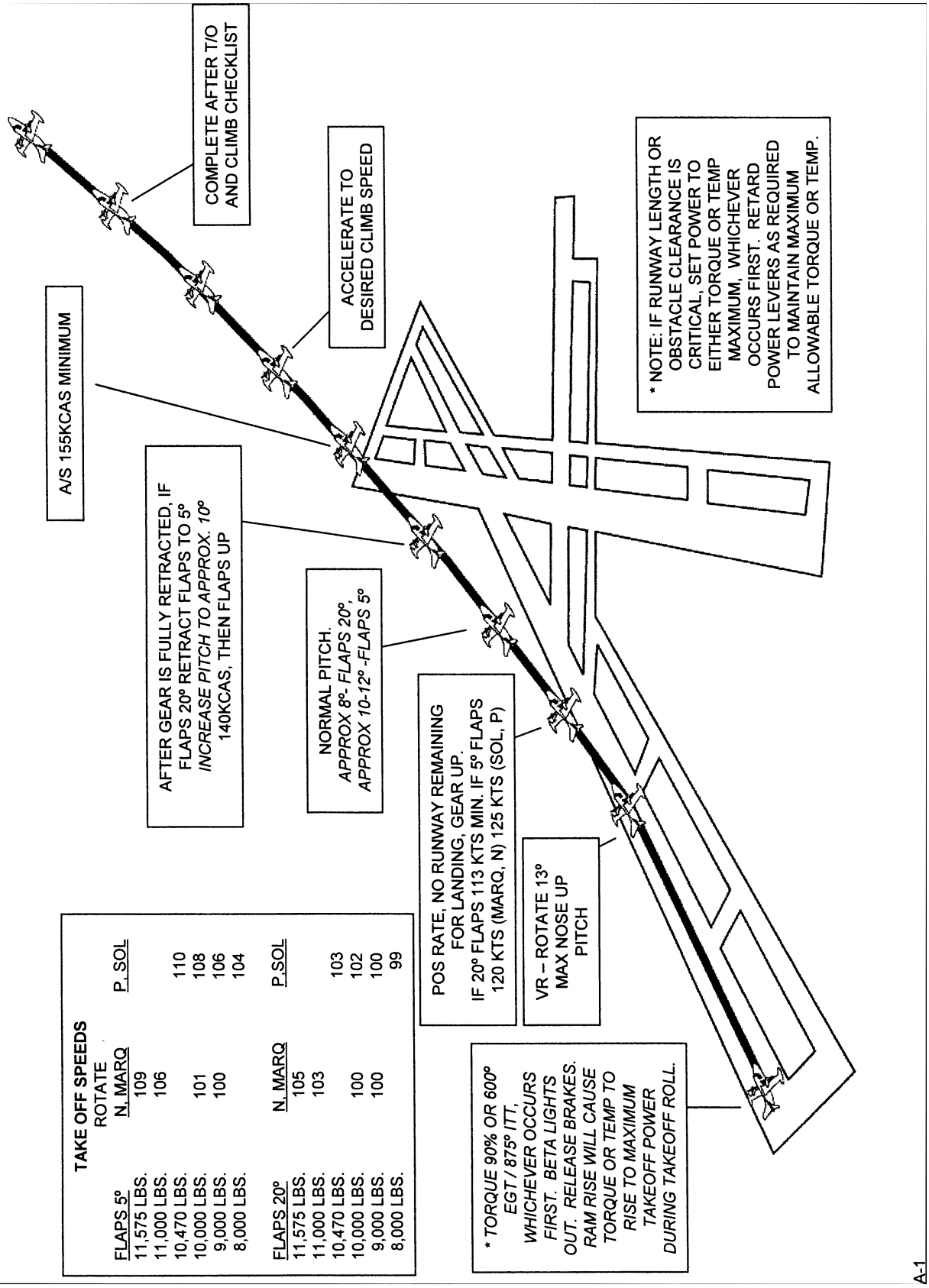
(2) J (–35), K (–25), L (–;36), M (–26)—Figures B–1 through B–28

(3) B, D (–10), F (–20), G (–30)—Figures C–1 through C–28

BILLING CODE 4910–13–P

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

NORMAL TAKE-OFF, 5° OR 20° FLAPS



TAKE OFF SPEEDS

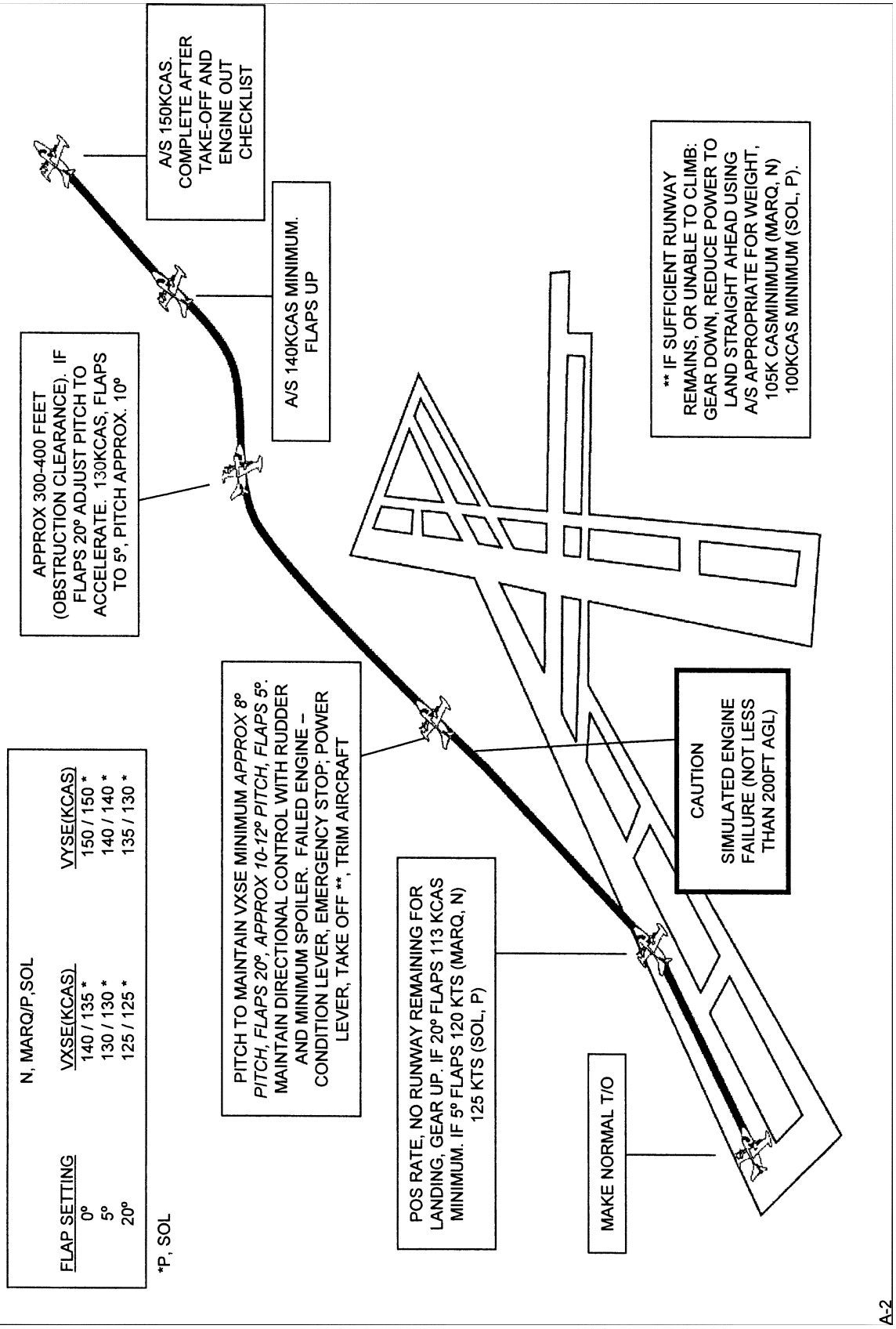
FLAPS 5°	ROTATE N. MARQ	P. SOL
11,575 LBS.	109	
11,000 LBS.	106	
10,470 LBS.		110
10,000 LBS.	101	108
9,000 LBS.	100	106
8,000 LBS.		104

FLAPS 20°	N. MARQ	P.SOL
11,575 LBS.	105	
11,000 LBS.	103	
10,470 LBS.		103
10,000 LBS.	100	102
9,000 LBS.	100	100
8,000 LBS.		99

A-1

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

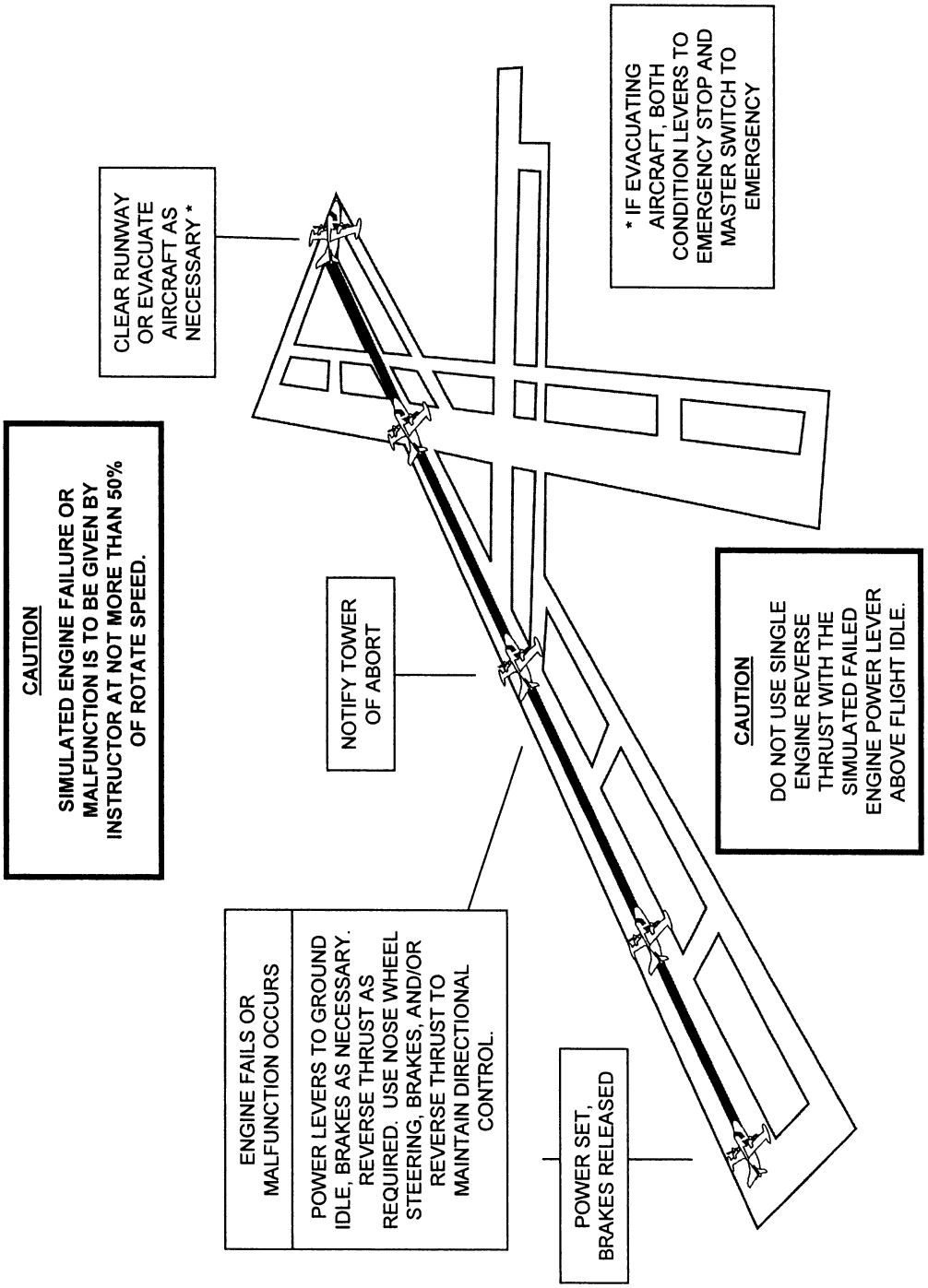
TAKE-OFF ENGINE FAILURE – FLAPS 5° OR 20°



A-2

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

TAKE-OFF ENGINE FAILURE ON RUNWAY

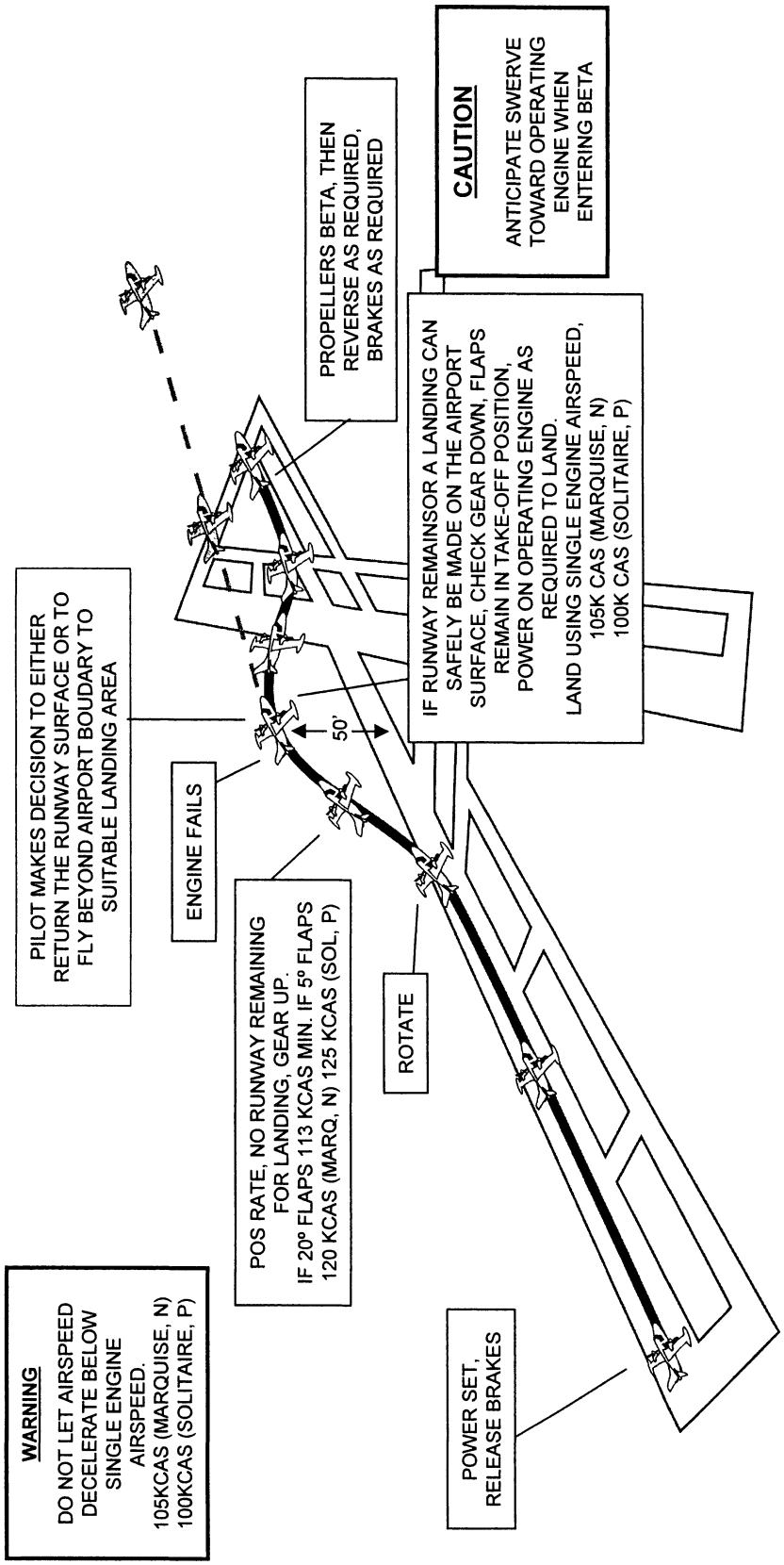


A-3

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

TAKE-OFF ENGINE FAILURE - UNABLE TO CLIMB

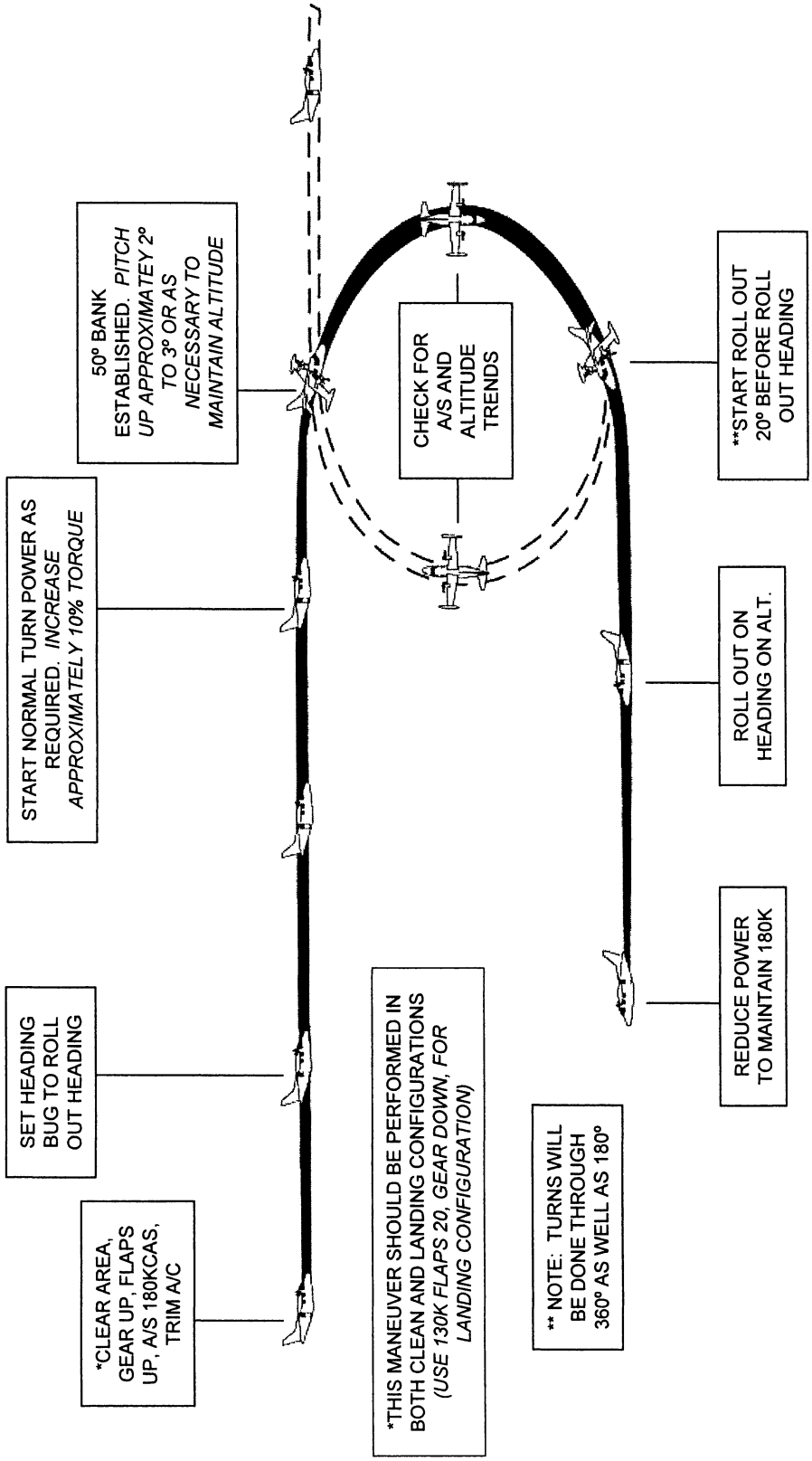
CLASSROOM DISCUSSION OR FTD USE ONLY



A-4

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

STEEP TURNS



A-5

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

SLOW FLIGHT MANEUVERING

MINIMUM CONTROLLABLE AIRSPEED

SLOW FLIGHT MANEUVERING IS CONDUCTED AS FOLLOWS:

CLEAR THE AREA PRIOR TO BEGINNING THE MANEUVER.

START WITH CLEAN CONFIGURATION AND CHANGE AIRCRAFT CONFIGURATION FROM CLEAN TO FULL FLAP AND GEAR IN STAGES. USE A MAXIMUM OF 15° BANK AND PERFORM HEADING CHANGES OF 90° LEFT AND RIGHT. CONSTANT ALTITUDE IS REQUIRED THROUGHOUT.
MAINTAIN 115KCAS IN ALL CONFIGURATIONS.

**APPROXIMATE POWER SETTINGS ARE:

CLEAN	*TORQUE*	*(35%) PER ENGINE*	*APPROX PITCH +12*
5° FLAP	*TORQUE*	*(32%) PER ENGINE*	*APPROX PITCH +8*
5° FLAP & GEAR	*TORQUE*	*(44%) PER ENGINE*	*APPROX PITCH +9*
20° FLAP & GEAR	*TORQUE*	*(42%) PER ENGINE*	*APPROX PITCH +4*
40° FLAP & GEAR	*TORQUE*	*(54%) PER ENGINE*	*APPROX PITCH 0*

** NOTE: POWER SETTINGS WILL VARY WITH AIRCRAFT WEIGHT AND ALTITUDE.

STALL SPEEDS (APPROXIMATE)
AT MAXIMUM GROSS TAKEOFF WEIGHT
N, MARQUISE / P, SOLITIARE

ANGLE OF BANK	0°	15°
FLAPS		
UP	106/104*	108/106*
5°	99/ 98*	100/ 99*
20°	87/ 88*	88/ 88*
40°	81/ 78*	83/ 79*

*P, SOL

Vmc FLAPS 5° 99K (MARQ, N), 100KCAS (SOL, P)
FLAPS 20° 99K (MARQ, N), 93KCAS (SOL, P)

CAUTION

STALL WARNING MAY ACTIVATE
4 TO 9 KCAS ABOVE STALL

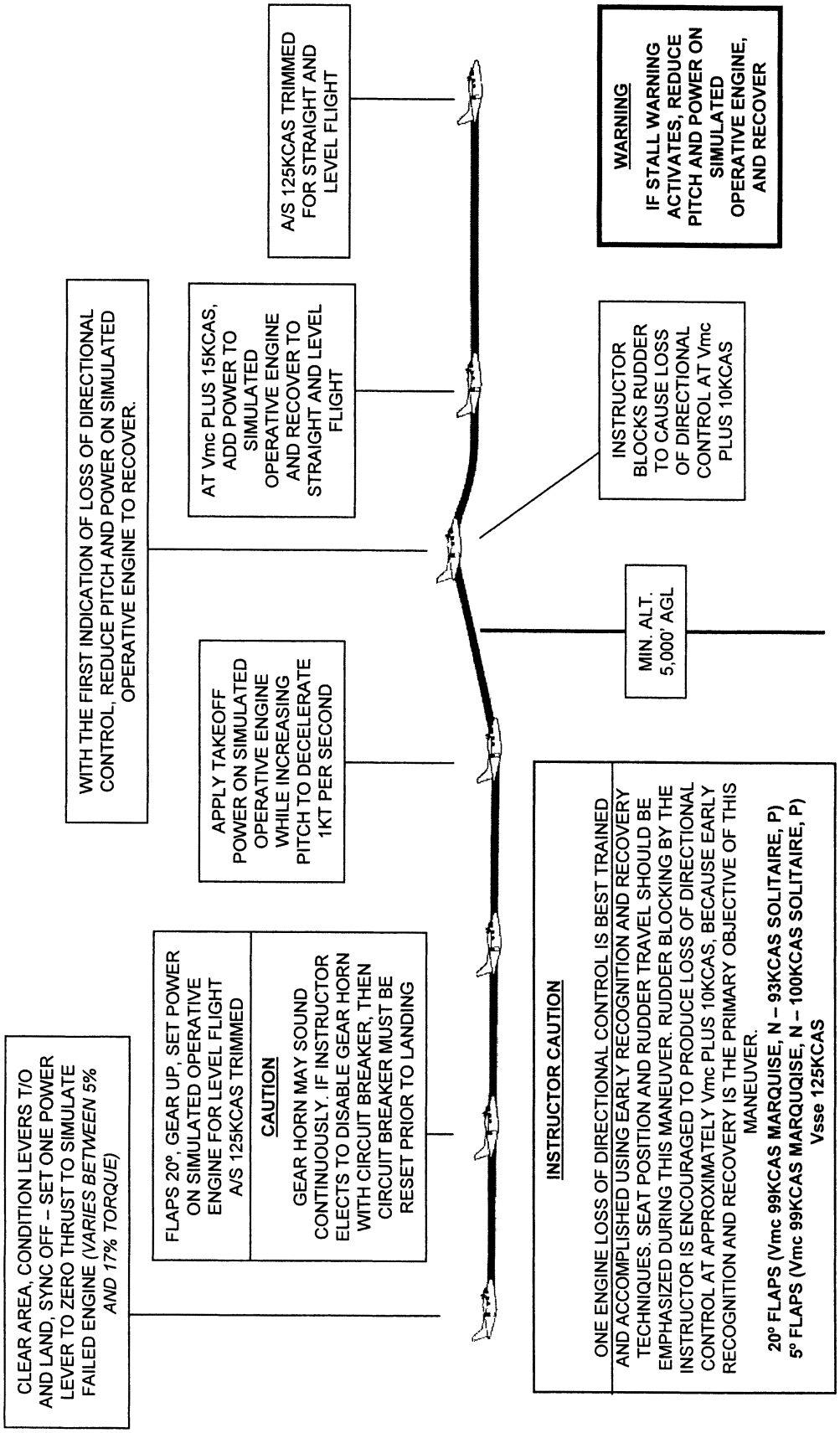
MINIMUM CONTROLLABLE AIRSPEED IS CONDUCTED AS FOLLOWS:

CLEAR THE AREA PRIOR TO BEGINNING THE MANEUVER.

THE MANEUVER MAY BE DONE IN ANY COMBINATION OF GEAR OR FLAP CONFIGURATIONS. IF BANK IS TO BE USED, IT SHOULD BE DONE AT BANK OF NOT MORE THAN 15°. BEGIN THE MANEUVER BY CONFIGURING THE AIRCRAFT IN THE DESIRED GEAR AND FLAP CONFIGURATION. SLOW THE AIRCRAFT UNTIL THE STALL WARNING (STICK SHAKER) IS ACTIVATED AND ADD POWER TO MAINTAIN ALTITUDE AND A SPEED JUST ABOVE AERODYNAMIC STALL. DO NOT ALLOW THE AIRCRAFT TO REACH AERODYNAMIC STALL BUFFET.

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

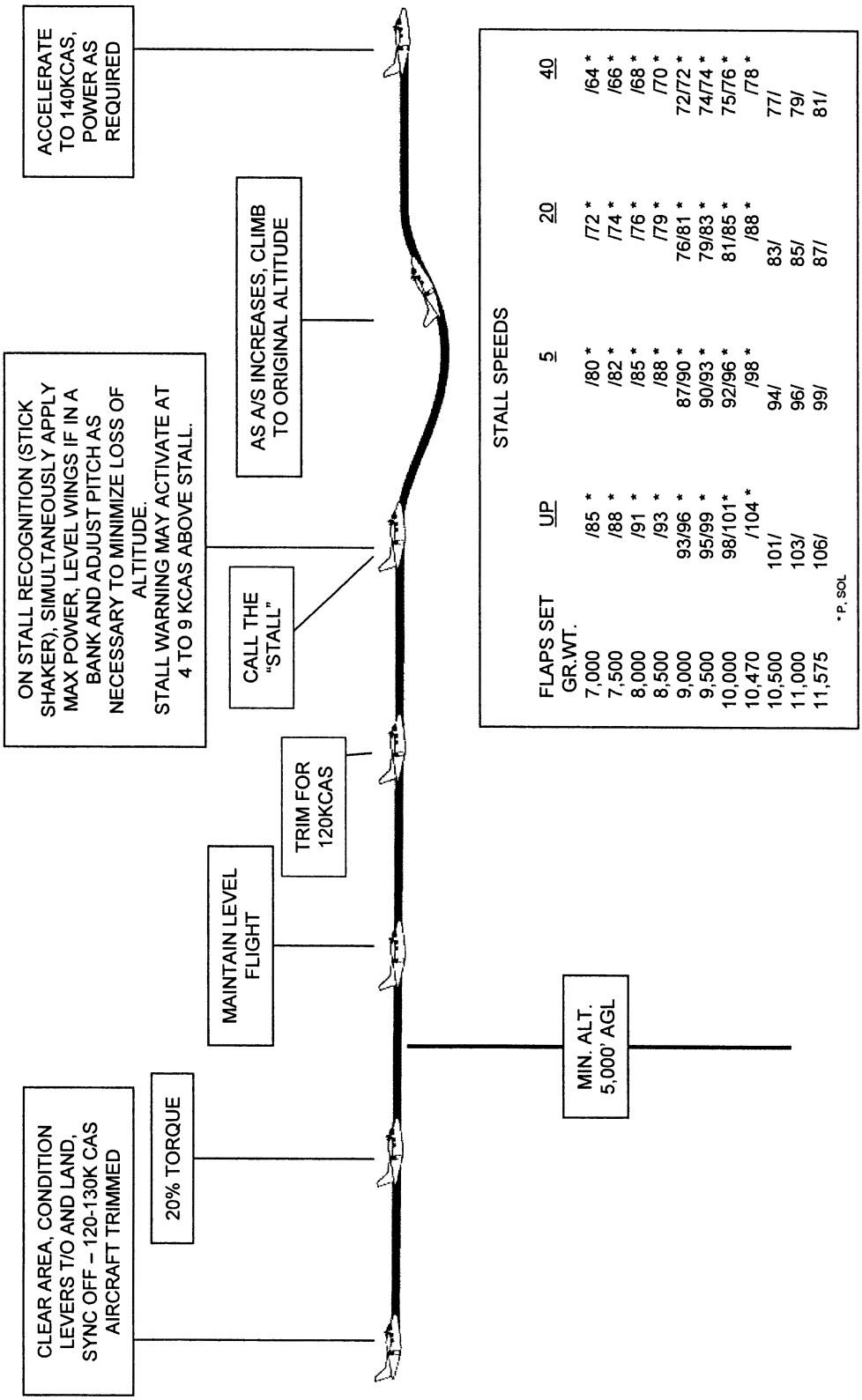
ONE ENGINE INOPERATIVE MANEUVERING LOSS OF DIRECTIONAL CONTROL



A-7

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

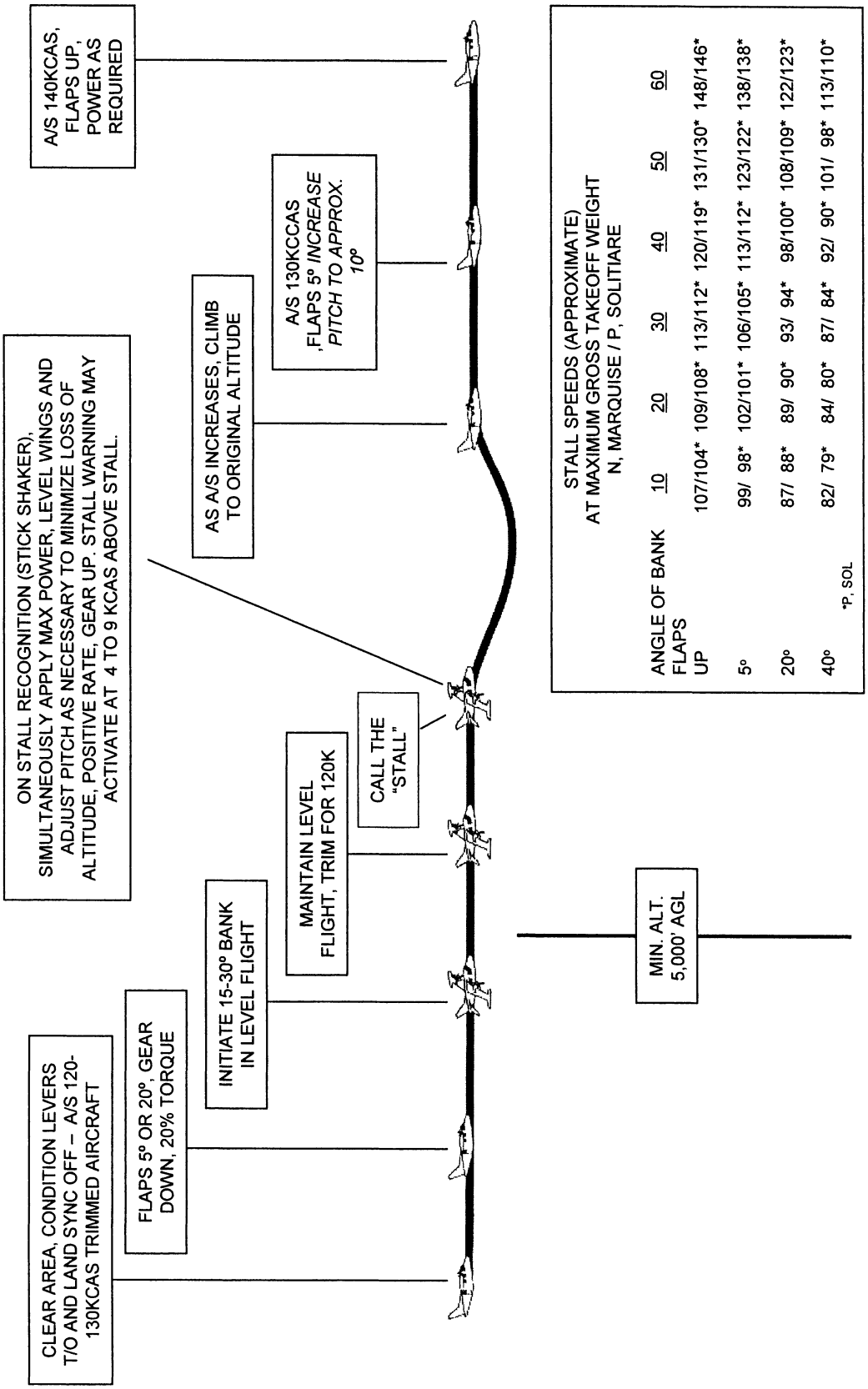
APPROACH TO STALL CLEAN CONFIGURATION / WINGS LEVEL



MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

APPROACH TO STALL

TAKEOFF CONFIGURATION 15-30° BANK

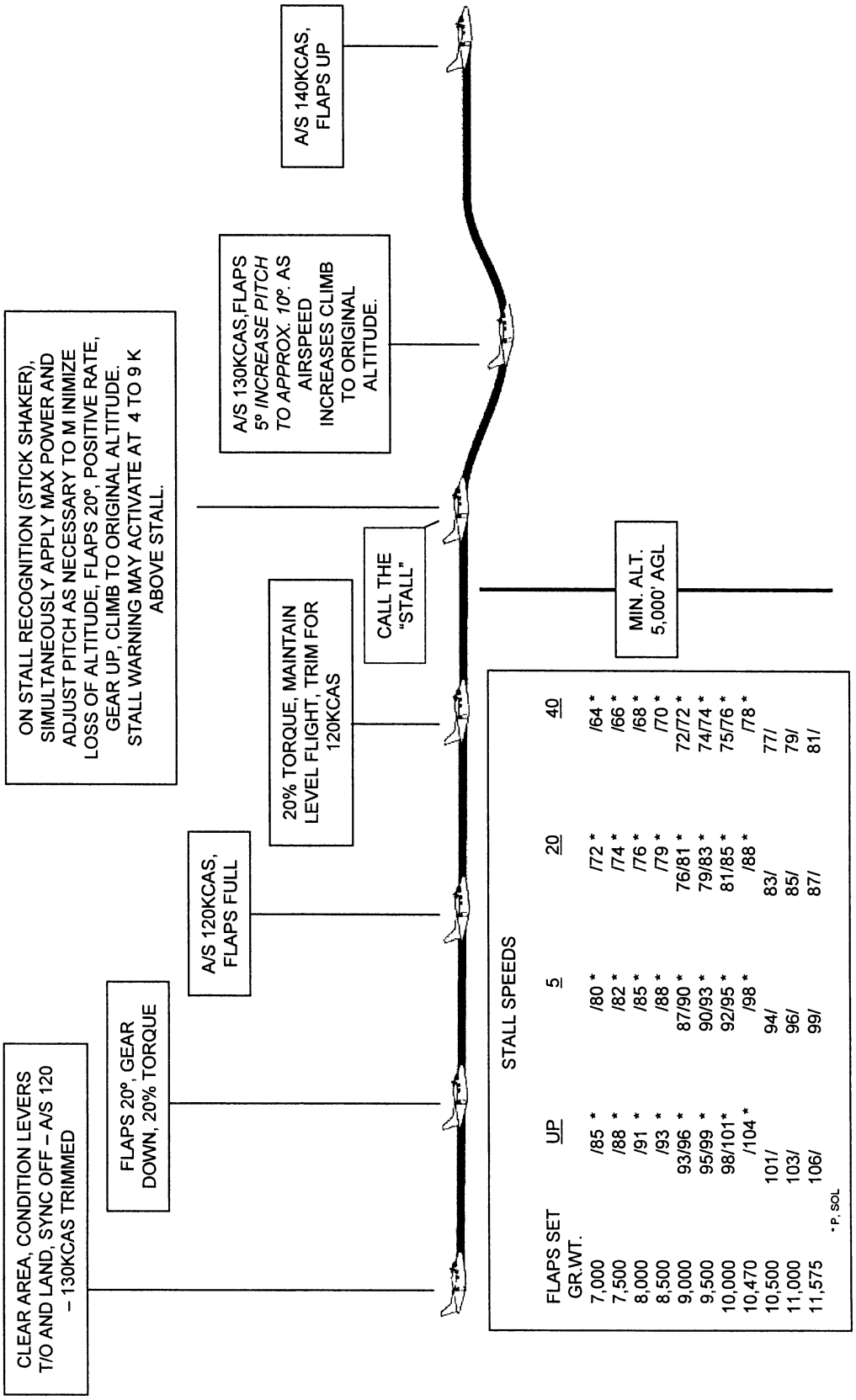


A-9

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

APPROACH TO STALL

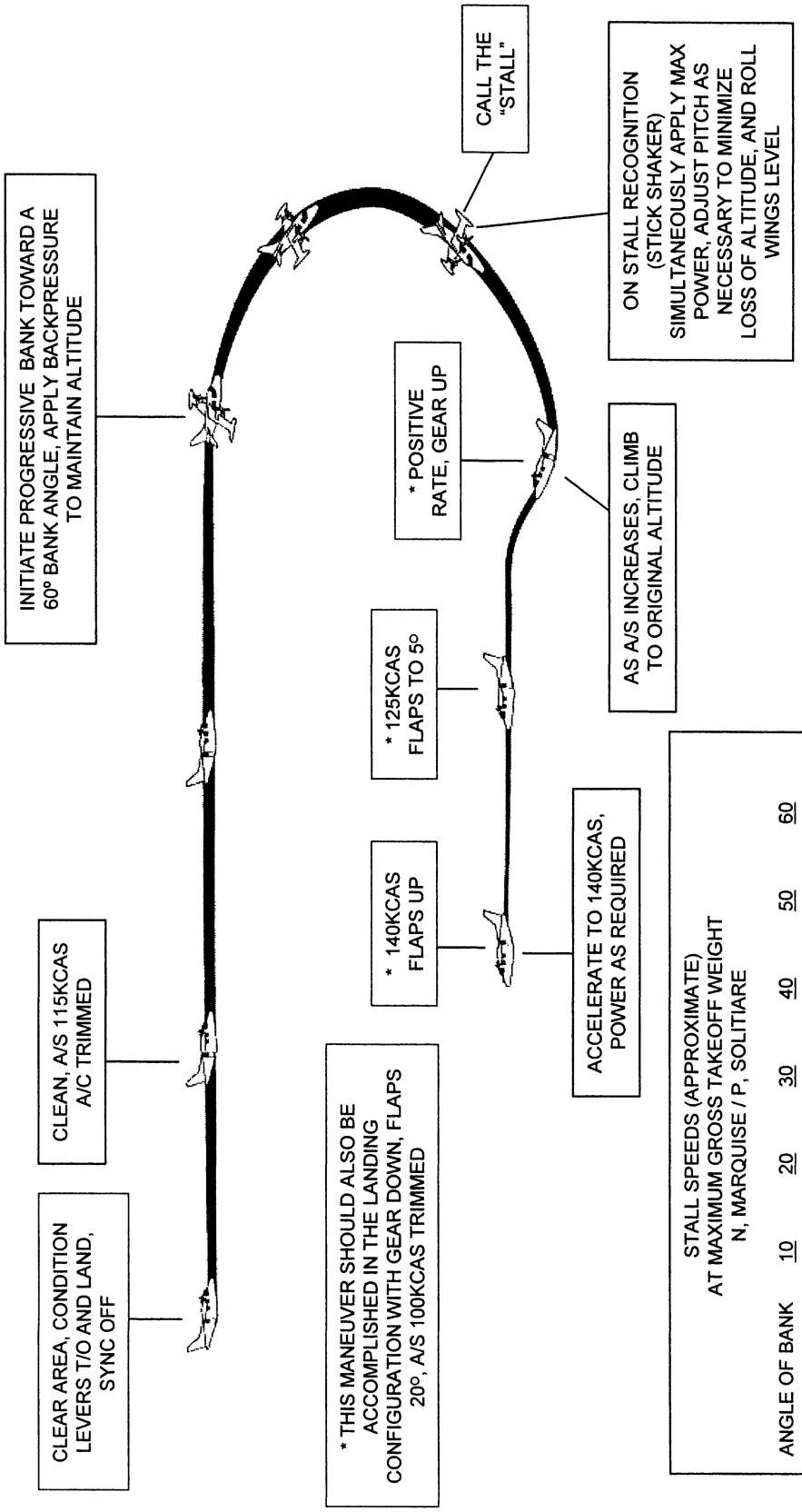
GEAR DOWN – FULL FLAPS



A-10

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

ACCELERATED STALLS



STALL SPEEDS (APPROXIMATE)
AT MAXIMUM GROSS TAKEOFF WEIGHT
N, MARQUISE / P, SOLITIARE

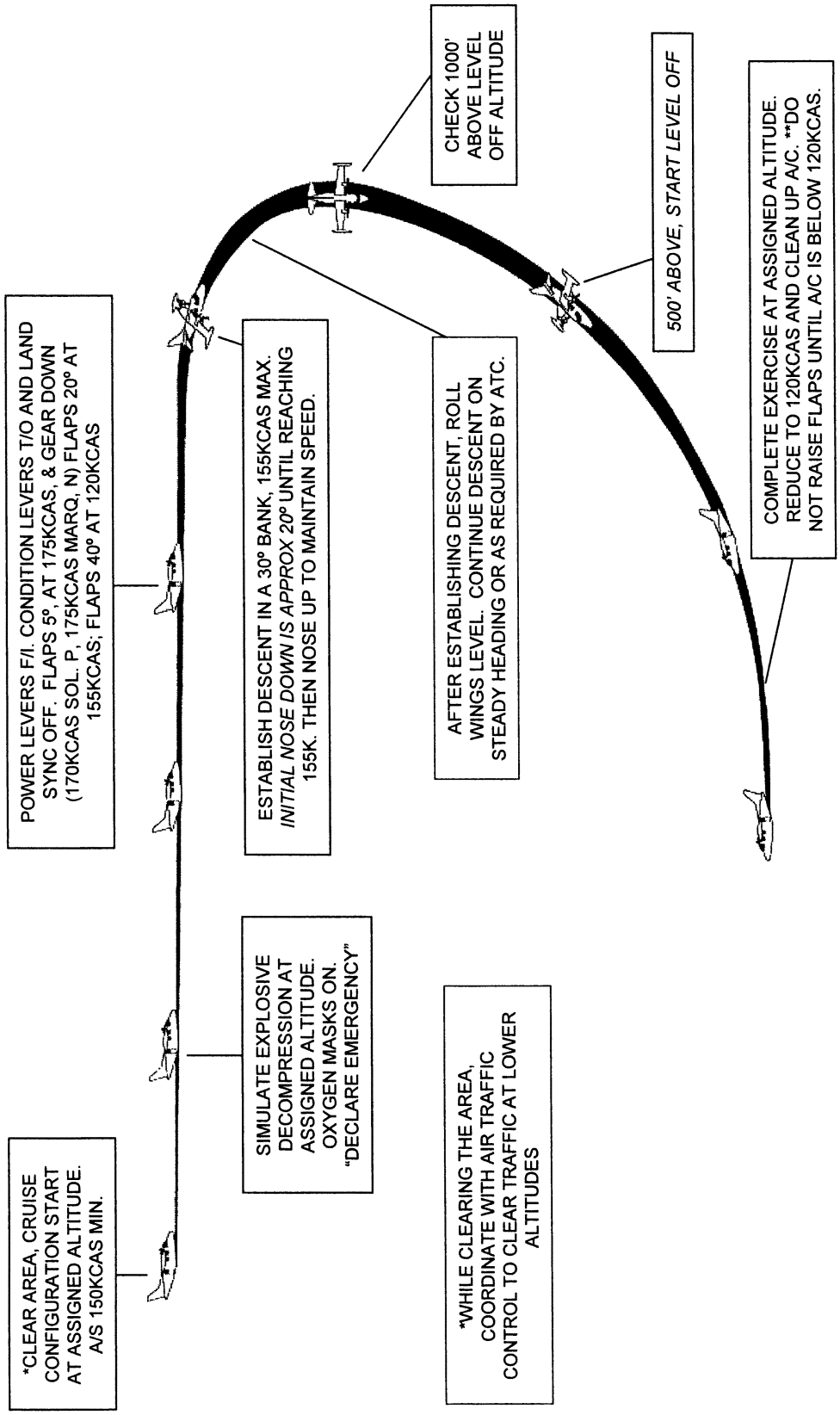
ANGLE OF BANK	10	20	30	40	50	60
FLAPS UP	107/104*	109/108*	113/112*	120/119*	131/130*	148/146*
5°	99/ 98*	102/101*	106/105*	113/112*	123/122*	138/138*
20°	87/ 88*	89/ 90*	93/ 94*	98/100*	108/109*	122/123*
40°	82/ 79*	84/ 80*	87/ 84*	92/ 90*	101/ 98*	113/110*

*P, SOL

A-11

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

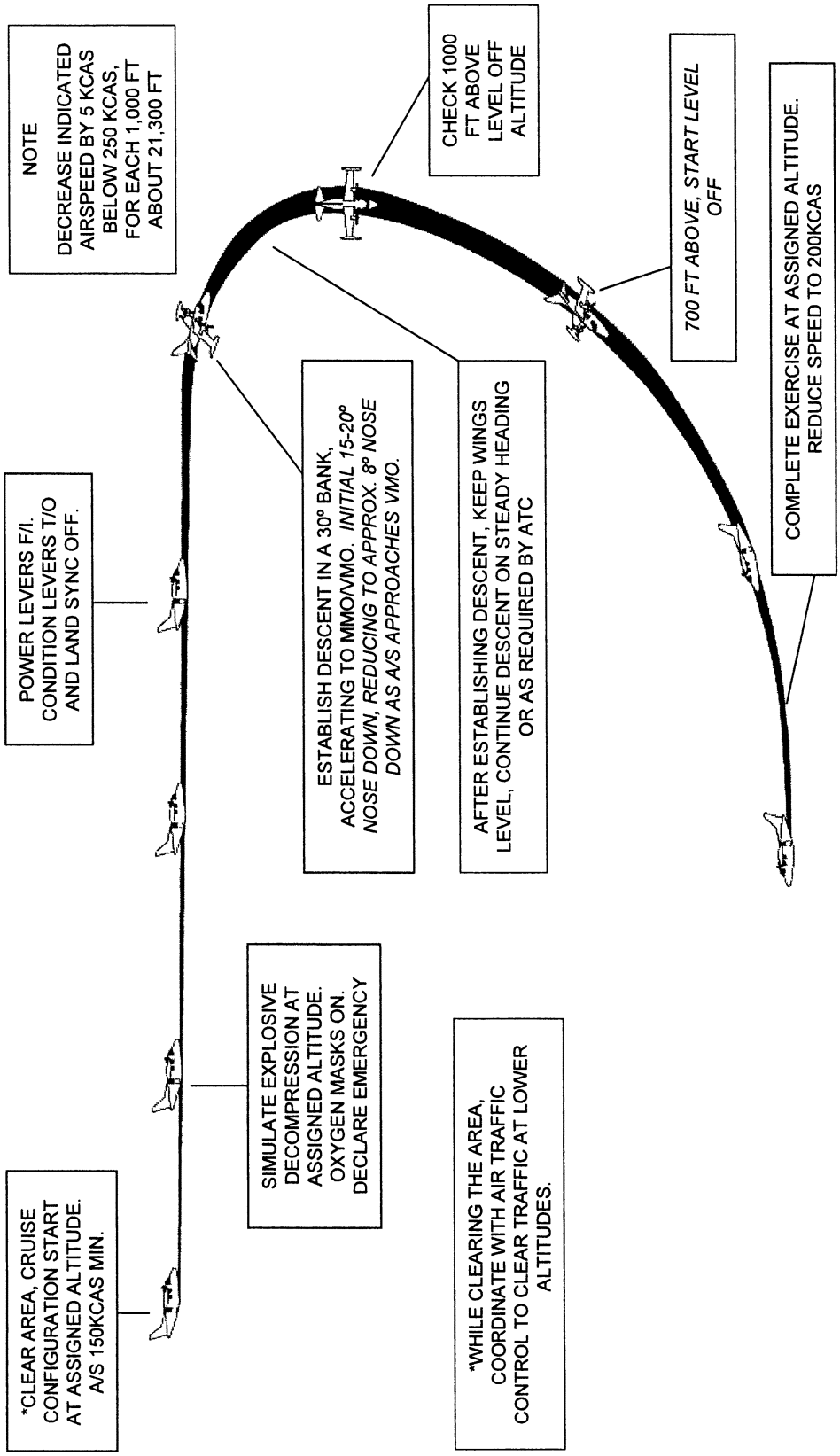
EMERGENCY DESCENT (LOW SPEED)



A-12

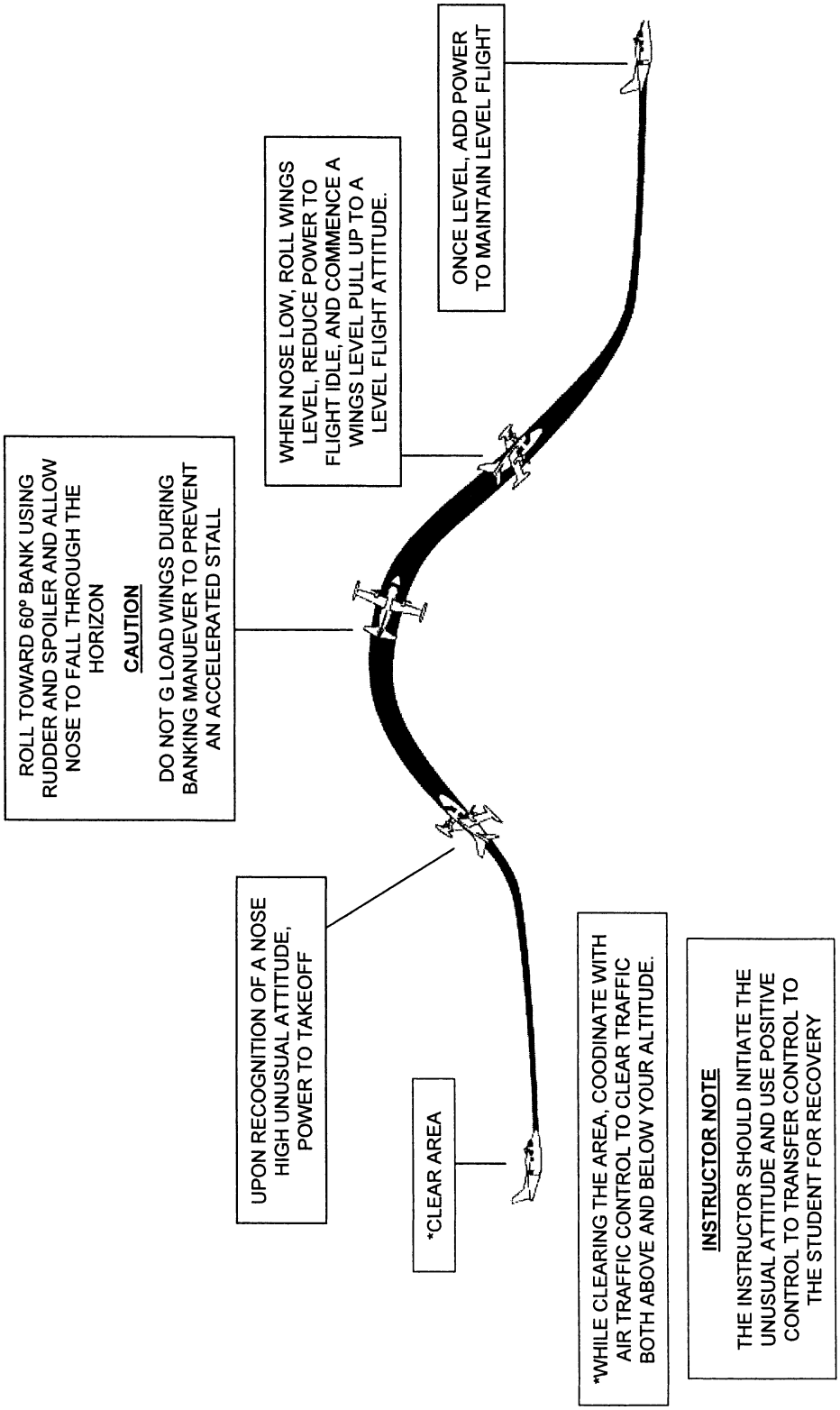
MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

EMERGENCY DESCENT (HIGH SPEED)



MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

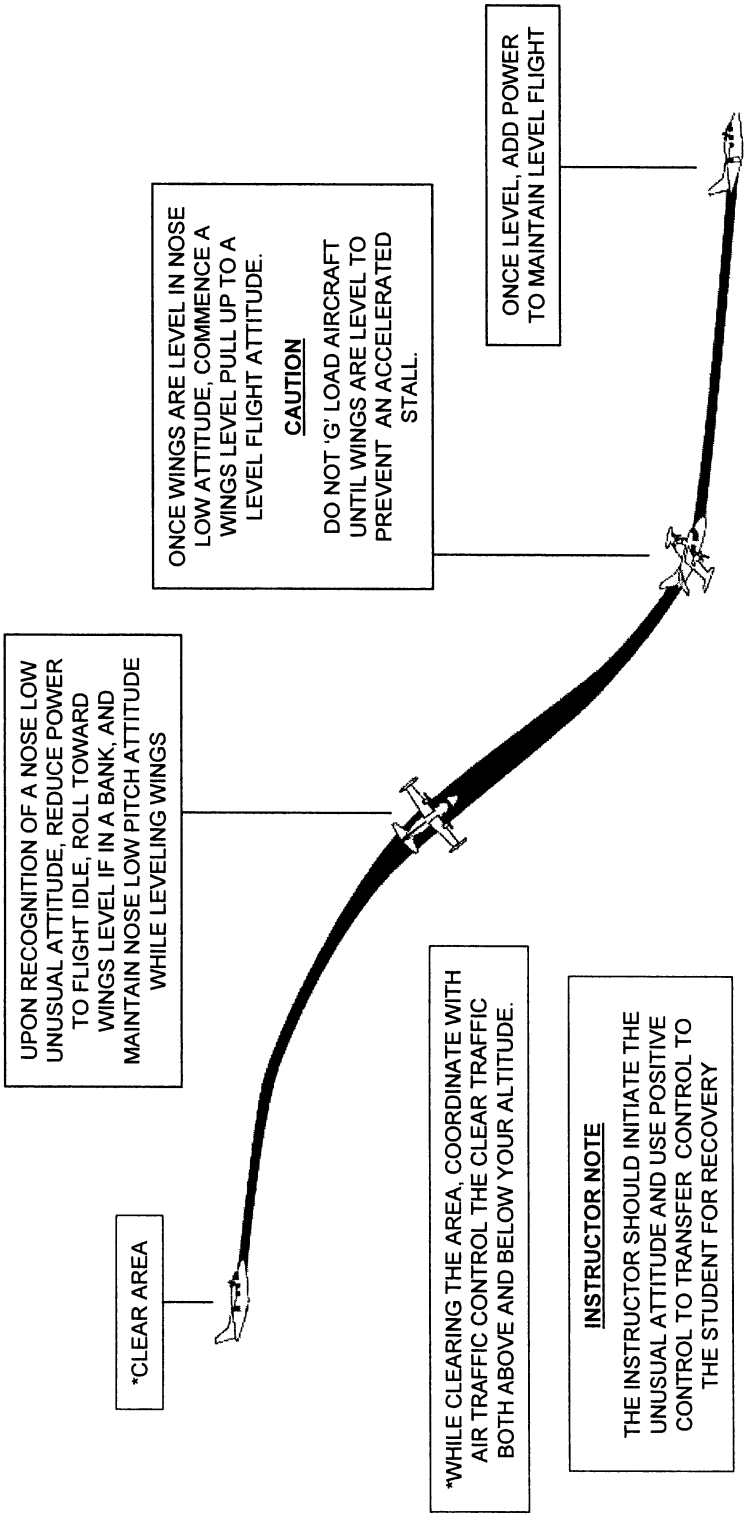
UNUSUAL ATTITUDE RECOVERY (NOSE HIGH)



A-14

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

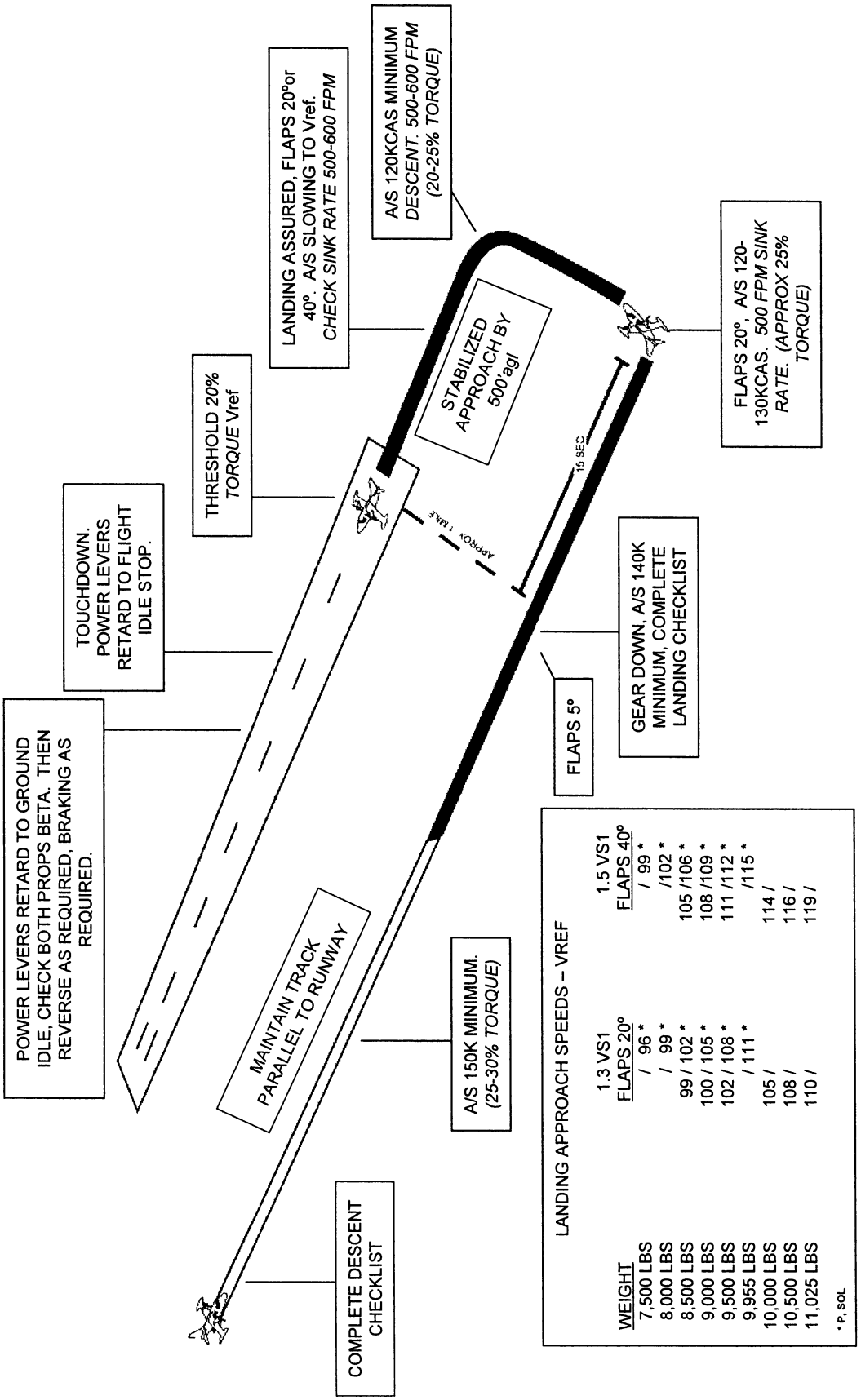
UNUSUAL ATTITUDE RECOVERY (NOSE LOW)



A-15

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

NORMAL LANDING (20° or 40° FLAPS)



LANDING APPROACH SPEEDS – VREF

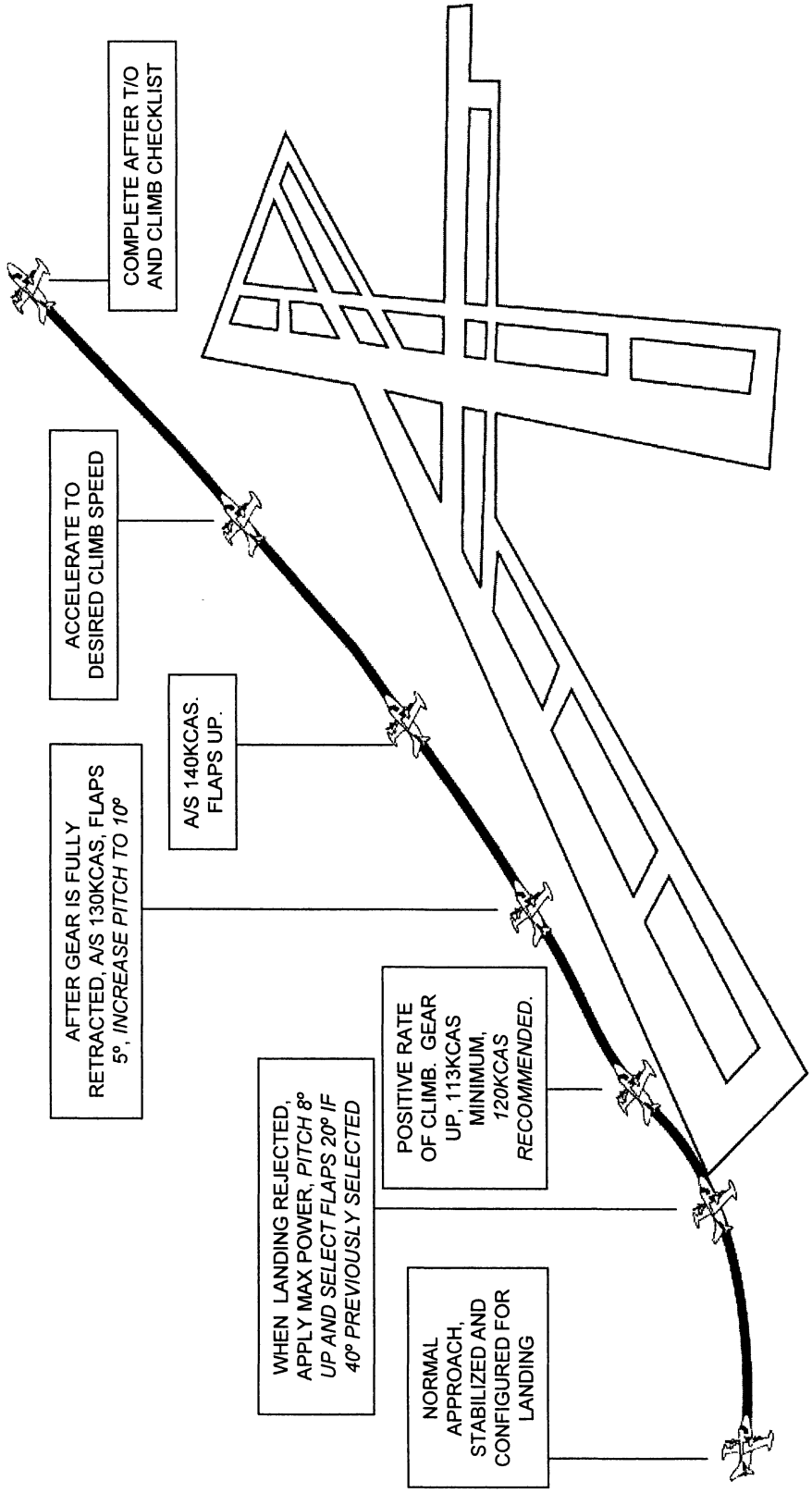
WEIGHT	1.3 VS1 FLAPS 20°	1.5 VS1 FLAPS 40°
7,500 LBS	/ 96 *	/ 99 *
8,000 LBS	/ 99 *	/102 *
8,500 LBS	99 / 102 *	105 /106 *
9,000 LBS	100 / 105 *	108 /109 *
9,500 LBS	102 / 108 *	111 /112 *
9,955 LBS	/ 111 *	/115 *
10,000 LBS	105 /	114 /
10,500 LBS	108 /	116 /
11,025 LBS	110 /	119 /

* P, SOL

A-16

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

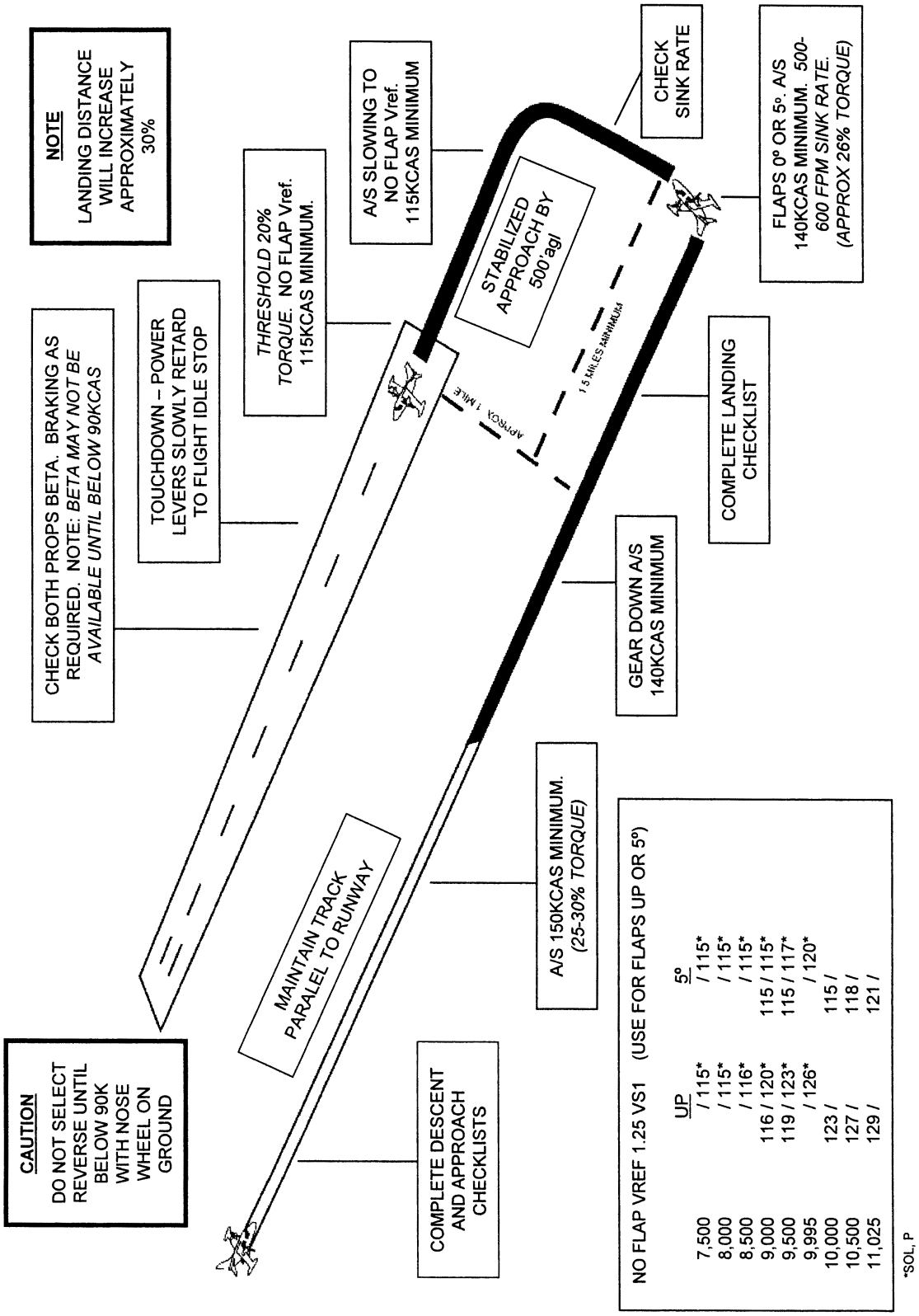
GO AROUND - REJECTED LANDING



A-17

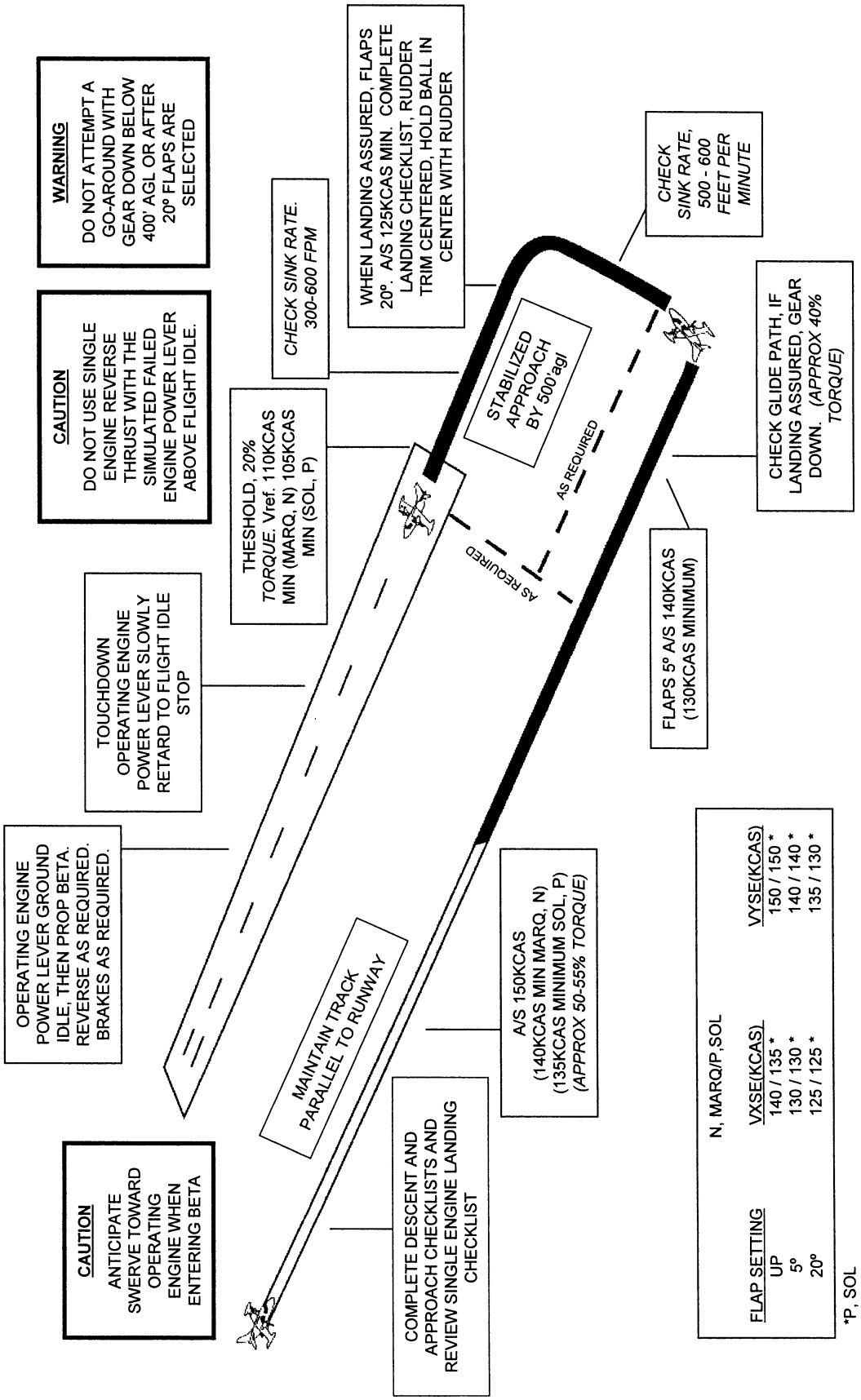
MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

NO FLAP OR 5º FLAP LANDING



MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

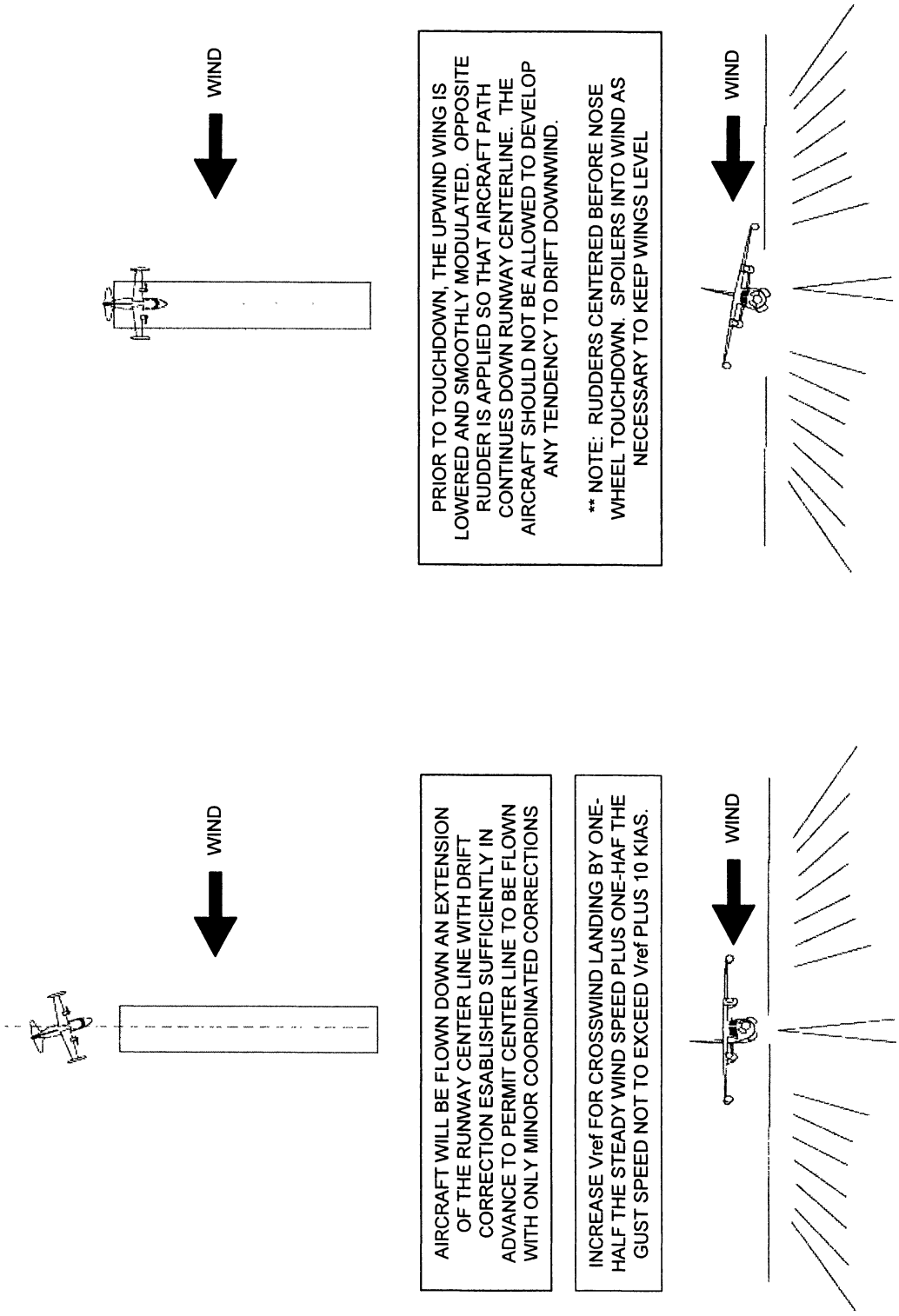
ONE ENGINE INOPERATIVE LANDING



A-19

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

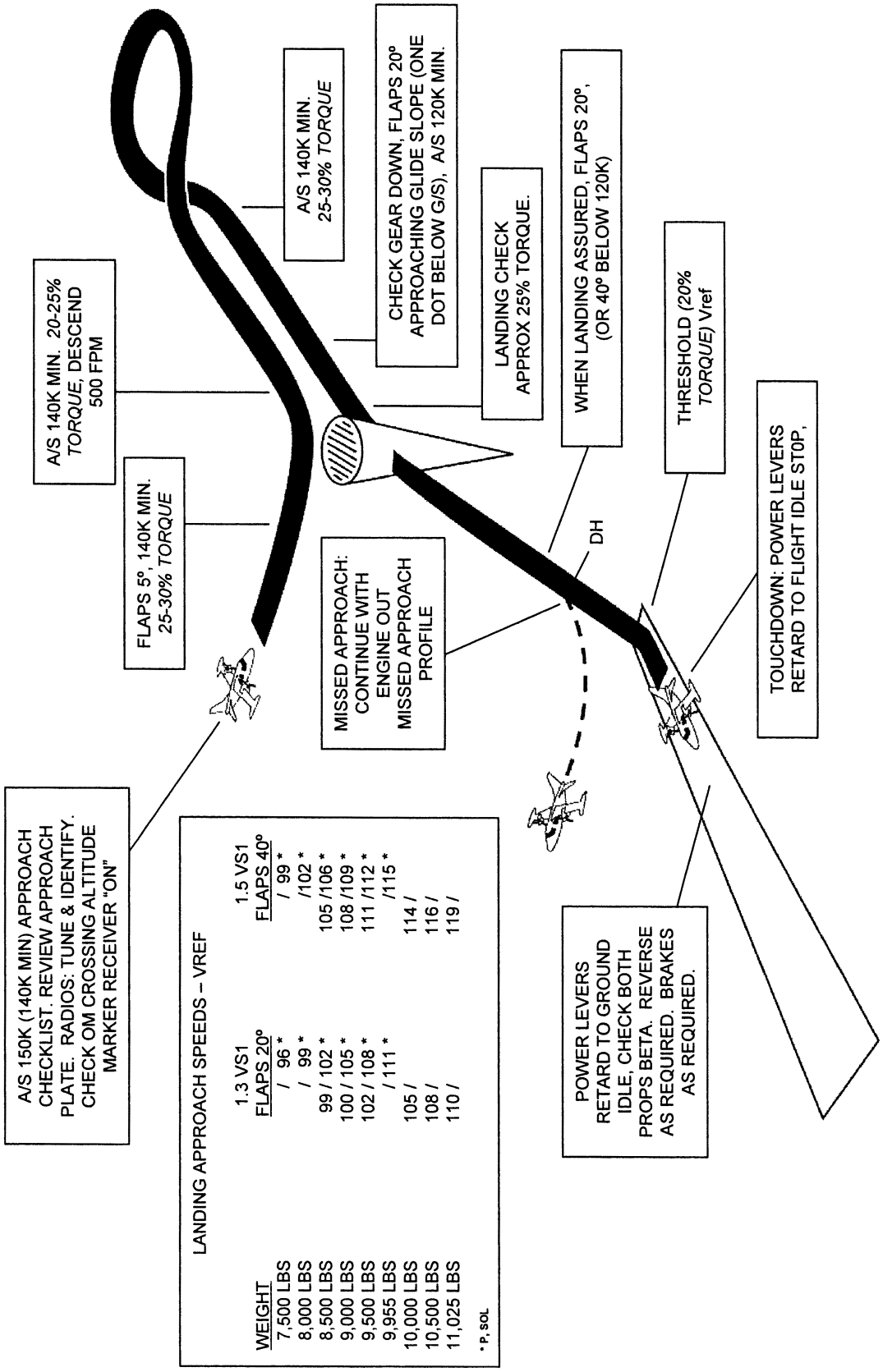
CROSSWIND LANDING



A-20

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

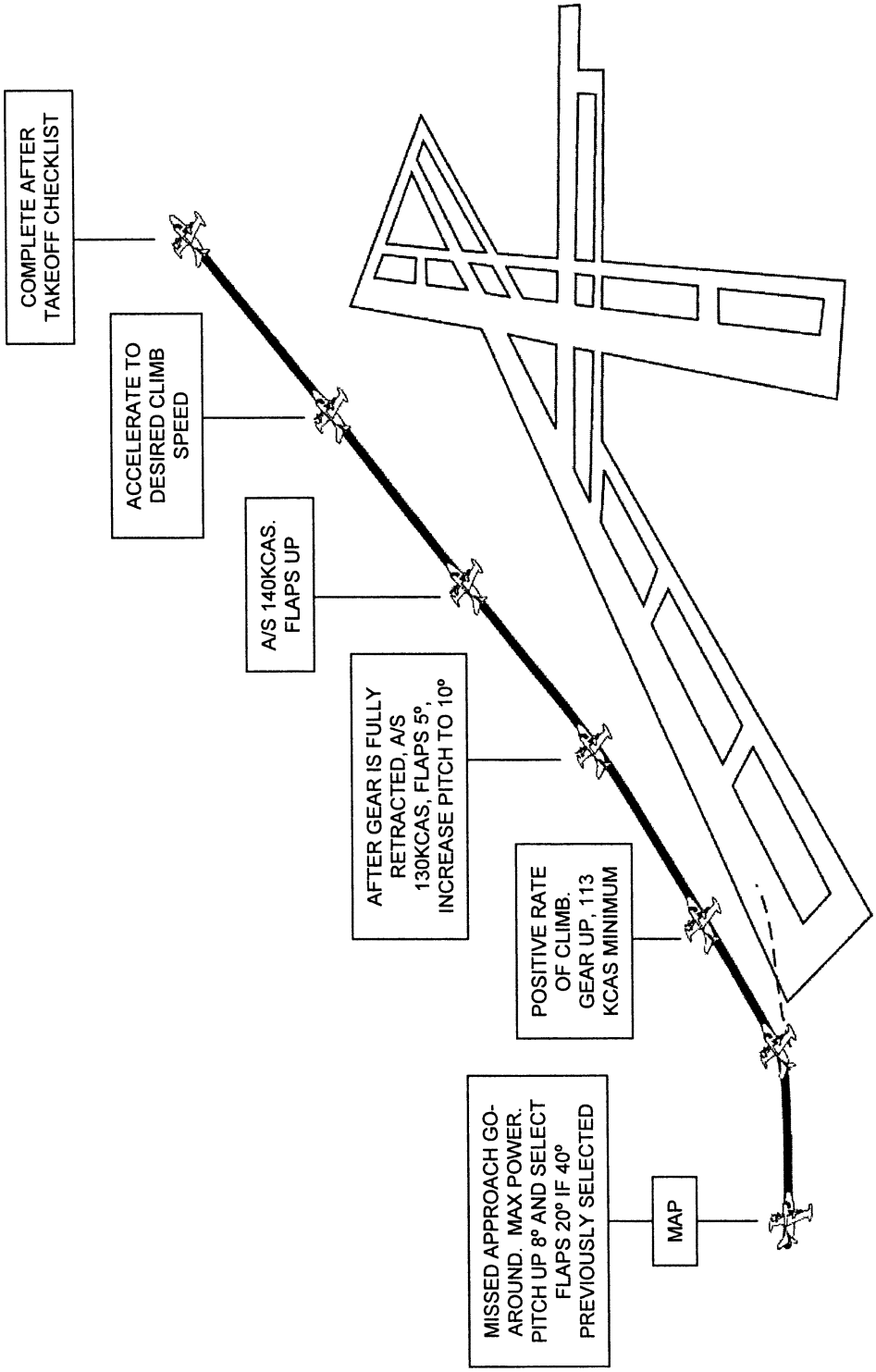
ILS AND MISSED APPROACH



A-21

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

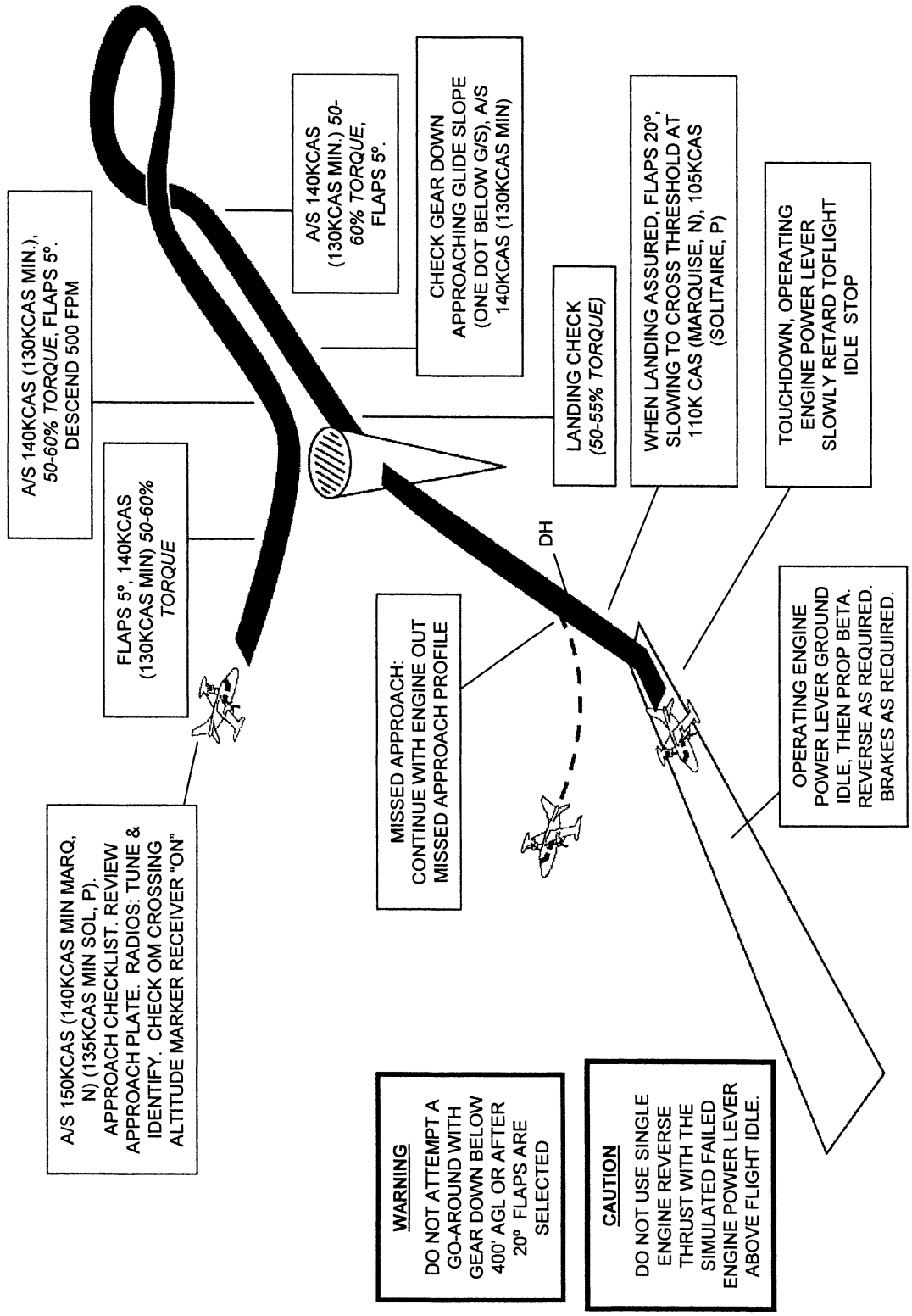
TWO ENGINE MISSED APPROACH



A-22

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

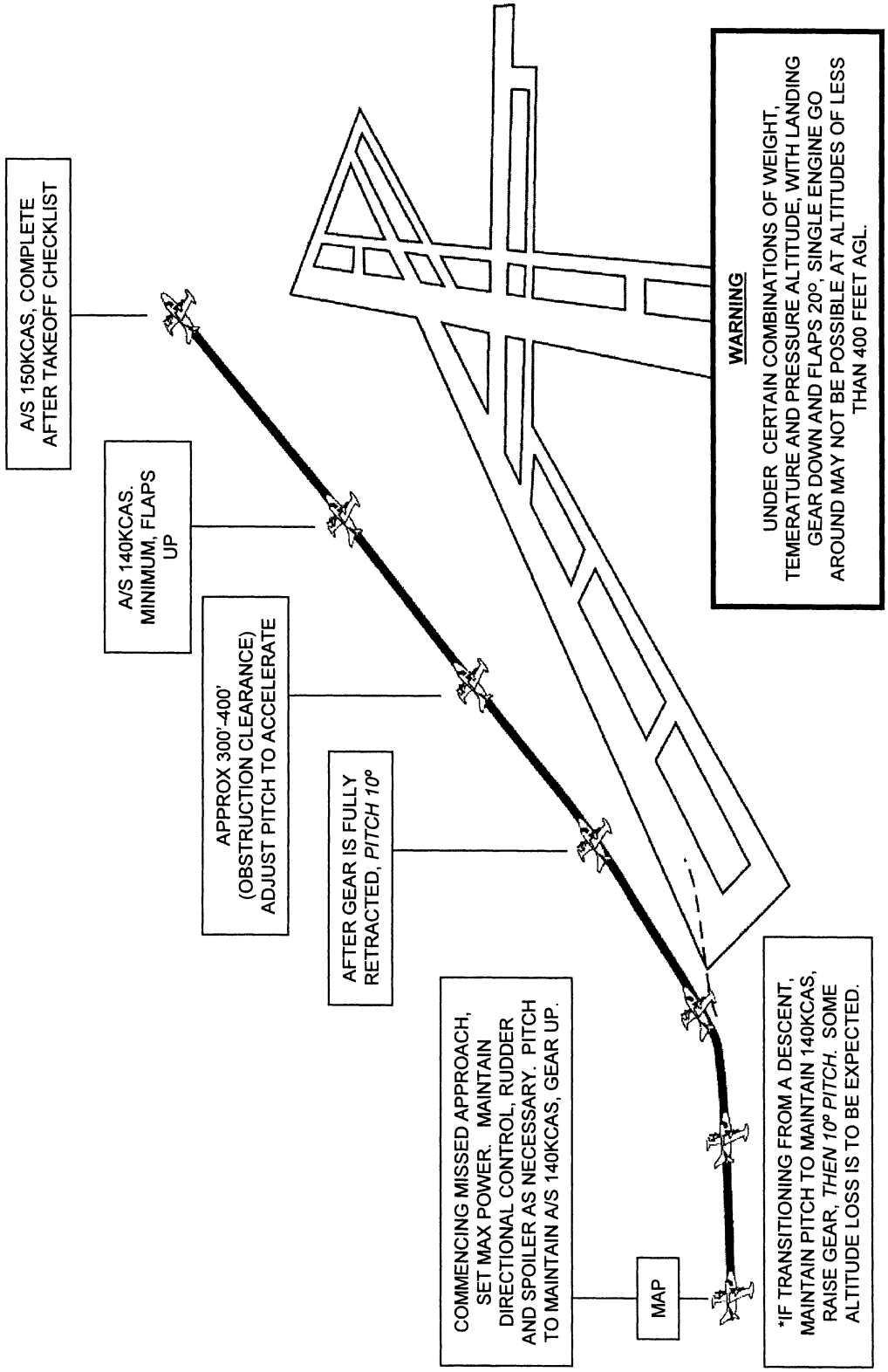
ONE ENGINE INOPERATIVE ILS AND MISSED APPROACH



A-23

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

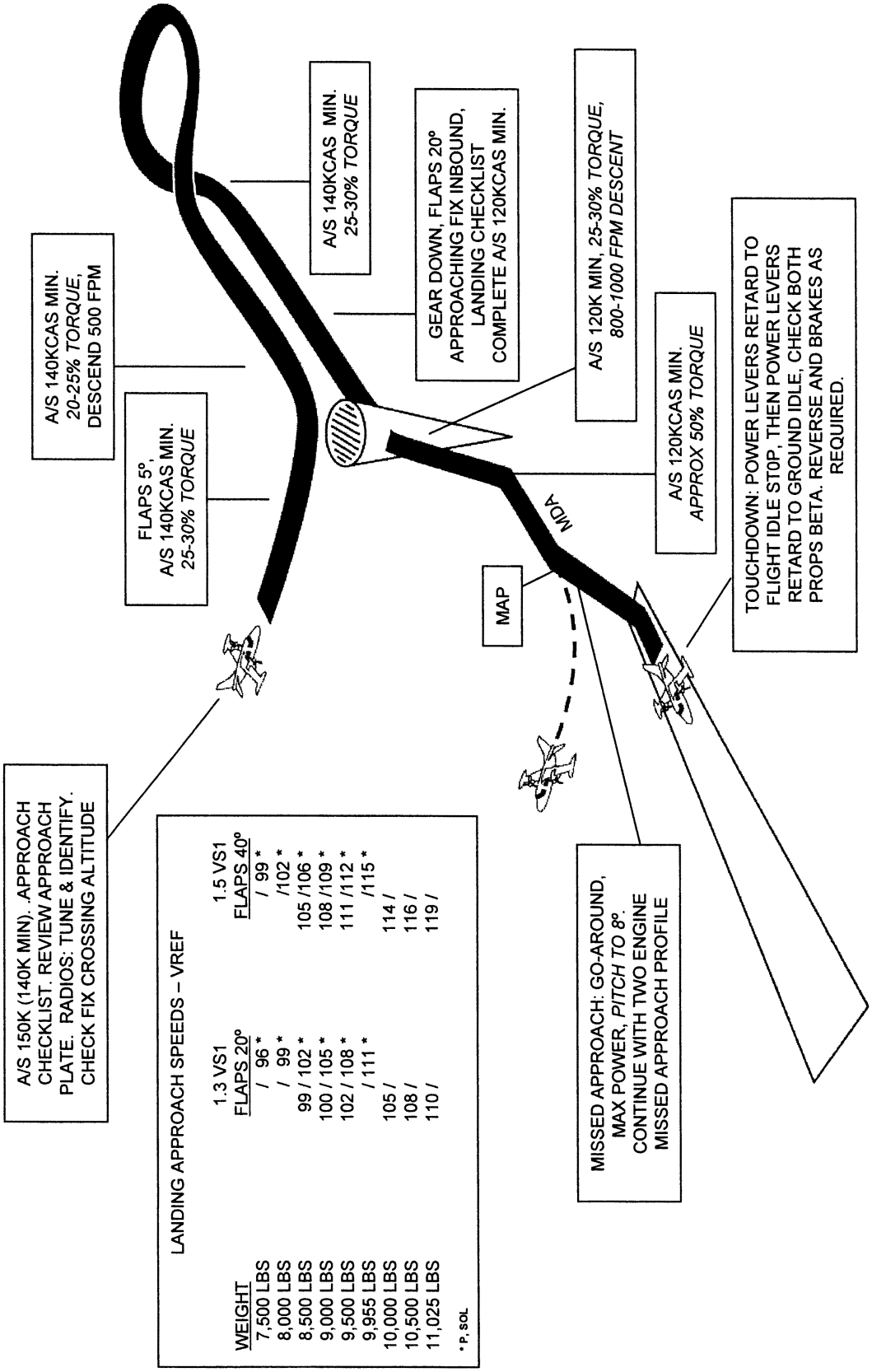
ONE ENGINE INOPERATIVE MISSED APPROACH



A-24

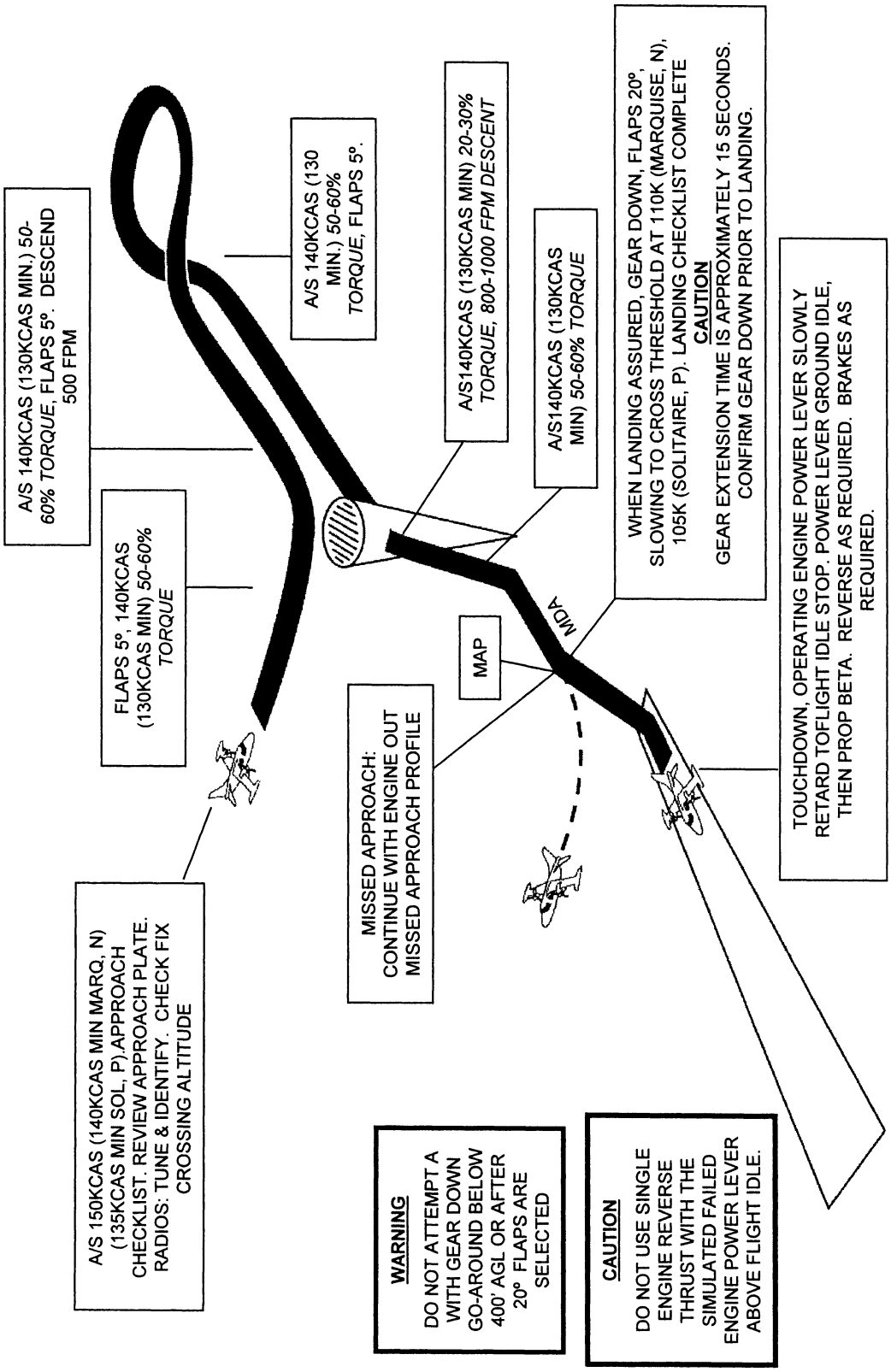
MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

NON-PRECISION AND MISSED APPROACH



MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

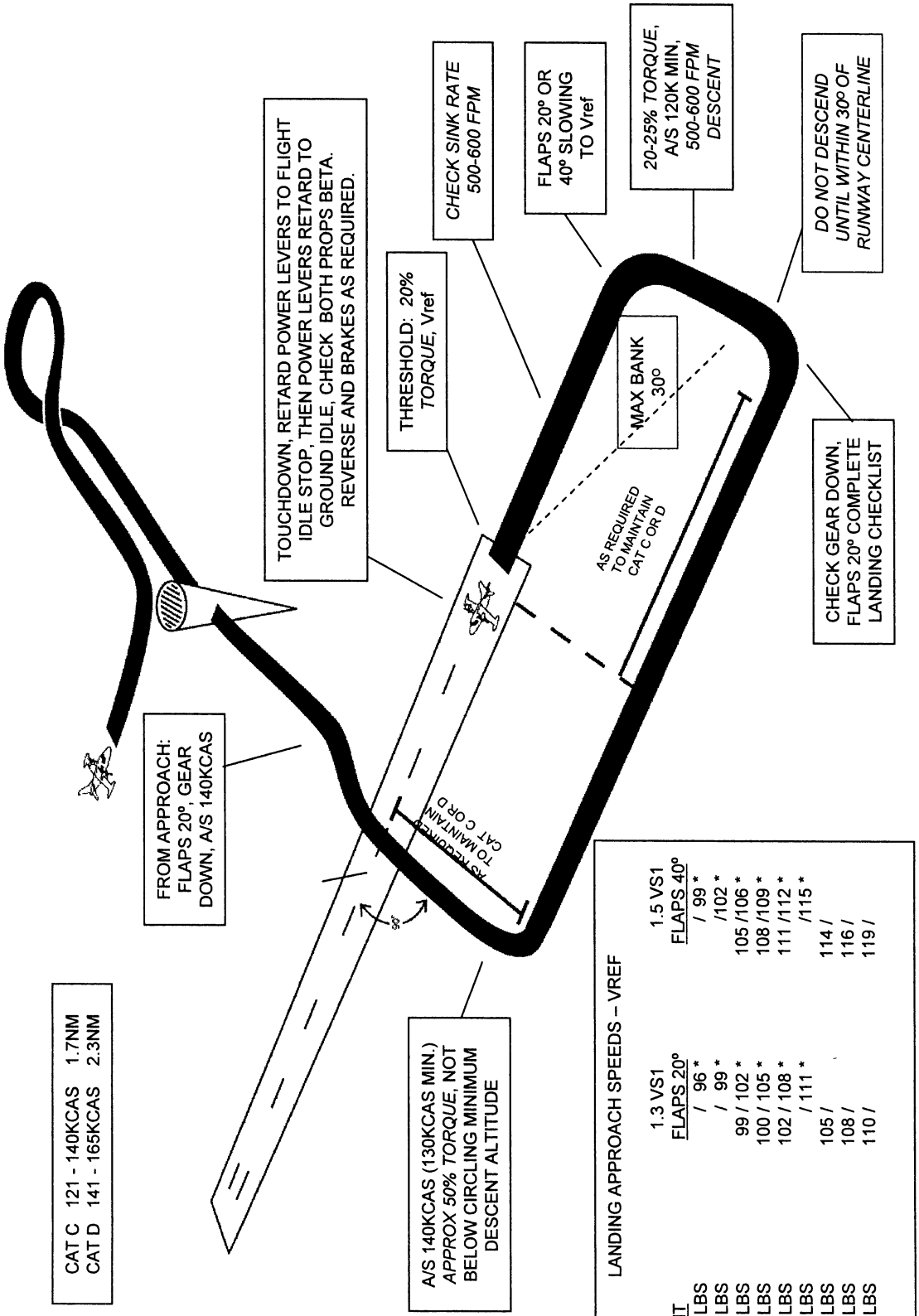
ONE ENGINE INOPERATIVE NON-PRECISION AND MISSED APPROACH



A-26

MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

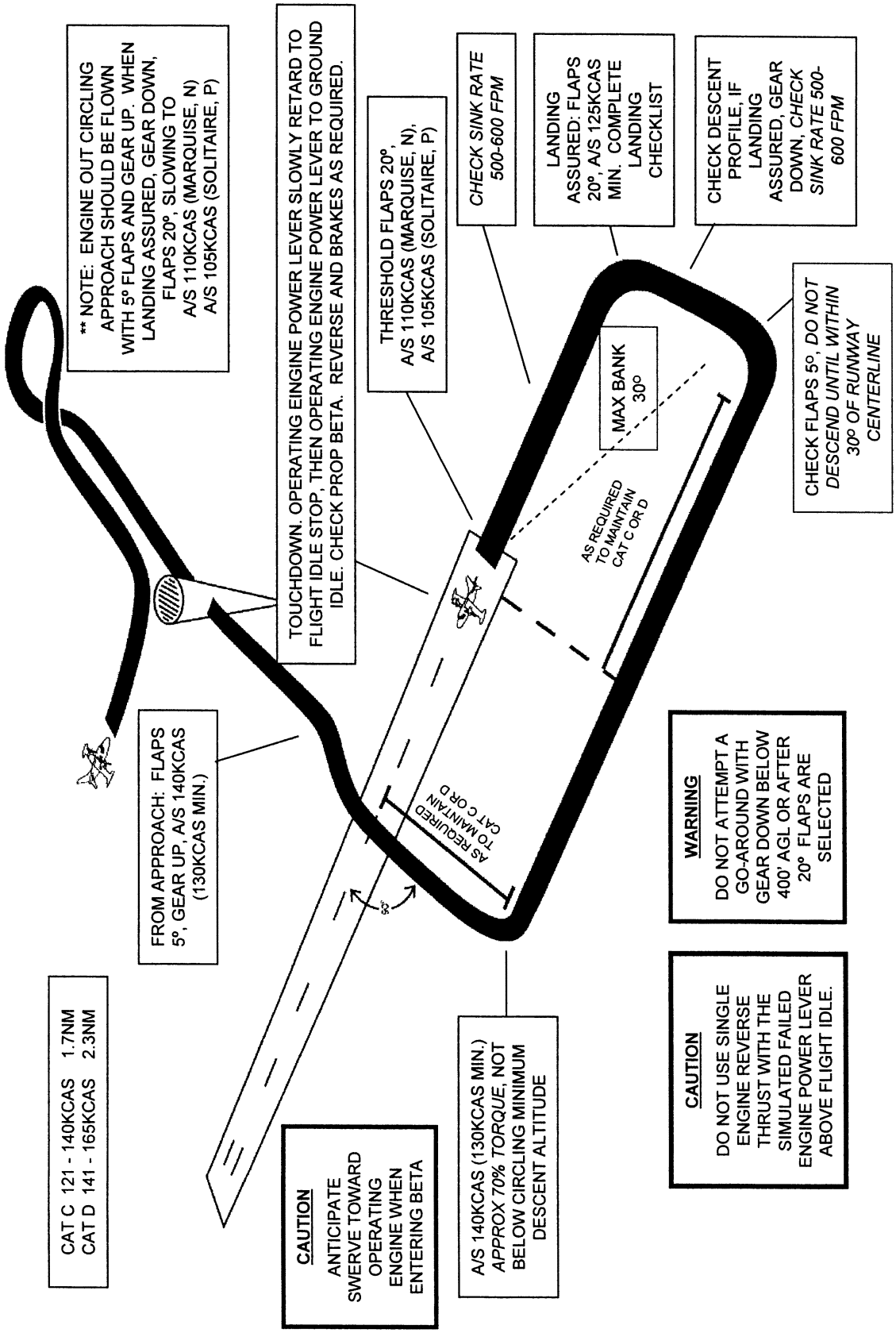
CIRCLING APPROACH AT WEATHER MINIMUMS



A-27

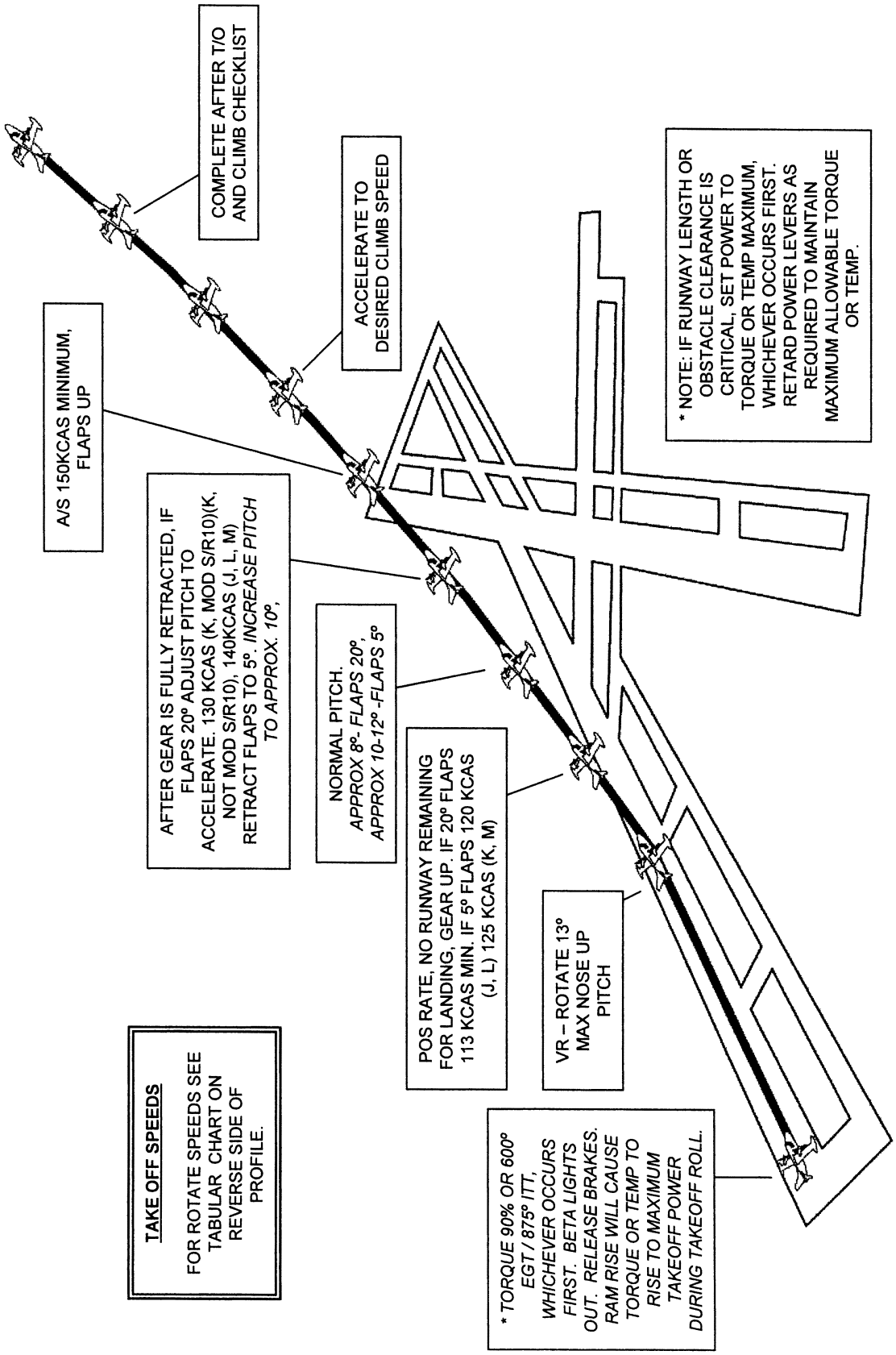
MU-2B MARQUISE (-60), SOLITAIRE (-40), N (-36A), P (-26A)

ONE ENGINE INOPERATIVE CIRCLING APPROACH AT WEATHER MINIMUMS



MU-2B J (-35), K (-25), L (-36), M (-26)

NORMAL TAKE-OFF, 5° OR 20° FLAPS



B-1

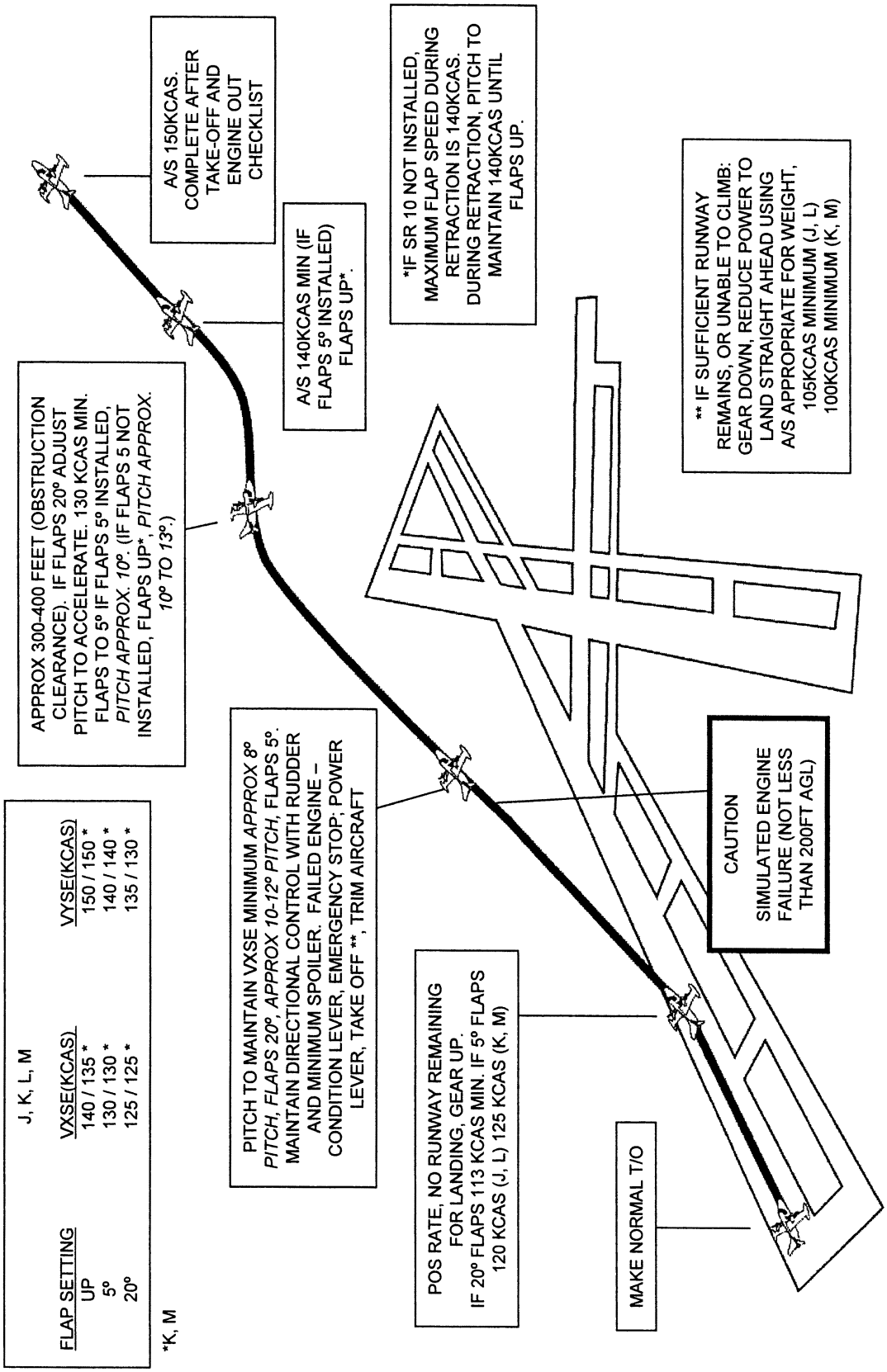
TAKE OFF SPEEDS
ROTATE

FLAPS 5°	K	M	J	L
11,575 LBS				109
11,000 LBS				106
10,800 LBS			109	105
10,470 LBS		110		104
10,000 LBS		108	105	101
9,920 LBS	108			101
9,500 LBS	107	107	103	101
9,000 LBS	106	106	101	100
8,000 LBS	104	104	100	
7,500 LBS	102			

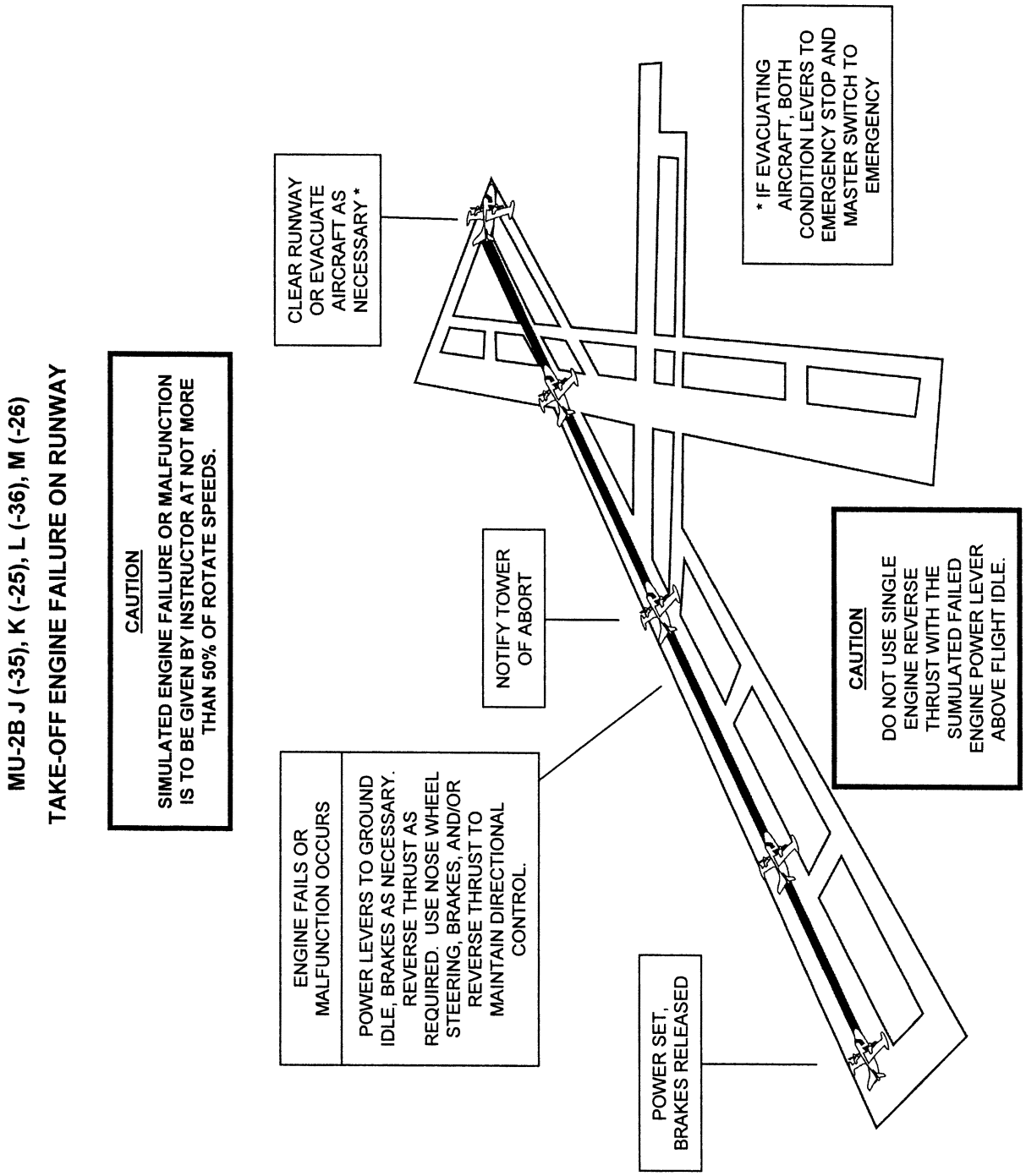
FLAPS 20°	K	M	J	L
11,575 LBS				105
11,000 LBS				103
10,800 LBS			105	
10,470 LBS		103		
10,000 LBS		102	102	100
9,920 LBS	102			
9,500 LBS	101	101	101	100
9,000 LBS	100	100	100	100
8,000 LBS	99	99	100	
7,500 LBS	98			

MU-2B J (-35), K (-25), L (-36), M (-26)

TAKE-OFF ENGINE FAILURE – FLAPS 5° OR 20°



B-2

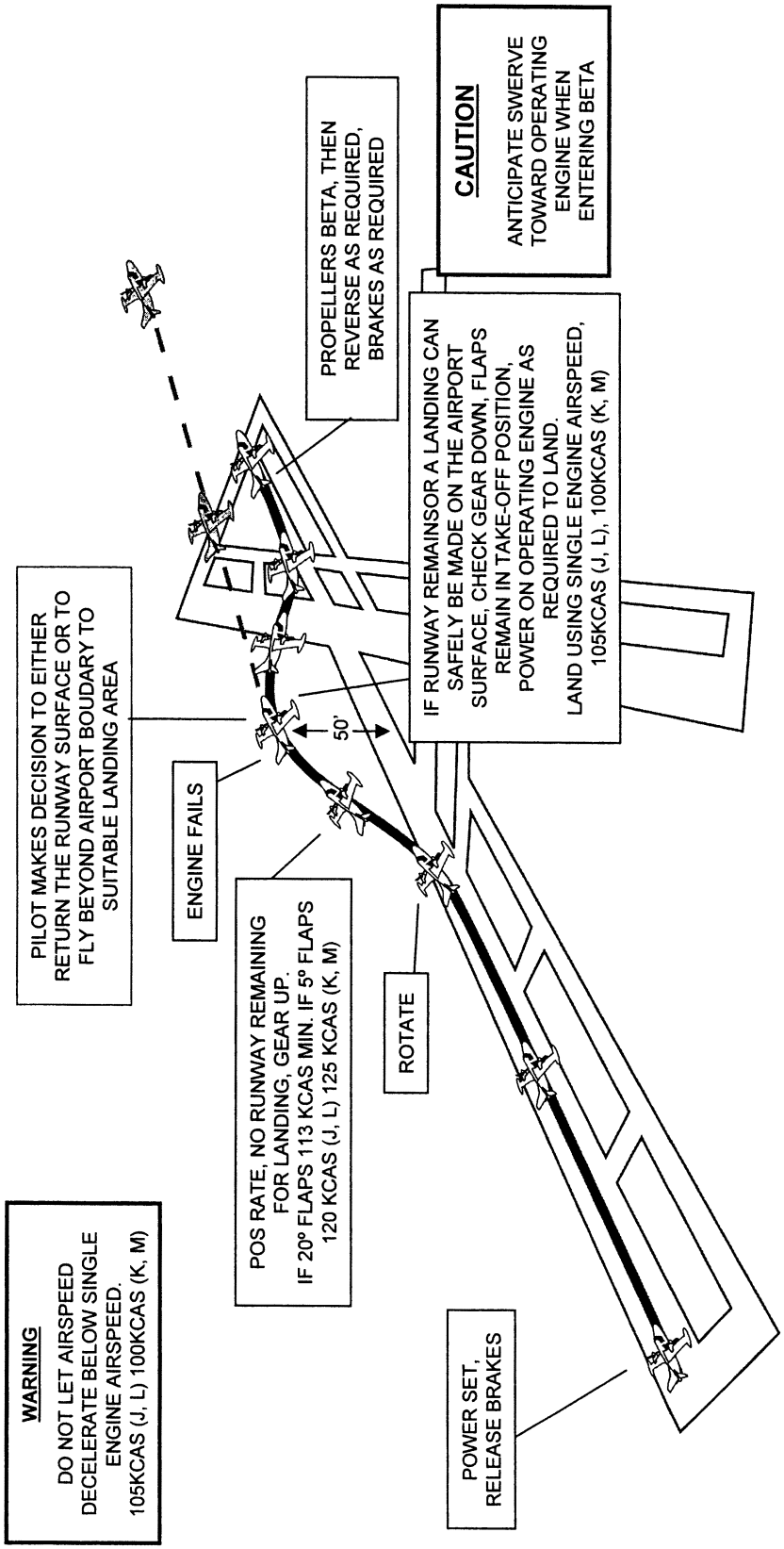

MU-2B J (-35), K (-25), L (-36), M (-26)
TAKE-OFF ENGINE FAILURE ON RUNWAY
CAUTION
SIMULATED ENGINE FAILURE OR MALFUNCTION IS TO BE GIVEN BY INSTRUCTOR AT NOT MORE THAN 50% OF ROTATE SPEEDS.
CLEAR RUNWAY OR EVACUATE AIRCRAFT AS NECESSARY *
* IF EVACUATING AIRCRAFT, BOTH CONDITION LEVERS TO EMERGENCY STOP AND MASTER SWITCH TO EMERGENCY
NOTIFY TOWER OF ABORT
ENGINE FAILS OR MALFUNCTION OCCURS
POWER LEVERS TO GROUND IDLE, BRAKES AS NECESSARY. REVERSE THRUST AS REQUIRED. USE NOSE WHEEL STEERING, BRAKES, AND/OR REVERSE THRUST TO MAINTAIN DIRECTIONAL CONTROL.
CAUTION
DO NOT USE SINGLE ENGINE REVERSE THRUST WITH THE SUMULATED FAILED ENGINE POWER LEVER ABOVE FLIGHT IDLE.
POWER SET, BRAKES RELEASED

B-3

MU-2B J (-35), K (-25), L (-36), M (-26)

TAKE-OFF ENGINE FAILURE - UNABLE TO CLIMB

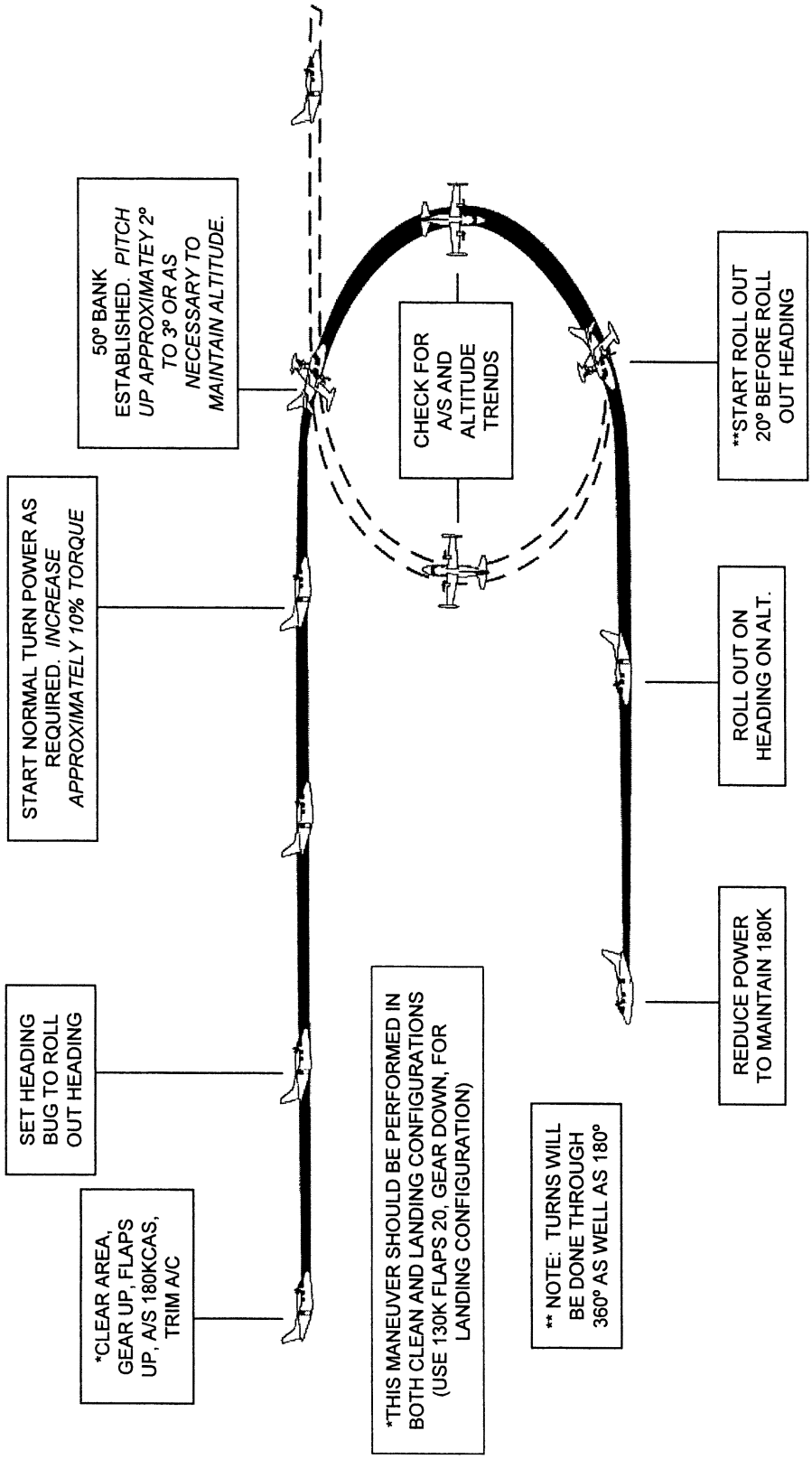
CLASSROOM DISCUSSION OR FTD USE ONLY



B-4

MU-2B J (-35), K (-25), L (-36), M (-26)

STEEP TURNS



MU-2B J (-35), K (-25), L (-36), M (-26)

SLOW FLIGHT MANEUVERING

MINIMUM CONTROLLABLE AIRSPEED

SLOW FLIGHT MANEUVERING IS CONDUCTED AS FOLLOWS:

CLEAR THE AREA PRIOR TO BEGINNING THE MANEUVER.

START WITH CLEAN CONFIGURATION AND CHANGE AIRCRAFT CONFIGURATION FROM CLEAN TO FULL FLAP AND GEAR IN STAGES. USE A MAXIMUM OF 15° BANK AND PERFORM HEADING CHANGES OF 90° LEFT AND RIGHT. CONSTANT ALTITUDE IS REQUIRED THROUGHOUT.
MAINTAIN 115KCAS IN ALL CONFIGURATIONS.

**APPROXIMATE POWER SETTINGS ARE:

CLEAN	*TORQUE*	*(35%) PER ENGINE*	*APPROX PITCH +12*
5° FLAP	*TORQUE*	*(32%) PER ENGINE*	*APPROX PITCH +8*
5° FLAP & GEAR	*TORQUE*	*(44%) PER ENGINE*	*APPROX PITCH +9*
20° FLAP & GEAR	*TORQUE*	*(42%) PER ENGINE*	*APPROX PITCH +4*
40° FLAP & GEAR	*TORQUE*	*(54%) PER ENGINE*	*APPROX PITCH 0*

** NOTE: POWER SETTINGS WILL VARY WITH AIRCRAFT WEIGHT AND ALTITUDE.

STALL SPEEDS (APPROXIMATE)
AT MAXIMUM GROSS TAKEOFF WEIGHT
J, K, L, M

ANGLE OF BANK	J / L / K / M 0°	J / L / K / M 15°
FLAPS		
UP	104/106/101/104	107/108/103/106
5°	98/ 99/ 95/ 98	100/101/ 97/100
20°	86/ 87/ 85/ 87	88/ 89/ 87/ 89
40°	79/ 81/ 76/ 78	82/ 83/ 78/ 80

Vmc FLAPS 5° 99KCAS (J, L), 100KCAS (K, M)
FLAPS 20° 90KCAS (J), 99KCAS (L), 93KCAS (K, M)

CAUTION

STALL WARNING MAY ACTIVATE
4 TO 9 KTS ABOVE STALL

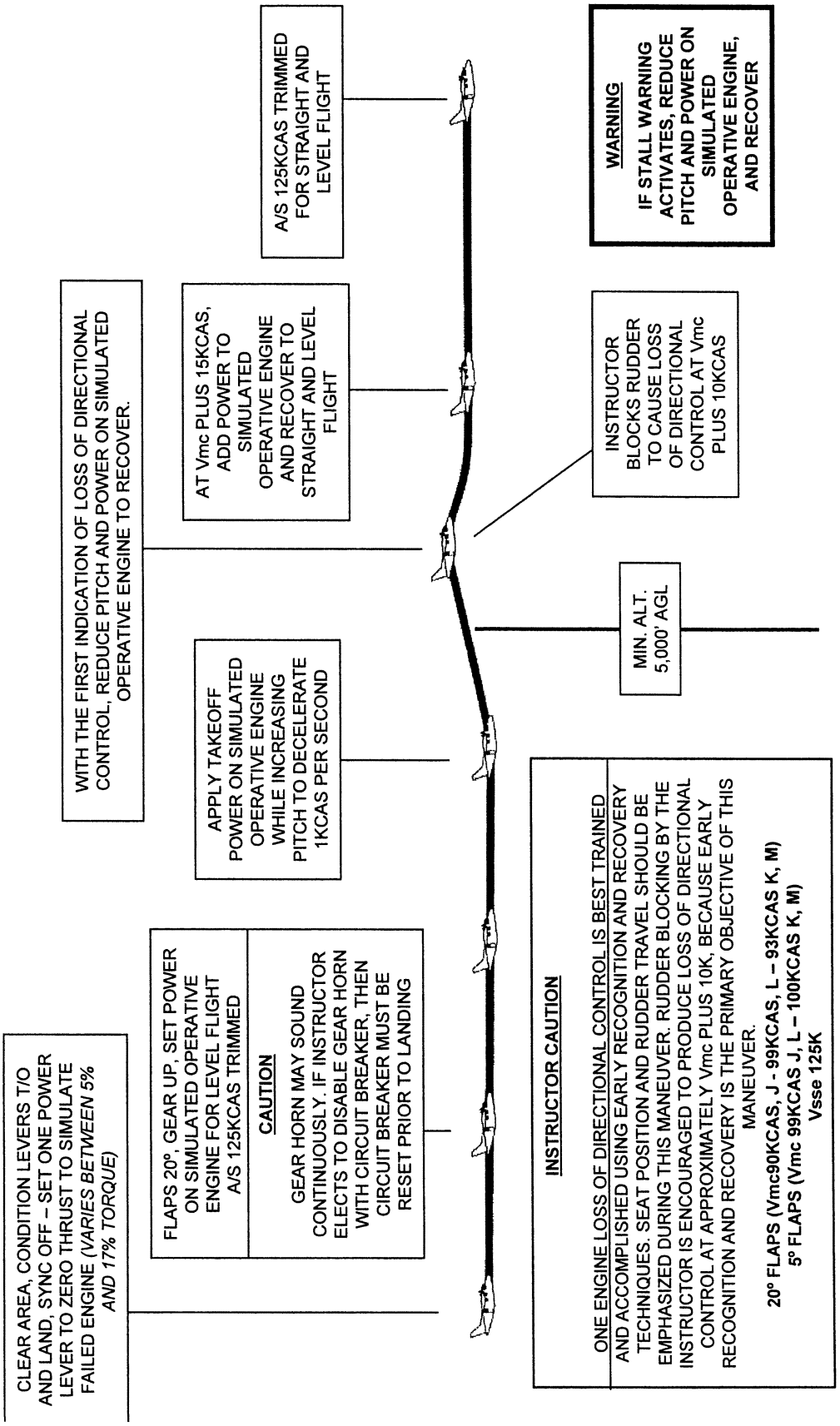
MINIMUM CONTROLLABLE AIRSPEED IS CONDUCTED AS FOLLOWS:

CLEAR THE AREA PRIOR TO BEGINNING THE MANEUVER.

THE MANEUVER MAY BE DONE IN ANY COMBINATION OF GEAR OR FLAP CONFIGURATIONS. IF BANK IS TO BE USED, IT SHOULD BE DONE AT BANK OF NOT MORE THAN 10°. BEGIN THE MANEUVER BY CONFIGURING THE AIRCRAFT IN THE DESIRED GEAR AND FLAP CONFIGURATION. SLOW THE AIRCRAFT UNTIL THE STALL WARNING (STICK SHAKER) IS ACTIVATED AND ADD POWER TO MAINTAIN ALTITUDE AND A SPEED JUST ABOVE AERODYNAMIC STALL. DO NOT ALLOW THE AIRCRAFT TO REACH AERODYNAMIC STALL BUFFET.

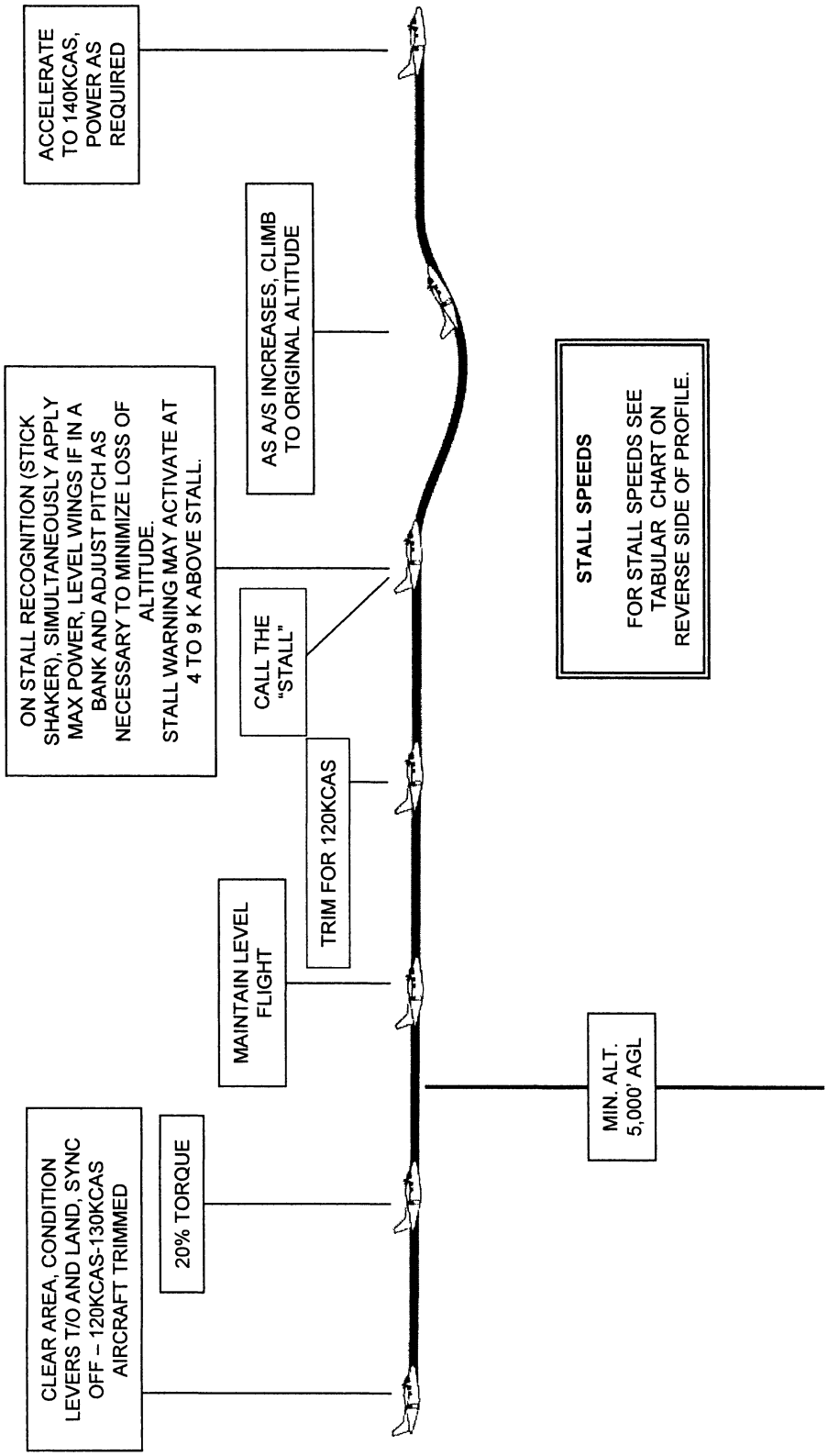
MU-2B J (-35), K (-25), L (-36), M (-26)

ONE ENGINE INOPERATIVE MANEUVERING LOSS OF DIRECTIONAL CONTROL



MU-2B J (-35), K (-25), L (-36), M (-26)

APPROACH TO STALL CLEAN CONFIGURATION / WINGS LEVEL



B–8

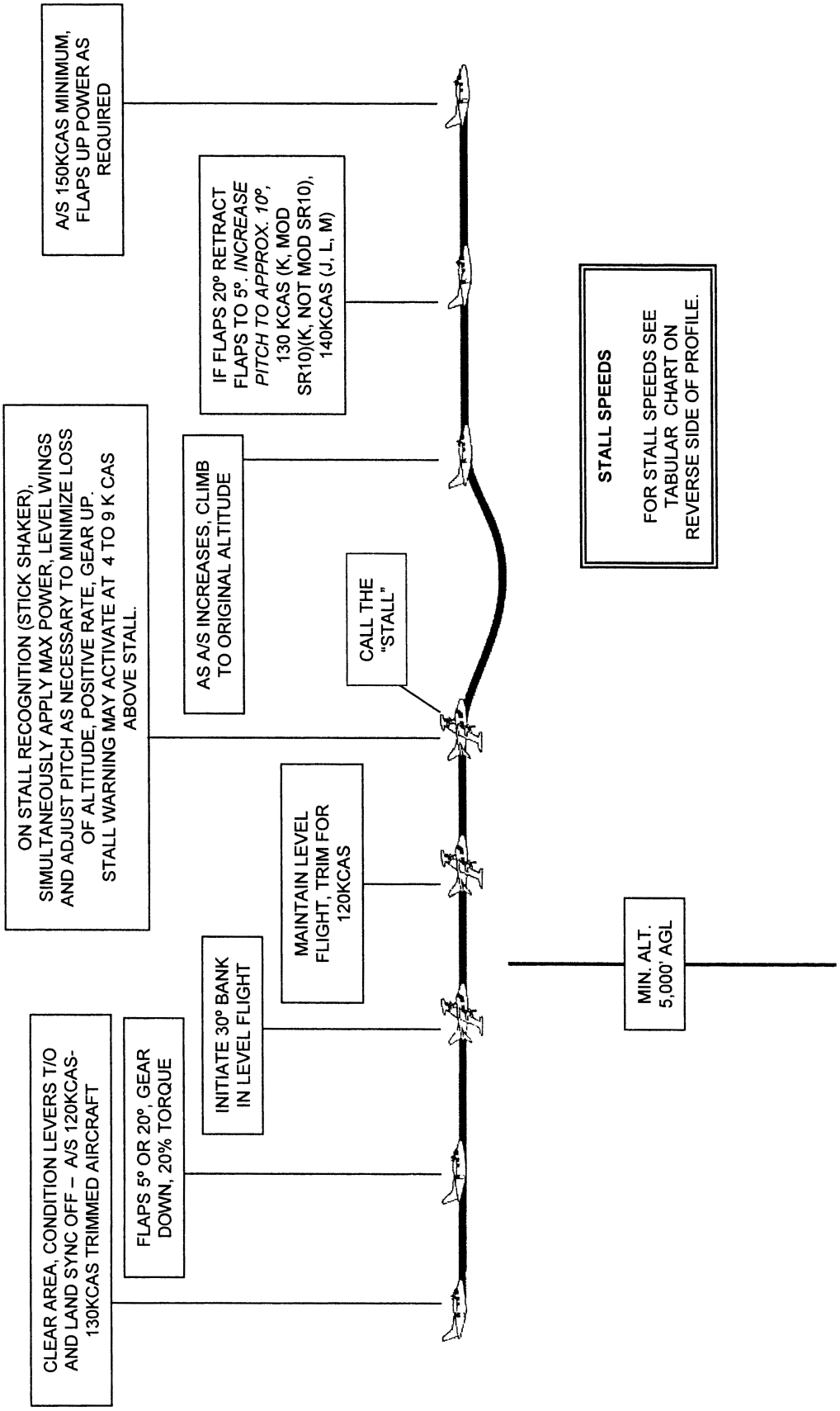
STALL SPEEDS

FLAPS SET	0	5	20	40
GR.WT.	K / M / J / L	K / M / J / L	K / M / J / L	K / M / J / L
7,000	85/ 85/	80/ 80/	72/ 72/	64/ 64/
7,500	88 / 88/	83/ 83/	74/ 75/	67/ 66/
8,000	91/ 91/ 90/	86/ 85/ 84/	77/ 77/ 74/	69/ 68/ 69
8,500	94/ 94/ 93/	89/ 88/ 87/	79/ 79/ 77/	71/ 70/ 71/
9,000	97/ 96/ 95/ 93	91/ 91/ 89/ 88	82/ 81/ 79/ 77	73/ 72/ 73/ 72
9,500	99 /99/ 98/ 96	93/ 93/ 92/ 90	84/ 83/ 81/ 79	75/ 74/ 75/ 74
9,920	101/	95/	85/	76/
10,000	/102/100/ 98	/ 96/ 94/ 92	/ 86/ 84/ 81	/ 76/ 77/ 76
10,470	/104/	/ 98/	/ 88/	/ 78/
10,500	/103/101	/ 96/ 94	/ 85/ 83	/ 79/ 77
10,800	/104/	/ 98/	/ 86/	/ 80/ 78
11,000	/103	/ 97	/ 85	/ 79
11,500	/106	/ 99	/ 87	/ 81

MU-2B J (-35), K (-25), L (-36), M (-26)

APPROACH TO STALL

TAKEOFF CONFIGURATION 15-30° BANK



B-9

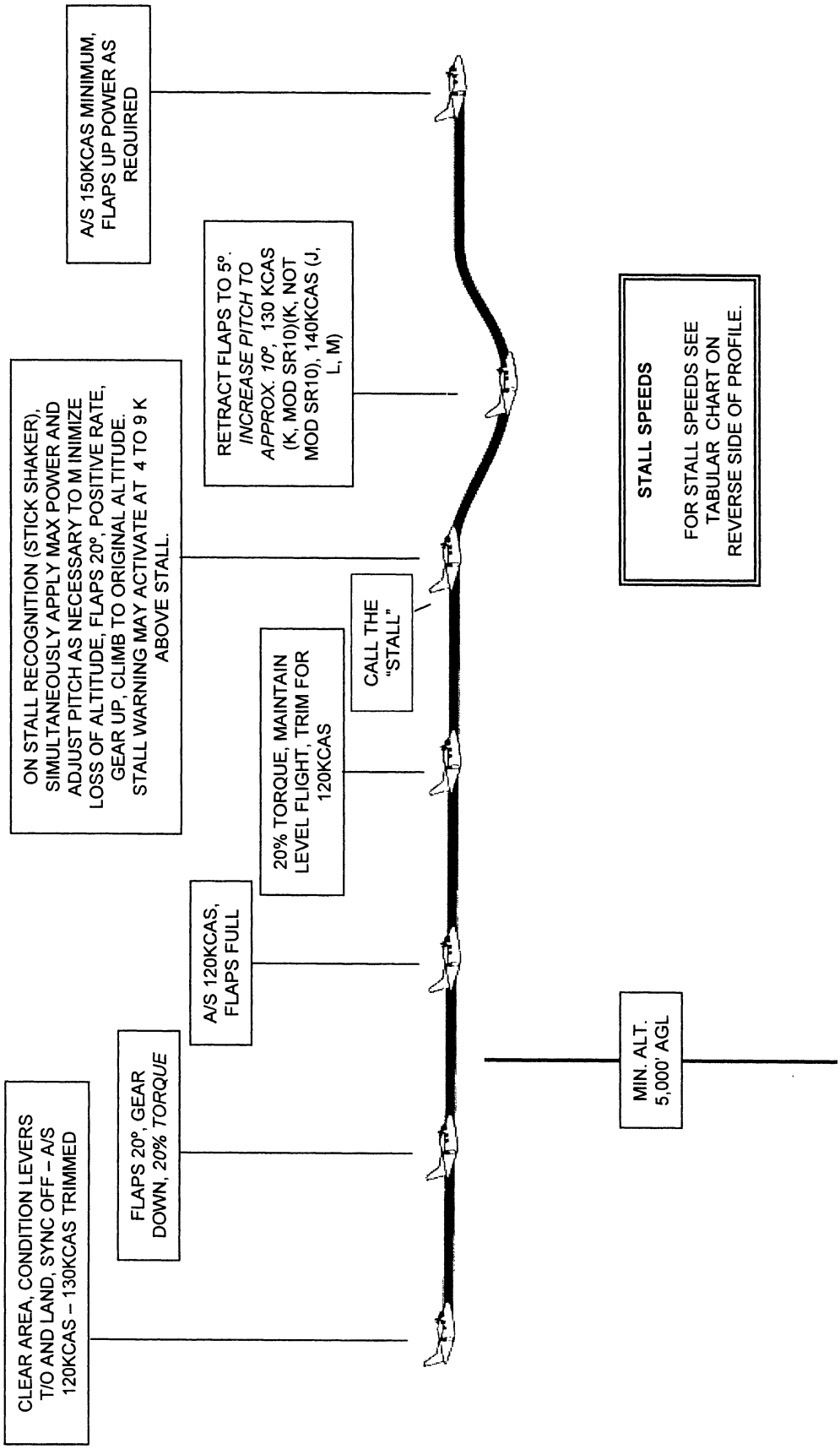
STALL SPEEDS (APPROXIMATE)
AT MAXIMUM GROSS TAKEOFF WEIGHT
J, K, L, M

BANK ANGLE	10	20	30	40	50	60
FLAPS	J / L / K / M	J / L / K / M	J / L / K / M	J / L / K / M	J / L / K / M	J / L / K / M
UP	106/107/102/105	108/109/105/108	112/114/109/112	120/121/116/120	130/132/126/130	148/150/143/147
5°	99/100/ 96/ 98	101/102/ 98/101	105/107/102/105	112/113/109/112	122/123/119/122	138/140/134/138
20°	87/ 88/ 86/ 88	89/ 90/ 88/ 90	92 /94/ 92/ 94	98/100/ 97/100	108/109/107/109	122/123/120/123
40°	81/ 82/ 77/ 79	83/ 84/ 79/ 81	86/ 87/ 82/ 84	92/ 93/ 87/ 90	100/102/ 96/ 98	112/115/108/110

MU-2B J (-35), K (-25), L (-36), M (-26)

APPROACH TO STALL

GEAR DOWN – FULL FLAPS



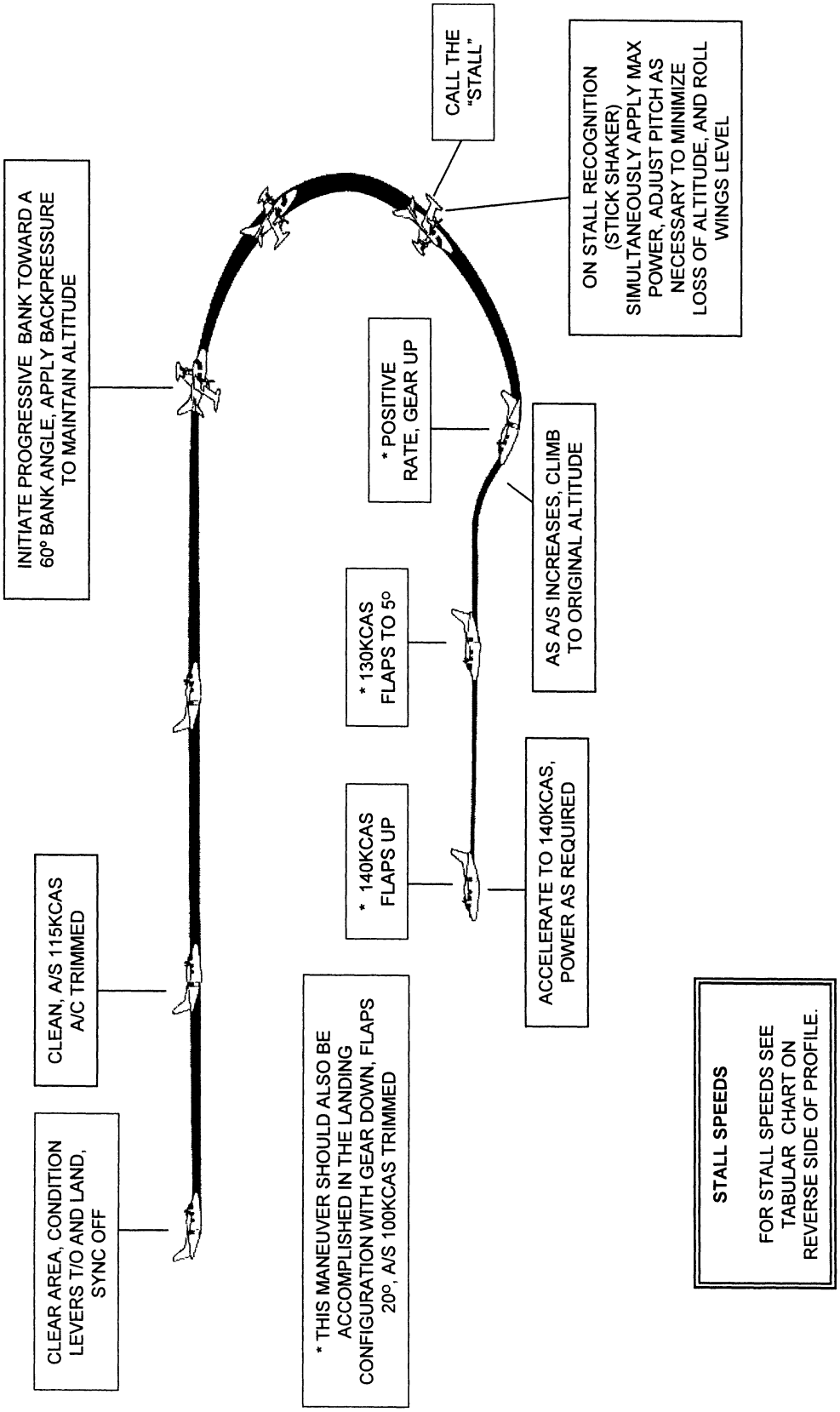
B-10

STALL SPEEDS

FLAPS SET	0	5	20	40
GR.WT.	K / M / J / L	K / M / J / L	K / M / J / L	K / M / J / L
7,000	85/ 85/	80/ 80/	72/ 72/	64/ 64/
7,500	88 / 88/	83/ 83/	74/ 75/	67/ 66/
8,000	91/ 91/ 90/	86/ 85/ 84/	77/ 77/ 74/	69/ 68/ 69
8,500	94/ 94/ 93/	89/ 88/ 87/	79/ 79/ 77/	71/ 70/ 71/
9,000	97/ 96/ 95/ 93	91/ 91/ 89/ 88	82/ 81/ 79/ 77	73/ 72/ 73/ 72
9,500	99 /99/ 98/ 96	93/ 93/ 92/ 90	84/ 83/ 81/ 79	75/ 74/ 75/ 74
9,920	101/	95/	85/	76/
10,000	/102/100/ 98	/ 96/ 94/ 92	/ 86/ 84/ 81	/ 76/ 77/ 76
10,470	/104/	/ 98/	/ 88/	/ 78/
10,500	/103/101	/ 96/ 94	/ 85/ 83	/ 79/ 77
10,800	/104/	/ 97/	/ 86/	/ 80/ 78
11,000	/103	/ 97	/ 85	/ 79
11,500	/106	/ 99	/ 87	/ 81

MU-2B J (-35), K (-25), L (-36), M (-26)

ACCELERATED STALLS



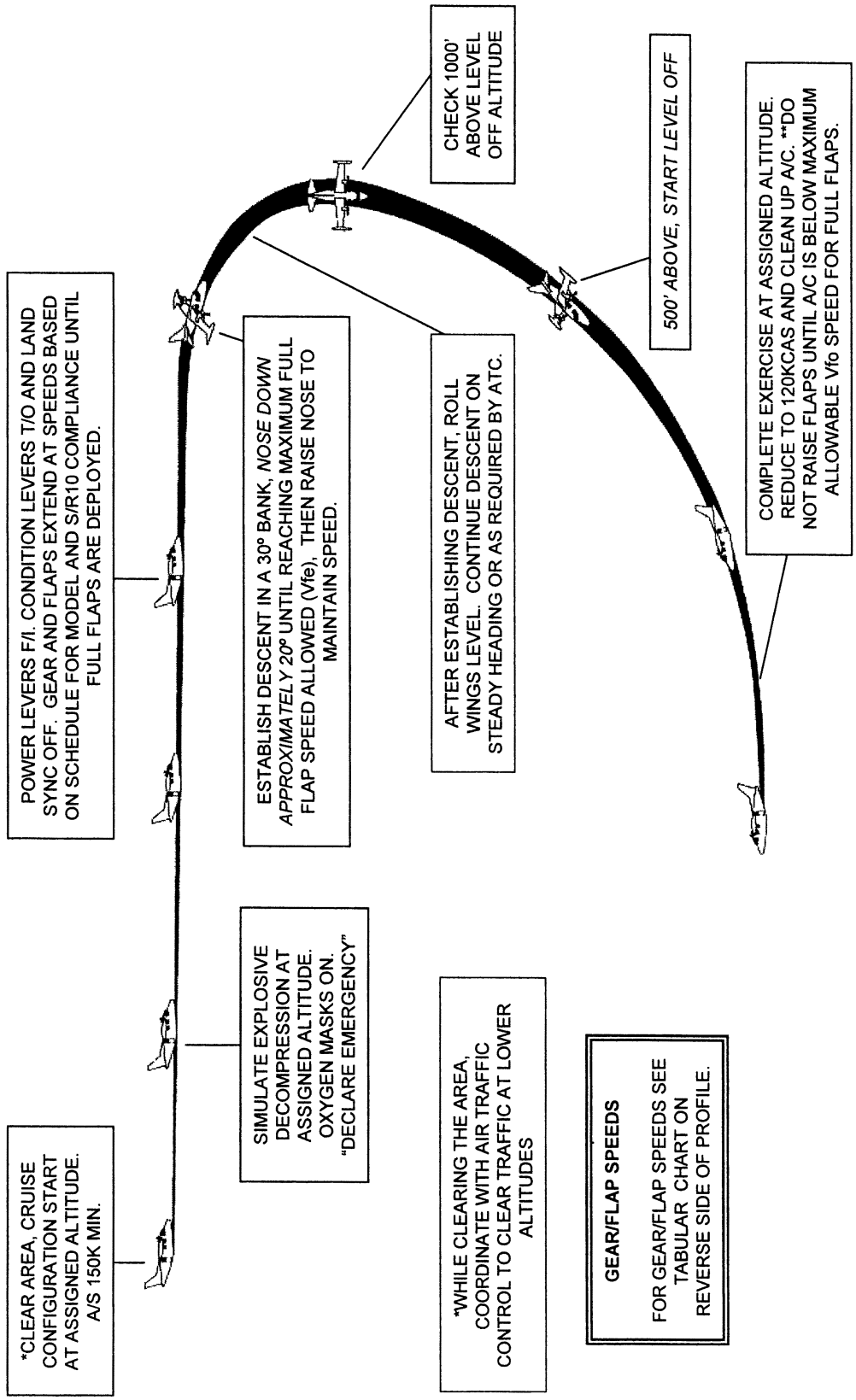
B-11

STALL SPEEDS (APPROXIMATE)
AT MAXIMUM GROSS TAKEOFF WEIGHT
J, K, L, M

BANK ANGLE	10	20	30	40	50	60
FLAPS	J / L / K / M	J / L / K / M	J / L / K / M	J / L / K / M	J / L / K / M	J / L / K / M
UP	106/107/102/105	108/109/105/108	112/114/109/112	120/121/116/120	130/132/126/130	148/150/143/147
5°	99/100/ 96/ 98	101/102/ 98/101	105/107/102/105	112/113/109/112	122/123/119/122	138/140/134/138
20°	87/ 88/ 86/ 88	89/ 90/ 88/ 90	92 /94/ 92/ 94	98/100/ 97/100	108/109/107/109	122/123/120/123
40°	81/ 82/ 77/ 79	83/ 84/ 79/ 81	86/ 87/ 82/ 84	92/ 93/ 87/ 90	100/102/ 96/ 98	112/115/108/110

MU-2B J (-35), K (-25), L (-36), M (-26)

EMERGENCY DESCENT (LOW SPEED)



B-12

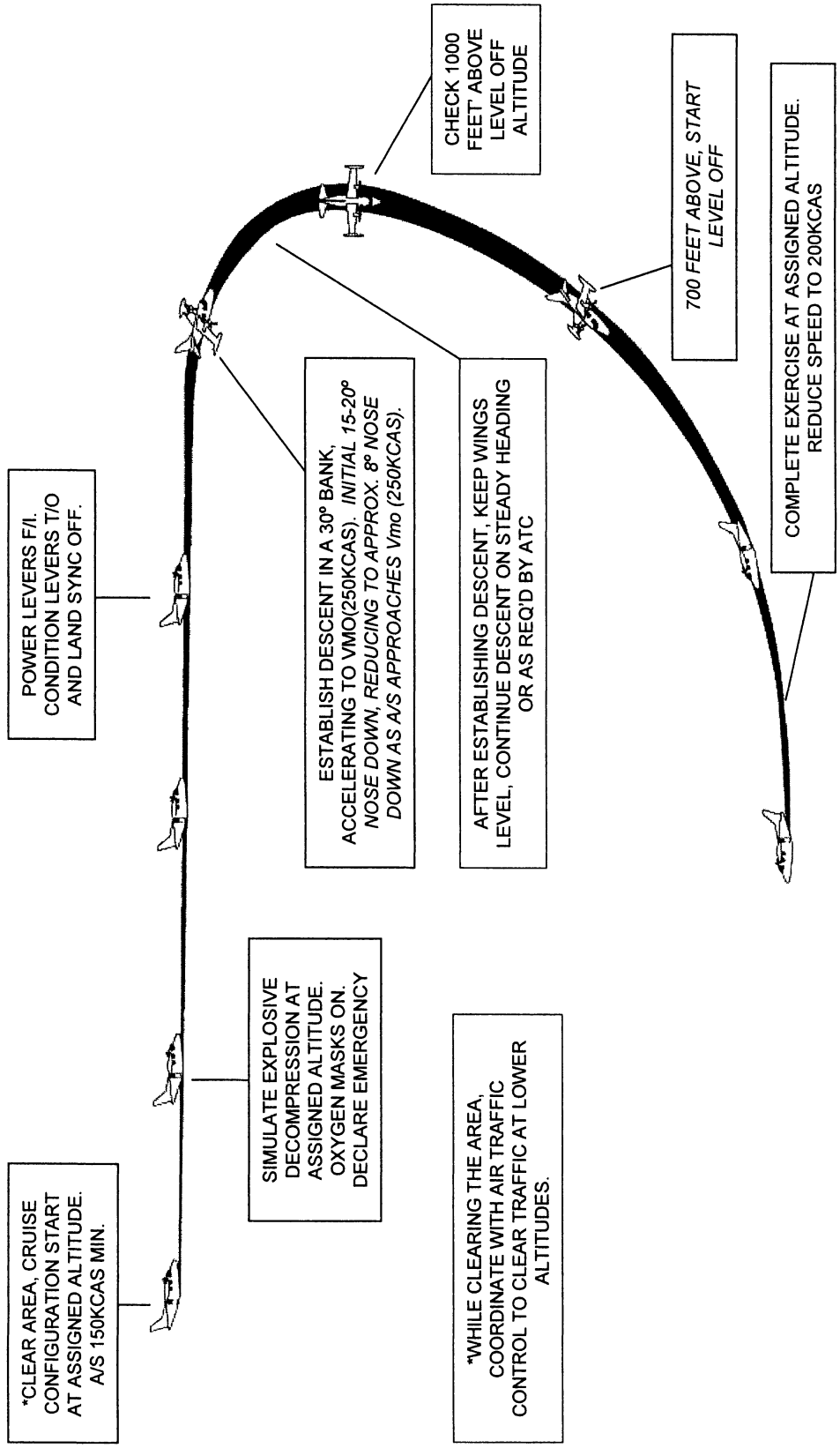
GEAR AND FLAP EXTEND SCHEDULE

(K+ AND J+ ARE MODIFIED BY S/R10)

GEAR			
K, K+:	**160KCAS**		
M, J, J+:	**170KCAS**		
L:	**175KCAS**		
FLAPS	**5º**	**20º**	**40º**
J: S/N 548 – 609 NOT MODIFIED BY S/R10	**146KCAS**	**146KCAS**	**120KCAS**
J+: S/N 548 – 609 MODIFIED BY S/R10 AND S/N 610 - 654	**175KCAS**	**146KCAS**	**120KCAS**
K: S/N 239 – 279 NOT MODIFIED BY S/R10	**140KCAS**	**140KCAS**	**120KCAS**
K+: S/N 239 – 279 MODIFIED BY S/R10 AND S/N 280 - 318	**175KCAS**	**140KCAS**	**120KCAS**
L / M	**175KCAS**	**155KCAS**	**120KCAS**

MU-2B J (-35), K (-25), L (-36), M (-26)

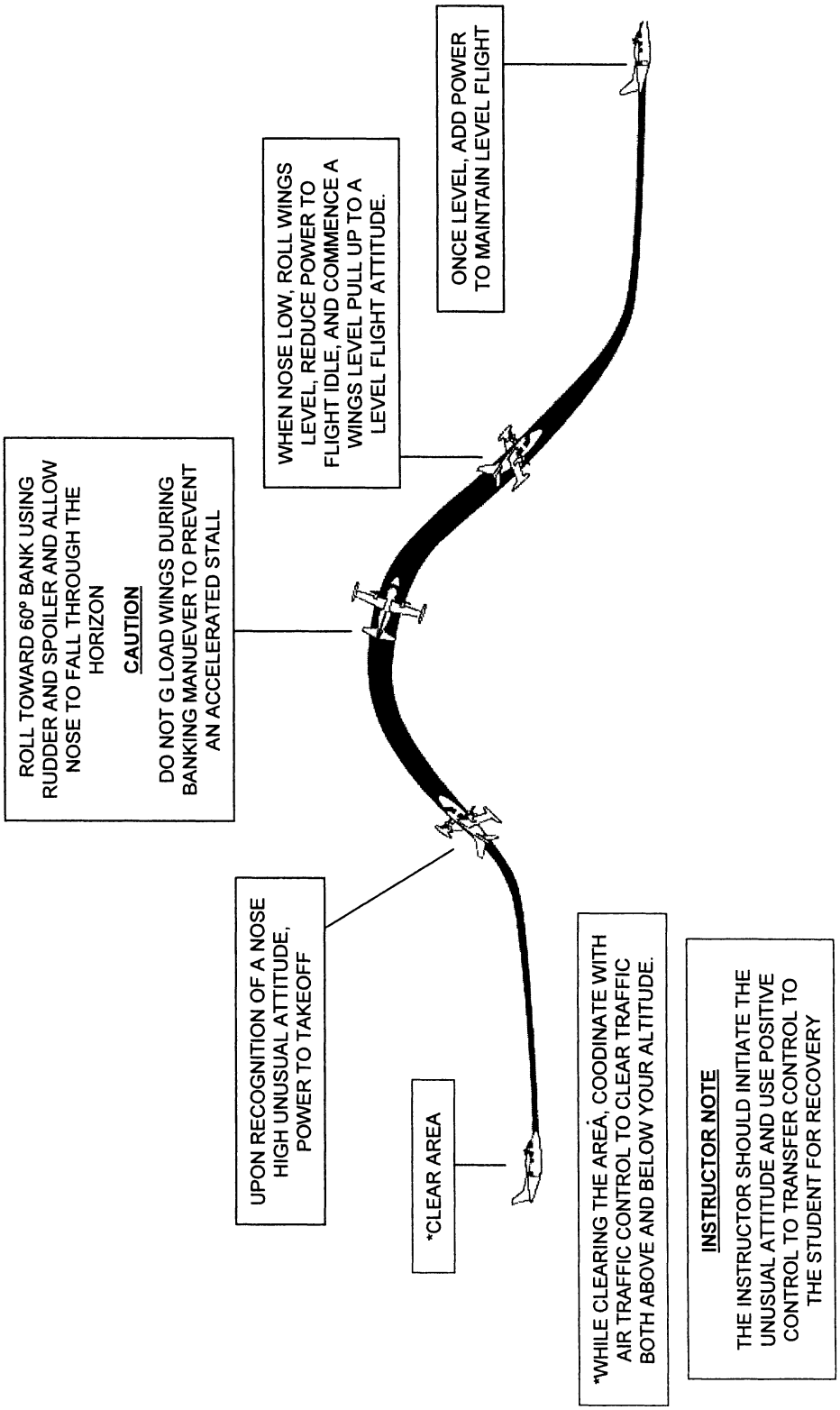
EMERGENCY DESCENT (HIGH SPEED)



B-13

MU-2B J (-35), K (-25), L (-36), M (-26)

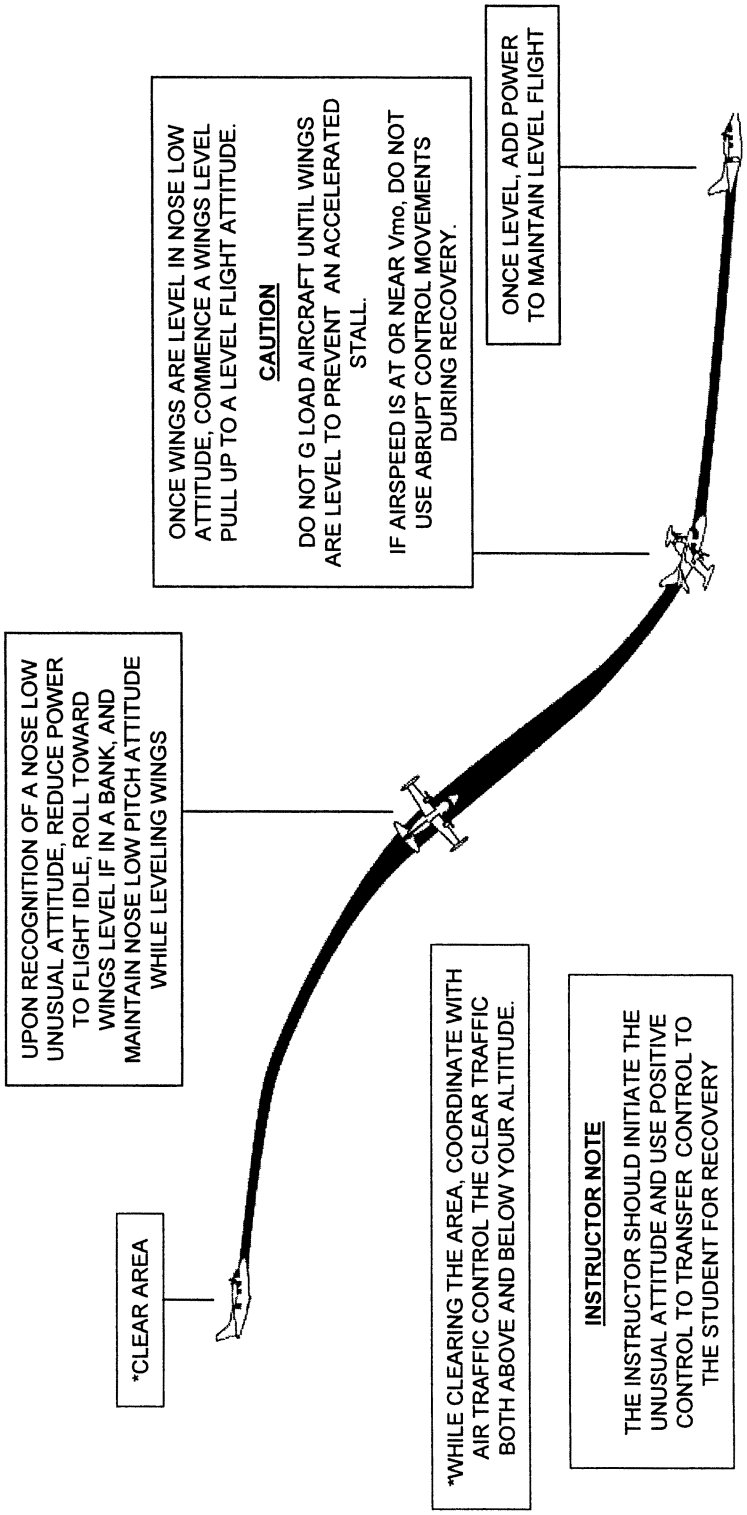
UNUSUAL ATTITUDE RECOVERY (NOSE HIGH)



B-14

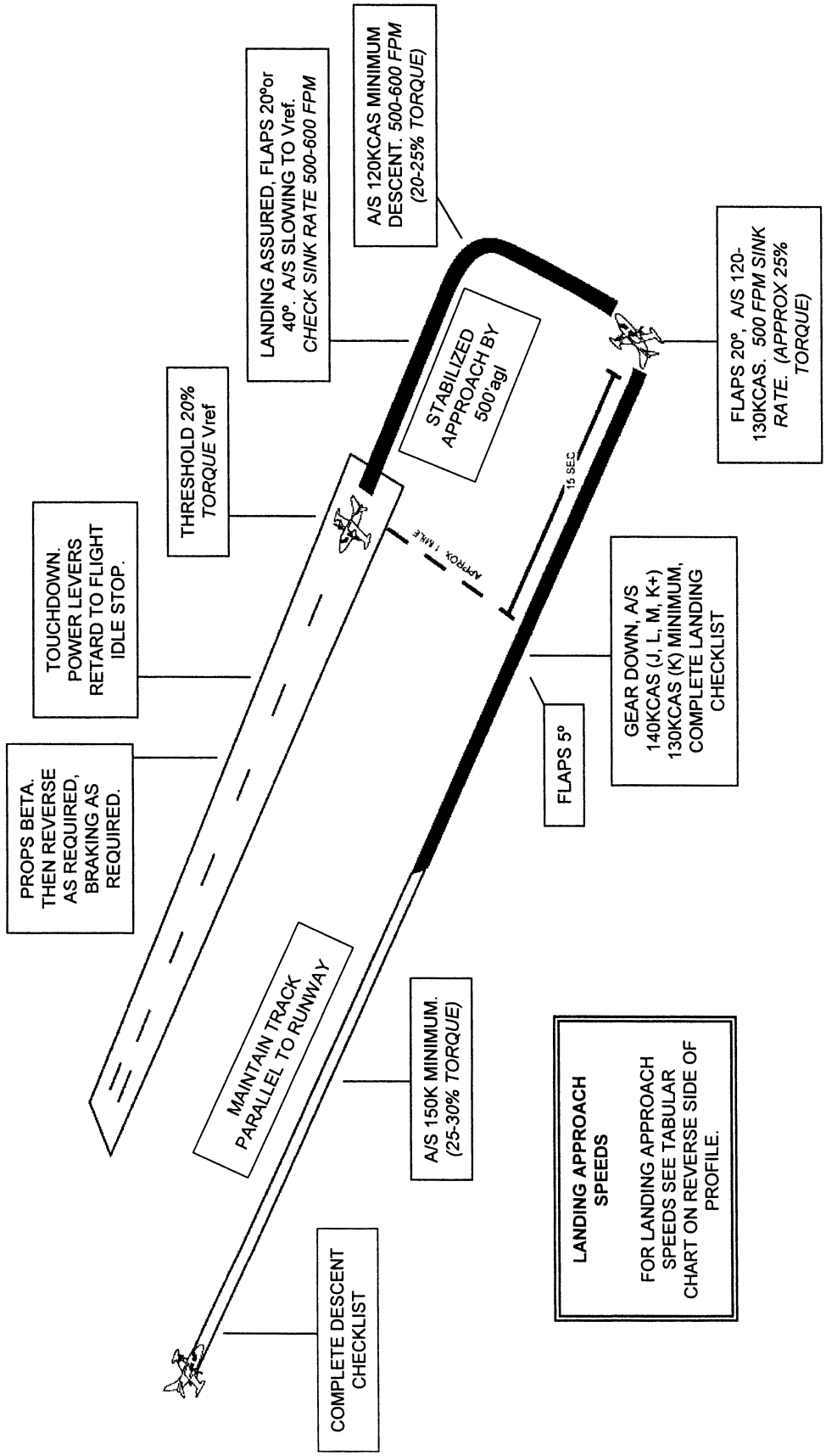
MU-2B J (-35), K (-25), L (-36), M (-26)

UNUSUAL ATTITUDE RECOVERY (NOSE LOW)



MU-2B J (-35), K (-25), L (-36), M (-26)

NORMAL LANDING (20°or 40° FLAPS)



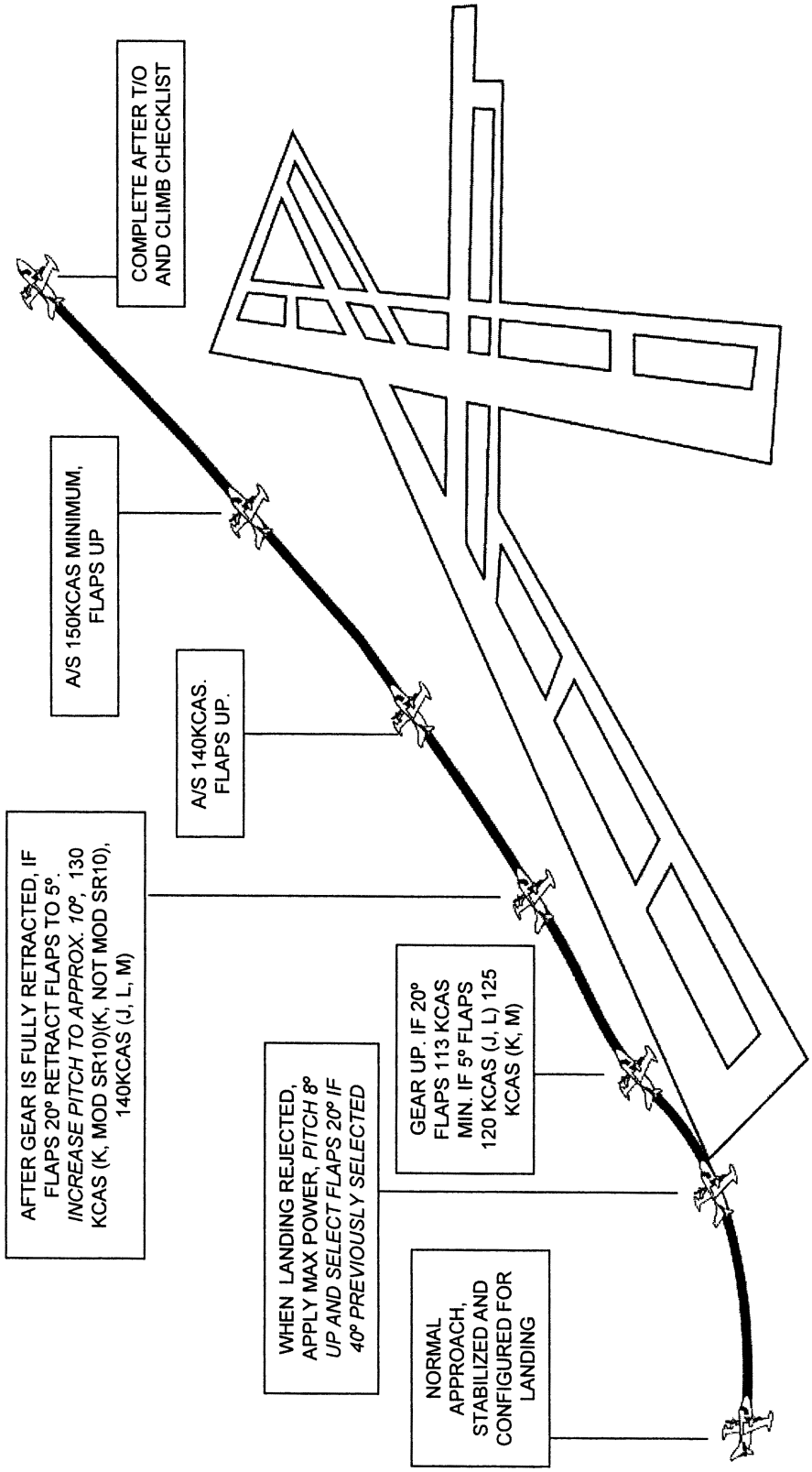
B-16

LANDING APPROACH SPEEDS Vref
J, K, L, M

	FLAPS 20° (1.3 VS1)				FLAPS 40° (1.5 VS1)			
WEIGHT	K	M	J	L	K	M	J	L
7,000	93	96				96		
7,500	96	100	93		99	100	100	
8,000	100	103	96		103	103	103	
8,500	103	106	100	99	106	106	106	105
9,000	106	109	103	99	109	109	109	108
9,435	108				112			
9,500		112	106	103		112	112	111
9,955		115				115		
10,000			109	105			115	114
10,260			110				117	
10,500				108				117
11,000				110				119
11,025				110				119

MU-2B J (-35), K (-25), L (-36), M (-26)

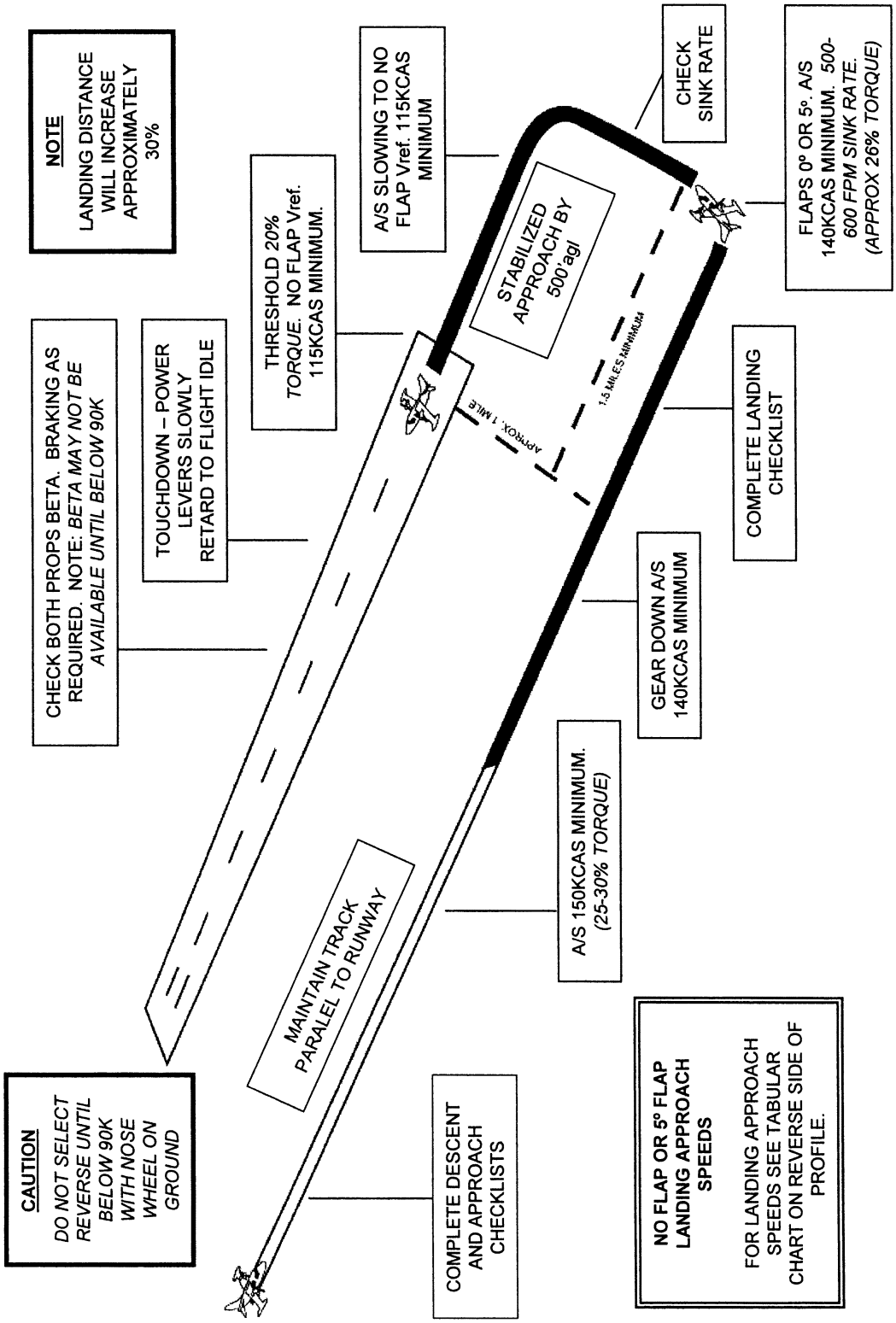
GO AROUND - REJECTED LANDING



B-17

MU-2B J (-35), K (-25), L (-36), M (-26)

NO FLAP OR 5° FLAP LANDING



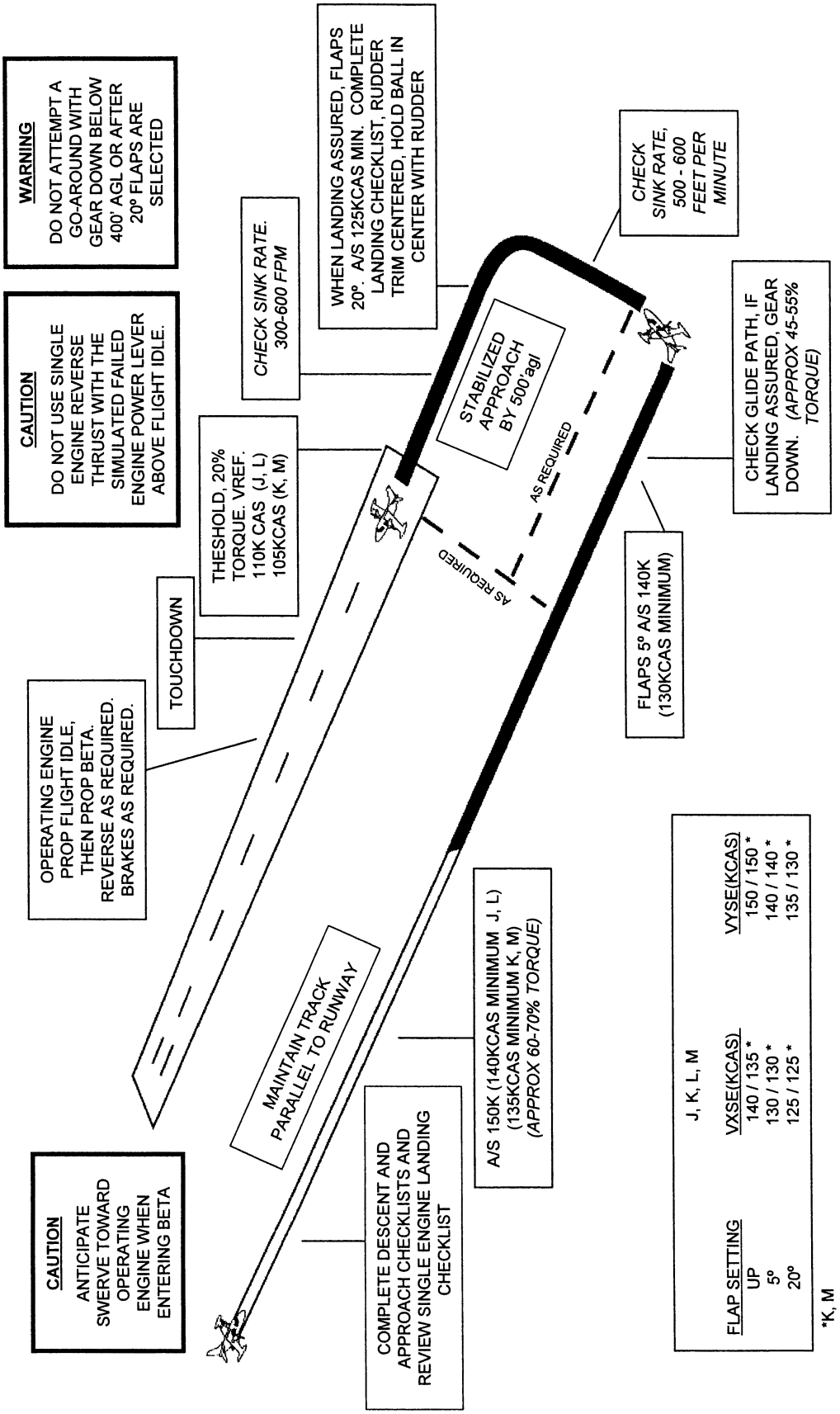
NO FLAP Vref 1.25 VS1
(BUT NOT BELOW 115KCAS)
USE FOR FLAP UP OR 5°

J, K, L, M

	FLAPS UP				FLAPS 5°			
WEIGHT	J	K	L	M	J	K	L	M
7,500		115				115		
8.000	115	115		115	115	115		115
8.500	117	118		118	115	115		115
9.000	119	122	117	120	115	115	115	115
9,435		124				117		
9.500	123		120	124	115		115	117
9.955				127				119
10.000	125		123		118		115	
10.260	128							
10.500			127				118	
11,000			129				124	
11.025			129				124	

MU-2B J (-35), K (-25), L (-36), M (-26)

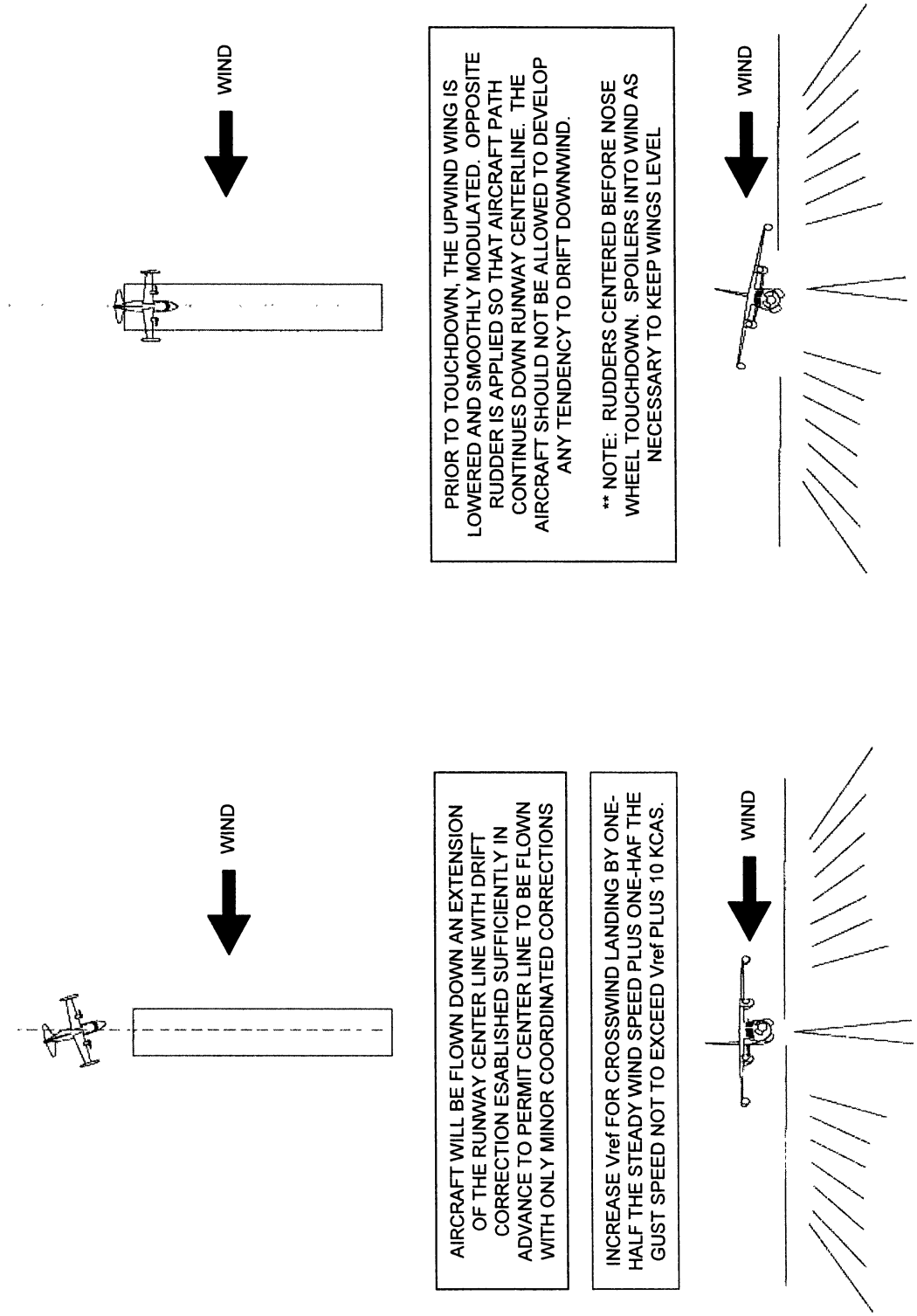
ONE ENGINE INOPERATIVE LANDING



B-19

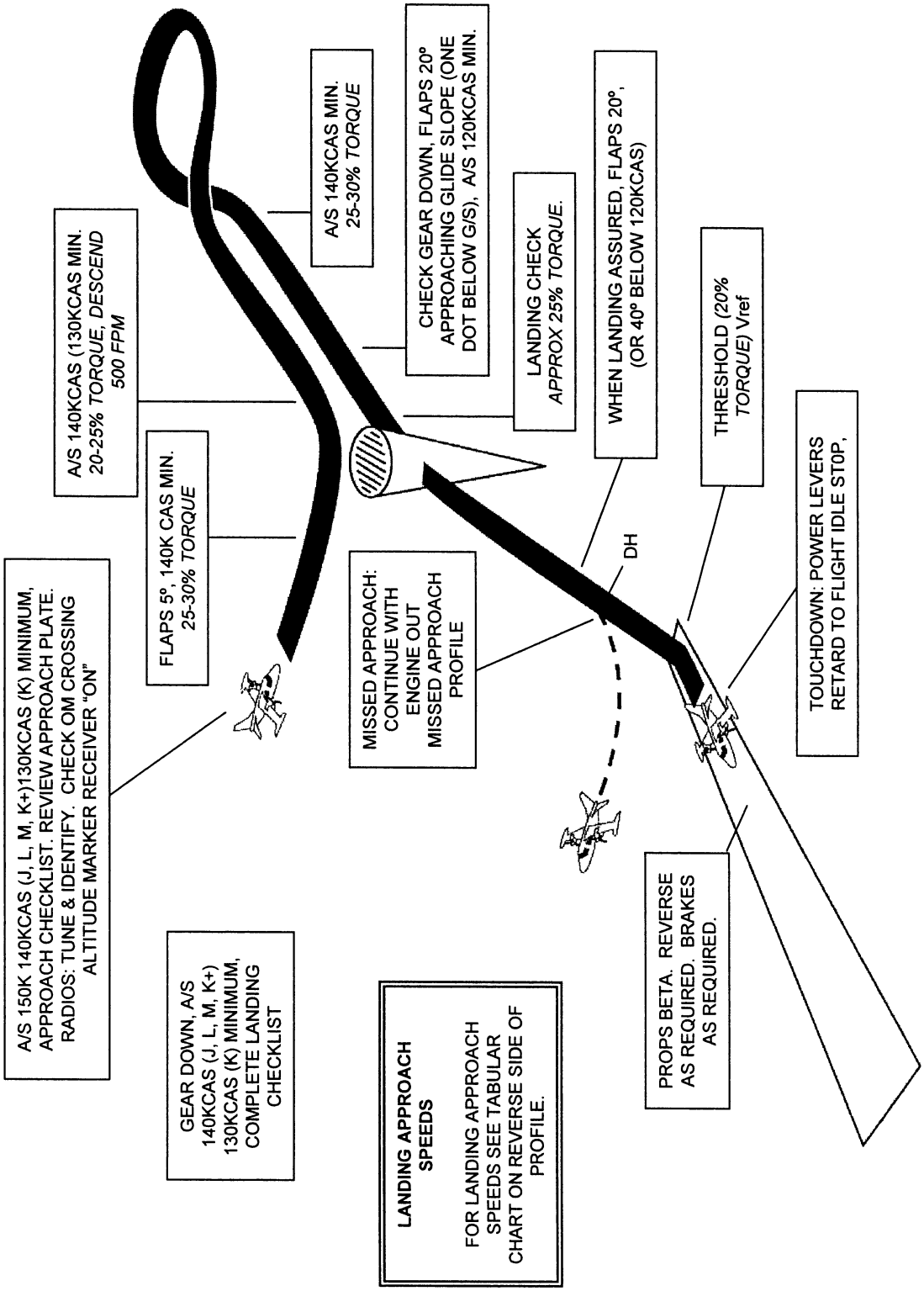
MU-2B J (-35), K (-25), L (-36), M (-26)

CROSSWIND LANDING



MU-2B J (-35), K (-25), L (-36), M (-26)

ILS AND MISSED APPROACH



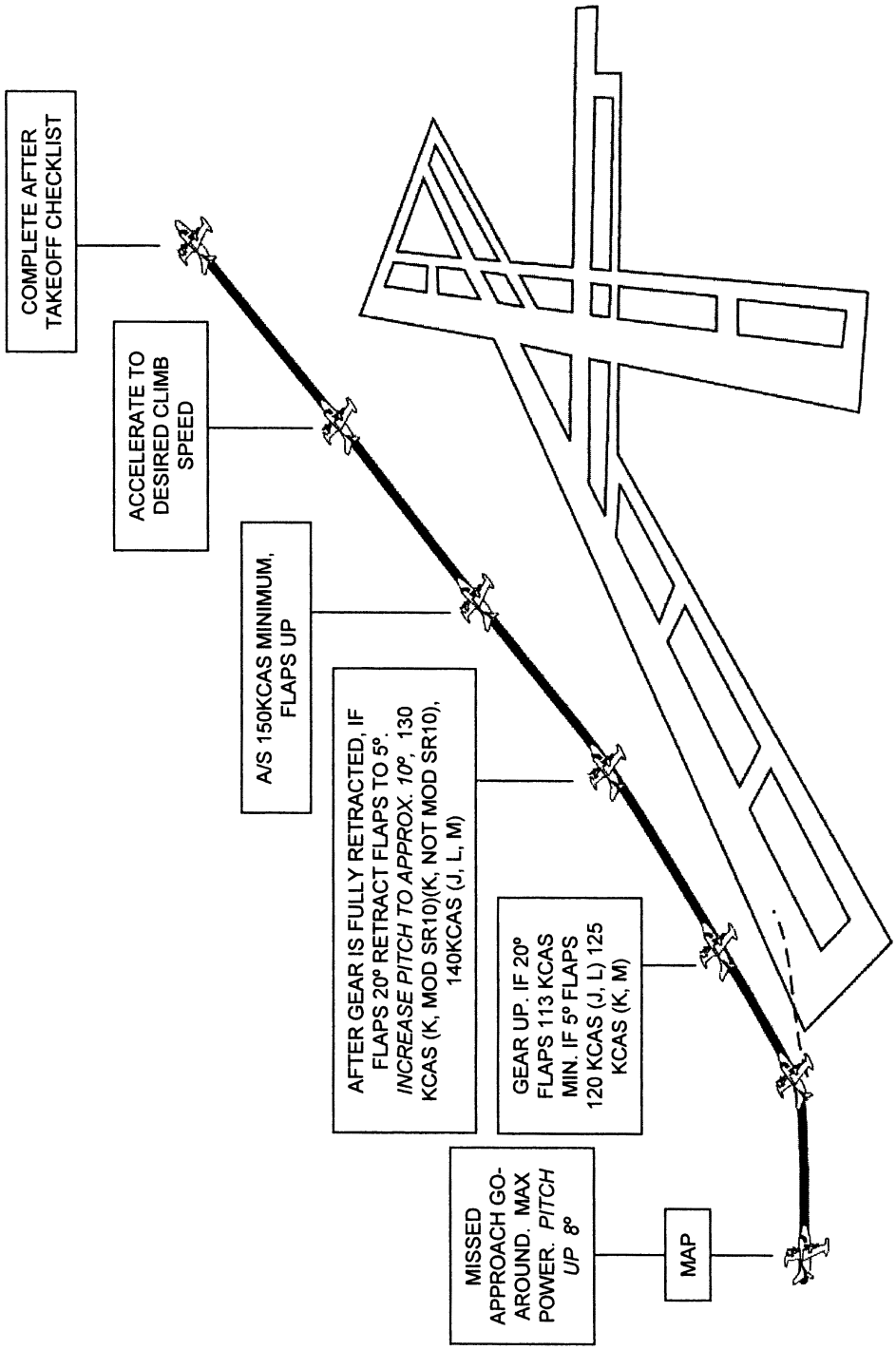
B-21

LANDING APPROACH SPEEDS Vref
J, K, L, M

	FLAPS 20° (1.3 VS1)				FLAPS 40° (1.5 VS1)			
WEIGHT	K	M	J	L	K	M	J	L
7,000	93	96				96		
7,500	96	100	93		99	100	100	
8,000	100	103	96		103	103	103	
8,500	103	106	100	99	106	106	106	105
9,000	106	109	103	99	109	109	109	108
9,435	108				112			
9,500		112	106	103		112	112	111
9,955		115				115		
10,000			109	105			115	114
10,260			110				117	
10,500				108				117
11,000				110				119
11,025				110				119

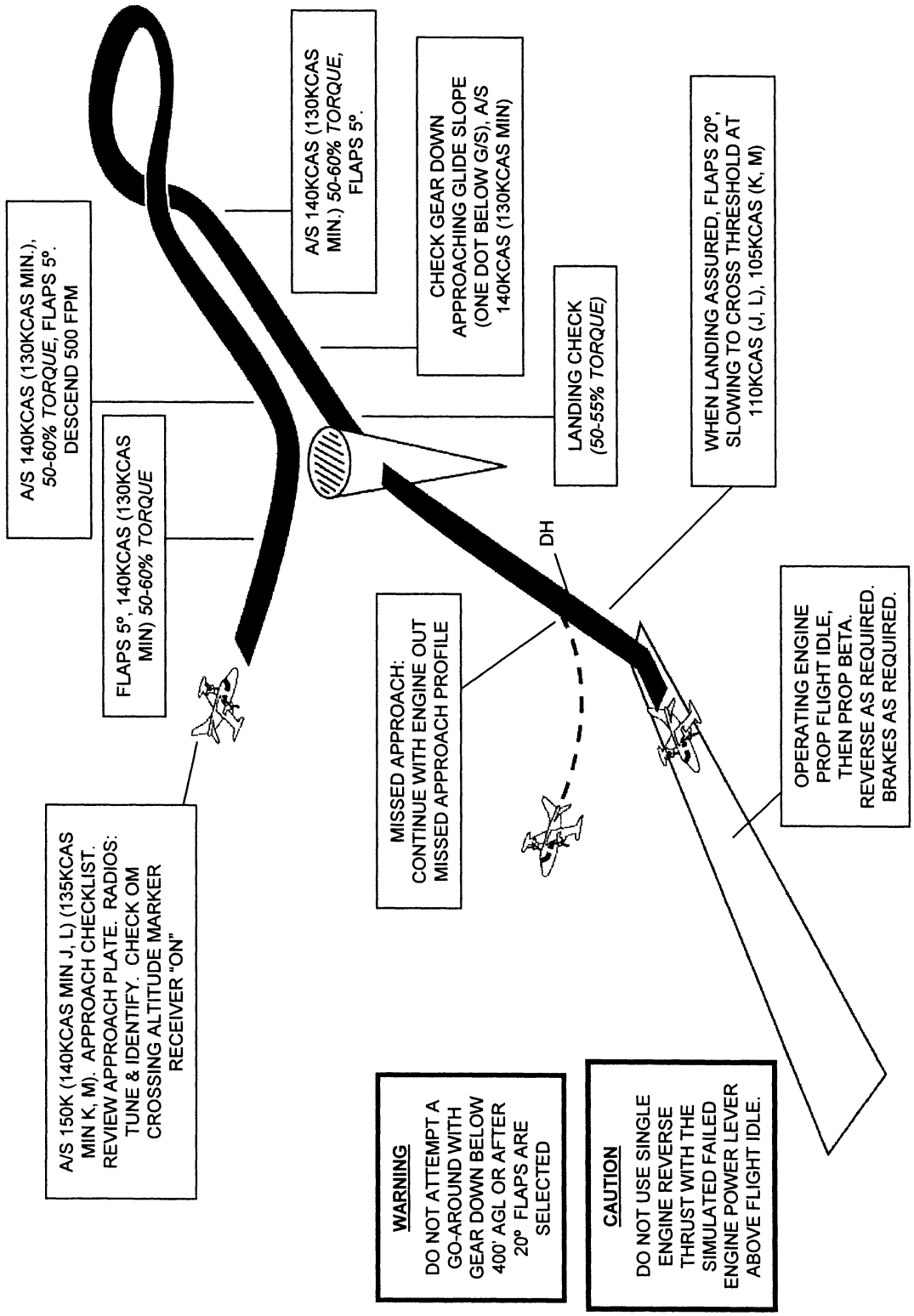
MU-2B J (-35), K (-25), L (-36), M (-26)

TWO ENGINE MISSED APPROACH



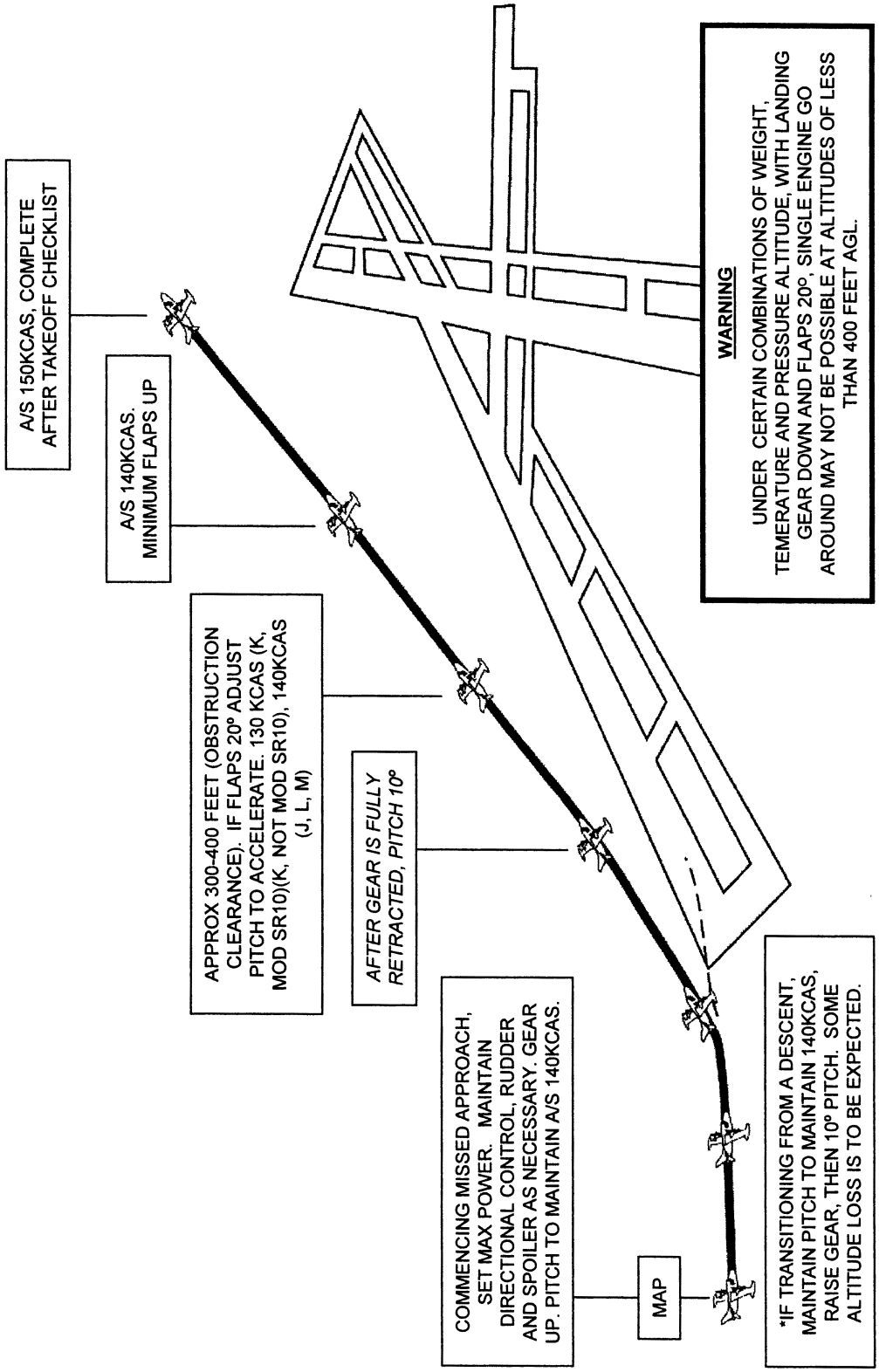
MU-2B J (-35), K (-25), L (-36), M (-26)

ONE ENGINE INOPERATIVE ILS AND MISSED APPROACH



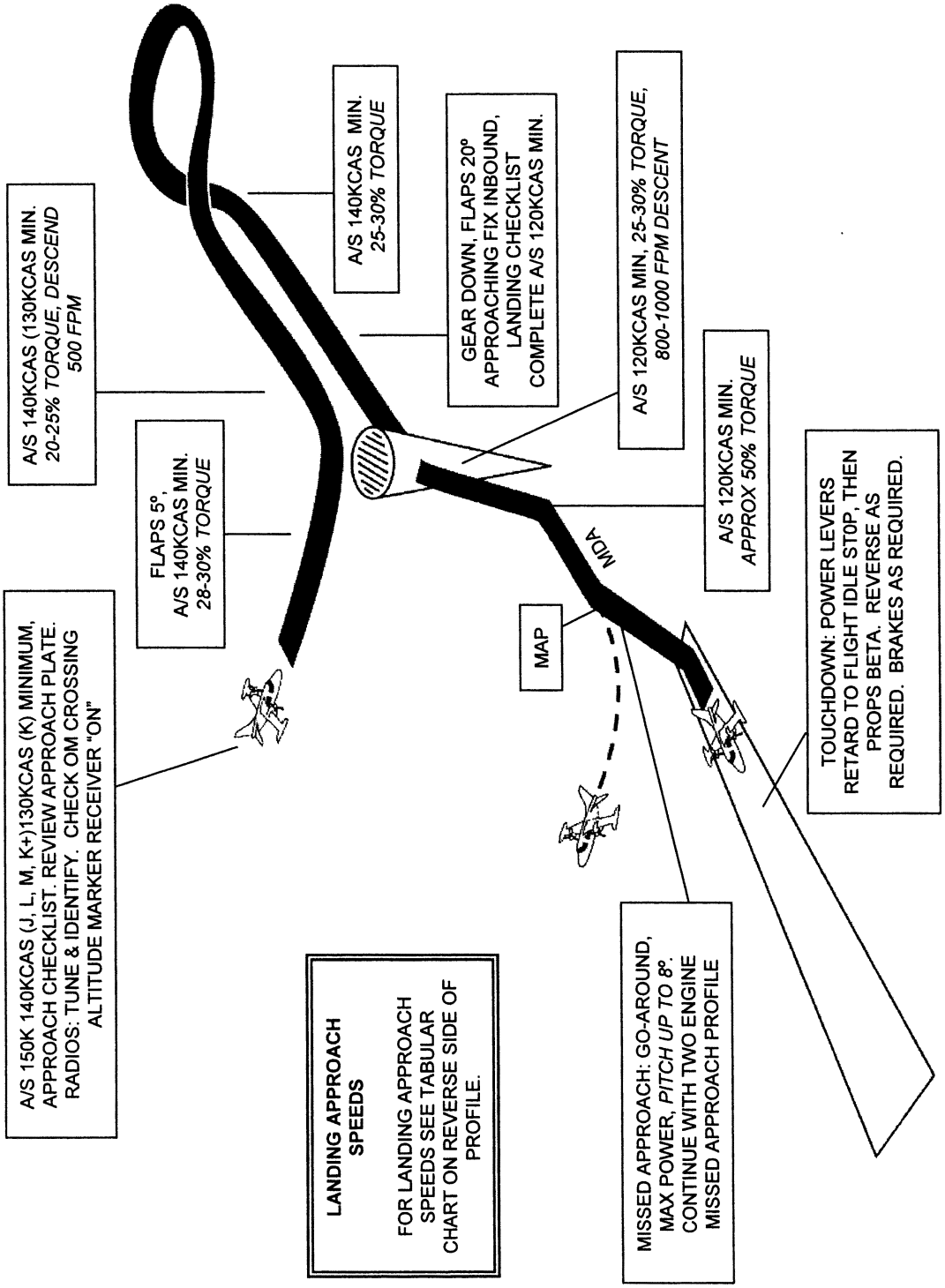
MU-2B J (-35), K (-25), L (-36), M (-26)

ONE ENGINE INOPERATIVE MISSED APPROACH



MU-2B J (-35), K (-25), L (-36), M (-26)

NON-PRECISION AND MISSED APPROACH



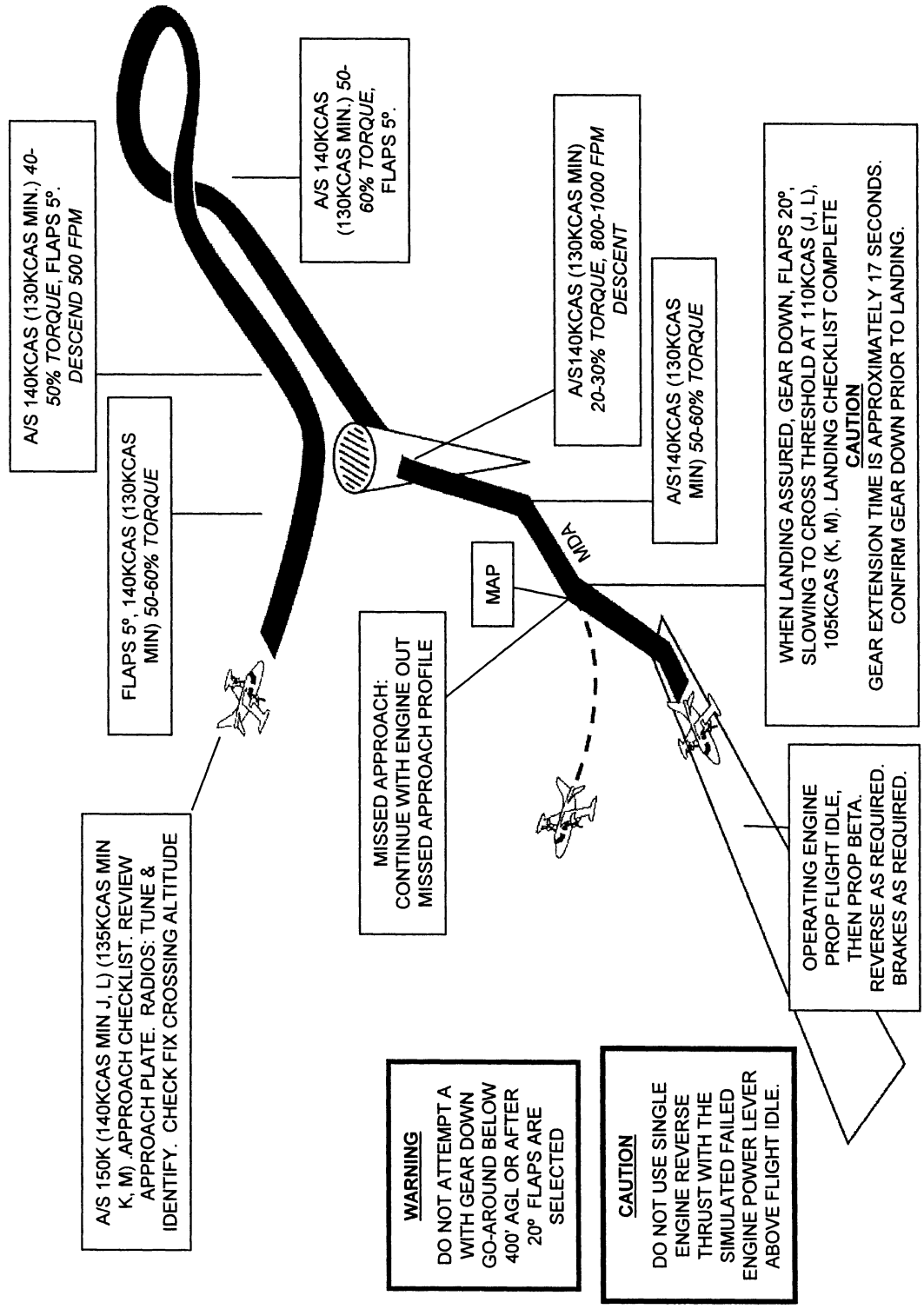
B-25

LANDING APPROACH SPEEDS Vref
J, K, L, M

	FLAPS 20° (1.3 VS1)				FLAPS 40° (1.5 VS1)			
WEIGHT	K	M	J	L	K	M	J	L
7,000	93	96				96		
7,500	96	100	93		99	100	100	
8,000	100	103	96		103	103	103	
8,500	103	106	100	99	106	106	106	105
9,000	106	109	103	99	109	109	109	108
9,435	108				112			
9,500		112	106	103		112	112	111
9,955		115				115		
10,000			109	105			115	114
10,260			110				117	
10,500				108				117
11,000				110				119
11,025				110				119

MU-2B J (-35), K (-25), L (-36), M (-26)

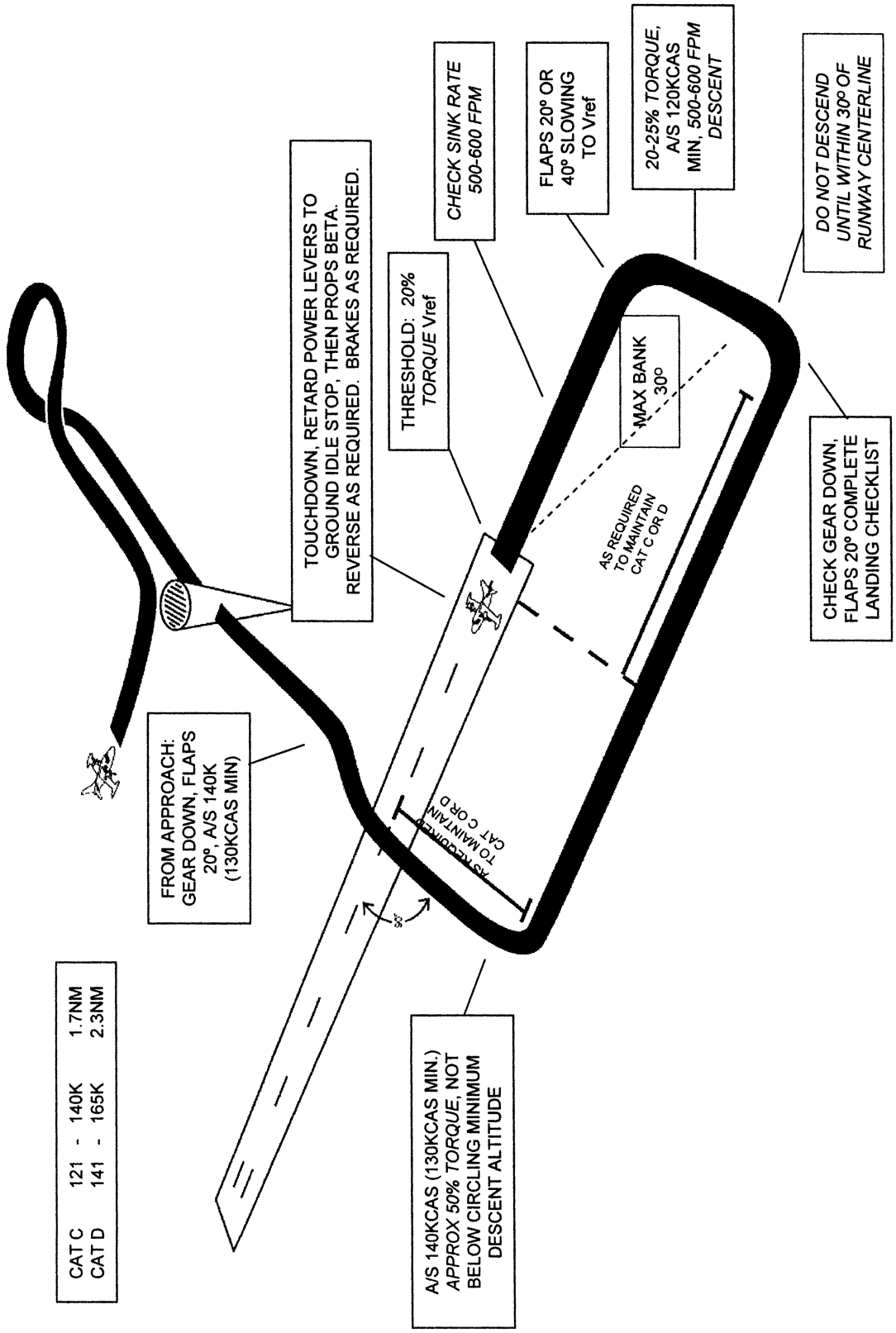
ONE ENGINE INOPERATIVE NON-PRECISION AND MISSED APPROACH



B-26

MU-2B J (-35), K (-25), L (-36), M (-26)

CIRCLING APPROACH AT WEATHER MINIMUMS



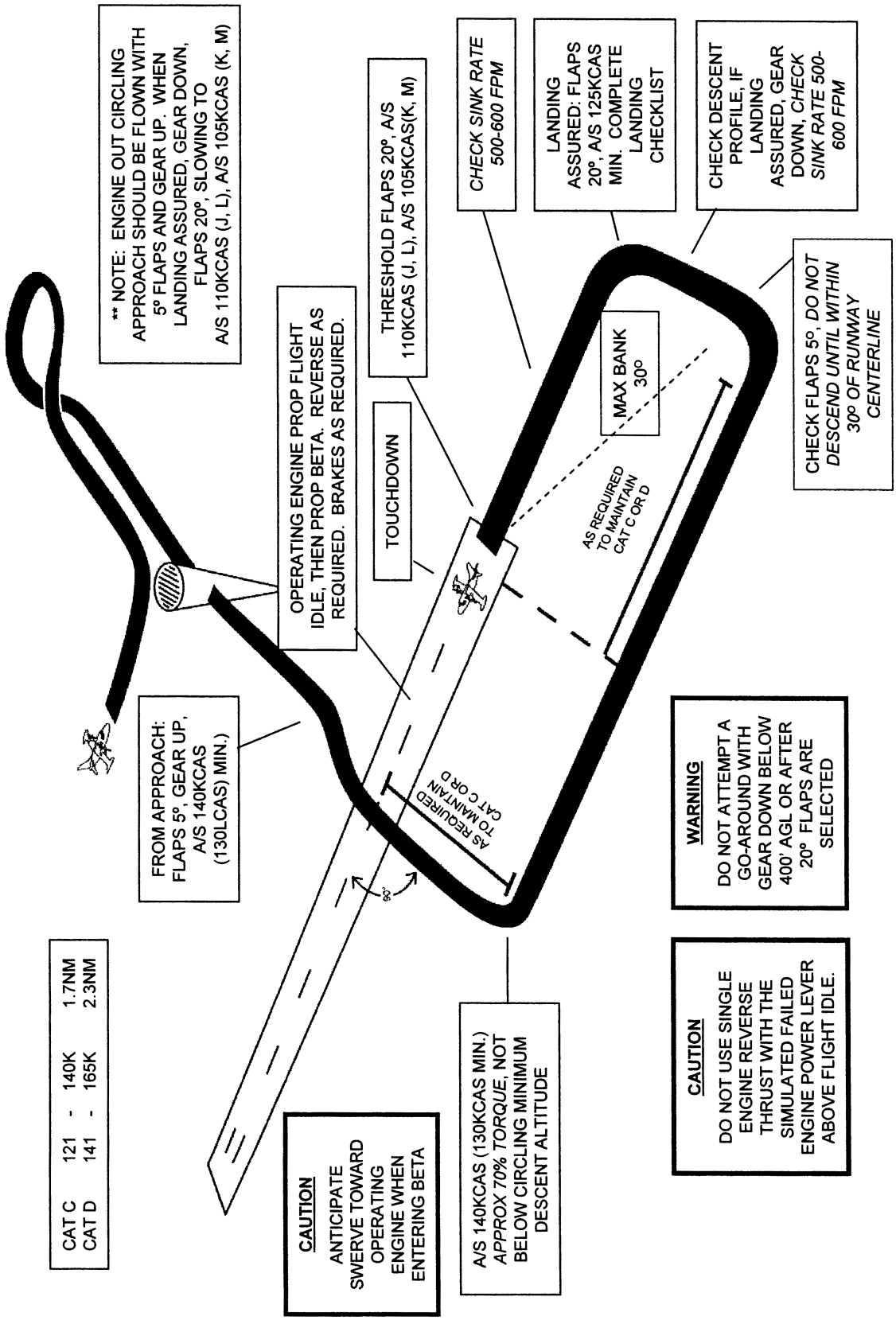
B-27

LANDING APPROACH SPEEDS Vref
J, K, L, M

	FLAPS 20° (1.3 VS1)				FLAPS 40° (1.5 VS1)			
WEIGHT	K	M	J	L	K	M	J	L
7,000	93	96				96		
7,500	96	100	93		99	100	100	
8,000	100	103	96		103	103	103	
8,500	103	106	100	99	106	106	106	105
9,000	106	109	103	99	109	109	109	108
9,435	108				112			
9,500		112	106	103		112	112	111
9,955		115				115		
10,000			109	105			115	114
10,260			110				117	
10,500				108				117
11,000				110				119
11,025				110				119

MU-2B J (-35), K (-25), L (-36), M (-26)

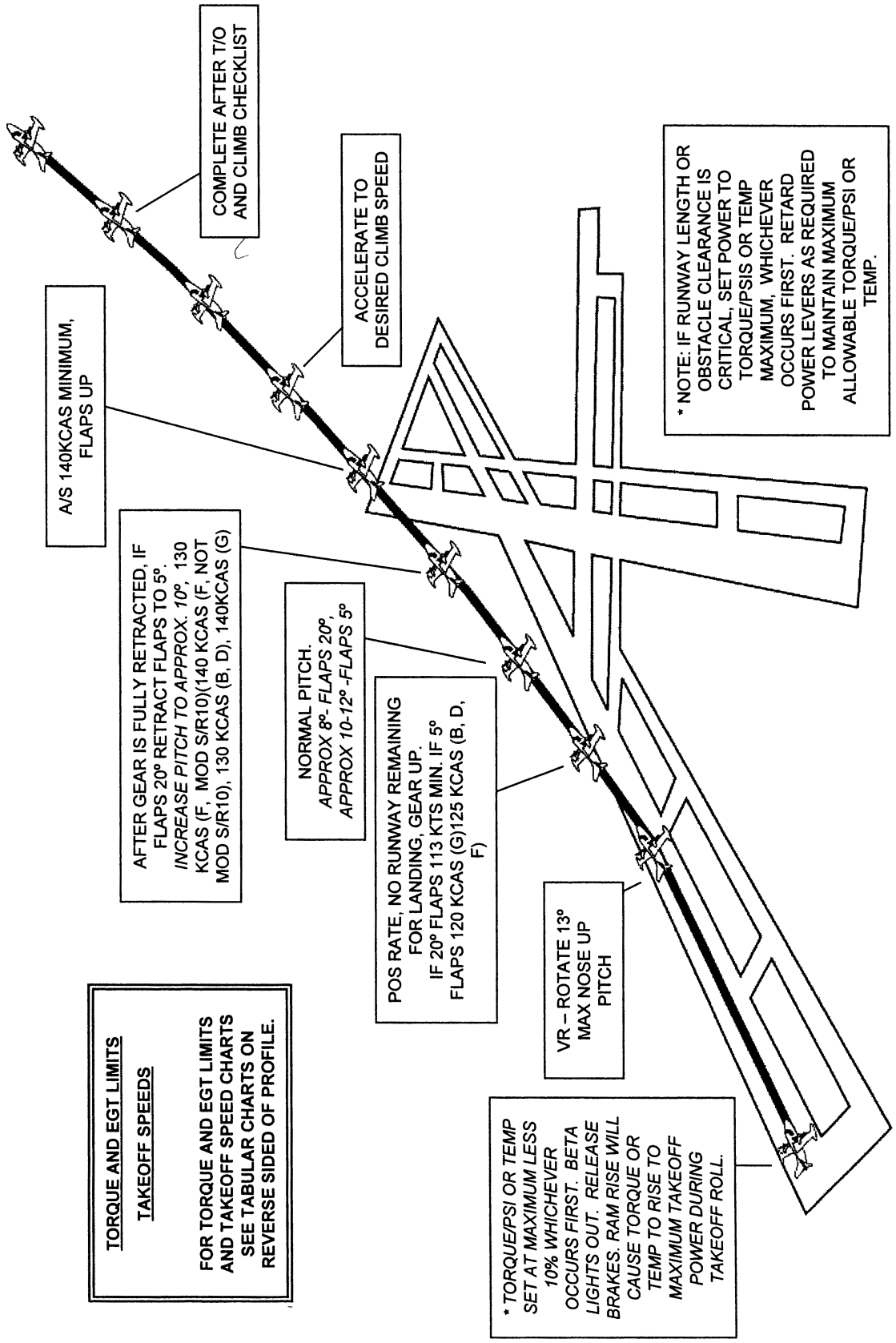
ONE ENGINE INOPERATIVE CIRCLING APPROACH AT WEATHER MINIMUMS



B-28

MU-2B B, D (-10), F (-20), G (-30)

NORMAL TAKE-OFF, 5º OR 20º FLAPS



C-1

TORQUE LIMITS

B, D	64 PSI
F, G	60 PSI (STATIC)
	64 PSI (RAM CONDITIONS 5 MINUTES

EGT LIMITS DEPEND ON OUTSIDE AIR TEMPERATURE, CHECK EGT LIMITS PRIOR TO DEPARTURE.

TAKE OFF SPEEDS
ROTATE

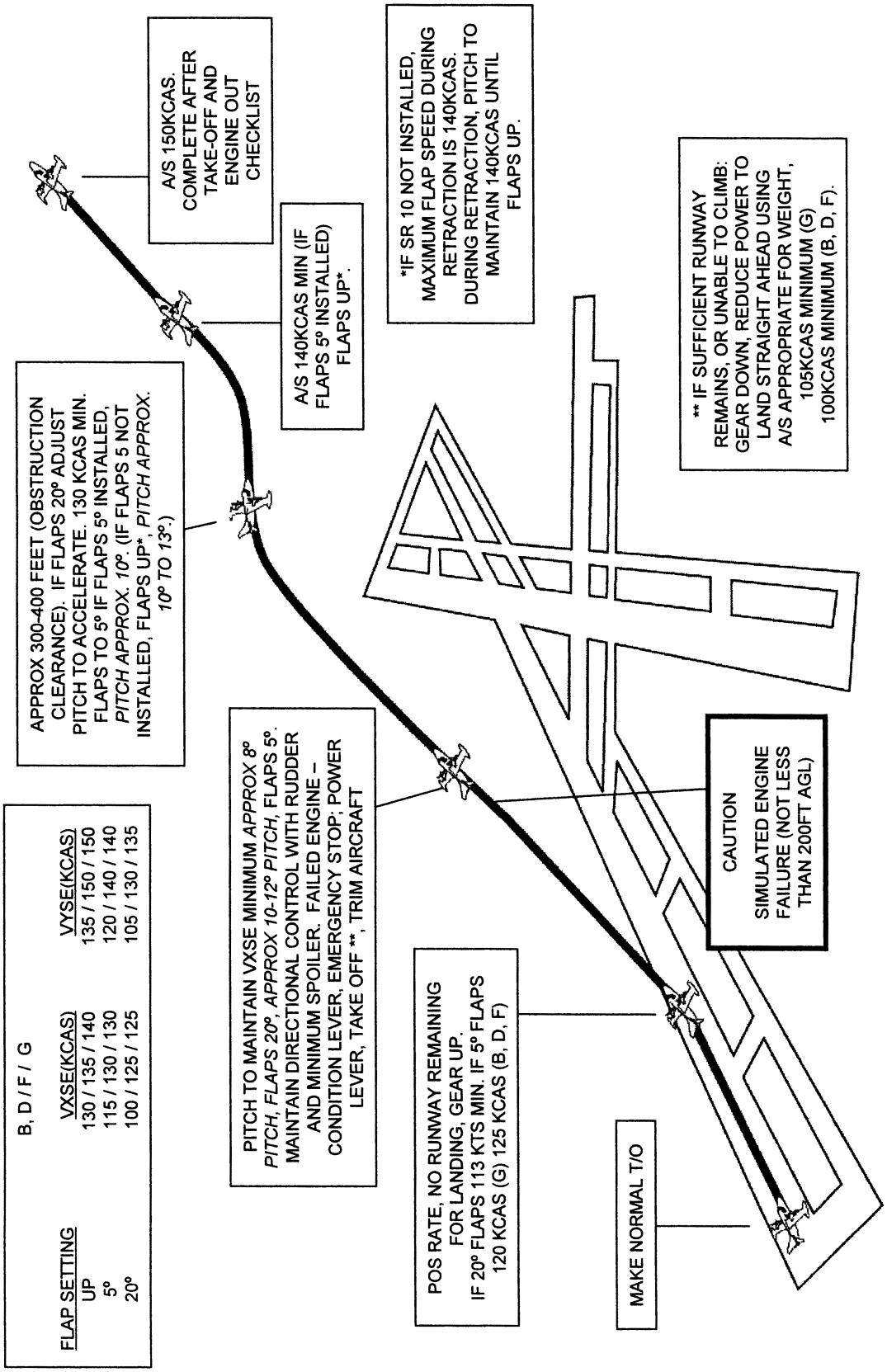
FLAPS 5°	B	B+	D	F	G
10,800 LBS					109
10,000 LBS					105
9,920 LBS				108	
9,500 LBS				107	103
9,350 LBS		111	111		
9,000 LBS		110	110	106	101
8,930 LBS	109				
8,000 LBS	107	107	107	104	100
7,500 LBS	106	106	106	102	
7,000 LBS	104	104	104		

FLAPS 20°	B	B+	D	F	G
10,800 LBS					105
10,000 LBS					102
9,920 LBS				102	
9,500 LBS				101	101
9,350 LBS		104	104		
9,000 LBS		103	103	100	100
8,930 LBS	103				
8,000 LBS	101	101	101	99	100
7,500 LBS	100	100	100	98	
7,000 LBS	99	99	99		

B: NOT MODIFIED BYH S/B 036 AND S/B 092
B+: MODIFIED BY S/B 036 AND S/B 092

MU-2B B, D (-10), F (-20), G (-30)

TAKE-OFF ENGINE FAILURE – FLAPS 5º OR 20º



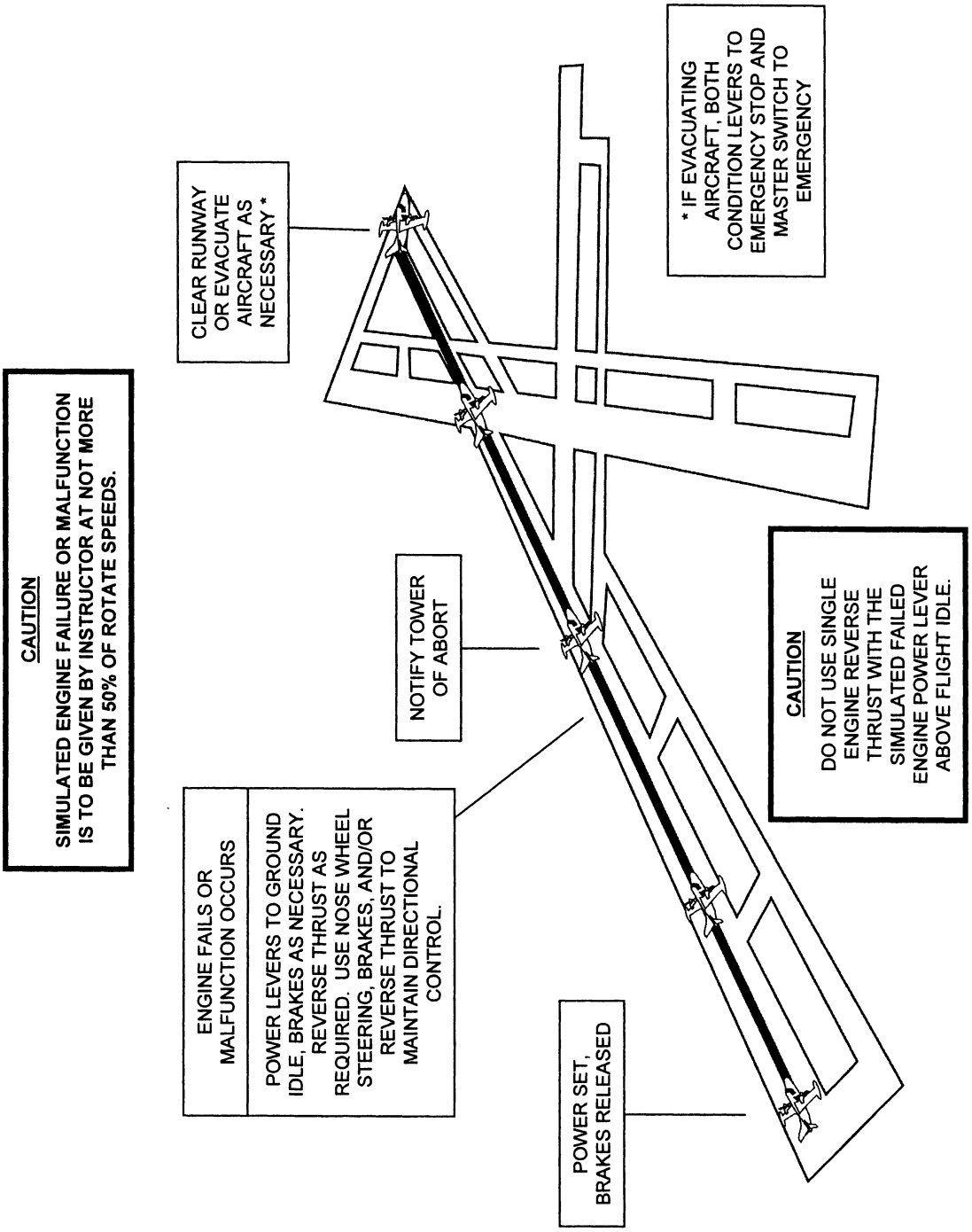
B, D / F / G

FLAP SETTING	VXSE(KCAS)	VYSE(KCAS)
UP	130 / 135 / 140	135 / 150 / 150
5º	115 / 130 / 130	120 / 140 / 140
20º	100 / 125 / 125	105 / 130 / 135

C-2

MU-2B B, D (-10), F (-20), G (-30)

TAKE-OFF ENGINE FAILURE ON RUNWAY

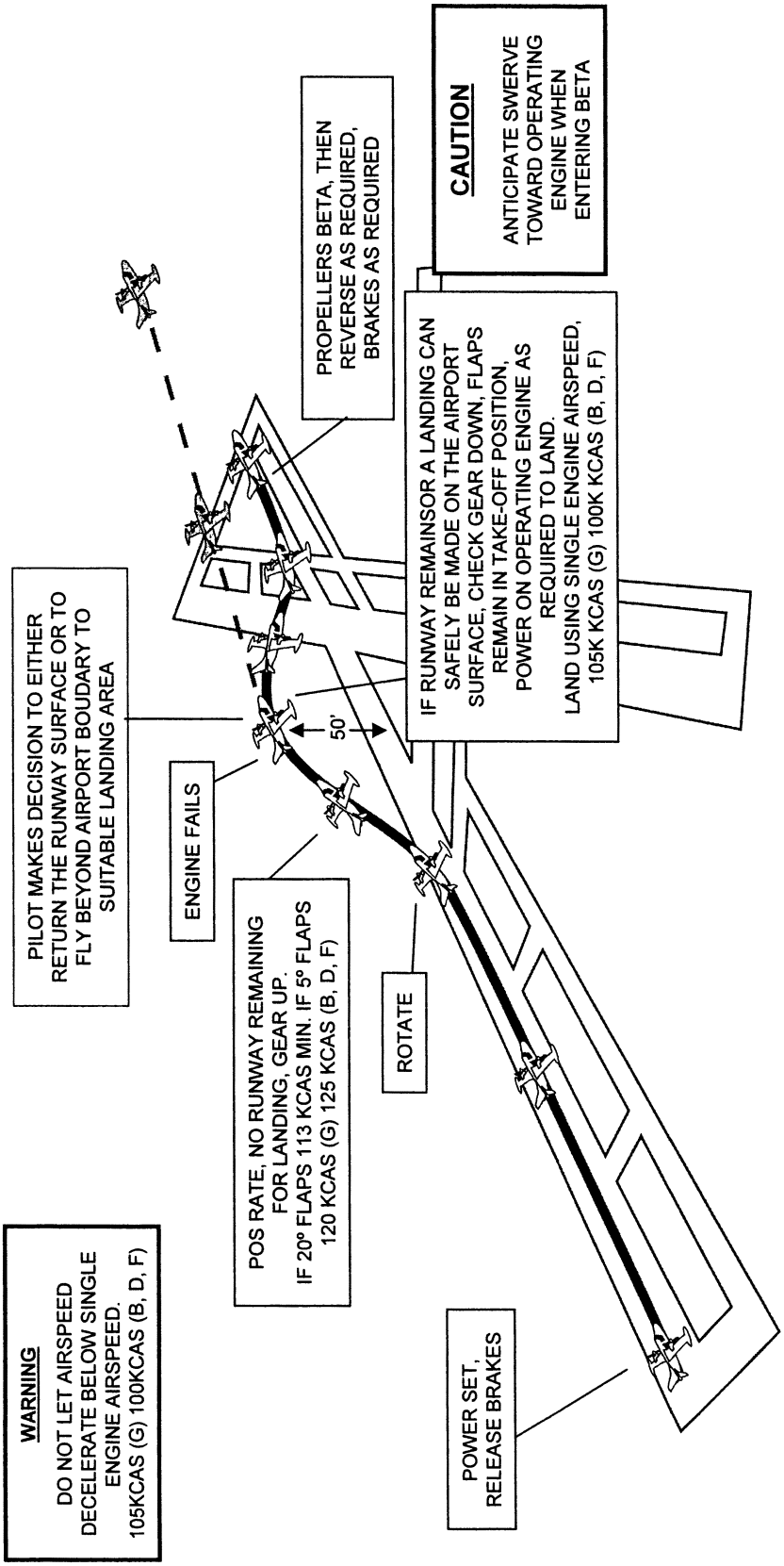


C-3

MU-2B B, D (-10), F (-20), G (-30)

TAKE-OFF ENGINE FAILURE - UNABLE TO CLIMB

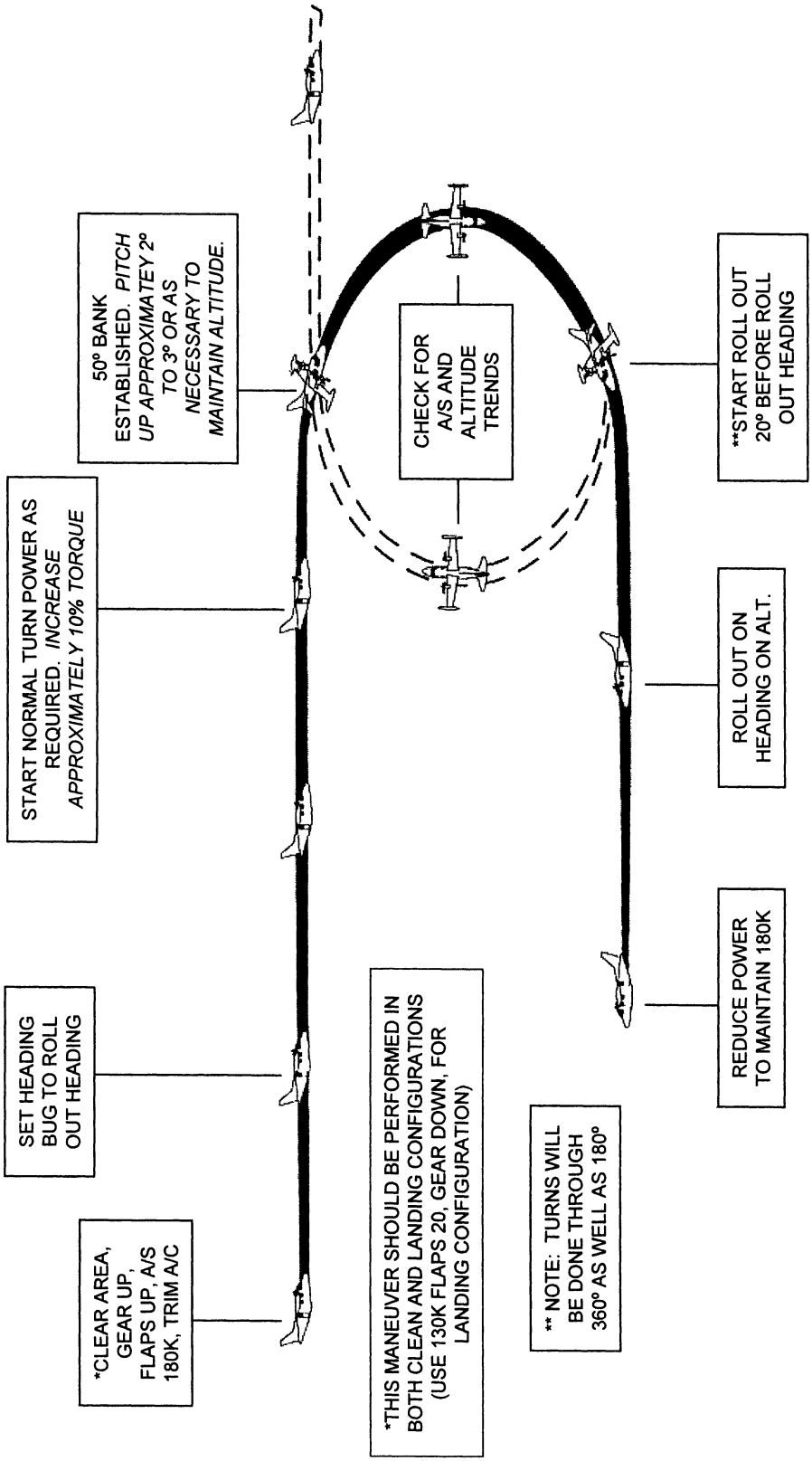
CLASSROOM DISCUSSION OR FTD USE ONLY



C-4

MU-2B B, D (-10), F (-20), G (-30)

STEEP TURNS



MU-2B B, D (-10), F (-20), G (-30)

SLOW FLIGHT MANEUVERING

MINIMUM CONTROLLABLE AIRSPEED

SLOW FLIGHT MANEUVERING IS CONDUCTED AS FOLLOWS:

CLEAR THE AREA PRIOR TO BEGINNING THE MANEUVER.

START WITH CLEAN CONFIGURATION AND CHANGE AIRCRAFT CONFIGURATION FROM CLEAN TO FULL FLAP AND GEAR IN STAGES. USE A MAXIMUM OF 15° BANK AND PERFORM HEADING CHANGES OF 90° LEFT AND RIGHT. CONSTANT ALTITUDE IS REQUIRED THROUGHOUT.
MAINTAIN 115K IN ALL CONFIGURATIONS.

**APPROXIMATE POWER SETTINGS ARE:

CLEAN	*TORQUE (35%) OR PSI (23) PER ENGINE*	*APPROX PITCH +12*
5° FLAP	*TORQUE (32%) OR PSI (21) PER ENGINE*	*APPROX PITCH +8*
5° FLAP & GEAR	*TORQUE (44%) OR PSI (29) PER ENGINE*	*APPROX PITCH +9*
20° FLAP & GEAR	*TORQUE (42%) OR PSI (27) PER ENGINE*	*APPROX PITCH +4*
40° FLAP & GEAR	*TORQUE (54%) OR PSI (35) PER ENGINE*	*APPROX PITCH 0*

** NOTE: POWER SETTINGS WILL VARY WITH AIRCRAFT WEIGHT AND ALTITUDE.

STALL SPEEDS (APPROXIMATE)
AT MAXIMUM GROSS TAKEOFF WEIGHT
B, B+, D, F, G

	B/ B+ / D / F / G	B / B+ / D / F / G
ANGLE OF BANK	0°	15°
FLAPS		
UP	95/ 98 / 98/102/104	98/ 99/ 99/104/106
5°	85/ 88/ 88/ 95/ 98	88/ 89/ 89/ 97/100
20°	80/ 81/ 81/ 85/ 86	81/ 83/ 83/ 87/ 88
40°	72/ 73/ 73/ 77/ 80	73/ 74/ 74/ 78/ 81

Vmc: 20° FLAPS (90KCAS G, 93KCAS F, 89KCAS D, 89/91KCAS B)
5° FLAPS (99KCAS G, 100KCAS F, 97KCAS D, 97/99KCAS B)
(FOR B MODEL Vmc SPEED CONSULT SERIAL NUMBER APPLICABILITY IN AFM)

CAUTION

STALL WARNING MAY ACTIVATE
4 TO 9 KTS ABOVE STALL

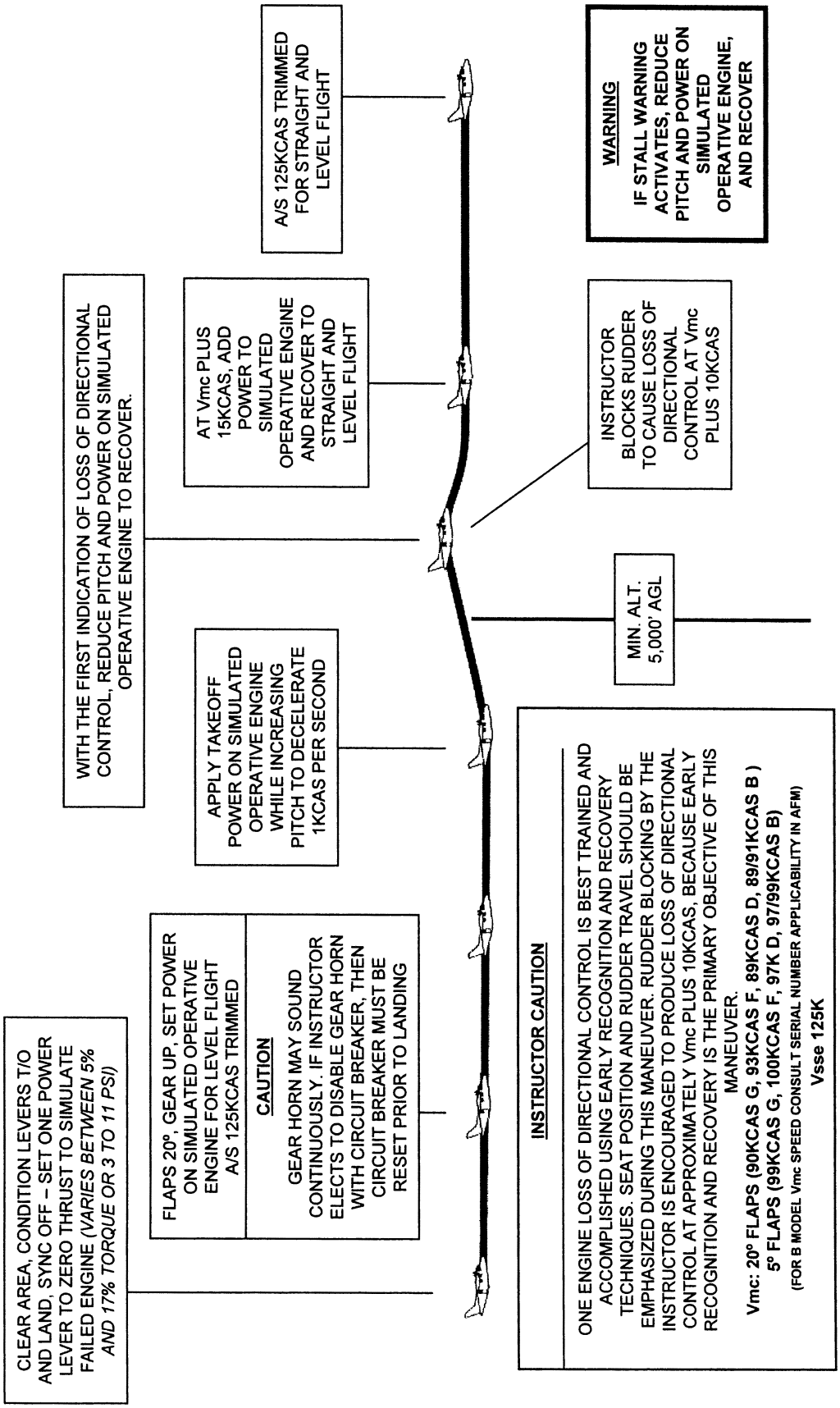
MINIMUM CONTROLLABLE AIRSPEED IS CONDUCTED AS FOLLOWS:

CLEAR THE AREA PRIOR TO BEGINNING THE MANEUVER.

THE MANEUVER MAY BE DONE IN ANY COMBINATION OF GEAR OR FLAP CONFIGURATIONS. IF BANK IS TO BE USED, IT SHOULD BE DONE AT BANK OF NOT MORE THAN 10°. BEGIN THE MANEUVER BY CONFIGURING THE AIRCRAFT IN THE DESIRED GEAR AND FLAP CONFIGURATION. SLOW THE AIRCRAFT UNTIL THE STALL WARNING (STICK SHAKER) IS ACTIVATED AND ADD POWER TO MAINTAIN ALTITUDE AND A SPEED JUST ABOVE AERODYNAMIC STALL. DO NOT ALLOW THE AIRCRAFT TO REACH AERODYNAMIC STALL BUFFET.

MU-2B B, D (-10), F (-20), G (-30)

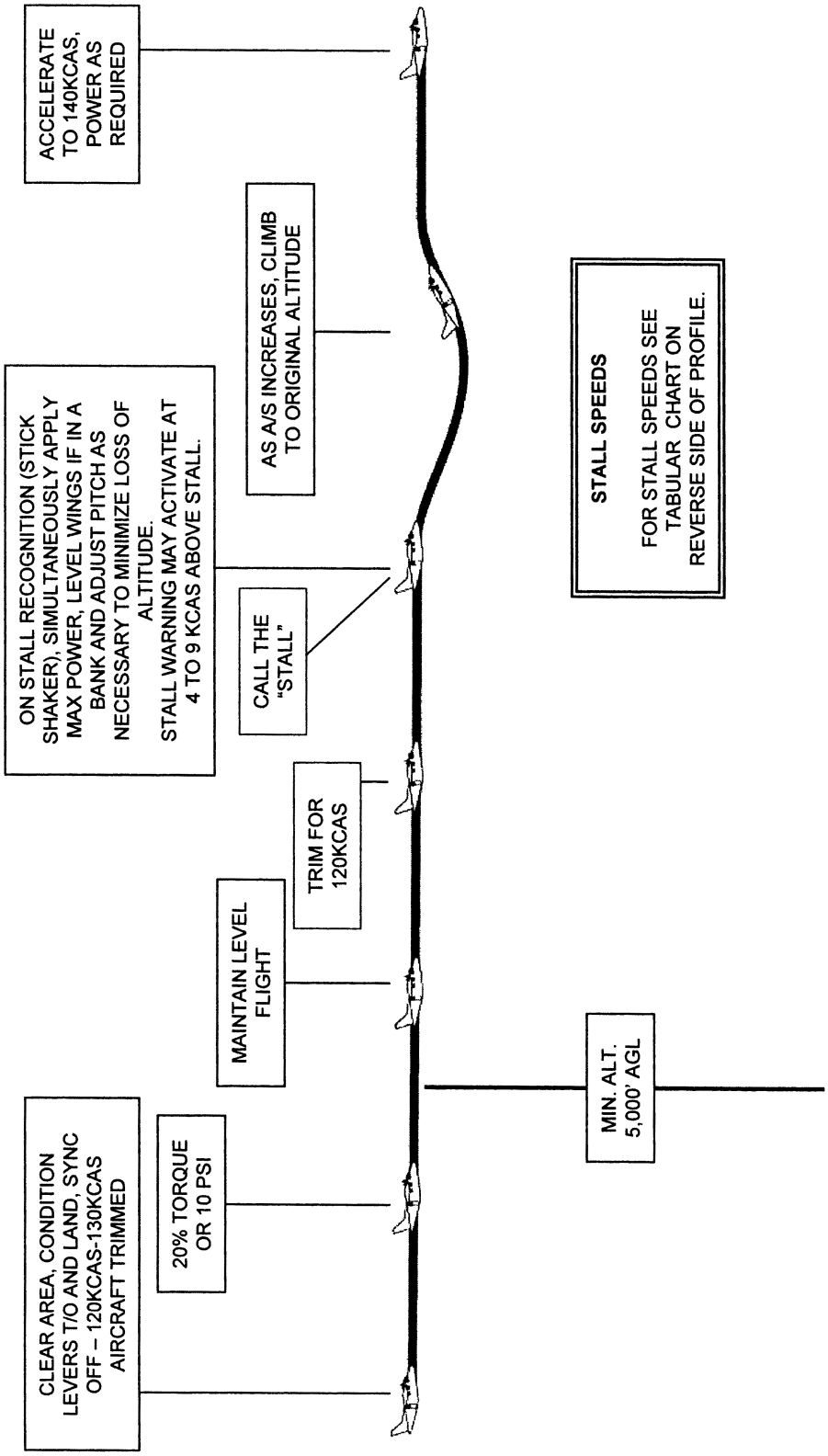
ONE ENGINE INOPERATIVE MANEUVERING LOSS OF DIRECTIONAL CONTROL



C-7

MU-2B B, D (-10), F (-20), G (-30)

APPROACH TO STALL CLEAN CONFIGURATION / WINGS LEVEL

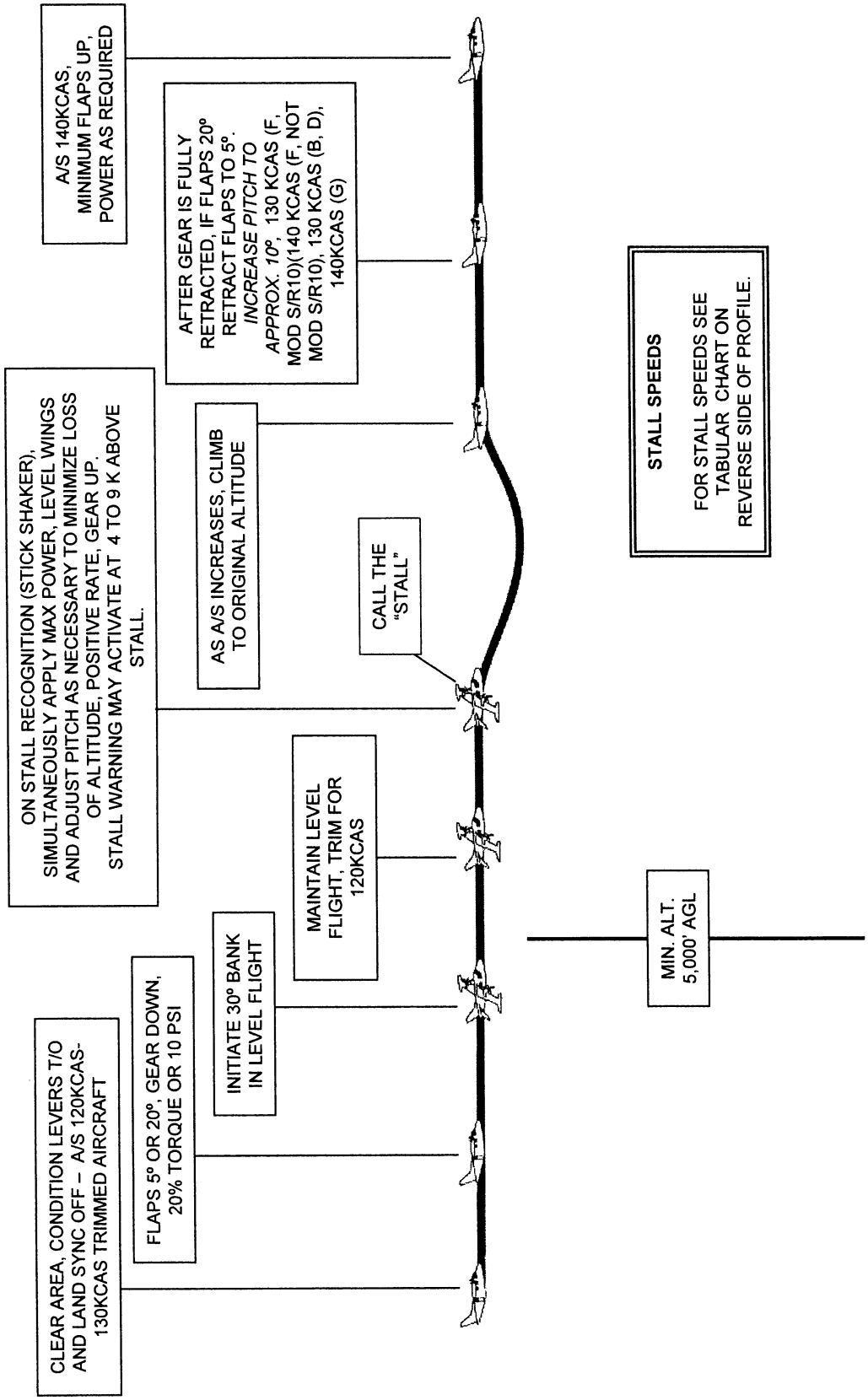


STALL SPEEDS				
FLAPS SET	0	5	20	40
GR.WT.	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G
7,000	85/ 85/ 85	76/ 76/ 80	70/ 70/ 72	63/ 63/ 64
7,500	88/ 88/ 85/	78/ 78/ 83/	73/ 73/ 74/	66/ 63/ 67/
8,000	90/ 90/ 91/ 90	81/ 81/ 86/ 84	75/ 75/ 77/ 74	68/ 68/ 69/ 69
8,500	93/ 93/ 94/ 93	83/ 83/ 88/ 87	78/ 78/ 79/ 77	70/ 70/ 71/ 71
8,930	95/	85/	79/	72/
9,000	/ 95/ 97/ 95	/ 86/ 91/ 90	/ 80/ 81/ 79	/ 72/ 73/ 73
9,350	/ 97/	/ 87/	/ 81/	/ 73/
9,500	/ 99/ 98	93/ 92	/ 83/ 81	/ 75/ 75
9,920	/101/	95/	/ 85/	/ 76/
10,000	/101	/ 94	/ 83	/ 77
10,500	/103	/ 97	/ 85	/ 79
10,800	/105	/ 98	/ 87	/ 81

MU-2B B, D (-10), F (-20), G (-30)

APPROACH TO STALL

TAKEOFF CONFIGURATION 15-30° BANK



C-9

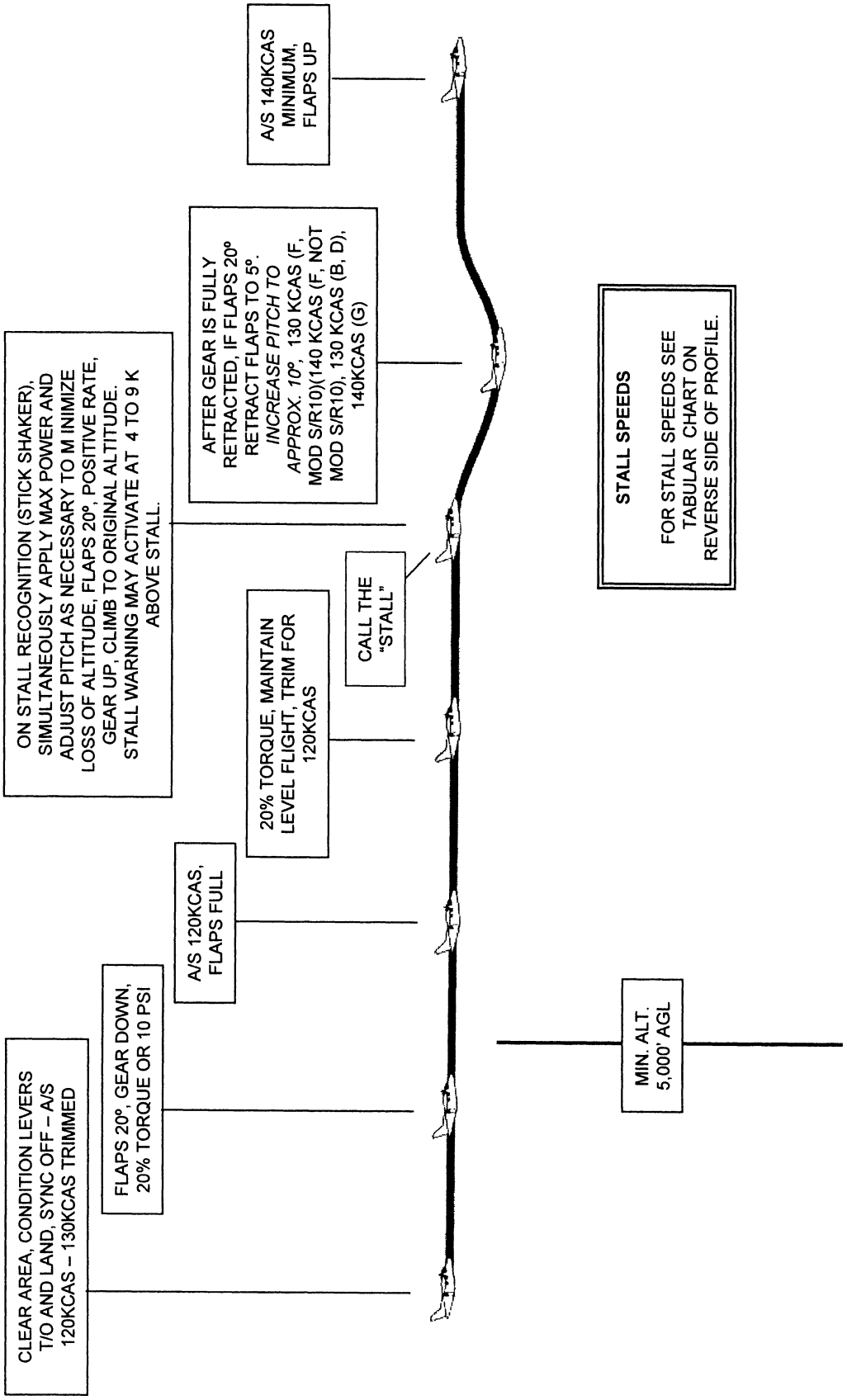
STALL SPEEDS (APPROXIMATE)
AT MAXIMUM GROSS TAKEOFF WEIGHT
B, B+, D, F, G

BANK ANGLE	10	20	30	40	50	60
FLAPS	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G
UP	96/ 99/102/106	99/ 101/105/108	103/105/109/112	109/111/116/120	120/122/126/130	136/138/143/148
5°	87/ 88/ 96/ 99	89/ 90/ 98/101	92/ 94/102/105	98/100/109/112	107/109/119/122	120/124/135/138
20°	80/ 82/ 86/ 87	82/ 84/ 88/ 89	86/ 87/ 92/ 93	91/ 93/ 97/ 98	99/101/107/108	113/114/120/122
40°	72/ 74/ 77/ 81	74/ 75/ 79/ 82	77/ 79/ 82/ 86	82/ 83/ 87/ 91	90/ 91/ 95/100	102/103/108/113

MU-2B B, D (-10), F (-20), G (-30)

APPROACH TO STALL

GEAR DOWN – FULL FLAPS

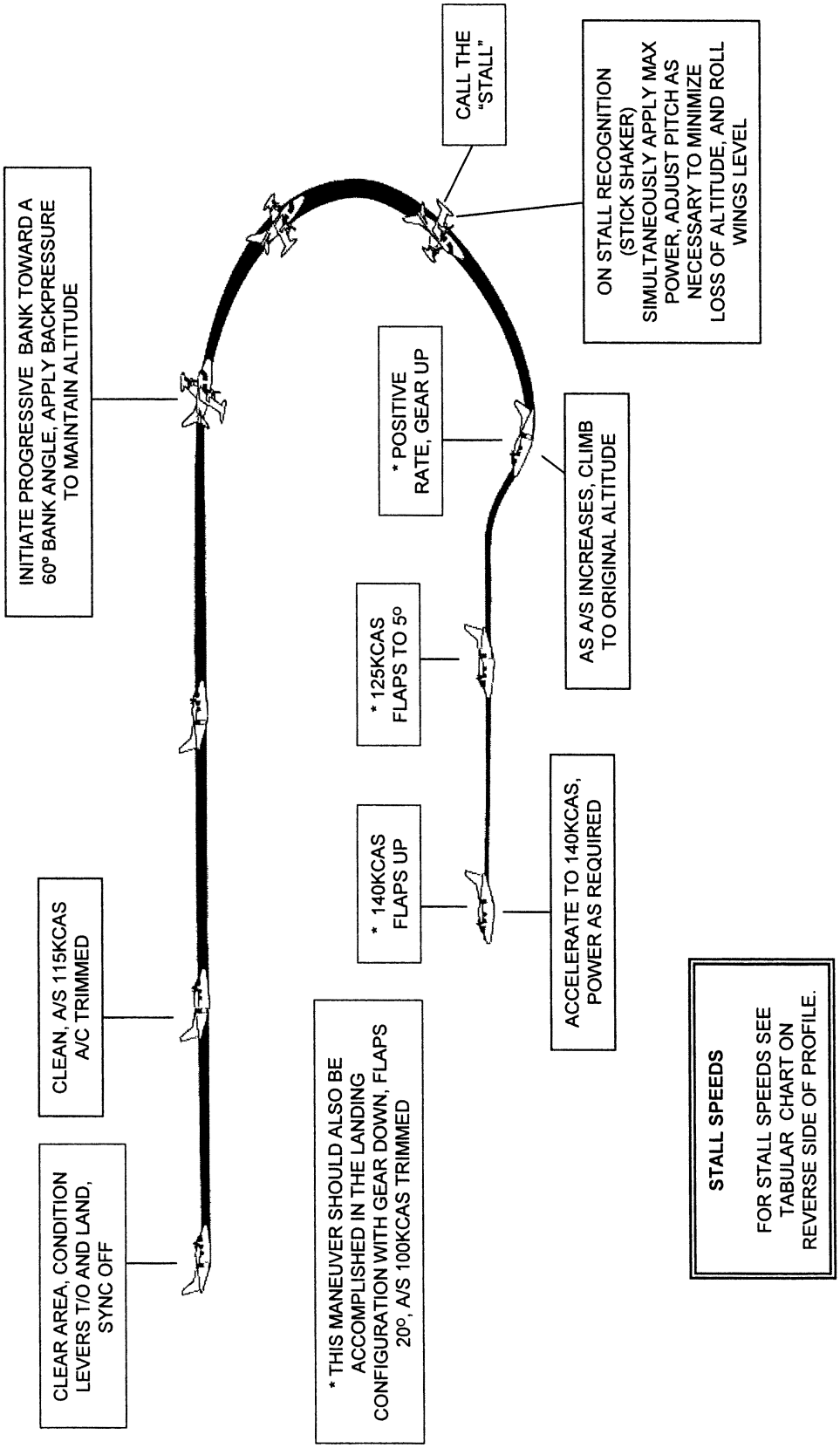


C-10

	STALL SPEEDS			
FLAPS SET	0	5	20	40
GR.WT.	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G
7,000	85/ 85/ 85	76/ 76/ 80	70/ 70/ 72	63/ 63/ 64
7,500	88/ 88/ 85/	78/ 78/ 83/	73/ 73/ 74/	66/ 63/ 67/
8,000	90/ 90/ 91/ 90	81/ 81/ 86/ 84	75/ 75/ 77/ 74	68/ 68/ 69/ 69
8,500	93/ 93/ 94/ 93	83/ 83/ 88/ 87	78/ 78/ 79/ 77	70/ 70/ 71/ 71
8,930	95/	85/	79/	72/
9,000	/ 95/ 97/ 95	/ 86/ 91/ 90	/ 80/ 81/ 79	/ 72/ 73/ 73
9,350	/ 97/	/ 87/	/ 81/	/ 73/
9,500	/ 99/ 98	93/ 92	/ 83/ 81	/ 75/ 75
9,920	/101/	95/	/ 85/	/ 76/
10,000	/101	/ 94	/ 83	/ 77
10,500	/103	/ 97	/ 85	/ 79
10,800	/105	/ 98	/ 87	/ 81

MU-2B B, D (-10), F (-20), G (-30)

ACCELERATED STALLS



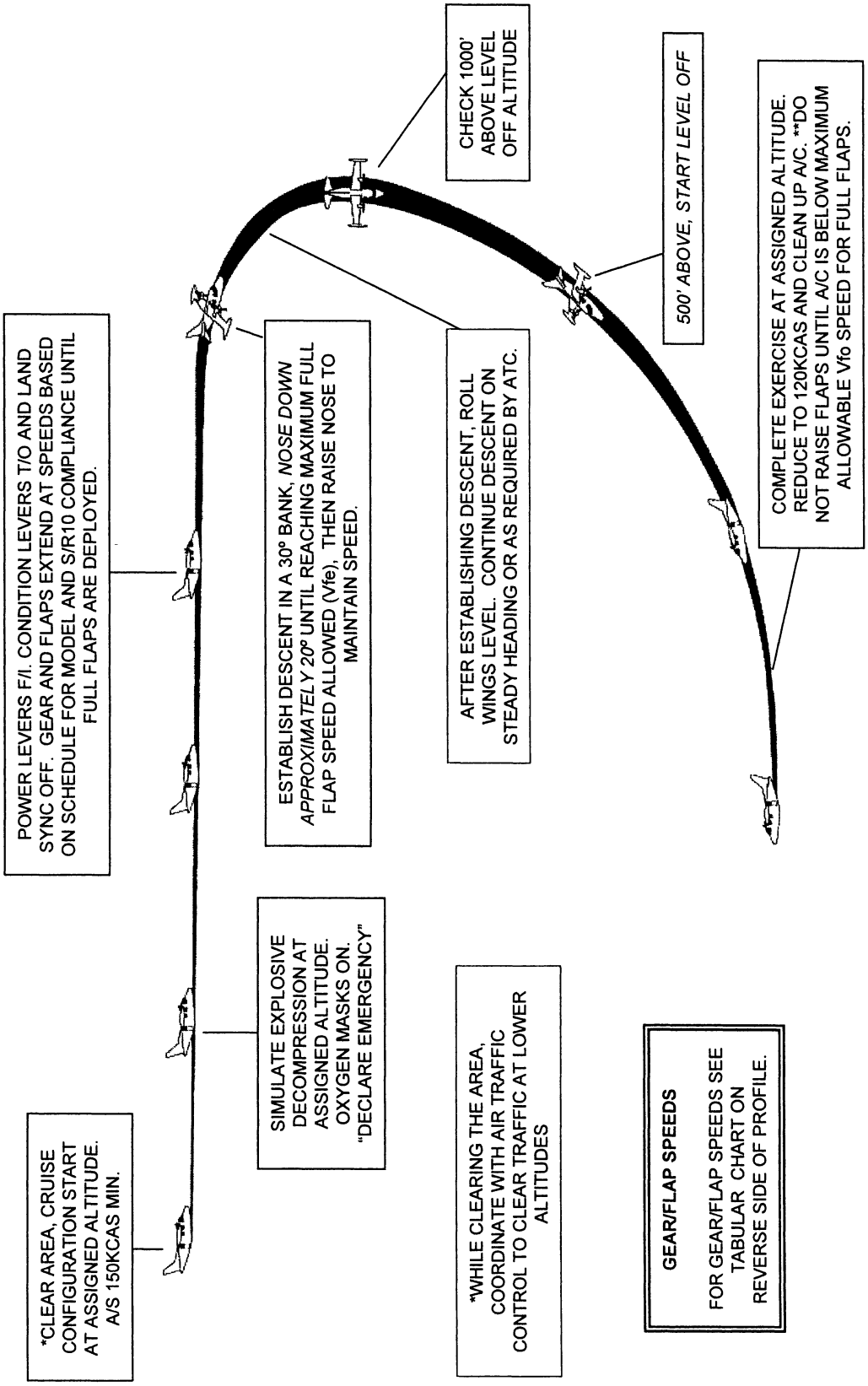
C-11

STALL SPEEDS (APPROXIMATE)
AT MAXIMUM GROSS TAKEOFF WEIGHT
B, B+, D, F, G

BANK ANGLE	10	20	30	40	50	60
FLAPS	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G	B/ B+, D/ F/ G
UP	96/ 99/102/106	99/ 101/105/108	103/105/109/112	109/111/116/120	120/122/126/130	136/138/143/148
5°	87/ 88/ 96/ 99	89/ 90/ 98/101	92/ 94/102/105	98/100/109/112	107/109/119/122	120/124/135/138
20°	80/ 82/ 86/ 87	82/ 84/ 88/ 89	86/ 87/ 92/ 93	91/ 93/ 97/ 98	99/101/107/108	113/114/120/122
40°	72/ 74/ 77/ 81	74/ 75/ 79/ 82	77/ 79/ 82/ 86	82/ 83/ 87/ 91	90/ 91/ 95/100	102/103/108/113

MU-2B B, D (-10), F (-20), G (-30)

EMERGENCY DESCENT (LOW SPEED)



C-12

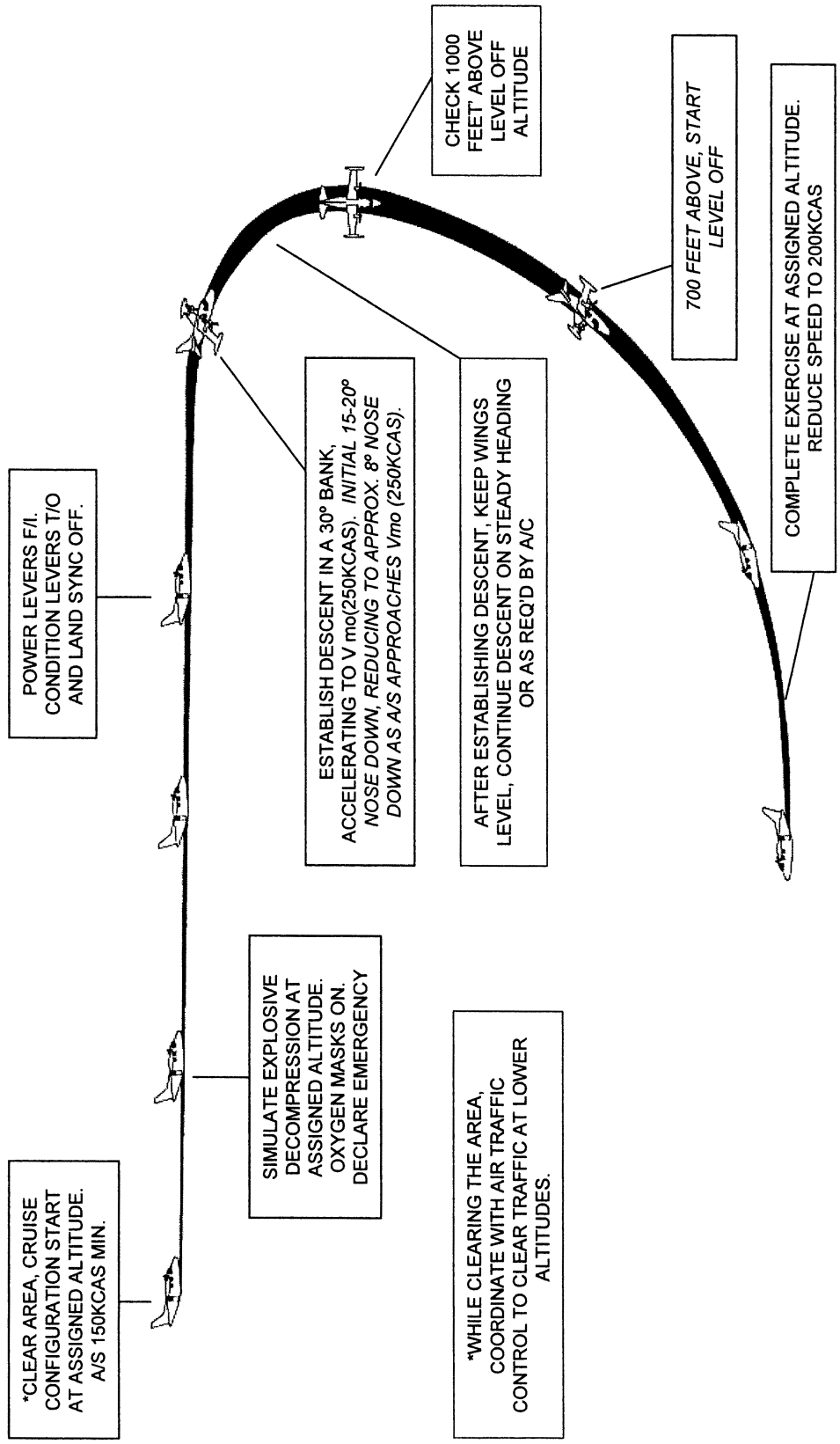
GEAR AND FLAP EXTEND SCHEDULE

(F+ AND G+ ARE MODIFIED BY S/R10)

GEAR			
B, D, F, F+:	160KCAS		
G, G+:	170KCAS		
FLAPS	5°	20°	40°
G: NOT MODIFIED BY S/R10	146KCAS	146KCAS	120KCAS
G+: MODIFIED BY S/R10 AND	175KCAS	146KCAS	120KCAS
F: NOT MODIFIED BY S/R10	140KCAS	140KCAS	120KCAS
F+: MODIFIED BY S/R10 AND	175KCAS	140KCAS	120KCAS
B, D, F	140KCAS	140KCAS	120KCAS

MU-2B B, D (-10), F (-20), G (-30)

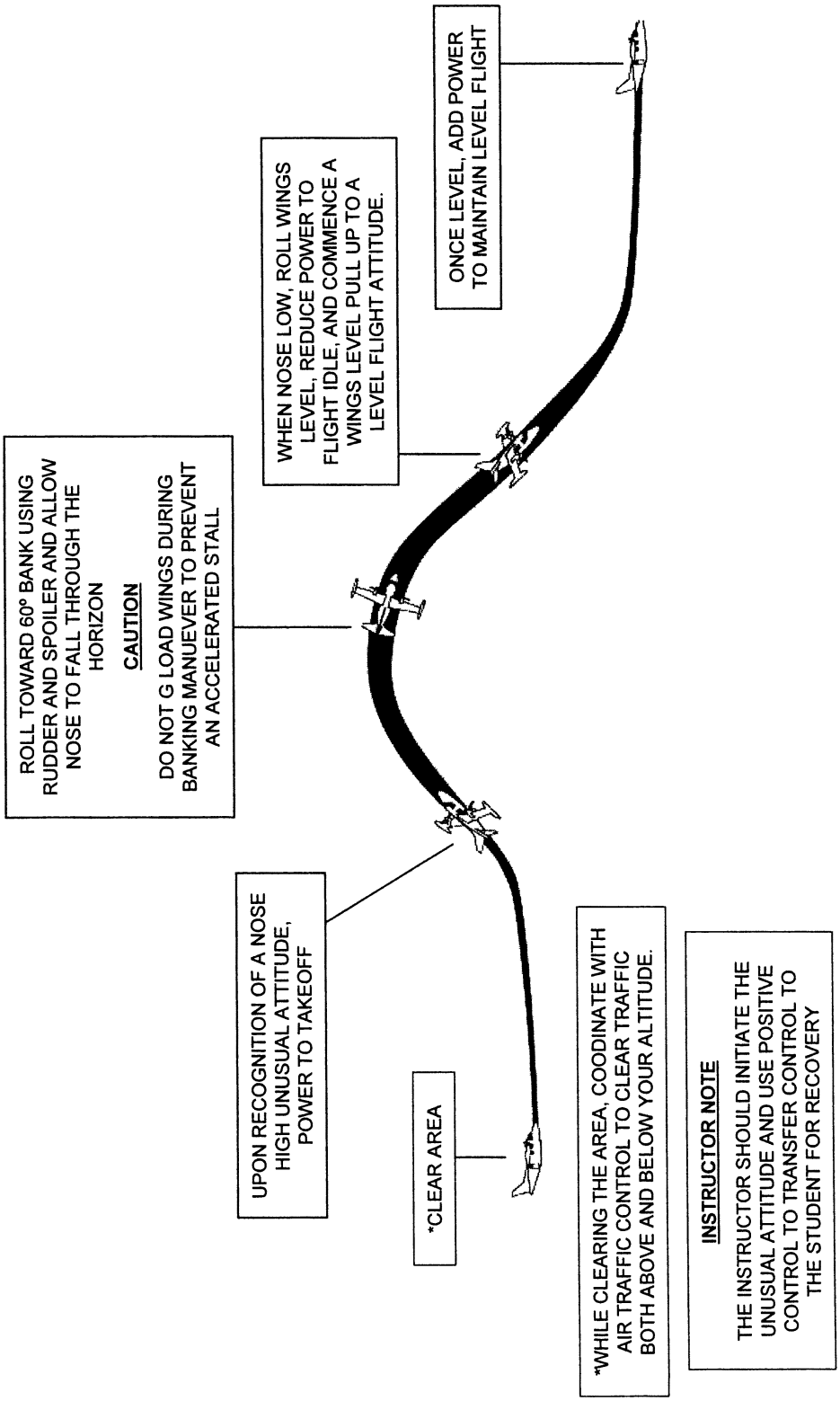
EMERGENCY DESCENT (HIGH SPEED)



C-13

MU-2B B, D (-10), F (-20), G (-30)

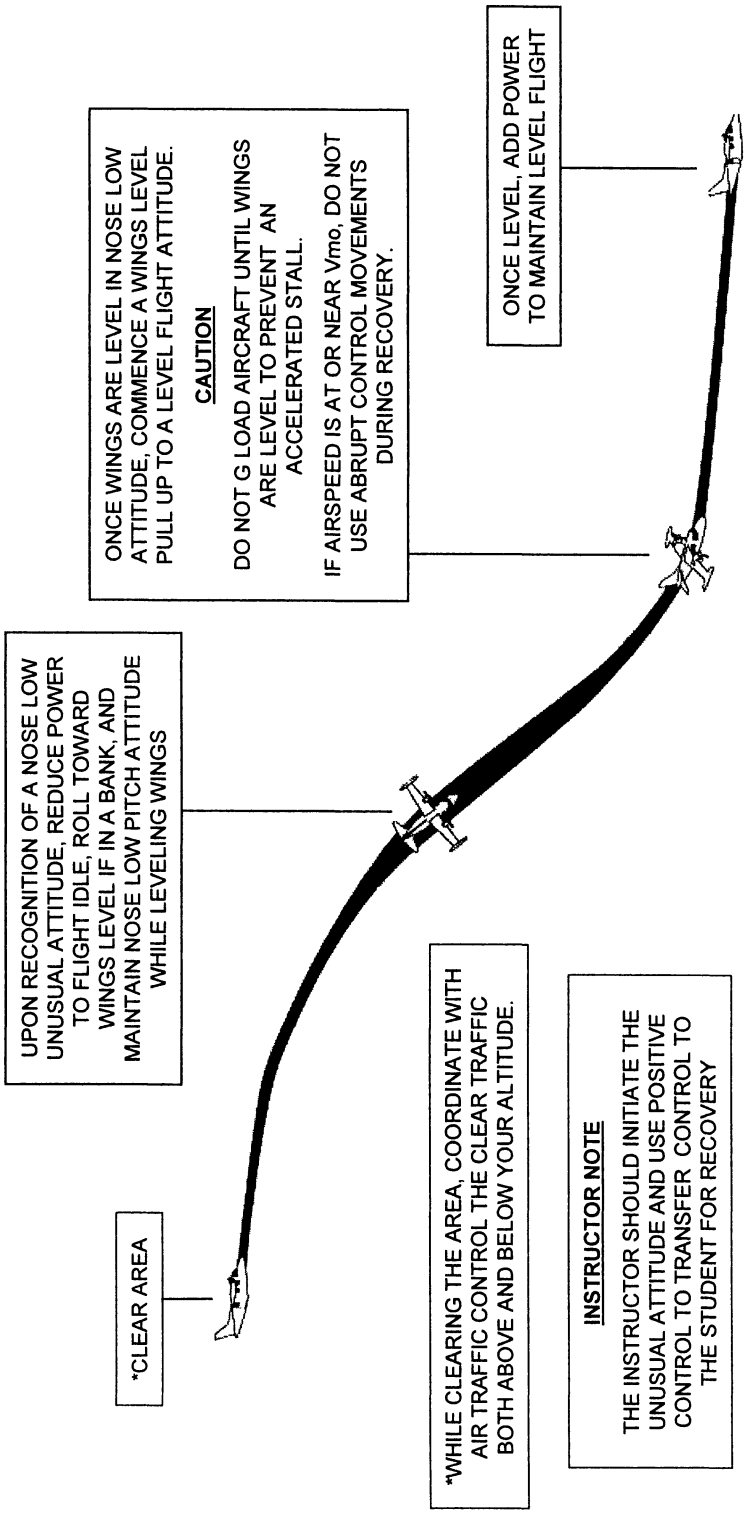
UNUSUAL ATTITUDE RECOVERY (NOSE HIGH)



C-14

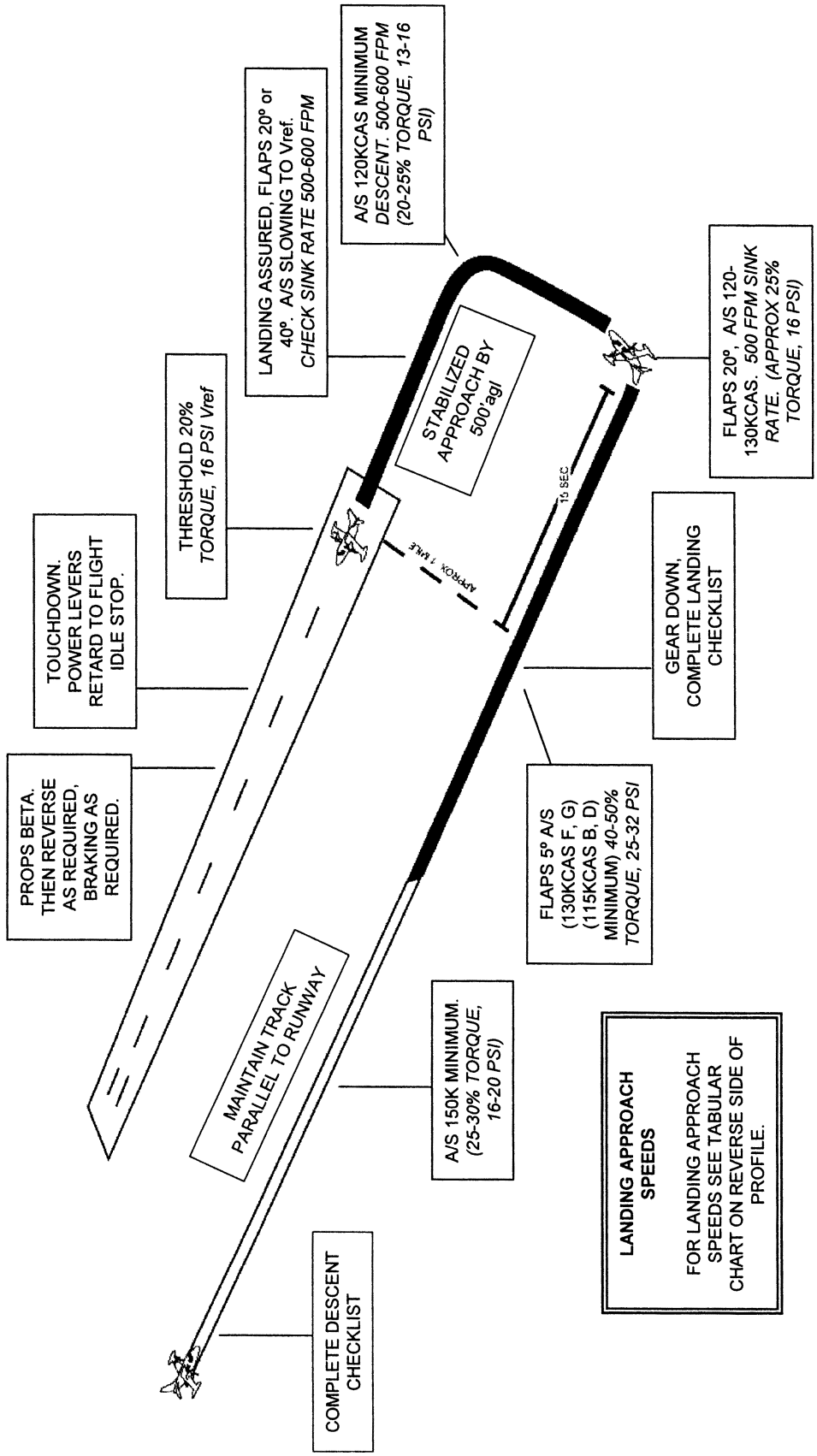
MU-2B B, D (-10), F (-20), G (-30)

UNUSUAL ATTITUDE RECOVERY (NOSE LOW)



MU-2B B, D (-10), F (-20), G (-30)

NORMAL LANDING (20°or 40° FLAPS)



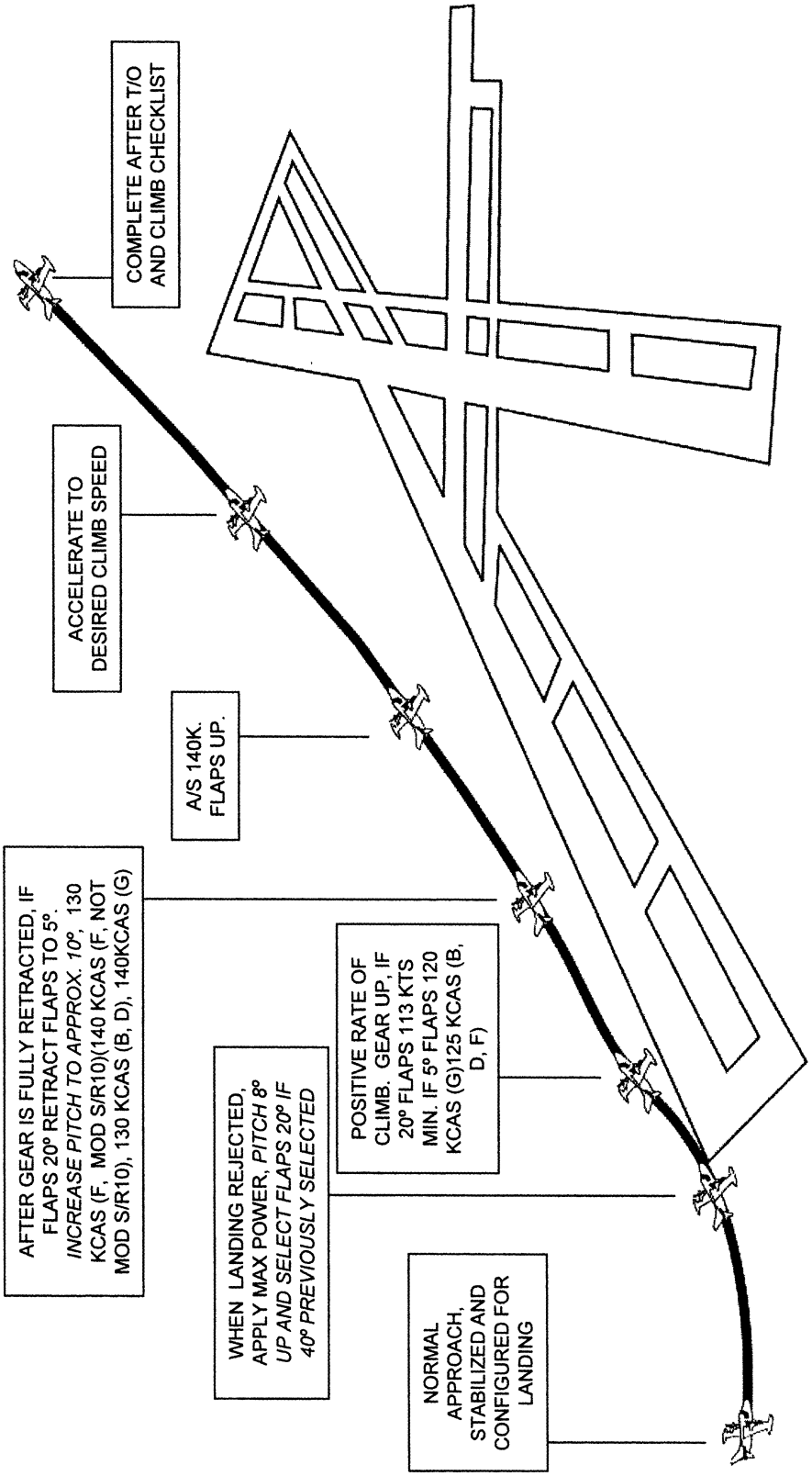
C-16

LANDING APPROACH SPEEDS Vref
B, B+, D, F, G

	FLAPS 20° (1.3 VSI)				FLAPS 40° (1.5 VSI)			
WEIGHT	B	B+, D	F	G	B	B+, D	F	G
7,000	92	92	93		94	94		
7,500	95	95	96	94	98	98	99	100
8,000	98	98	100	97	101	101	103	103
8,500		101	103	100		104	106	106
8,490	101				104			
8,930		103				107		
9,000			106	103			109	109
9,435			108				112	
9,500				105				112
10,000				108				115
10,260				109				117

MU-2B B, D (-10), F (-20), G (-30)

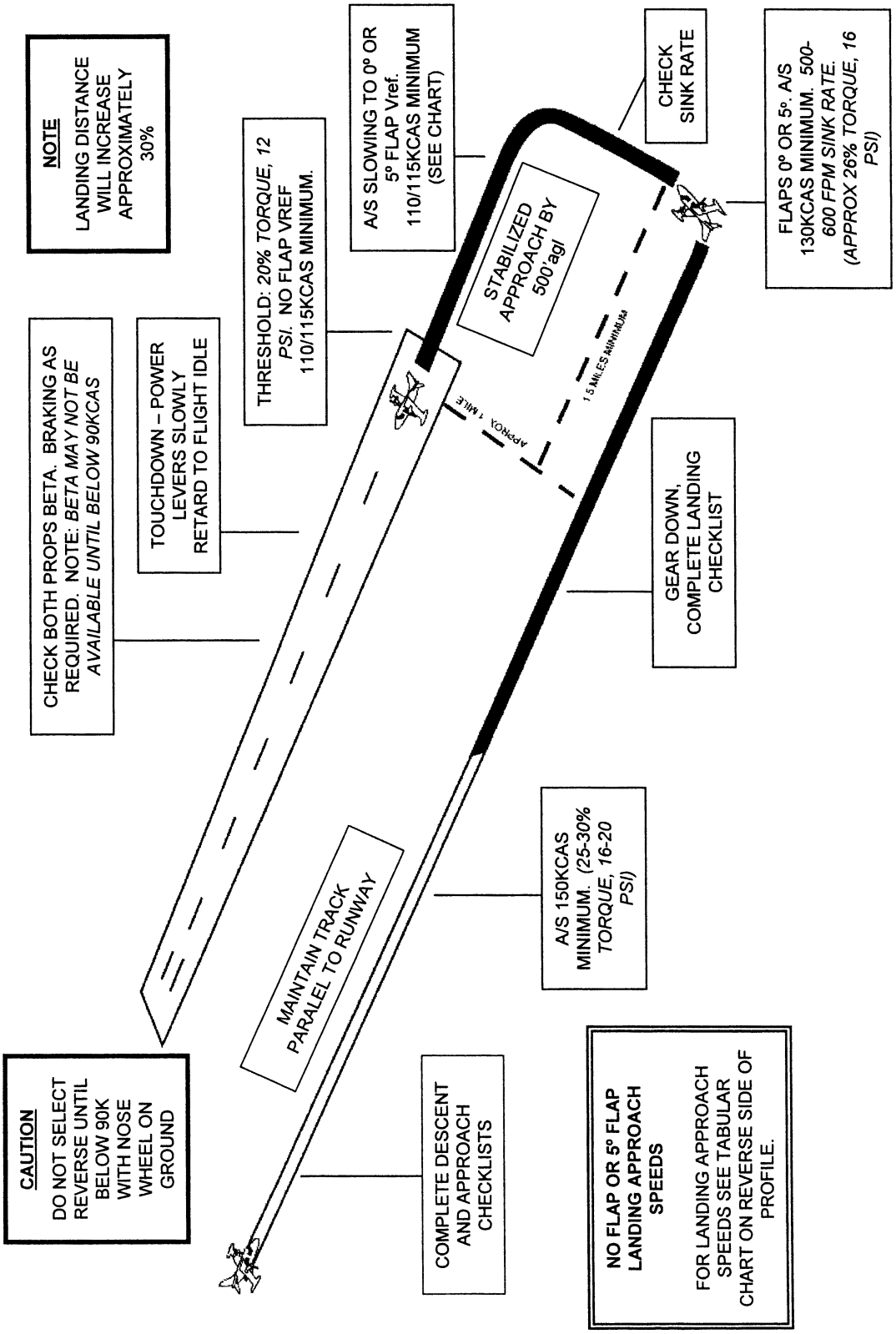
GO AROUND - REJECTED LANDING



C-17

MU-2B B, D (-10), F (-20), G (-30)

NO FLAP OR 5º FLAP LANDING



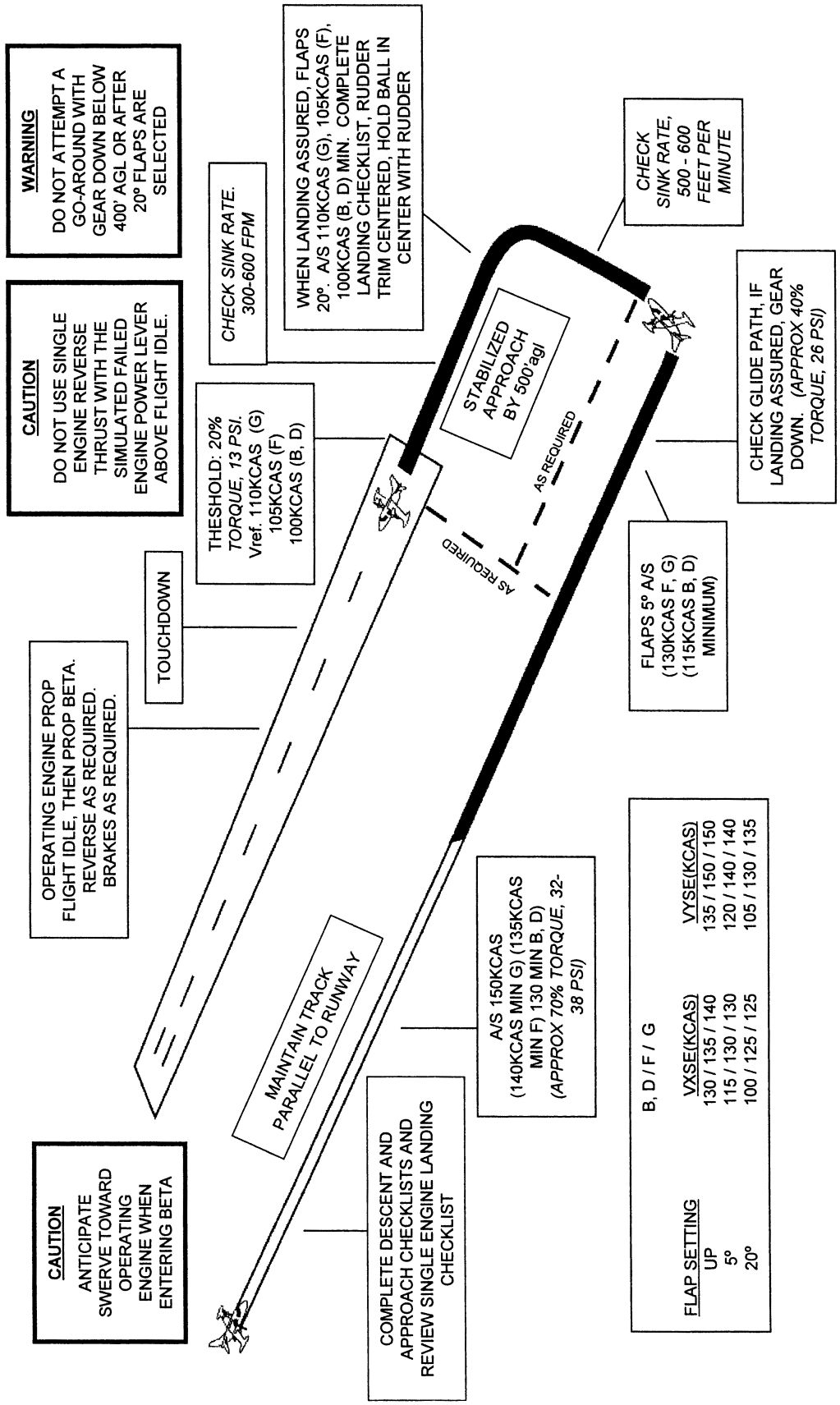
A-18

NO FLAP Vref 1.25 VS1
(BUT NOT BELOW 110KCAS (B, B+, D, F) 115KCAS (G))
USE FOR FLAP UP OR 5°
B, B+, D, F, G

	FLAPS UP					FLAPS 5°				
WEIGHT	B	B+	D	F	G	B	B+	D	F	G
7,500	110	110	110	110		110	110	110	110	
8.000	113	113	113	114	115	110	110	110	110	115
8,490	117					110				
8.500		117	117	118	117		110	110	110	115
8,930		119	119				110	110		
9.000				122	119				114	115
9,435				124					117	
9.500					123					115
10.000					127					118
10.260					128					120

MU-2B B, D (-10), F (-20), G (-30)

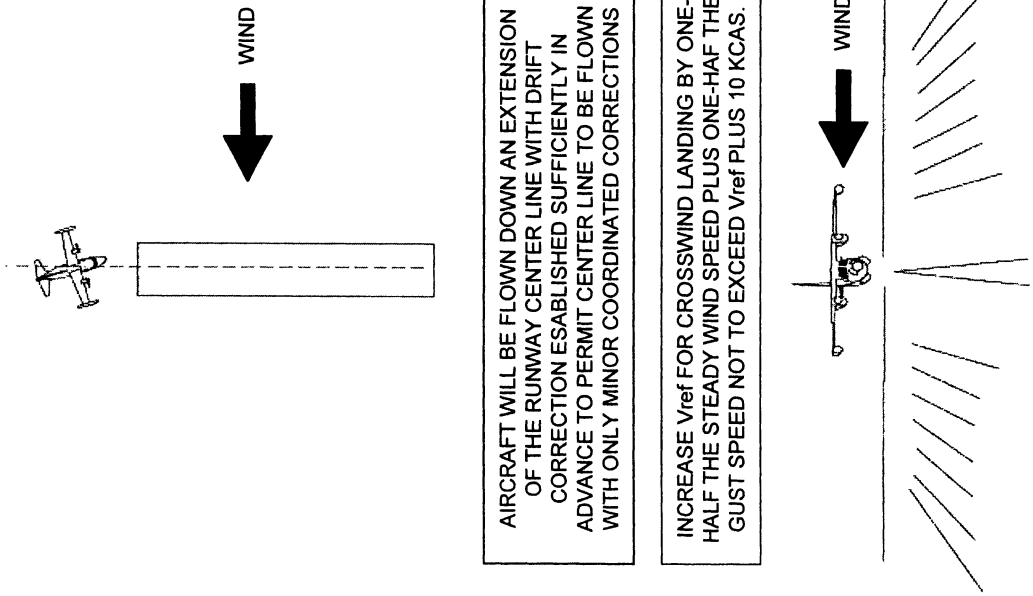
ONE ENGINE INOPERATIVE LANDING

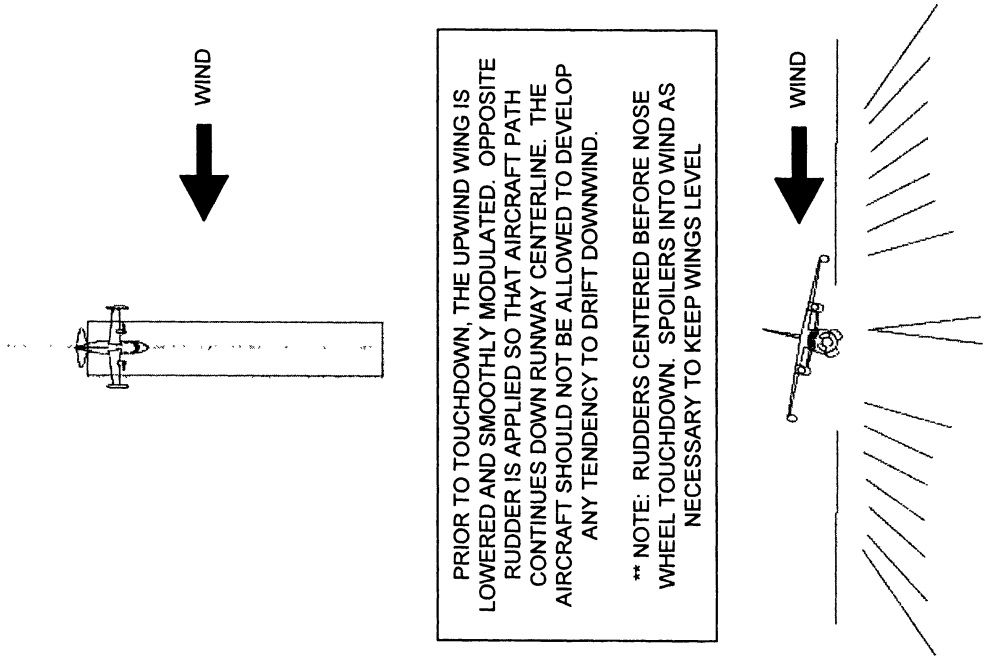


C-19

MU-2B B, D (-10), F (-20), G (-30)

CROSSWIND LANDING

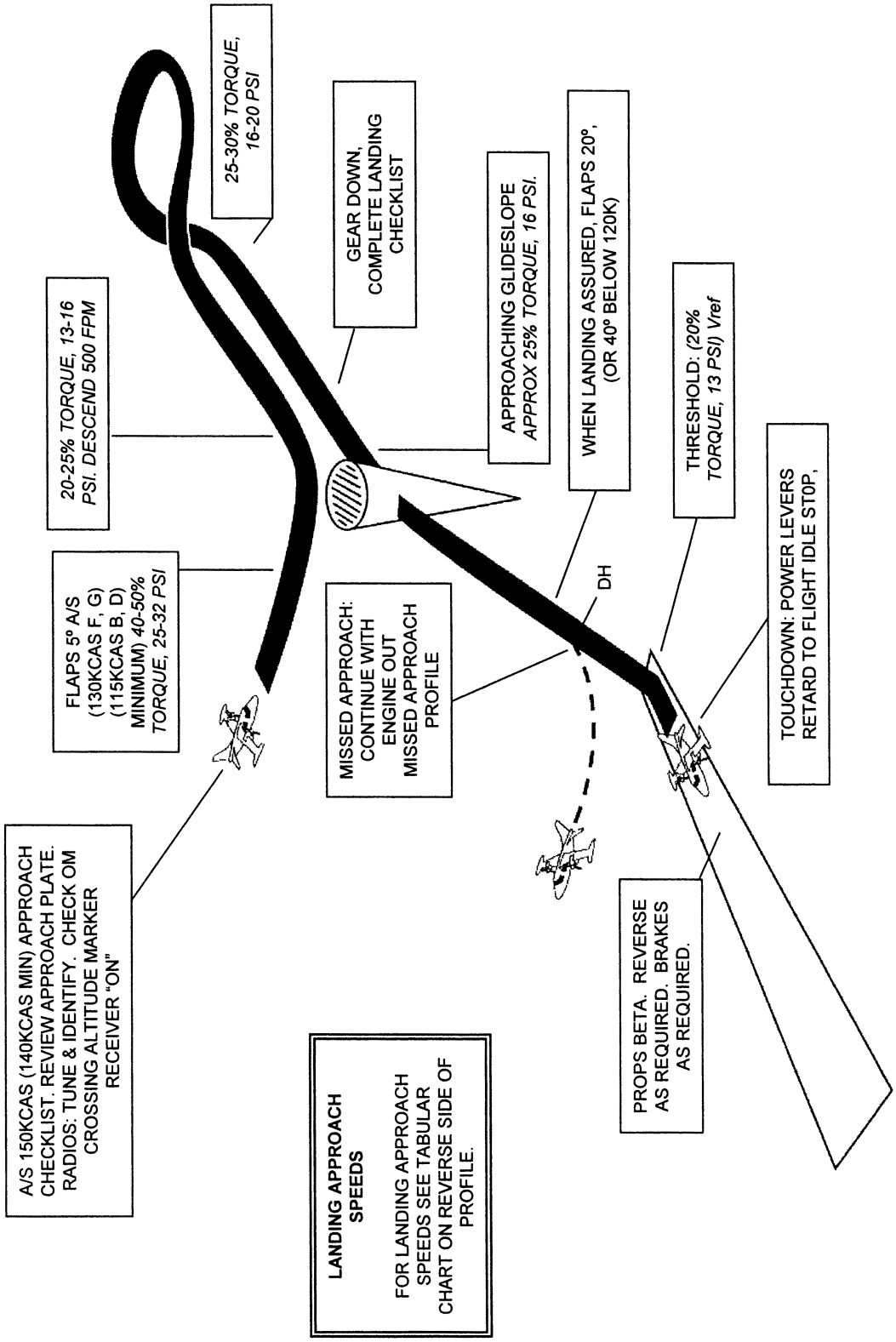




C-20

MU-2B B, D (-10), F (-20), G (-30)

ILS AND MISSED APPROACH

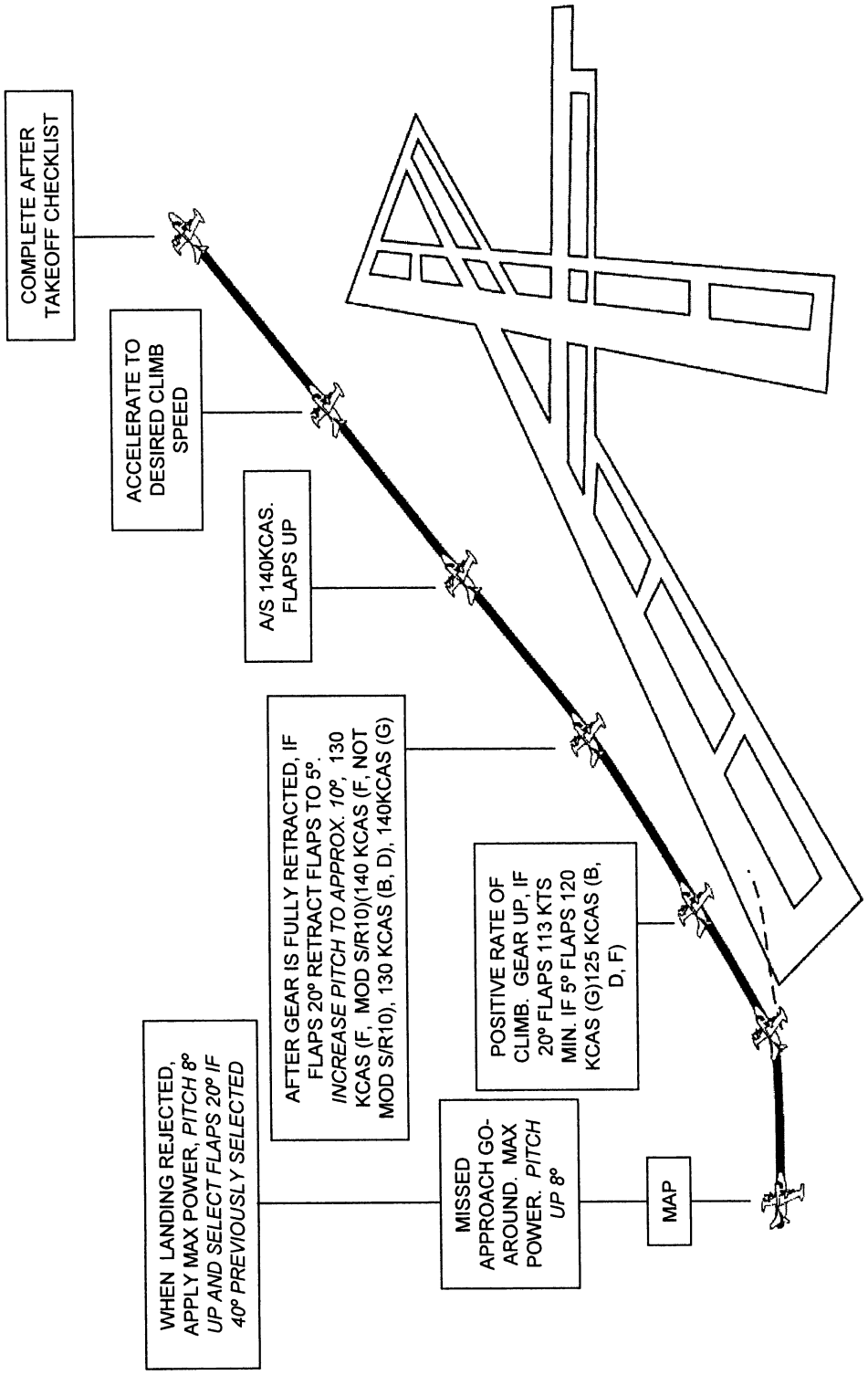


C-21

LANDING APPROACH SPEEDS Vref
B, B+, D, F, G

	FLAPS 20° (1.3 VSI)				FLAPS 40° (1.5 VSI)			
WEIGHT	B	B+, D	F	G	B	B+, D	F	G
7,000	92	92	93		94	94		
7,500	95	95	96	94	98	98	99	100
8,000	98	98	100	97	101	101	103	103
8,500		101	103	100		104	106	106
8,490	101				104			
8,930		103				107		
9,000			106	103			109	109
9,435			108				112	
9,500				105				112
10,000				108				115
10,260				109				117

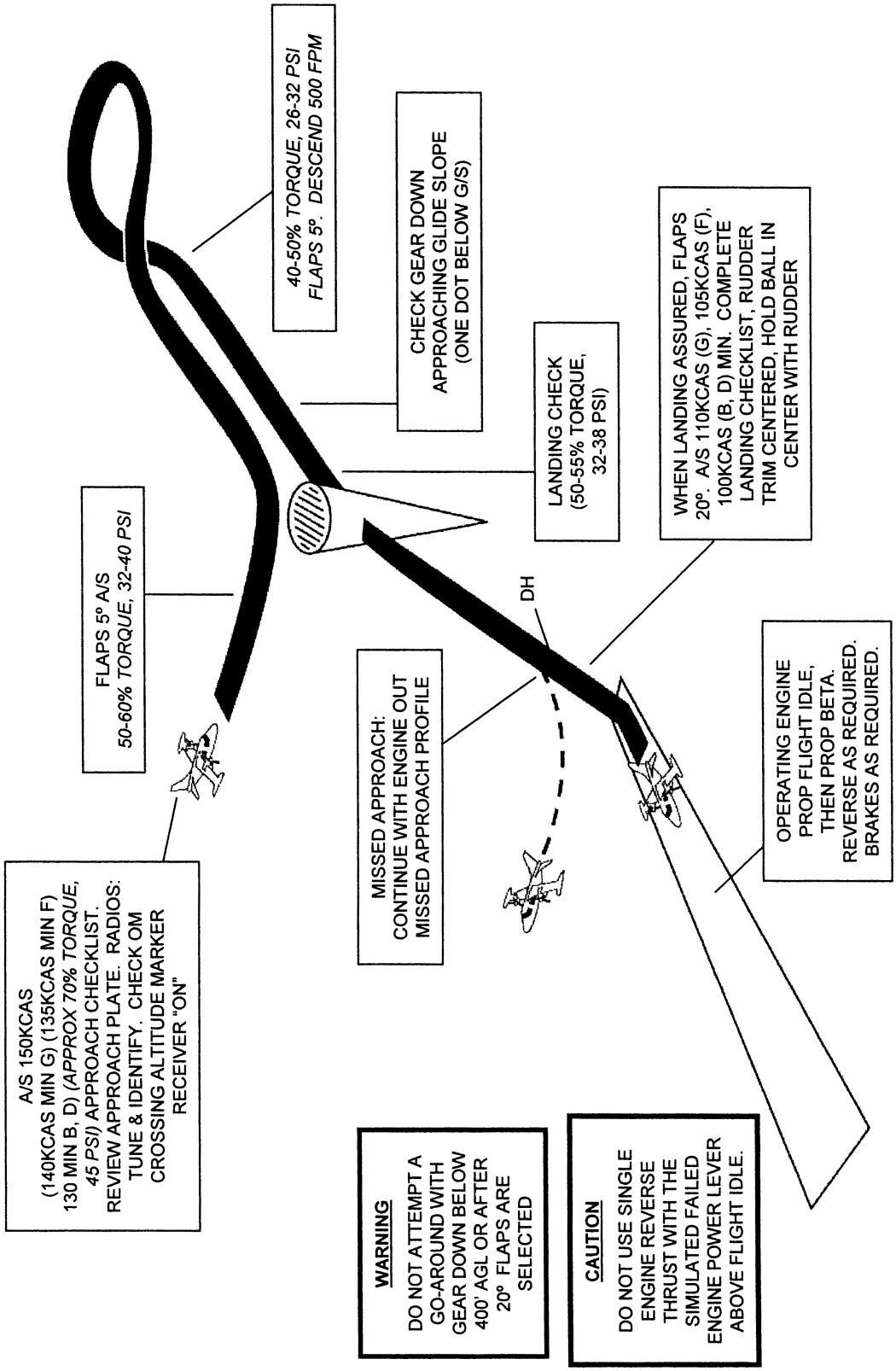
MU-2B B, D (-10), F (-20), G (-30)
TWO ENGINE MISSED APPROACH



C-22

MU-2B B, D (-10), F (-20), G (-30)

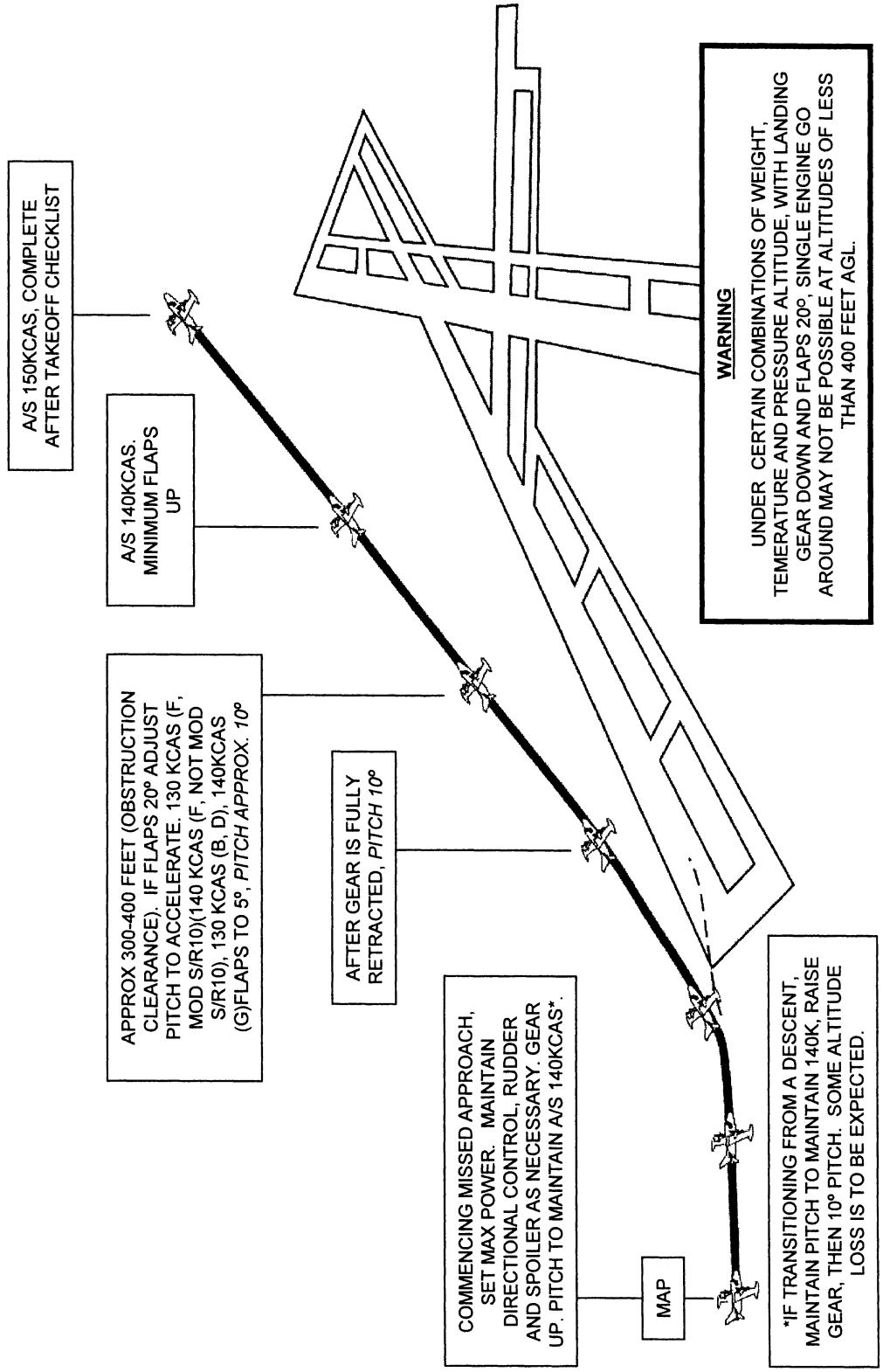
ONE ENGINE INOPERATIVE ILS AND MISSED APPROACH



C-23

MU-2B B, D (-10), F (-20), G (-30)

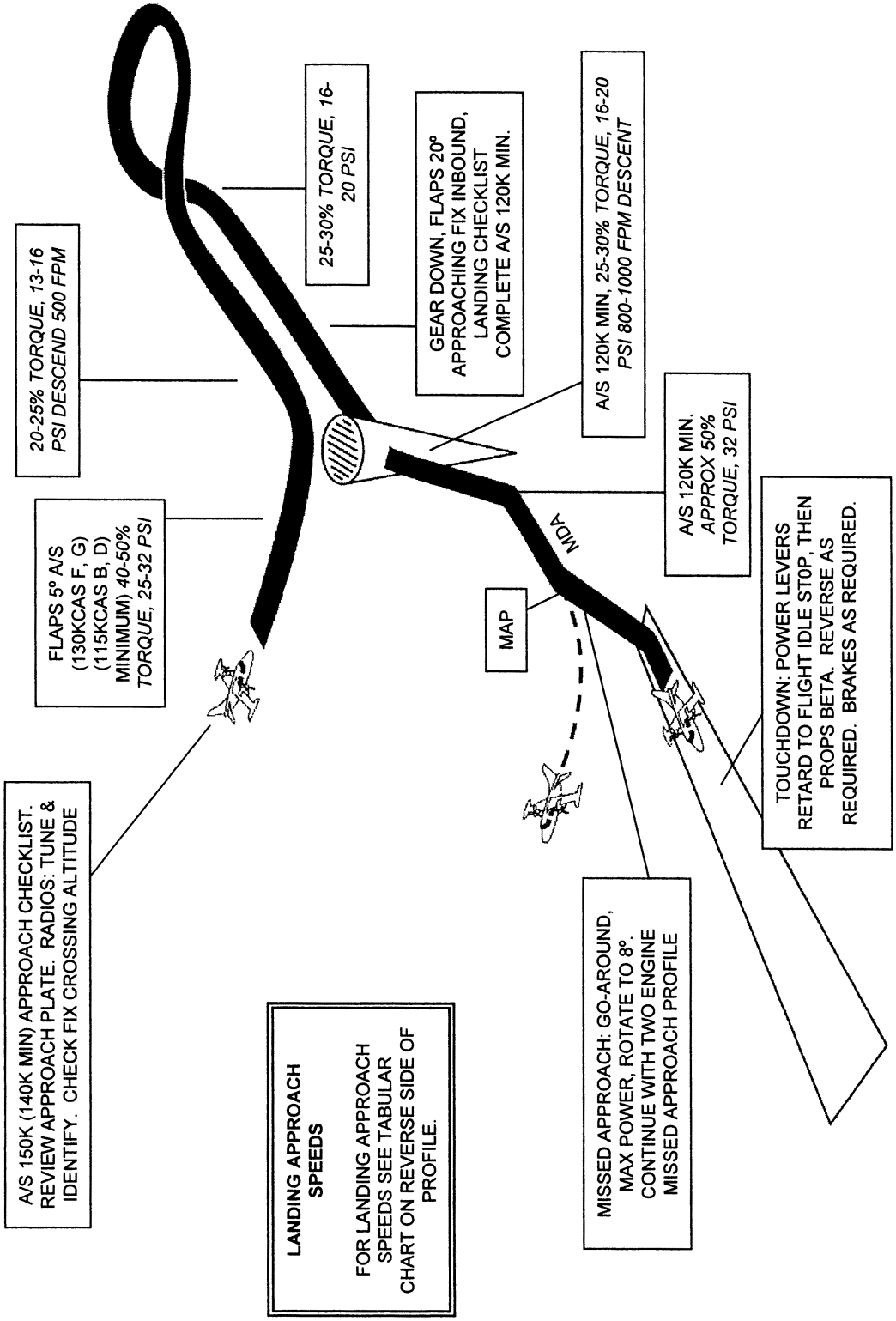
ONE ENGINE INOPERATIVE MISSED APPROACH



C-24

MU-2B B, D (-10), F (-20), G (-30)

NON-PRECISION AND MISSED APPROACH



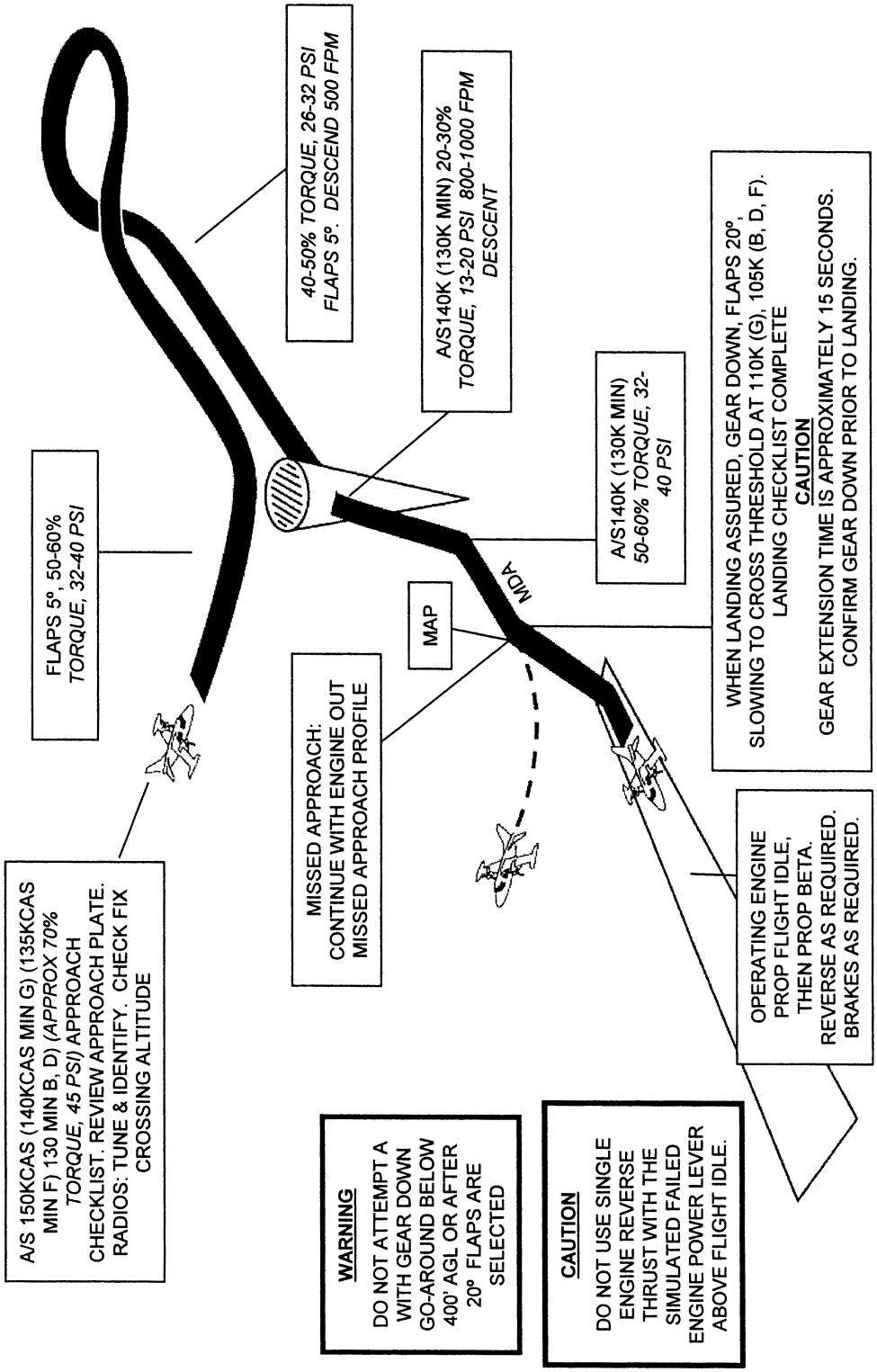
C-25

LANDING APPROACH SPEEDS Vref
B, B+, D, F, G

	FLAPS 20° (1.3 VSI)				FLAPS 40° (1.5 VSI)			
WEIGHT	B	B+, D	F	G	B	B+, D	F	G
7,000	92	92	93		94	94		
7,500	95	95	96	94	98	98	99	100
8,000	98	98	100	97	101	101	103	103
8,500		101	103	100		104	106	106
8,490	101				104			
8,930		103				107		
9,000			106	103			109	109
9,435			108				112	
9,500				105				112
10,000				108				115
10,260				109				117

MU-2B B, D (-10), F (-20), G (-30)

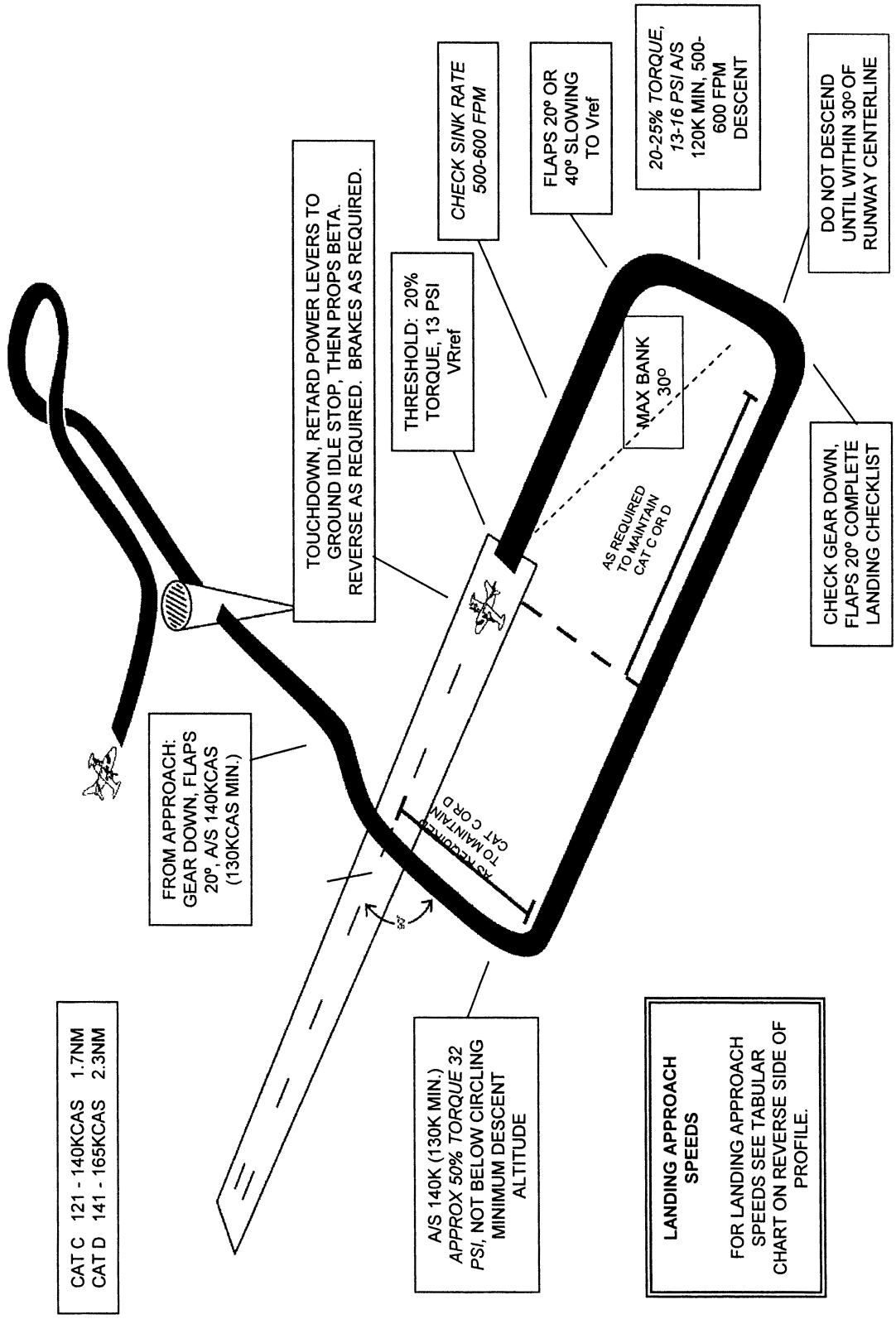
ONE ENGINE INOPERATIVE NON-PRECISION AND MISSED APPROACH



C-26

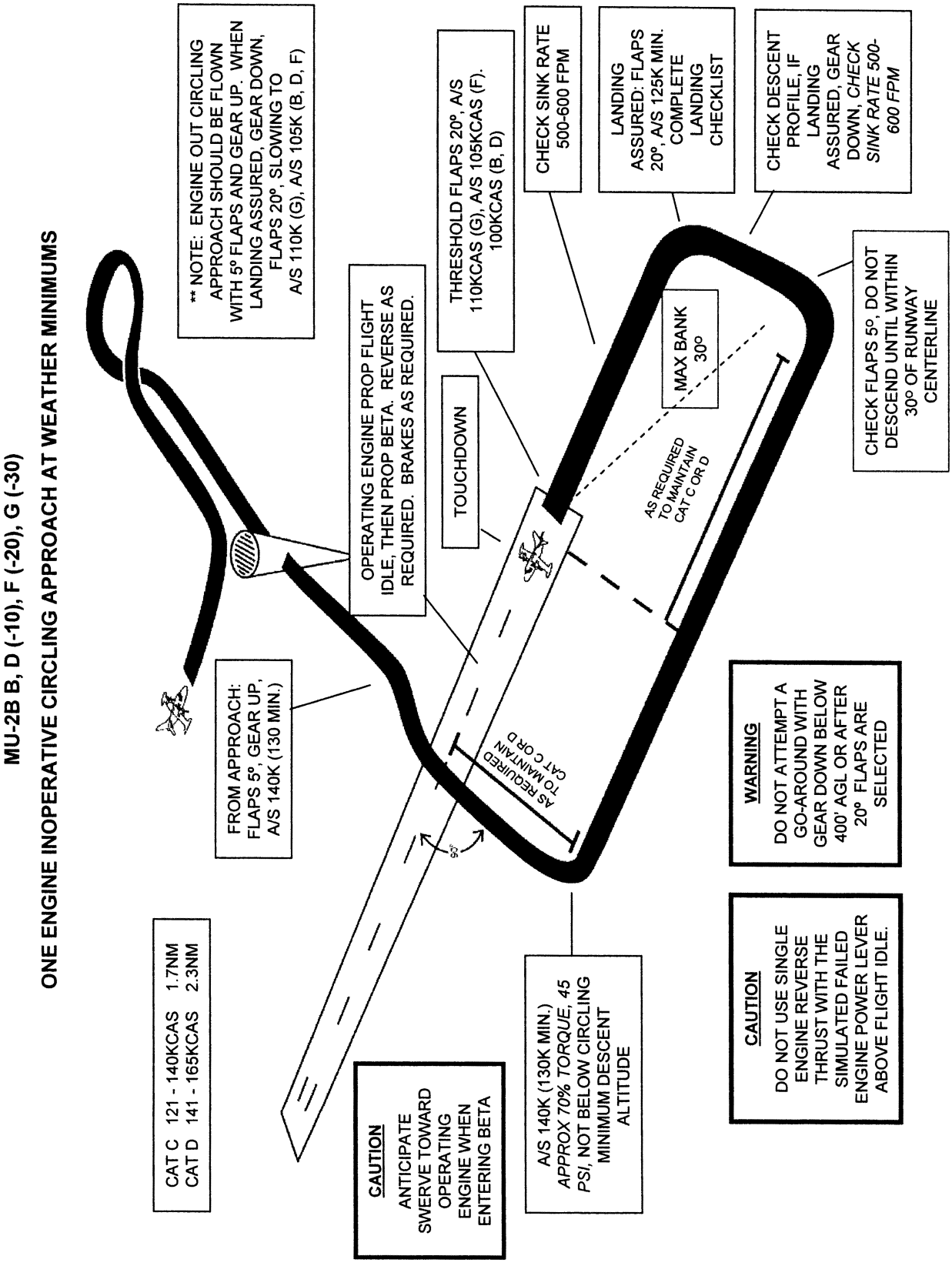
MU-2B B, D (-10), F (-20), G (-30)

CIRCLING APPROACH AT WEATHER MINIMUMS



LANDING APPROACH SPEEDS Vref
B, B+, D, F, G

	FLAPS 20° (1.3 VSI)				FLAPS 40° (1.5 VSI)			
WEIGHT	B	B+, D	F	G	B	B+, D	F	G
7,000	92	92	93		94	94		
7,500	95	95	96	94	98	98	99	100
8,000	98	98	100	97	101	101	103	103
8,500		101	103	100		104	106	106
8,490	101				104			
8,930		103				107		
9,000			106	103			109	109
9,435			108				112	
9,500				105				112
10,000				108				115
10,260				109				117



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(D) Each MU–2B profile in its respective section follows the outline below.

(1) Normal Takeoff (5- and 20-degrees flaps).

(2) Takeoff Engine Failure (5- and 20-degrees flaps).

(3) Takeoff Engine Failure on Runway or Rejected Takeoff.

(4) Takeoff Engine Failure after Liftoff—Unable to Climb (Classroom or FTD only).

(5) Steep Turns.
(6) Slow Flight Maneuvers.
(7) One Engine Inoperative Maneuvering/ Loss of Directional Control.
(8) Approach to Stall (clean configuration/ wings level).
(9) Approach to Stall (takeoff configuration/15- to 30-degrees bank).
(10) Approach to Stall (landing configuration/gear down/40-degrees flaps).
(11) Accelerated Stall (no flaps).
(12) Emergency Descent (low speed).
(13) Emergency Descent (high speed).
(14) Unusual Altitude Recovery (nose high).
(15) Unusual Altitude Recovery (nose low).
(16) Normal Landing (20- and 40-degrees flaps).
(17) Go Around/Rejected Landing.
(18) No Flap or 5-degrees flaps Landing.
(19) One Engine Inoperative Landing (5- and 20-degrees flaps).
(20) Crosswind Landing.
(21) ILS and Missed Approach.
(22) Two Engine Missed Approach.
(23) One Engine Inoperative ILS and Missed Approach.
(24) One Engine Inoperative Missed Approach.
(25) Non-Precision and Missed Approach.
(26) One Engine Inoperative Non-Precision and Missed Approach.
(27) Circling Approach at Weather Minimums.
(28) One Engine Inoperative Circling Approach at Weather Minimums.

Engine Performance

(A) The following should be considered in reference to power settings and airspeeds:

(1) Power settings shown in *italics* are provided as guidance only during training and are not referenced in the AFM. Power setting guidance is provided to show the approximate power setting that will produce the desired airspeed or flight condition. Actual power settings may be different from those stated and should be noted by the instructor and student for reference during other maneuvers. Power settings in the profiles are stated in torque or PSI and will vary with aircraft model, engine model, weight, and density altitude. Power settings are based on standard atmospheric conditions.

(2) Some pilots prefer to set power initially using fuel flow, because the fuel flow system is not field adjustable. Fuel flow settings refer to engine operations only. If fuel flow is used to set power for takeoff, check torque and temperature after setting fuel flow and adjust torque or temperature, whichever is limiting, for maximum takeoff power prior to liftoff.

(3) Improperly adjusted torque or improperly calibrated temperatures are a safety of flight issue and must be checked and corrected prior to conducting flight training.

(4) The pilot should refer to the performance section of the airplane flight manual to determine actual speeds required for his/her particular model and specific weight for any given operation.

In Flight Maneuvering

(A) Maneuvers conducted at altitude such as stalls and steep turns must always be preceded by clearing turns and at least one crew member must continually clear the flying area during the maneuver. The instructor must emphasize the importance of clearing the area, even if the maneuvers are being done in an FTD or simulator. This will create the habit pattern in the pilot to clear the area before practicing maneuvers.

(B) During stalling maneuvers and upon recognition of the indication of a stall, the pilot must call the ''stall'' to the instructor and then proceed with the recovery. In addition, during training, the pilot must announce the completion of the stall recovery maneuver. Instructors must exercise caution when conducting stall maneuvers and be prepared to take the controls if the safe outcome of the maneuver is in doubt.

(C) During accelerated stall maneuvers, it is important that the instructor pay close attention to the position of the ball throughout the maneuver and recovery so as to maintain coordinated flight. Stall recognition and recovery is the completion criteria, and it is not necessary to continue the stall beyond the stick shaker to aerodynamic buffet.

(D) When demonstrating a loss of directional control with one engine inoperative, the engine failure must only be simulated. During the slowing of the aircraft to demonstrate loss of directional control, the instructor should use the rudder block method to allow the student to experience the loss of directional control associated with VMC, at a speed of approximately 10 knots above actual VMC.

Note: To accurately simulate single engine operations, zero thrust must be established. The zero thrust torque setting will vary greatly from model to model. It is important to establish to zero thrust torque setting for your aircraft. This requires that the aircraft be flown on one engine to establish the zero thrust setting. This is accomplished by establishing single engine flight with one propeller feathered and noting the performance with the operating engine at maximum torque or temperature. It is suggested that two airspeeds be established for zero thrust power settings. They are 120 kts, flaps 20, gear up for takeoff and 140 knots, flaps 5, gear up for in-flight and approach maneuvering. Once performance has been established and recorded for each airspeed, restart the other engine and find the torque setting that duplicates the performance (climb or descent rate, airspeed) as was recorded with that propeller feathered. This torque setting will be zero thrust for the simulated inoperative engine. The student/pilot should note that the performance experienced with one engine operating at flight idle, may produce greater performance than if the engine were stopped and the propeller feathered.

Pre-maneuver briefings for any maneuver that requires either an actual engine shutdown or a simulated engine failure must be undertaken when using an aircraft. In the case of an actual engine shutdown, a minimum altitude of 3,000 ft above ground level (agl) must be used and done in a position where a safe landing can be made at an airport in the event of difficulty.

Takeoff and Landing

(A) When using the profiles to establish the procedure for configuring the aircraft for takeoff or landing, it is important to understand that each task for the procedure, as noted on the procedure diagram, establishes the point at which each task should have been completed and not the exact point at which the task should be accomplished unless otherwise stated in the task box. Numbers which represent performance such as descent rates or other maneuvering information that is not contained in the aircraft flight manual are shown in *italics.*

(B) In all takeoff profiles the prompt for the gear to be retracted is ''No Runway Remaining, Gear Up''. This should set the decision point for making a landback after an engine failure and should normally be reached at altitudes of less than 100 ft AGL. It is impractical to attempt a landback from above 100 ft AGL, because it can require distances up to 10,000 ft from the beginning of the takeoff run to bring the aircraft to a stop. But, even on very long runways, landback will not be necessary above 100 ft AGL and above Vyse for the flap configurations, if the single engine climb capability found in the POM charts, with the gear up, is positive (250 fpm or better) and obstacles clearance is not an issue.

(C) The manufacturers FAA-accepted checklists and checklist in Appendix C to this SFAR No. 108 describe a procedure for the discontinuance of flight following an engine failure after takeoff and the realization that the aircraft cannot climb. The corresponding flight profile in this training program is ''Takeoff Engine Failure, Unable to Climb''. This maneuver must not be attempted in the aircraft, but must be the subject of a classroom discussion or be demonstrated in the FTD.

(D) The focus of all landing procedures, whether two engine or engine out, is on a stabilized approach from an altitude of 500 feet. This will not be possible for all approach procedure maneuvering, especially during non-precision or circle to land approaches. Approach procedures for these two approaches should be stabilized from the point at which the pilot leaves the Minimum Descent Altitude for the landing.

(E) When performing one engine inoperative approaches, landings or missed approaches, the instructor must be prepared to add power to the simulated failed engine at the first sign of deteriorating airspeed or other situation that indicates the student's inability to correctly perform the maneuver.

(F) While maneuvering in the pattern or during instrument approach procedures with one engine inoperative, a 30° bank angle must not be exceeded. This will become especially important when executing non-precision and circle to land approaches.

Emergency and Abnormal Procedures

(A) During training, either in the FTD or in the aircraft, the performance of emergency and abnormal procedures is critical to the completion of the training program. All emergency and abnormal procedures should be simulated when training in the MU–2B airplane.

(B) When presenting emergency scenarios to the student, the instructor must not introduce multiple emergencies concurrently.

Scenario Based Training (SBT)

SBT flight training creates an environment of realism. The SBT programs utilize a highly structured flight operation scenario to simulate the overall flight environment. The pilot is required to plan a routine, point-to-point flight and initiate the flight. During the conduct of the flight, ''reality-based'' abnormal or emergency events are introduced without warning. Because the pilot is constantly operating in the world of unknowns, this type of training also builds in the ''startle factor'', and just as in the real-world, the consequences of the pilot's actions (decisions, judgment, airmanship, tactile skills, etc.) will continue to escalate and affect the outcome of the planned flight. Although flying skills are an integral part of this type of training, SBT enables the pilot to gain experience in dealing with unexpected events and more importantly further enhances the development of good judgment and decisionmaking.

PART 135—OPERATING REQUIREMENTS: COMMUTERS AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 5. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

■ 6. Add SFAR No. 108 to part 135 to read as follows: SPECIAL FEDERAL AVIATION REGULATION NO. 108.

Note: For the text of SFAR No. 108, see part 91 of this chapter.

Issued in Washington, DC, on January 23, 2008.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. 08–398 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
February 6, 2008

Part III

Department of Housing and Urban Development

24 CFR Part 5
Independent Public Accountant Roster; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–5054–P–01]

RIN 2501–AD20

Independent Public Accountant Roster

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a roster of approved independent public accountants and public accounting firms (IPAs) that would be permitted to perform audits or related services required by participants in certain HUD programs and submitted to HUD. The proposed rule would also establish eligibility, application, and removal procedures for IPAs listed on the IPA Roster. HUD believes this proposed rule would implement an additional protection to ensure the accuracy of financial data submitted to HUD by its program participants.

DATES: *Comment Due Date:* April 7, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. There are two methods for comments to be submitted as public comments and to be included in the public comment docket for this rule. Additionally, all submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Public and Indian Housing, Real Estate Assessment Center (REAC), Attention: Elizabeth Hanson, Deputy Assistant Secretary, Department of Housing and Urban Development, Office of Public and Indian Housing Real Estate Assessment Center, 550 12th Street, SW., Suite 100, Washington, DC 20410; telephone number (888) 245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. Additional information is available from the PIH–REAC Internet site at *http://www.hud.gov/reac/.*

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations at 24 CFR part 5, subpart H (currently consisting of a single section, 24 CFR 5.801) establish uniform financial reporting standards for the Department's public housing, Section 8 housing, and insured housing programs. The uniform financial reporting standards apply to those entities or individuals identified in 24 CFR 5.801. They are: (1) Public housing agencies (PHAs); (2) owners of housing assisted under any Section 8 project-based housing assistance payments program; (3) owners of multifamily projects receiving HUD assistance or with mortgages insured, coinsured, or held by HUD; and (4) HUD-approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and nonsupervised loan correspondents (collectively referred to as ''covered entities''). The uniform financial reporting standards require these entities or individuals to submit annual financial information electronically and in accordance with Generally Accepted Accounting Principles (GAAP). HUD relies on this audited financial information to ensure the integrity of financial data submitted to HUD.

II. This Proposed Rule

For the financial information required of HUD program participants, as described in 24 CFR 5.801, HUD is proposing to establish an independent public accountant (IPA) roster (IPA Roster or Roster) and to provide eligibility, application, and removal procedures for the IPA Roster. The quality and accuracy of financial data submitted to HUD begins with selecting qualified IPAs who agree to comply with HUD's requirements with respect to the provision of audits or related services. The IPA Roster would list IPAs that have been approved to perform audits or related services for covered entities. IPAs include individuals employed by public accounting firms (including a solo practice) or a State Auditor's Office who are licensed by a regulatory authority of a State or other political subdivision of the United States both before and after December 31, 1970. IPAs also include certified public accountants. As proposed, covered entities or individuals would be required to select an IPA that is listed on the IPA Roster for their particular jurisdiction to perform the audits or related services required by HUD. Any IPA seeking to perform audits or related services for the entities or individuals noted above would be required to be a listed IPA sole practitioner, be a member or partner of a listed IPA, or be a full-time employee of a listed IPA.

It is important to note, however, that while HUD is committed to improving the quality and accuracy of the financial information submitted to it, the inclusion of an IPA on the IPA Roster would not create or imply any warranty or endorsement by HUD of a listed IPA to the entities listed in 24 CFR 5.801, or to any other organization or individual user of the resulting audited financial statements. Nor would such inclusion represent a warranty of the specific audits or related services performed by a listed IPA. Such inclusion would mean only that the IPA has met the qualifications and conditions prescribed by the Secretary for placement on the IPA Roster.

A. IPA Roster Placement Procedure

This proposed rule would establish the requirements for listing on the IPA Roster. In order to be placed on the IPA Roster, each IPA would be required to submit an application to HUD identifying the specific state(s), territory(ies), Commonwealth(s), or District of the United States in which

the IPA wishes to be considered for listing. HUD would review each IPA's application to ensure that each requirement for eligibility is met for each of the specific jurisdictions in which the IPA has requested to be considered for listing. If HUD's review of an IPA's application demonstrates that the IPA is eligible in a particular jurisdiction, the IPA's name would be placed on the IPA Roster for that jurisdiction. If HUD denies the IPA's application, the IPA can request reconsideration, and the IPA would have 30 days in which to demonstrate that it was in fact eligible as of the date of its initial application. Should the IPA not be able to demonstrate eligibility as of the date of the IPA's application, the IPA would not be listed, but could reapply at any time in the future.

To be eligible for listing on the IPA Roster, an IPA would be required to:

1. Be licensed or authorized to practice in each of the specific jurisdictions for which the IPA is to be listed;

2. Not be, nor employ or contract with anyone for the performance of audits or related services who is, suspended, debarred, voluntarily excluded, subject to a limited denial of participation, or subject to any order of disbarment or other denial of right to practice before the Securities and Exchange Commission, or subject to a jurisdiction's disciplinary action that has resulted in the revocation, suspension, or surrender of a license or authorization to practice public accounting;

3. Agree to accept only those engagements for audits or related services where it meets the minimum qualifications specified by the Generally Accepted Government Auditing Standards (GAGAS);

4. Agree to accept engagements for only those entities listed in 24 CFR 5.801 that are located in jurisdictions in which the IPA is listed;

5. Agree to establish and implement quality control procedures sufficient to satisfy the quality control standards of GAGAS;

6. Agree to comply with the professional standards applicable to any audit or related service performed;

7. Agree to comply with any accountancy laws and rules of each jurisdiction for which the IPA is to be listed;

8. Agree to comply with all applicable HUD rules and instructions relating to financial reporting, audits, and related services performed for the entities listed in 24 CFR 5.801;

9. Agree to submit to and cooperate with reviews by HUD of the IPA's performance of audits or related services for those entities listed in 24 CFR 5.801;

10. Agree to notify HUD if the IPA or any member or employee of the firm is, or has been, within the previous 5 years, indicted or otherwise charged with or convicted of any offense listed in 24 CFR 24.800(a);

11. Agree to notify HUD if the IPA or any member or employee of the firm is, or has been, within the previous 5 years, adjudged to be civilly liable for any of the offenses listed in 24 CFR 24.800(a); and

12. Agree to comply with any requests for information made by HUD. The IPA would be required to comply with all agreements required to be listed on the IPA Roster immediately upon approval for such listing.

B. Responsibilities of Listed IPAs

An IPA who is eligible to perform audits or related services, and who is engaged by a covered entity or entities, has a contractual responsibility to those entities. Furthermore, the IPA also has a responsibility to HUD, whenever a covered entity or entities for which the IPA provides audits or related services are required to submit those audits to HUD. Therefore, IPAs listed on the IPA roster will be responsible for: (1) Complying with any agreements with HUD immediately upon their approval for listing on the IPA Roster and continually thereafter, including, but not limited to, agreements required for listing on the IPA Roster; (2) maintaining compliance with any other eligibility requirements for listing on the IPA Roster for each jurisdiction in which they are listed; and (3) notifying HUD within 30 days of any change in their continued compliance with eligibility requirements.

C. IPA Roster Removal Procedure

In order to safeguard the continued quality and accuracy of the audits and related services performed by listed IPAs and, ultimately, the integrity of the financial data submitted to HUD, this proposed rule would establish a removal process by which the listed IPAs may be removed from the IPA Roster. Removal of an IPA from the IPA Roster would not preclude HUD or the federal government from also bringing a false claims action, taking action against an IPA under 24 CFR part 24 (''Government Debarment and Suspension and Governmentwide Requirements for Drug-Free Workplace (Grants)''), or from seeking any other remedy against an IPA available to HUD or the federal government by statute or otherwise.

This proposed rule would allow HUD to remove an IPA from the IPA Roster who fails to fulfill its responsibilities as a listed IPA, for cause at any time. Cause for removal would include, but would not be limited to: (1) Failing to comply with any agreements with HUD, including, but not limited to, agreements identified at proposed new 24 CFR 5.810(a) as requirements for eligibility; (2) failing to maintain compliance with any other eligibility requirements for listing on the IPA Roster for each jurisdiction in which the IPA is listed; (3) failing to notify HUD within 30 days of any change in their continued compliance with eligibility requirements; or (4) making, or causing to be made, any false certification to HUD.

In certain circumstances described below, the proposed rule would require the automatic removal of an IPA from the IPA Roster, while in other circumstances the proposed rule would provide the IPA with an opportunity to respond and attend a conference before the IPA's removal from the IPA Roster. The proposed rule would require the automatic removal of an IPA from the IPA Roster: (1) When the IPA fails to maintain compliance with eligibility requirements by being debarred, suspended, voluntarily excluded, subject to a limited denial of participation, or subject to any order of disbarment or other denial of right to practice before the Securities and Exchange Commission; or (2) when the IPA fails to maintain compliance with eligibility requirements by losing, whether by revocation, suspension, surrender, or other means, its license or authorization to practice in any particular jurisdiction. However, if the IPA's license or authorization to practice lapsed or expired for reasons other than disciplinary actions, the IPA would be removed from the IPA Roster only for that specific jurisdiction. Under any of these automatic removal circumstances, the procedures for contestable removal set forth in 24 CFR 5.814(d) would not be applicable.

Except in the above cases of automatic removals, the removal procedures proposed by this rule would require HUD to give an IPA written notice of the proposed removal from the IPA Roster. Such notice would include the reasons for the proposed removal. The IPA would then be given 30 calendar days from the date of the removal notice to submit a written response opposing the removal. During this period, the IPA would also have the ability to submit a written request for a conference to discuss the proposed removal. If the IPA does not submit a response opposing the

proposed removal within 30 calendar days, the removal would become effective 30 calendar days after the date of HUD's initial removal notice.

If the IPA opposes the proposed removal, the Deputy Assistant Secretary of the Real Estate Assessment Center (REAC), or a designee (''Reviewing Official''), would: (1) Review the proposed removal notice along with any supporting information and the response to the notice; and (2) conduct the conference with the IPA, if requested, before making a determination as to whether the IPA should be removed from the IPA Roster. When a request for a conference is received, the Reviewing Official would schedule the conference within 30 calendar days of the date the request is received. The Reviewing Official would be required to issue a determination within 30 calendar days of receiving the IPA's written response, or, if a conference is requested, within 30 calendar days of the closing of the conference. The Reviewing Official may affirm or deny the IPA's proposed removal from the IPA Roster, or the Reviewing Official may find cause for removal but order the removal held in abeyance. In no instance would the Reviewing Official be the individual who made the initial determination to propose the IPA's removal from the IPA Roster.

The removal of the IPA would become effective on the date of HUD's notice affirming its initial removal decision. When the IPA's removal is held in abeyance, the effective date of the IPA's removal would be set for a date specified in the future to allow the IPA to demonstrate that all causes for removal have been eliminated. If the IPA successfully demonstrates that all causes for removal have been eliminated, the order of termination would be withdrawn; however, if the IPA fails to demonstrate that all causes for removal have been eliminated, the IPA would be removed from the IPA Roster as of the effective date listed in the order of abeyance.

Where HUD is considering the removal of an IPA who has, during the previous 3 years, performed audits or related services for covered entities covered by this rule, HUD will endeavor to ascertain whether those covered entities receive funds from other federal agencies. Where HUD determines that the IPA has performed audits or related services for covered entities receiving federal funds from other agencies, HUD will notify the agencies providing such funding prior to taking any removal action.

D. Effect of Removal From IPA Roster

An IPA who has been removed from the IPA Roster would not be permitted to enter into any contract or engagement for audits or related services with covered entities. While the IPA would be permitted to continue performance under any contract or engagement in effect at the time of the removal, the IPA would not be permitted to extend or renew any contract or engagement, with the exception of no-cost time extensions, unless the Reviewing Official were to grant an exception. The granting of any such exception would be within the sole discretion of the Reviewing Official and would be granted only when determined to be in the interest of HUD. Additionally, nothing in this rule would affect an entity's discretion to terminate an existing contract or engagement as a result of the IPA's removal, or due to the circumstances precipitating such removal.

III. Implementation of This Rule and Cost Benefits of the Rule

To ensure that IPAs affected by this rule have adequate time to register with HUD, HUD plans to delay, at the final rule stage, the implementation date of this rule for a period of 12 months following publication of the final rule. During this phase-in period, HUD plans to undertake outreach to covered entities and IPAs that have registered for a unique IPA identifier (UII) under the existing Uniform Financial Reporting Standards (UFRS) regulation of the transition to the new requirements that provide for listing on the IPA Roster. HUD intends to undertake such outreach utilizing email notifications, website postings, mailings, system messages, presentations at industry conferences and seminars, press releases, and, to the extent necessary, targeted phone calls, to ensure that all IPAs registered under existing regulations, and other interested IPAs, are aware of this new rule. HUD intends to begin its outreach efforts by ensuring that IPAs and covered entities are notified of this proposed rule, when published. HUD plans to increase these efforts following the publication of the final rule, continuing through the one-year phase-in period following publication of the final rule. Thirty days prior to the expiration of the phase-in period, HUD plans to contact all IPAs registered with HUD under the current UFRS regulation and all covered entities notifying them of the expiration of the phase-in period and reminding them of the approaching implementation date of the IPA Roster regulation. HUD has set a goal of receiving applications from 90 percent of currently registered IPAs during the phase-in period.

Upon the implementation date of the final IPA Roster rule, the UIIs of IPAs registered under the existing UFRS regulation that have failed to seek and obtain approval for listing on the IPA Roster will be deactivated. Any IPA whose UII has been deactivated remains able to apply for placement on the IPA Roster, in accordance with the procedures of any final IPA Roster rule.

HUD recognizes the costs, in terms of time and resources, that will be committed to the implementation of an IPA Roster rule. However, the Department believes that the benefits to both the Department and the entities covered by this rule far outweigh any costs associated with an IPA Roster rule. Specifically, if adopted, the IPA Roster rule would provide the Department a significant measure of confidence that the audits being submitted to it have been performed by licensed IPAs in accordance with professional standards. Audits are a critical management tool for both the federal government and the recipients of federal funding, and it is essential to the effective oversight and monitoring of billions of federal dollars that these audits be performed properly.

At this time, the Department does not have the ability to verify that IPAs are licensed or competent before an IPA is engaged to perform a covered service. Once implemented, the IPA Roster rule would provide the Department with a tool to ensure that those auditors being engaged to perform work for covered entities are, at a minimum, licensed in the jurisdictions in which they are performing those covered services and are willing to perform the covered services in accordance with professional standards.

Additionally, the remedies currently available to the Department to address unlicensed or unprofessional auditors are the costly and very time-consuming actions for debarment or suspension. In the Department's experience, such actions are generally complex and technical, and require an excessive amount of time and resources to prosecute. Once implemented, the IPA Roster rule would result in significant savings of departmental enforcement resources by enabling the Department to take action in a timely and efficient manner if it identifies an IPA that is not performing in accordance with established auditing standards or the provisions of the IPA Roster rule. Thus, the Department believes that the improved oversight of federal funds and program performance resulting from this rule, along with the time and monetary

savings associated with enforcement actions against IPAs, justify the establishment of this roster.

HUD recognizes that this proposed rule, which would establish a roster of approved independent public accountants and public accounting firms, is an innovative method to attempt to improve the quality of the audits submitted to HUD and improve HUD's oversight of federal funds and program performance. Establishing such a roster would also be unique to the federal government. For these reasons, HUD encourages the public to submit comments on the potential effectiveness of the rule and on the general concept of establishing a roster of approved independent public accountants and public accounting firms as a means to improve the quality of the audit of federal funds and program performance.

IV. Small Business Concerns Related to Independent Public Accountant Roster

In creating and maintaining the IPA Roster, or in taking action to remove a listed IPA, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to ''work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement-related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel.'' To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small business concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], you will find the necessary comment forms at *www.sba.gov.ombudsman* or call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD will work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

V. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at (202) 708–3055.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must be received within 60 days from the date of this rule. The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
24 CFR 5.812	7,137	1	1	7,137

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number FR–5054–P–01 and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395–6974, and Directives Management Officer, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh

Street, SW., Room 4116, Washington, DC 20410–8000.

Environmental Impact

This proposed rule establishes placement and removal procedures for HUD's IPA Roster. This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule establishes the procedure by which an IPA who has violated professional auditing or other HUD requirements may be removed from HUD's IPA Roster. Accordingly, to the extent that this proposed rule impacts small entities, it is as a result of actions taken by small entities themselves; that is, violation of professional auditing, HUD, or other requirements. The proposed rule provides several procedural safeguards designed to minimize any potential impact on small entities. For example, the rule grants IPAs selected for removal from the IPA Roster with the opportunity to provide a written response and to request a conference regarding a proposed removal. The rule also specifies that the official designated by HUD to review an appeal may not be the same HUD official involved in the initial removal decision.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments from all entities, including small entities, regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandate on any state, local, or tribal governments, or on the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or that preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure; Aged; Claims; Crime; Government contracts; Grant programs—housing and community development; Individuals with disabilities; Intergovernmental relations; Loan programs—housing and community development; Low and moderate income housing; Mortgage insurance; Penalties; Pets; Public housing; Rent subsidies; Reporting and recordkeeping requirements; Social security; Unemployment compensation; Wages.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Add new §§ 5.802, 5.804, 5.806, 5.808, 5.810, 5.812, 5.814, 5.816, 5.818, and 5.820 to read as follows:

§ 5.802 Definitions.

The following definitions apply to this subpart:

Audit(s) or related service(s). Any audit, attestation, compilation, review, or other service that an IPA is required to perform in accordance with those financial reporting standards described in § 5.801.

Covered entity(ies). Public housing agencies; contract administrators; owners; and Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents that are subject to the requirements of 24 CFR 5.801, for which HUD is the cognizant or oversight agency under the Single Audit Act Amendments of 1996.

Independent Public Accountant (IPA). An accountant is an individual employed by a public accounting firm (including a solo practice) or a State Auditor's Office, and licensed by a regulatory authority of a State or other political subdivision of the United States both before and after December 31, 1970. All certified public accountants are considered to be independent public accountants.

Jurisdiction. Any State, territory, Commonwealth, or District of the United States.

Professional standards. (1) Accounting principles that are:

(i) Established by the Government Accounting Standards Board or Generally Accepted Accounting Principles (GAAP), as applicable;

(ii) Established by the Office of Management and Budget (OMB);

(iii) Established by HUD; or

(iv) Applicable to audit reports for particular covered entities or covered by the quality control system of a particular IPA listed on the IPA Roster.

(2) *Auditing standards.* Standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards that are issued or adopted by:

(i) The American Institute of Certified Public Accountants (Generally Accepted Auditing Standards (GAAS));

(ii) The Government Accountability Office (Generally Accepted Government Auditing Standards (GAGAS));

(iii) The Office of Management and Budget (OMB Circular A–133); or

(iv) HUD.

§ 5.804 The Independent Public Accountant Roster (IPA Roster).

(a) *Independent Public Accountant Roster.* HUD maintains a roster of independent public accountants and public accounting firms (IPAs) who are approved to perform audits or related services in specified jurisdictions for those entities that are required to submit audited financial statements to HUD under this subpart, and for which HUD is the cognizant or oversight agency under the Single Audit Act Amendments of 1996.

(b) *Disclaimer.* The inclusion of an IPA on the IPA Roster does not create or imply any warranty or endorsement to any organization or individual, including any other potential user of the

audited financial statements, by HUD of a listed IPA, nor does it represent a warranty of any audits or related services performed by the listed IPA. The inclusion of an IPA on the IPA Roster means only that the IPA has met the qualifications and conditions, prescribed in this part, for inclusion on the IPA Roster.

§ 5.806 Responsibilities of an IPA listed on the IPA Roster.

An IPA listed on the IPA Roster is responsible for:

(a) Complying with any agreements with HUD, including, but not limited to, agreements identified at § 5.810(a);

(b) Maintaining any other eligibility requirements and compliance for each state or jurisdiction in which the IPA is listed;

(c) Notifying HUD within 30 days of any change in the continued compliance of the IPA with eligibility requirements; and

(d) Not making, or causing to be made, any false certifications to HUD.

§ 5.808 Applicability of IPA Roster.

(a) Any IPA that seeks to perform audits or related services in a particular jurisdiction for covered entities must be listed on the IPA Roster for that state or jurisdiction.

(b) When the IPA wishes to perform audits or related services for covered entities with offices in numerous jurisdictions, the IPA need only be listed in the jurisdiction in which the covered entity maintains its headquarters.

(c) Every IPA that is engaged to perform audits or related services, or who contracts with an IPA to perform any portion of audits or related services, must be listed on the IPA Roster individually or be an employee or member of an auditing firm listed on the IPA Roster.

§ 5.810 Eligibility requirements for placement on the IPA Roster.

To be eligible for placement on the IPA Roster:

(a) Public accounting firms and State Auditor's Offices must:

(1) Be licensed or authorized to practice in each of the specific jurisdiction(s) for which the IPA is to be listed;

(2) Not be, or employ or contract with anyone for the performance of audits or related services who is: suspended, debarred, voluntarily excluded, subject to a limited denial of participation, or subject to any order of disbarment or other denial of right to practice before the Securities and Exchange Commission, or subject to a jurisdiction's disciplinary action that has resulted in the revocation, suspension, or surrender of a license or authorization to practice public accounting;

(3) Agree upon approval for placement on the IPA Roster, to comply with the following to maintain placement on the IPA Roster:

(i) Accept only those engagements for audits or related services that meet the minimum qualifications specified by the Generally Accepted Government Auditing Standards (GAGAS);

(ii) In servicing covered entities, accept only those engagements for audits or related services for covered entities located in jurisdictions in which the IPA is listed on the IPA Roster;

(iii) Establish and implement quality control procedures sufficient to satisfy the quality control standards of GAGAS;

(iv) Comply with the professional standards applicable to any audits or related services performed for covered entities;

(v) Comply with any accountancy laws and rules of each jurisdiction for which the IPA is to be listed;

(vi) Comply with all applicable HUD rules and instructions relating to financial reporting, audits, or related services;

(vii) Submit to and cooperate with reviews by HUD of the IPA's performance of audits or related services for covered entities;

(viii) Notify HUD if the IPA or any member or employee of the firm is, or has been within the previous 5 years, indicted or otherwise charged with or convicted of any offense listed in 24 CFR 24.800(a);

(ix) Notify HUD if the IPA or any member or employee of the firm is, or has been within the previous 5 years, adjudged to be civilly liable for any of the offenses listed in 24 CFR 24.800(a); and

(x) Comply with any requests for information made by HUD.

(b) Individual public accountants that wish to be listed on the IPA Roster must either:

(1) Meet the eligibility requirements specified in § 5.810(a); or

(2) Be a partner or member of a public accounting firm listed on the IPA Roster, or be a full-time employee of such a firm.

§ 5.812 IPA Roster Placement Procedures.

(a) *Application.* An IPA seeking to be listed on the IPA Roster must submit an application to HUD. The application must specifically identify each jurisdiction in which the IPA seeks to be listed, and must demonstrate that the IPA meets the eligibility requirements described in § 5.810 for listing in each such jurisdiction. The application must be in a form, and delivered in a manner, prescribed by HUD.

(b) *Approval for listing on the IPA Roster.* Once received by HUD, the application will be reviewed and a decision issued within 45 days of HUD's receipt of the application, unless HUD extends this time by providing notice to the IPA.

(1) *Approval.* If HUD determines that the IPA meets the eligibility requirements described in § 5.810 for listing in a particular jurisdiction, the IPA will be listed on the IPA Roster for that particular jurisdiction.

(2) *Denial.* If the IPA fails to demonstrate that it meets all the eligibility requirements described in § 5.810, the application will be denied.

(i) If a denial of the application is issued, the IPA will be notified of the reasons for the denial and will be given 30 days from the date of the denial to request reconsideration and demonstrate that the IPA did meet all eligibility requirements for listing in a particular jurisdiction at the time of the initial application.

(ii) If the IPA demonstrates that it did meet all eligibility requirements for listing in a particular jurisdiction at the time of the initial application, the IPA will be listed on the IPA Roster for that particular jurisdiction.

(iii) If the IPA fails to demonstrate that it met all eligibility requirements, the denial of the application is final and the IPA will be required to submit a new application to be considered for future placement on the IPA Roster.

§ 5.814 IPA Roster Removal Procedures.

(a) *Removal from the IPA Roster.*

(1) An IPA may be voluntarily removed from the IPA Roster by notifying the Department in writing, and specifying from which jurisdiction(s) the IPA wishes to be removed.

(2) An IPA that fails to fulfill its responsibilities as a listed IPA is subject to involuntary removal from the IPA Roster.

(b) *Involuntary automatic removal.* HUD may automatically remove an IPA from the IPA Roster for all applicable jurisdictions, without the benefit of a conference or other opportunity to respond, if the IPA:

(1) Fails to maintain compliance with eligibility requirements by being debarred, suspended, voluntarily excluded, subject to a limited denial of participation, or subject to any order of disbarment or other denial of right to practice before the Securities and Exchange Commission;

(2) Fails to maintain compliance with eligibility requirements by incurring a jurisdiction's disciplinary action that results in the revocation, suspension, or surrender of a license or authorization to practice; or

(3) Fails to maintain compliance with eligibility requirements by allowing licensing or authorization to practice to expire, not due to jurisdiction disciplinary action in any jurisdiction for which the IPA is listed on the IPA Roster.

(4) Automatic removal of an IPA from the IPA Roster for any jurisdiction will constitute automatic removal from the IPA Rosters for all jurisdictions. However, automatic removal under paragraph (b)(3) of this section for failure to maintain licensing or authorization constitutes removal for only the jurisdictions in which the IPA has allowed its licensing or authorization to practice to lapse, and does not affect the listing of the IPA on the IPA Roster for any other jurisdiction in which the IPA remains eligible.

(c) *Causes for contestable removal.* Causes for contestable removal include, but are not limited to:

(1) Failing to comply with any agreements with HUD, including, but not limited to, agreements identified at § 5.810(a);

(2) Failing to maintain compliance with any other eligibility requirements for listing on the IPA Roster for each jurisdiction in which the IPA is listed;

(3) Failing to notify HUD within 30 days of any change in the continued compliance of the IPA with eligibility requirements; or

(4) Making, or causing to be made, any false certification to HUD.

(d) *Procedure for contestable removal.* Unless an IPA is subject to automatic removal from the IPA Roster under paragraph (b) of this section, the following procedures apply:

(1) HUD will provide the IPA with written notice of the proposed removal from the IPA Roster. The notice of proposed removal will include the reasons for the proposed removal of the IPA from the IPA Roster.

(2) The IPA has 30 calendar days from the date of the notice of proposed removal to submit a written response objecting to the proposed removal and/or requesting a conference. If an IPA submits a timely written objection to the proposed removal, the Deputy Assistant Secretary of the Departmental Real Estate Assessment Center (REAC) or a designee (''Reviewing Official''), will review the proposed removal and the IPA objection, and conduct a conference with the IPA, if requested. When a request for a conference is received, the Reviewing Official will schedule the conference within 30 calendar days of the date the request is received. In no instance will the Reviewing Official be the same individual who made the initial determination to propose removal of the IPA from the IPA Roster.

(3) The Reviewing Official will issue a determination within 30 days of receiving the IPA's written response, or, if a conference is requested, within 30 days of the closing of the conference. The Reviewing Official may extend the time for issuance of a final decision by providing the IPA with notice.

(4) The Reviewing Official may affirm or deny the proposed removal from the IPA Roster, or the Reviewing Official may, in his or her sole discretion, find cause for the removal but order that the removal be held in abeyance pending further action.

(e) *Removal held in abeyance.* (1) When the Reviewing Official has determined that cause for removal exists, the Reviewing Official may, instead, in his or her sole discretion, issue an order of abeyance, deferring the removal of the IPA from the IPA Roster until a future date specified in the order of abeyance.

(2) The order of abeyance provides the IPA with the opportunity to demonstrate to the satisfaction of the Reviewing Official that all causes for the removal have been addressed prior to the effective date for removal specified in the order of abeyance.

(3) The Reviewing Official shall consider any relevant evidence submitted by an IPA as of the date specified in the order of abeyance, to determine whether all causes for removal have been addressed. Upon request by the IPA, the Reviewing Official, in his or her discretion, may review such evidence at any time prior to the date specified in the order of abeyance.

(f) *Other action.* Nothing in this subpart prohibits HUD or the federal government from taking such other action against an IPA as provided under 24 CFR part 24, or from seeking any other remedy against an IPA available to HUD or the federal government by statute or otherwise.

(g) *Effective dates of removal from the IPA Roster.* (1) Unless an IPA is subject to automatic removal from the IPA Roster under paragraph (b) of this section, the following effective dates apply.

(i) If the IPA does not submit a written response within 30 calendar days of the date of the notice of proposed removal, the removal becomes effective 30 calendar days after the date of HUD's removal notice.

(ii) If the IPA submits a written response within 30 calendar days of the date of the notice of proposed removal, and the removal decision is affirmed, the effective date of the removal is the date of HUD's notice affirming its initial removal decision.

(2) If the IPA is subject to automatic removal, the removal is effective as of the date the IPA receives notice of the removal.

(3) If the removal is held in abeyance, the order of abeyance will specify the effective date of the removal, which will be effective should the IPA fail to demonstrate to the satisfaction of the Reviewing Official that all causes for the removal have been eliminated by the effective date.

(h) *Notification of other federal agencies.* Where HUD is considering the removal of an IPA who has, during the previous 3 years, performed audits or related services for a covered entity, HUD will endeavor to ascertain whether any audited covered entity receives funds from any other federal agency. Where HUD determines that the IPA has performed audits or related services for a covered entity receiving federal funds from another agency, HUD will notify that agency prior to taking any removal action against the IPA.

§ 5.816 Consequences of removal from the IPA Roster.

(a) If an IPA is removed from the IPA Roster, the IPA can no longer be engaged to perform audits or related services for covered entities.

(b) If the IPA is currently engaged to perform audits or related services for covered entities, the IPA is not prohibited from completing those contracts or engagements. However, the IPA may not renew or extend (other than no-cost time extensions) any contract or engagement, unless the Reviewing Official grants an exception. The granting of any such exception lies within the sole discretion of the Reviewing Official and will be granted only when the Reviewing Official determines that an exception is in the interest of HUD.

(c) HUD's action to remove an IPA from the IPA Roster does not affect the ability of covered entities to, in their discretion, terminate an existing contract or engagement as a result of the removal of the IPA from the IPA Roster or the circumstances precipitating the removal of the IPA.

§ 5.818 Consequences of a removal action that is held in abeyance.

(a) If the IPA demonstrates, to the satisfaction of the Reviewing Official, that all causes for removal have been

eliminated within the specified time period before the effective date of the removal, the removal action against the IPA will be terminated and the IPA will remain listed on the IPA Roster, subject to continued eligibility.

(b) If the IPA fails to demonstrate elimination of all causes for removal, to the satisfaction of the Reviewing Official, before the effective date, the IPA will be removed from the IPA Roster as of the effective date.

§ 5.820 Reinstatement to the IPA Roster.

(a) *Reinstatement.* Except as specified in paragraph (b) of this section, an IPA may request reinstatement of its listing on the IPA Roster no earlier than one year following the effective date of the removal from the IPA Roster.

(1) The request for reinstatement must contain all the information and comply with all the requirements for initial application for placement on the IPA Roster.

(2) The IPA must submit a written explanation of the circumstances surrounding the removal from the IPA Roster.

(3) The IPA must submit documentation demonstrating that all causes resulting in the removal from the IPA Roster have been eliminated.

(b) *Reinstatement following automatic removal due to expiration of license or authorization to practice.* If the IPA has been automatically removed due to the expiration of licensing or authorization to practice in a jurisdiction, not due to disciplinary action, the IPA may request reinstatement and be reinstated at any time by submitting evidence demonstrating the renewal of licensing or authorization to practice in that particular jurisdiction.

Dated: January 7, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8–2097 Filed 2–5–08; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Wednesday,
February 6, 2008

Part IV

The President

Executive Order 13458—Implementation of the Protocol Additional to the Agreement Between the United States and the International Atomic Energy Agency for the Application of Safeguards in the United States of America

Federal Register
Vol. 73, No. 25
Wednesday, February 6, 2008

Presidential Documents

Title 3—

The President

Executive Order 13458 of February 4, 2008

Implementation of the Protocol Additional to the Agreement Between the United States and the International Atomic Energy Agency for the Application of Safeguards in the United States of America

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the United States Additional Protocol Implementation Act (the ''Act'')(Public Law 109–401) and section 301 of title 3, United States Code, and in order to facilitate implementation of the Act and the Protocol Additional to the Agreement between the United States and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (the ''Additional Protocol''), it is hereby ordered as follows:

Section 1. The Secretaries of State, Defense, Commerce, and Energy, the Attorney General, the Nuclear Regulatory Commission, and heads of such other agencies as appropriate, each shall issue, amend, or revise, and enforce such regulations, orders, directives, instructions, or procedures as are necessary to implement the Act and United States obligations under the Additional Protocol.

Sec. 2. The Secretary of Commerce, with the assistance, as necessary, of the Attorney General, is authorized to obtain and to execute warrants pursuant to section 223 of the Act for the purpose of gaining complementary access to locations subject to regulations issued by the Department of Commerce pursuant to section 1 of this order.

Sec. 3. The Secretaries of State, Defense, Commerce, and Energy, the Attorney General, the Nuclear Regulatory Commission, and heads of such other departments and agencies as appropriate, are authorized to carry out, consistent with the Act and in accordance with subsequent directives, appropriate functions that are not otherwise assigned in the Act and are necessary to implement the Act and United States obligations under the Additional Protocol. The Secretary of State shall perform the function of providing notifications or information to the Congress when required by the Act.

Sec. 4. This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

Sec. 5. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
February 4, 2008.

[FR Doc. 08–568
Filed 2–5–08; 11:55 am]
Billing code 3195–01–P

Federal Register

Wednesday,
February 6, 2008

Part V

The President

Notice of February 5, 2008—Continuation of the National Emergency Blocking Property of Certain Persons Contributing to the Conflict in Cote d'Ivoire

Federal Register
Vol. 73, No. 25
Wednesday, February 6, 2008

Presidential Documents

Title 3—

The President

Notice of February 5, 2008

Continuation of the National Emergency Blocking Property of Certain Persons Contributing to the Conflict in Cote d'Ivoire

On February 7, 2006, by Executive Order 13396, I declared a national emergency and ordered related measures blocking the property of certain persons contributing to the conflict in Cote d'Ivoire, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). I took this action to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in or in relation to Cote d'Ivoire, which has been addressed by the United Nations Security Council in Resolution 1572 of November 15, 2004, and subsequent resolutions, and has resulted in the massacre of large numbers of civilians, widespread human rights abuses, significant political violence and unrest, and attacks against international peacekeeping forces leading to fatalities. Because the situation in or in relation to Cote d'Ivoire continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on February 7, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond February 7, 2008. 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 13396.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
February 5, 2008.

[FR Doc. 08–575
Filed 2–5–08; 1:49 pm]
Billing code 3195–01–P

Reader Aids

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To extend the Protect America Act of 2007 for 15 days. (Jan. 31, 2008; 122 Stat. 605)

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