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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 20, 2001, from 9:00 a.m. to Noon (E.S.T.)

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–AF56

Cleaning and Reinspection of Farmers Stock Peanuts; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Correction to final regulations.

SUMMARY: This document corrects final peanut price support regulations which were published on Wednesday, January 10, 2001 (66 FR 1807).

DATES: Effective February 15, 2001.

FOR FURTHER INFORMATION CONTACT: David Kincannon, (202) 720–7914.

SUPPLEMENTARY INFORMATION:

Background and Need for Correction

Amendments published on January 10, 2001, to the peanut price support regulations contained in 7 CFR part 1446 related to Segregation 3 peanuts and other aspects of the peanut support program. However, one of those amendments erroneously purported to amend "1444.307" rather than "1446.307." That error is hereby corrected. 7 CFR 1446.307 was the section which was the intended site of the amendment; 7 CFR 1444.307 does not exist.

Correction of Publication

Accordingly, the publication of January 10, 2001 (66 FR 1807) of the final regulations applicable to 7 CFR part 1446 is corrected as follows:

On page 1810, in the first column, in the heading and amendatory language of the first sentence of the last paragraph (item 4), the two references to "1444.307" are corrected to read "1446.307".

Signed at Washington, DC, on February 9, 2001.

James R. Little,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01–3838 Filed 2–14–01; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–11–AD; Amendment 39–12109; AD 2001–03–05]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Learjet Model 45 airplanes. This action requires revising the airplane flight manual (AFM) to prohibit flight into known icing conditions; inspecting the anti-ice manifold assembly for missing material, and performing corrective actions if necessary; replacing the anti-ice manifold assembly with a new assembly, which terminates the AFM revision requirement; and revising the Learjet 45 maintenance program to incorporate additional inspections and maintenance practices for the anti-ice manifold assembly. This action is necessary to prevent metal fragments from breaking off the anti-ice manifold assembly due to fatigue, which could block a duct in the anti-ice system and result in an unannunciated loss of ice protection. This action is intended to address the identified unsafe condition.

DATES: Effective February 20, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 20, 2001.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–11–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: The FAA has been advised that a Learjet Model 45 airplane recently experienced anti-ice system difficulties, generating a warning to the flight crew of an overheat condition of the horizontal stabilizer. Subsequent inspection revealed a fragment of metal from the system's bleed air manifold lodged in a section of the system's ducts. Inspection of other airplanes revealed fatigue cracking on the manifold splitter vanes.

The anti-ice system on Model 45 airplanes incorporates a bleed airflow manifold to deliver air to the wing and horizontal stabilizer piccolo tubes. The manifold contains a set of internal splitter vanes, which recent inspections indicate are subject to premature fatigue cracking. The vanes are inadequately welded and subject to engine bleed airflow at high temperatures.

Consequently, the vanes are susceptible to fatigue caused by turbulent airflow traveling within the manifold. Metal pieces of the vanes may break off and become lodged in the anti-ice system downstream of the leading edge skin temperature sensors. This condition, if not corrected, could result in an unannunciated loss of ice protection.

Explanation of Relevant Service Information

The FAA has reviewed and approved Learjet 45 Temporary Flight Manual Change TFM 2000–16, dated January 8, 2001, which prohibits flight into icing conditions until the airplane's anti-icing system has been inspected and modified, as described below.

The FAA has reviewed and approved Bombardier (Learjet 45) Alert Service Bulletin SB A45–30–2, dated December 18, 2000. The alert service bulletin describes procedures for a one-time inspection to detect missing pieces of the manifold assembly splitter. If fragments are missing from the splitter, the service bulletin recommends borescopic inspections to detect debris in the anti-ice tube assemblies within the wing and horizontal stabilizer anti-ice system, and removal of any splitter debris. The alert service bulletin also describes procedures for replacing the anti-ice manifold assembly with a new assembly.

The manufacturer has issued Temporary Revisions (TR) 4–2, 5–2, and 30–1, all dated January 2, 2001, for the Learjet 45 maintenance program manual. TR's 4–2 and 5–2 add borescopic inspections of the anti-ice manifold. TR 30–1 adds certain maintenance practices for the removal, installation, and inspection of the anti-ice manifold assembly. The TR's are to be incorporated into the Learjet maintenance program manual to revise the Learjet maintenance program.

Accomplishment of the actions specified in the AFM revision, alert service bulletin, and maintenance program revisions is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent metal fragments of the splitter in the anti-ice system from breaking due to fatigue, which could block a duct in the anti-ice system and result in an unannunciated loss of ice protection. This AD requires accomplishment of the actions specified in the AFM revision, alert service bulletin, and maintenance program revisions described previously, except as discussed below.

Difference Between AD and Alert Service Bulletin

This AD requires replacement of the anti-ice manifold assembly within 100 flight hours, whereas the alert service bulletin recommends replacement within 25 flight hours. At the time the alert service bulletin was developed, the shorter compliance time was recommended because of the urgency of the unsafe condition and the lack of available interim procedures developed to prohibit flight into known icing conditions until the manifold is replaced. In developing an appropriate compliance time for this AD, the FAA considered the safety implications as well as subsequent recommendations from the manufacturer. The FAA finds that 100 flight hours represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2001–NM–11–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–03–05 Learjet: Amendment 39–12109. Docket 2001–NM–11–AD.

Applicability: Model 45 airplanes, certificated in any category, serial numbers 45–002 through 45–004 inclusive, 45–006 through 45–121 inclusive, and 45–124 through 45–129 inclusive.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent metal fragments from breaking off the anti-ice manifold assembly due to fatigue, which could block a duct in the anti-ice system and result in an unannunciated loss of ice protection, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Within 24 hours after the effective date, and until accomplishment of the requirements of paragraph (b) of this AD: Revise the Limitations section of the FAA-approved AFM by replacing the existing information in the TYPE OF OPERATION section with the following. This may be accomplished by inserting a copy of this AD into the AFM.

"This airplane is approved for:

- VFR (Visual)
- IFR (Instrument)
- Day
- Night

Flight into icing conditions is prohibited. If icing conditions are encountered, comply with the Inadvertent Icing Encounter procedure, Section IV. Fly out of icing conditions as soon as possible.

Icing conditions exist when outside air temperature (OAT) on the ground and for takeoff is 10°C (50°F) or below, or the static air temperature (SAT) in flight is 10°C (50°F) to −40°C (−40°F), and visible moisture in any form is present (such as clouds, fog with visibility of one mile or less, rain, snow, sleet, or ice crystals).

Icing conditions also exist when the OAT on the ground and for takeoff is 10°C (50°F) or below when operating on ramps, taxiways, or runways where surface snow, ice, standing water, or slush may be ingested by the engines, or freeze on engines, nacelles, or engine sensor probes."

Note 2: Insertion into the AFM of a copy of Learjet 45 Temporary Flight Manual Change (TFM) TFM 2000–16, dated January 8, 2001, is also acceptable for compliance with the requirements of paragraph (a) of this AD.

Anti-Ice Manifold Assembly Replacement

(b) Within 100 flight hours after the effective date of this AD: Perform a general visual inspection to detect missing pieces from the splitter vanes of the manifold assembly, perform all applicable corrective actions (including borescopic inspections to detect debris and removal of debris), and replace the anti-ice manifold assembly with a new assembly. Do the actions in accordance with Bombardier (Learjet 45) Alert Service Bulletin SB A45–30–2, dated December 18, 2000. When the manifold assembly has been replaced, the TFM required by paragraph (a) of this AD may be removed from the AFM.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Maintenance Program Revision

(c) Concurrently with the accomplishment of the requirements of paragraph (b) of this AD, revise the Learjet maintenance program by incorporating the procedures for removal, installation, and inspection of the anti-ice manifold assembly specified in Learjet Model 45 Maintenance Manual Temporary Revisions 4–2, 5–2, and 30–1; all dated January 2, 2001.

(d) When the temporary revisions required by paragraph (c) of this AD have been incorporated into the general revisions of the maintenance program, the general revisions may be incorporated into the maintenance program, provided that the information contained in the general revisions is identical to that specified in the temporary revisions.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided the airplane is restricted from flight into known icing conditions.

Incorporation by Reference

(g) Except as required by paragraph (a) of this AD: The actions shall be done in accordance with Bombardier (Learjet 45) Alert Service Bulletin SB A45–30–2, dated December 18, 2000; Learjet 45 Maintenance Manual Temporary Revision 4–2, dated January 2, 2001; Learjet 45 Maintenance Manual Temporary Revision 5–2, dated January 2, 2001; and Learjet 45 Maintenance Manual Temporary Revision 30–1, dated January 2, 2001; as applicable. The actions required by paragraph (a) of this AD may also be done in accordance with Learjet 45 Temporary Flight Manual Change TFM 2000–16, dated January 8, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on February 20, 2001.

Issued in Renton, Washington, on February 7, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–3671 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–16–AD; Amendment 39–12096; AD 2001–02–11]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for

Bell Helicopter Textron, Inc. (BHTI) Model 204B helicopters that requires replacing any main rotor mast assembly (mast), part number (P/N) 204–011–450–001, within 25 hours time-in-service (TIS). This amendment is prompted by the crash of a restricted category Model UH–1B helicopter due to failure of a mast, P/N 204–011–450–001. The same mast P/N is used on the Model 204B helicopters. The actions specified by this AD are intended to prevent failure of the mast and subsequent loss of control of the helicopter.

EFFECTIVE DATE: March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for BHTI Model 204B helicopters was published in the **Federal Register** on October 2, 2000 (65 FR 58681). That action proposed replacing any mast, P/N 204–011–450–001, within 25 hours TIS.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 15 helicopters of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $8,862 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $141,930.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–02–11 Bell Helicopter Textron, Inc.: Amendment 39–12096. Docket No. 2000-SW–16-AD.

Applicability: Model 204B helicopters with main rotor mast assembly, part number (P/N) 204–011–450–001, installed, certificated in any category.

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

Compliance: Required within 25 hours time-in-service, unless accomplished previously.

To prevent failure of the main rotor mast assembly (mast) and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove any mast, P/N 204–011–450–001, from service and replace it with an airworthy mast. Accomplishing the requirement of this paragraph constitutes terminating action for the requirements of this AD. P/N 204–011–450–001 is not eligible for installation on any helicopter.

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

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

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

(d) This amendment becomes effective on March 22, 2001.

Issued in Fort Worth, Texas, on January 19, 2001.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–3670 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–368–AD; Amendment 39–12110; AD 2001–03–06]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model MU–300, MU–300–10, 400, and 400A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Raytheon (Beech) Model MU–300, MU–300–10, 400, and 400A series airplanes, that requires repetitive inspections of the bleed air supply tube assemblies for discrepancies; and replacement of the bleed air tube assembly with a new bleed air tube assembly, if necessary. In lieu of accomplishing the repetitive

inspections, this AD also provides for a revision of the Airworthiness Limitations to incorporate, among other things, certain inspections and compliance times to detect discrepancies of the subject area; and corrective action, if necessary. This amendment is prompted by reports of broken wire braiding in the bellows assembly of the bleed air supply tube assembly due to premature failure from loading. The actions specified by this AD are intended to prevent the bleed air supply tube assembly from disconnecting and contacting other pneumatic or electrical systems of the airplane or expelling high temperature air on surrounding systems and structure. Such a condition could reduce the functional capabilities of the airplane or the ability of the flight crew to cope with adverse operating conditions.

DATES: Effective March 22, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager, Service Engineering, Beechjet Premier Technical Support, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209; telephone (316) 946–4142; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Raytheon (Beech) Model MU–300, MU–300–10, 400, and 400A series airplanes was published in the **Federal Register** on May 10, 2000 (65 FR 30031). That action proposed to require repetitive inspections of the bleed air supply tube assemblies for discrepancies; and replacement of the bleed air tube assembly with a new bleed air tube assembly, if necessary. That action also proposed to require that, in lieu of accomplishing the repetitive inspections, the Airworthiness Limitations Section (ALS) be revised to specify, among other things, certain inspections to detect discrepancies and compliance times for the subject area; and corrective action, if necessary.

Since the Issuance of the NPRM

The FAA has reviewed and approved Raytheon Aircraft Beechjet 400/400A Maintenance Manual, Airworthiness Limitations, Page 1, Section 4–00–00, Revision B26, dated August 27, 1999. The FAA also has reviewed and approved Raytheon Aircraft Beechjet 400/400A Maintenance Manual, Time-Limited Inspections, Pages 3 and 6, Section 4–00–02, and Pages 4 and 9, Section 4–00–04, Revision B26, dated August 27, 1999. The FAA has determined that Revision B26 contains no information that has been revised or added to since the issuance of Revision B23 regarding STARS Code 361031 (Bleed Air System). Since Revision B26 is the most current ALS revision, the FAA has cited Revision B26 in this final rule, as no required work has been added or changed from the requirements set forth in the proposed rule.

The FAA has reviewed and approved Raytheon Aircraft Diamond 1/1A MU–300 Maintenance Requirement Manual, Revision 9, dated February 26, 1999. The FAA has determined that Revision 9 contains no information that has been revised or added to since the issuance of Revision 8 regarding the Bleed Air System. Since Revision 9 is the most current ALS revision, the FAA has cited Revision 9 in this final rule, as no required work has been added or changed from the requirements set forth in the proposed rule.

Clarification of Paragraph (a) of the Final Rule

The FAA notes that the method of compliance in paragraph (a) of the proposal was inadvertently not included in the proposal. Therefore, the FAA has specified that those actions required by paragraph (a)(1) of this AD must be accomplished in accordance with the Airplane Maintainance Manual, Chapter 4, dated August 27, 1999. Paragraph (a)(1) of the final rule has been revised accordingly.

Comments to the NPRM

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

Request to Clarify the Compliance Time

One commenter requests that the compliance time specified in paragraph (b) of the proposal be clarified to state that the actions must be accomplished within 200 hours time-in-service.

The FAA concurs with the commenter that clarification is needed. Since paragraph (a) of the proposal clearly specifies a compliance time of 200 hours time-in-service, paragraph (b) of the the proposal has been redesignated as paragraph (a)(2) to clarify that the 200 hours time-in-service also applies to those requirements.

Request to Specify Incorporation of Airworthiness Limitations Section as Terminating Action

One commenter requests that the proposal clearly specify that incorporation of the revisions of the ALS specified in the proposal be designated as a terminating action "until such time as the operator elects to inspect the affected aircraft in accordance with paragraphs (a) or (d)."

The FAA does not concur. Accomplishment of the requirements of paragraph (a)(2) of this AD (incorporation of the ALS revisions) is simply considered to be one way of complying with the requirements of paragraph (a) of this AD. Incorporation of the ALS revisions relieves the operator from continually updating compliance with the inspection requirements of this AD, but does not "terminate" the requirement to perform the inspections that are now enforceable as part of the ALS. No change is necessary to the final rule.

Request to Clarify the Requirements of Paragraph (b)

The same commenter also requests that the proposal clarify that the ALS does not require any inspection until the aircraft accumulates 1,000 hours time-in-service. The commenter further requests that the proposal clearly reference the current 20-hour "inspection interval tolerance" provided for in the ALS.

The FAA acknowledges that the ALS does not require an inspection until the aircraft accumulates 1,000 hours time-in-service, and that the ALS provides for a 20-hour "inspection interval tolerance." However, the requirements of paragraph (a)(2) of this AD merely require incorporating procedures specified in certain revisions of the ALS of the Instructions of Continued Airworthiness. The FAA does not consider it necessary to identify each of the procedures, provisions, or requirements that are included in those specific revisions of the ALS. Therefore, no change has been made to the final rule in this regard.

Conclusion

After careful review of the available data, including the comments noted

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

Cost Impact

There are approximately 530 airplanes of the affected design in the worldwide fleet. The FAA estimates that 452 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish either the inspection or the revision to the Airworthiness Limitations Section, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $27,120, or $60 per airplane.

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

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 1 work hour to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the optional terminating action would be $60 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–03–06 Raytheon Aircraft Company (Formerly Beech): Amendment 39–12110. Docket 98–NM–368–AD.

Applicability: All Model MU–300, MU–300–10, 400, and 400A series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the bleed air supply tube assembly from disconnecting and contacting other pneumatic or electrical systems of the airplane or expelling high temperature air on surrounding systems and structure, which could result in reduced functional capabilities of the airplane or the ability of the flight crew to cope with adverse operating conditions; accomplish the following:

Inspection

(a) Within 200 hours time-in-service after the effective date of this AD, accomplish the actions specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) Perform a general visual inspection of the bleed air supply tube assemblies for broken wire braiding on the bellows assemblies or for ruptured or leaking bellow assemblies. The bleed air supply tube assemblies are located within the aft fuselage and connect to mating ducting in the pylon area on the right and left side of the airplane. Repeat the inspection thereafter at intervals not to exceed 400 hours time-in-service. If any broken wire is detected or if any bellow assembly is ruptured or leaking, prior to further flight, replace the bleed air tube assembly with a new bleed air tube assembly, in accordance with the Airplane Maintenance Manual, Revision B26 of Chapter 4, dated August 27, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Revise the Airworthiness Limitations Sections of the Instructions for Continued Airworthiness by incorporating the procedures specified in Chapter 4, "Airworthiness Limitations" of Raytheon Aircraft Beechjet 400/400A Maintenance Manual, Revision B26, dated August 27, 1999, for Model MU–300–10, 400, and 400A series airplanes; or Section MR–11–00, "Airworthiness Limitations" of Raytheon Aircraft Diamond 1/1A MU–300 Maintenance Requirement Manual, Revision 9, dated February 26, 1999 (for Model MU–300 airplanes); as applicable.

(b) Except as provided in paragraph (c) of this AD: After the action specified in paragraph (a)(2) of this AD has been accomplished, no alternative inspections or inspection intervals may be approved for the part specified in paragraph (a)(2) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(e) This amendment becomes effective on March 22, 2001.

Issued in Renton, Washington, on February 7, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–3672 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–279–AD; Amendment 39–12117; AD 2001–03–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 707 series airplanes, that requires modification of certain areas of the upper skin of the wing. This amendment is necessary to prevent cracking of the upper skin of the wing, which could result in reduced structural integrity of the wing. This action is intended to address the identified unsafe condition.

DATES: Effective March 22, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 707 series airplanes was published in the **Federal Register** on November 28, 2000 (65 FR 70819). That action proposed to require modification of certain areas of the upper skin of the wing.

Comments

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

Conclusion

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

Cost Impact

There are approximately 5 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 8 work hours to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on the single U.S. operator is estimated to be $480.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–03–13 Boeing: Amendment 39–12117. Docket 2000–NM–279–AD.

Applicability: Model 707 series airplanes; as listed in Boeing Service Bulletin 2378, Revision 1, dated June 30, 1967; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the upper skin of the wing, which could result in reduced structural integrity of the wing, accomplish the following:

Modification

(a) Prior to the accumulation of 20,000 total flight hours, or within 24 months after the effective date of this AD, whichever occurs later, modify the upper skin of the wing at wing stringers 10A and 11A on both the left- and right-hand wings of the airplane, in accordance with Boeing Service Bulletin 2378, Revision 1, dated June 30, 1967.

(b) During the high frequency eddy current inspection included as part of the modification required by paragraph (a) of this AD, if any crack is found, prior to further flight, repair in accordance with the applicable section of the Boeing 707 Structural Repair Manual.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(e) This amendment becomes effective on March 22, 2001.

Issued in Renton, Washington, on February 8, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–3695 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2000–8460; Notice No. 01–02]

RIN 2120–AH17

Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on January 12, 2001. In that document, the FAA proposed to move several standard provisions currently found in every airworthiness directive into its regulations pertaining to airworthiness directives. This extension is a result of a request from Helicopter Association International to extend the comment period to the proposal.

DATES: Comments must be received on or before March 29, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–8460 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. you may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Donald Byrne, Assistant Chief Counsel, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2000–8460." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy is available on the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the docket selected, click on the proposed rule.

An electronic copy is also available on the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register**'s web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Further, a copy may be obtained by submitting a written 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 notice number or docket number of this proposed rule.

Background

On November 29, 2000, the Federal Aviation Administration (FAA) issued Notice No. 00–15, Airworthiness Directives (66 FR 3382, January 12, 2001). Comments to that document were to be received on or before February 12, 2001.

By letter dated January 31, 2001, Helicopter Association International requested that the FAA extend the comment period for Notice No. 00–15 until March 14, 2001, to allow HAI to comment on the proposed revisions to part 39. Although HAI requests only a 30 day extension of the comment period, the FAA believes a 45 day extension would be adequate for HAI and other interested persons to provide comment to Notice No. 00–15.

Extension of Comment Period

In accordance with § 11.47 of Title 14, Code of Federal Regulations, the FAA has reviewed the petition made by HAI for extension of the comment period to Notice No. 00–15. HAI has shown an interest in the proposed rule and good cause for the extension. The FAA also has determined that extension of the comment period is in the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 00–15 is extended until March 29, 2001.

Ronald T. Wojnar,

Acting Director, Aircraft Certification Service.

[FR Doc. 01–3884 Filed 2–12–01; 5:02 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–54–AD; Amendment 39–12105; AD 2001–01–51]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–01–51, which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron Canada (BHTC) Model 222, 222B, 222U, 230, and 430 helicopters by individual letters. This AD requires visually inspecting the main rotor hydraulic actuator support (support) to verify the presence of all dowel pins and sealant between the support and transmission and verifying the proper torque of each attaching nut (nut). This amendment is prompted by the failure of a support resulting in an accident of a BHTC Model 222U helicopter. All retaining studs and shear pins were found sheared or pulled out at the junction between the support and the transmission case. The actions specified by this AD are intended to prevent failure of the support and subsequent loss of control of the helicopter.

DATES: Effective March 2, 2001, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–01–51, issued on January 5, 2001, which contained the requirements of this amendment.

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

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–54–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

The applicable service information may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On January 5, 2001, the FAA issued Emergency AD 2001–01–51 for BHTC Model 222, 222B, 222U, 230, and 430 helicopters which requires visually inspecting the support to verify the presence of all dowel pins and sealant between the support and the transmission and verifying the proper torque of each nut. That action was prompted by the failure of a support resulting in an accident of a BHTC Model 222U helicopter. All retaining studs and shear pins were found sheared or pulled out at the junction between the support and the transmission case. This condition, if not detected, could result in failure of the support and subsequent loss of control of the helicopter.

The FAA has reviewed BHTC Alert Service Bulletin Nos. 222–00–86, 222U–00–57, 230–00–18, and 430–00–17, all dated May 19, 2000 (ASB's), which specify, within 25 hours time-in-service (TIS), conducting a one-time inspection of the support installation by accomplishing a torque check of the nuts. In addition, a revision to the maintenance manual will introduce a recurring torque check of the nuts. Transport Canada, which is the airworthiness authority for Canada, classified these ASB's as mandatory and issued AD No. CF–2000–29 dated September 6, 2000, to ensure the continued airworthiness of these helicopters in Canada.

Since the unsafe condition described is likely to exist or develop on other BHTC Model 222, 222B, 222U, 230, and 430 helicopters of the same type designs, the FAA issued Emergency AD 2001–01–51 to prevent failure of the support and subsequent loss of control of the helicopter. The AD requires, at specified time intervals, visually inspecting the support to verify the presence of all dowel pins and sealant between the support and transmission and verifying the proper torque of each nut. Repairing or replacing any unairworthy support, transmission case, stud, or dowel pin and retorquing to proper torque are required before further flight. The actions must be accomplished in accordance with the ASB's described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, the actions previously listed are required within 25 hours TIS, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on January 5, 2001, to all known U.S. owners and operators of BHTC Model 222, 222B, 222U, 230, and 430 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 145 helicopters of U.S. registry will be affected by this AD, that it will take approximately ½ work hour per helicopter to inspect for proper torque, and that the average labor rate is $60 per work hour. The cost for the inspection is estimated to be $4,350. Assuming 15 helicopters require removing the support for additional inspections, it would take approximately 6 additional work hours at $60 per work hour and $50 for parts at an additional total cost of $410 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $10,500, assuming no supports have to be replaced.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–54–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–01–51 Bell Helicopter Textron Canada: Amendment 39–12105. Docket No. 2000–SW–54–AD.

Applicability: Model 222, 222B, 222U, 230, and 430 helicopters, with a main rotor hydraulic actuator support (support), part number (P/N) 222–040–125–001, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the support and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours TIS and thereafter at intervals not to exceed 600 hours TIS, accomplish the following:

(1) Visually inspect the support for the presence of all dowel pins and for sealant between the support and the transmission. If any pin is missing, or if no sealant is visible, before further flight, remove the support and further inspect the support, transmission case, studs, and dowel pins in accordance with the Accomplishment Instructions, paragraphs 5 through 7, of the applicable Bell Helicopter Textron Alert Service Bulletin Nos. 222–00–86, 222U–00–57, 230–00–18, or 430–00–17, all dated May 19, 2000 (ASB's). Repair or replace any unairworthy support, transmission case, stud, or dowel pin before further flight.

(2) Verify the torque of the support attaching nuts (nuts). Upper nuts must not rotate at a torque less than 40 in-lbs. Lower nuts must not rotate at a torque less than 90 in-lbs.

(i) If two or more upper nuts rotate at a torque less than 40 in-lbs. or two or more lower nuts rotate at a torque less than 90 in-lbs., before further flight, remove the support and further inspect the support, transmission case, studs, and dowel pins in accordance with the Accomplishment Instructions, paragraph 5 through 7, of the applicable ASB's. Repair or replace any unairworthy support, transmission case, stud, or dowel pin before further flight.

(ii) If less than two upper nuts rotate at a torque less than 40 in-lbs. or less than two lower nuts rotate at a torque less than 90 in-lbs., before further flight, retorque the upper nut to 50 to 70 in-lbs. plus tare and the lower nut to 100 to 140 in-lbs. plus tare.

(b) At not less than 20 hours TIS nor more than 30 hours TIS after reinstalling a support for any reason, verify the torque of the nuts in accordance with paragraph (a)(2) of this AD.

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

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

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

(e) The inspections shall be done in accordance with the Accomplishment Instructions, paragraphs 5 through 7, of the applicable Bell Helicopter Textron Alert Service Bulletin Nos. 222–00–86, 222U–00–57, 230–00–18, or 430–00–17, all dated May 19, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 2, 2001, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–01–51, issued January 5, 2001, which contained the requirements of this amendment.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2000–29, dated September 6, 2000.

Issued in Fort Worth, Texas, on February 2, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–3561 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF STATE

22 CFR Parts 41 and 42

[Public Notice 3570]

Documentation of Immigrants and Nonimmigrants Under the Immigration and Nationality Act, as Amended—Refusal of Individual Visas

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule adds two additional grounds of ineligibility for a visa for certain nonimmigrants to the listing of those serving as bases for the refusal of nonimmigrant visas by consular officers. It adds one of those to the regulation relating to crewmen. Moreover, the rule adds another relatively new restriction on the place of application for aliens who have overstayed the allowable period in the United States. Finally, in the interest of consistency between the rules relating to nonimmigrants and immigrants, it also adds the appropriate listing of bases for refusal of immigrant visas. There are some editorial changes to the current nonimmigrant rule on refusals for the purpose of clarification and to incorporate by reference the essence of the legislation underlying the procedures described therein.

DATES: Effective February 15, 2001. Written comments may be submitted through April 16, 2001.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520–0106, (202) 663–1204, e-mail *odomhe@state.gov*, or fax at (202) 663–3898.

SUPPLEMENTARY INFORMATION: Public Laws 101–649, Immigration Act of 1990, and 104–298, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, added two new grounds of ineligibility to those already in the Immigration and Nationality Act, as amended, (INA). Each is classification-specific, not a generic ineligibility such as most of those found in INA 212(a). It also added a provision invalidating the visa of a person who had overstayed the authorized period of stay in the United States and requiring such an alien to apply in his/her home country for a new visa except under certain authorized circumstances (INA 222(g)).

What Classes Are Affected?

The first of the new ineligibilities relates to crewmen. As set forth in INA 214(f), it makes an alien unclassifiable as a crewman under INA 101(a)(15)(D) if the alien intends to land for the purpose of joining a vessel or aircraft during a labor dispute where there is a strike or lockout involving the employer and the bargaining unit of the employer. This provision is also reflected in an amendment of 22 CFR 41.41, Crewmen, which is included herein.

The other such provision, which is found in INA 214(l)—the second (l) in INA 214—relates to students. It denies an alien classification as a student under INA 101(a)(15)(F)(1) for the purpose of study at a public elementary or publicly-funded adult education program, or at a public secondary school unless the total period of stay in the latter educational institution is less than one year and the student has fully reimbursed the school for the costs of such education. Students who have been admitted in F–1 status for attendance at private schools and then transfer to a public school have, under this provision, violated their status unless the student has reimbursed the school as noted above. The seriousness of this provision is reinforced in a new INA 212(a)(6)(G), which makes an individual who violated student status under INA 214(l) inadmissible for five years after the date of the violation. Although not specifically included in the regulation covering INA 212(a)(6)(G) at 22 CFR 40.67, the terms of INA 214(l) were described in the supplementary information in the interim rule published at 62 FR 67564, December 29, 1997.

The essence of the INA 222(g) provision is set forth above.

So Why This Rule Now?

This rule is being promulgated for the primary purpose of adding those INA 214(f) and (l) citations to an existing regulation, 22 CFR 41.121, which lists the permissible grounds for denial of a nonimmigrant visa application. The necessity for so doing also provides an opportunity to include editorial revisions in paragraph (b) for the purpose of greater clarity and noting by reference the statutory basis for the refusal procedures, and to add, again by reference, the gist of INA 214(f) to the crewman regulations. No substantive changes to past and/or current procedures are intended by the revisions in subsection 41.121(b).

The refusal regulation with respect to immigrant visa applicants equivalent to section 41.121, namely 22 CFR 42.81, does not now correspondingly specify the applicable grounds of refusal in immigrant cases. This rule inserts such data in the interest of consistency.

Finally, the regulation at 41.122, Grounds of Revocation of a Visa, does not now include INA 222(g), which is being added by reference in this rule.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as an interim rule, with a 60-day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The provisions of law being referred to in this rule became effective on January 28, 1991, in the case of a crewman proceeding to a job which is involved in a strike or lockout, and, in the case of student visa abusers, on November 29, 1996. More importantly, the rule makes no substantive changes in visa operations.

Regulatory Flexibility Act

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section (6)(a)(3)(A).

Executive Order 131332

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

Accordingly, the Department of State amends 22 CFR chapter I as follows:

PART 41—[Amended]

1. The authority citation for Part 41 continues to read as follows:

Authority: 8 U.S.C. 1104.

2. Revise § 41.41(a) to read as follows:

§ 41.41 Crewmen.

(a) *Alien classifiable as crewman.* An alien is classifiable as a nonimmigrant crewman upon establishing to the satisfaction of the consular officer the qualifications prescribed by INA 101(a)(15)(D), provided that the alien has permission to enter some foreign country after a temporary landing in the United States, unless the alien is barred from such classification under the provisions of INA 214(f).

* * * * *

3. Revise § 41.121(a) and (b) to read as follows:

§ 41.121 Refusal of individual visas.

(a) *Grounds for refusal.* Nonimmigrant visa refusals must be based on legal grounds, such as one or more provisions of INA 212(a), INA 212(e), INA 214(b), (f) or (l) (as added by Section 625 of Pub. L. 104–208), INA 221(g), or INA 222(g) or other applicable law. Certain classes of nonimmigrant aliens are exempted from specific provisions of INA 212(a) under INA 102 and, upon a basis of reciprocity, under INA 212(d)(8). When a visa application has been properly completed and executed in accordance with the provisions of INA and the implementing regulations, the consular officer must either issue or refuse the visa.

(b) *Refusal procedure.* (1) When a consular officer knows or has reason to believe a visa applicant is ineligible and refuses the issuance of a visa, he or she must inform the alien of the ground(s) of ineligibility (unless disclosure is barred under INA 212(b)(2) or (3)) and whether there is, in law or regulations, a mechanism (such as a waiver) to overcome the refusal. The officer shall note the reason for the refusal on the application. Upon refusing the nonimmigrant visa, the consular officer shall retain the original of each document upon which the refusal was based, as well as each document indicating a possible ground of ineligibility, and should return all other supporting documents supplied by the applicant.

(2) If an alien, who has not yet filed a visa application, seeks advice from a consular officer, who knows or has reason to believe that the alien is ineligible to receive a visa on grounds which cannot be overcome by the presentation of additional evidence, the officer shall so inform the alien. The consular officer shall inform the applicant of the provision of law or regulations upon which a refusal of a visa, if applied for, would be based (subject to the exception in paragraph (b)(1) of this section). If practicable, the consular officer should request the alien to execute a nonimmigrant visa application in order to make a formal refusal. If the individual fails to execute a visa application in these circumstances, the consular officer shall treat the matter as if a visa had been refused and create a record of the presumed ineligibilty which shall be filed in the consular office.

* * * * *

4. Amend § 41.122(a)(1) by adding before the semicolon ", or was issued a visa in contravention of INA 222(g)".

PART 42—[AMENDED]

5. The authority citation for Part 42 continues to read as follows:

Authority: 8. U.S.C. 1104.

6. Revise § 42.81(a) to read as follows:

§ 42.81 Procedure in refusing individual visas.

(a) *Issuance or refusal mandatory.* When a visa application has been properly completed and executed before a consular officer in accordance with the provisions of INA and the implementing regulations, the consular officer must either issue or refuse the visa under INA 212(a) or INA 221(g) or other applicable law. Every refusal must be in conformance with the provisions of 22 CFR 40.6.

* * * * *

Dated: December 19, 2001.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 01–3754 Filed 2–14–01; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8911]

RIN 1545–AV92

Relief for Service in Combat Zone and for Presidentially Declared Disaster; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on December 15, 2000 (65 FR 78409). This document relates to the postponement of certain tax-related deadlines due either to service in a combat zone or a Presidentially declared disaster.

DATES: This correction is effective December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Bridget E. Finkenaur (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 7508 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8911) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8911), which are

the subject of FR Doc. 00–31500, is corrected as follows:

§ 301.7508A–1 [Corrected]

1. On page 78412, column 2, § 301.7508A–1, paragraph (g), paragraph (i) of *Example 4*, the second line from the bottom of the paragraph, the language "payments. H and W's principal residence is" is corrected to read "payments. H's and W's principal residence is."

2. On page 78412, column 2, § 301.7508A–1, paragraph (g), paragraph (iii) of *Example 4*, line 1, the language "Because H and W's principal residence" is corrected to read "Because H's and W's principal residence".

3. On page 78412, column 2, § 301.7508A–1, paragraph (g), paragraph (iii) of *Example 4*, line 4, the language "date of H and W's 2001 Form 1040 and" is corrected to read "date of H's and W's 2001 Form 1040 and".

4. On page 78412, column 3, § 301.7508A–1, paragraph (g), paragraph (iii) of *Example 4*, line 6 from the top of the column, the language "Accordingly, H and W's 2001 Form 1040 and" is corrected to read "Accordingly, H's and W's 2001 Form 1040 and".

5. On page 78412, column 3, § 301.7508A–1, paragraph (g), paragraph (i) of *Example 5*, line 6, the language "of section 7508A, under section 6511(a), H" is corrected to read "of section 7508A, under section 6511(a), H's".

6. On page 78413, column 1, § 301.7508A–1, paragraph (g), paragraph (i)of *Example 8*, second line from the bottom of the paragraph, the language "the 2001 taxable year. H and W's principal" is corrected to read "the 2001 taxable year . H's and W's principal".

7. On page 78413, column 1, § 301.7508A–1, paragraph (g), paragraph (iii) of *Example 8*, line 1, the language "Because H and W's principal residence" is corrected to read "Because H's and W's principal residence".

8. On page 78413, column 1, § 301.7508A–1, paragraph (g), paragraph (iii) of *Example 8*, line 12, the language "extension. Therefore, H and W's return and" is corrected to read "extension. Therefore, H's and W's return and".

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 01–3774 Filed 2–14–01; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in March 2001. Interest assumptions are also published on the PBGC's web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: March 1, 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during March 2001, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during March 2001, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during March 2001.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 6.40 percent for the first 20 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for February 2001) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.75 percent for the period during which a benefit is in pay status, and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for February 2001.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during March 2001, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 89, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_{32}
*	*	*	*	*	*	*	*	*
89	3–1–01	4–1–01	4.75	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 89, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
89	3–1–01	4–1–01	4.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
March 2001	.0640	1–20	.0625	>20	N/A	N/A

Issued in Washington, DC, on this 12th day of February 2001.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01–3881 Filed 2–14–01; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA62

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) TRICARE, Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act Medical Benefits for Fiscal Year 2001; Change in Effective Date

AGENCY: Office of the Secretary, Defense.

ACTION: Interim final rule.

SUMMARY: On Friday, February 9, 2001 (66 FR 9651), the Department of Defense published an Interim final rule on Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act Medical Benefits for Fiscal Year 2001. This document is published to change the effective date of that rule in accordance with the statutory requirements of the National Defense Authorization Act for Fiscal Year 2001, which directed implementation of specific medical benefits on April 1, 2001.

EFFECTIVE DATE: The effective date of the rule is amended to April 1, 2001.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, 703–601–4722.

Dated: February 9, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 01–3788 Filed 2–14–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 323

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 232

[FRL–6945–3]

Further Revisions to the Clean Water Act Regulatory Definition of "Discharge of Dredged Material": Delay of Effective Date

AGENCIES: Army Corps of Engineers, Department of the Army, DOD; and Environmental Protection Agency.

ACTION: Final Rule; Delay of Effective Date.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled "Further Revisions to the Clean Water Act Regulatory Definition of 'Discharge of Dredged Material'," published in the **Federal Register** on Wednesday, January 17, 2001, at 66 FR 4549. That rule amends Clean Water Act section 404 regulations defining the term "discharge of dredged material."

DATES: The effective date of Further Revisions to the Clean Water Act Regulatory Definition of "Discharge of Dredged Material," amending 33 CFR part 323 and 40 CFR part 232, published in the **Federal Register** on Wednesday, January 17, 2001, at 66 FR 4549, is delayed for 60 days, from the original February 16, 2001, effective date to a new effective date of April 17, 2001.

FOR FURTHER INFORMATION CONTACT: For information on today's action, contact either Mr. Michael Smith, U.S. Army Corps of Engineers, ATTN: CECW-OR (3F73), 441 "G" Street, NW, Washington, DC 203140–1000, phone: (202) 761–4598, or Cynthia Puskar, U.S. Environmental Protection Agency, Office of Water (4201), 1200 Pennsylvania Avenue N.W., Washington, DC 20460, phone: (202) 260–8532.

SUPPLEMENTARY INFORMATION: To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the agencies' implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give EPA and Corps officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this rule immediately effective upon publication.

Dated: February 9, 2001.

Claudia L. Tornblom,

Deputy Assistant Secretary of the Army (Management and Budget), Department of the Army.

Dated: February 12, 2001.

Christine T. Whitman,

Administrator, Environmental Protection Agency.

[FR Doc. 01–3843 Filed 2–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6927–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA)

ACTION: Partial direct final deletion of the California Gulch Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announces its intent to delete Operable Unit 10 (OU 10) of the California Gulch Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR Part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA) of 1980, as amended. This partial deletion of the California Gulch Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (Nov. 1, 1995).

OU 10 includes the Oregon Gulch Tailing Impoundment. EPA issued a Record of Decision (ROD) for OU 10 on August 7, 1997. The Remedial Action was completed on September 26, 1999 and was approved by EPA on September 30, 1999. The EPA bases its proposal to delete OU 10 on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate response actions under CERCLA have been implemented at OU 10. The California Gulch Superfund Site was listed on the NPL on September 8, 1983.

The Site has been divided into 12, Operable Units (OUs). This partial deletion pertains only to OU 10 of the Site. Response activities will continue at the remaining OUs.

DATES: This "direct final" action will be effective April 16, 2001 unless EPA receives significant adverse or critical comments by March 19, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Rebecca Thomas, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 999 18th Street, Suite 300, Denver, CO 80202. Telephone: (303) 312–6552.

Information Repositories:

Comprehensive information on the California Gulch Site is available through the EPA, Region 8 public docket, which is located at the EPA, Region 8, Superfund Records Center and is available for viewing from 8:00 AM to 4:30 PM, Monday through Friday, excluding holidays. Requests for documents should be directed to the EPA, Region 8, Superfund Records Center. The address for the Region 8 Superfund Records Center is: U.S. Environmental Protection Agency, Region 8, Superfund Record Center, 999 18th Street, 5th Floor, Denver, CO 80202, Telephone (303) 312–6473.

FOR FURTHER INFORMATION CONTACT: Rebecca Thomas, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 999 18th Street, Suite 300, Denver, CO 80202. Telephone: (303) 312–6552.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Environmental Protection Agency (EPA), Region VIII announces its intent to delete a portion of the California Gulch Superfund Site (Site) from the National Priorities List (NPL) (40 CFR Part 300 Appendix B) and requests comments on this proposal. The Site is located in Lake County, Colorado. This proposal for partial deletion pertains to Operable Unit 10 (OU10) of the Site, which consists of the Oregon Gulch Tailing Impoundment and Lower Oregon Gulch.

The Site is divided into 12 Operable Units (OUs) pursuant to a 1994 Consent Decree. The 12 OUs comprising the California Gulch Site are as follows:

OU 1 Yak Tunnel/Water Treatment Plant
OU 2 Malta Gulch Tailing Impoundments and Lower Malta Gulch Fluvial Tailing
OU 3 D&RG Slag piles and Railroad Yard/Easement
OU 4 Upper California Gulch
OU 5 Asarco Smelter sites/Slag/Mill sites
OU 6 Starr Ditch/Stray Horse Gulch/Lower Evans Gulch/Penrose Mine Waste Pile
OU 7 Apache Tailing Impoundments
OU 8 Lower California Gulch
OU 9 Residential and Commercial Populated Areas
OU 10 Oregon Gulch
OU 11 Arkansas River Valley Floodplain
OU 12 Site-wide Surface and Ground Water

OUs 2 through 11 were designated in order to facilitate source remediation of specific geographic areas. OUs 2 through 11 pertain to distinct geographical areas and correspond with areas of responsibility for the identified responsible parties. The EPA has taken responsibility for areas where either no responsible party could be identified, the United States was a responsible party, or cash-out settlements had been reached with the responsible parties. OU 12, which covers the entire Site was designated to address Site-wide Surface and Groundwater. OU12 will be addressed after completion of source remediation in OUs 2 through 11. EPA proposes to delete the areas addressed by OU 10 because all appropriate CERCLA response actions have been completed in the areas within OU 10 as described in Section IV. Response activities are not complete at the other OUs at the Site. Those OUs will remain on the NPL and are not the subject of this partial deletion.

The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept any dissenting comments on this partial deletion for thirty days following publication of this notice in the **Federal Register**.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites or portions of a Site from the NPL. In accordance with 40 CFR 300.425(e), sites may be completely or partially deleted from the NPL where no further response in the areas to be deleted is appropriate to protect public health or the environment. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. Therefore, deletion of an operable unit at a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the operable unit deleted if future site conditions warrant such actions. A partial deletion of a site from the NPL also does not affect or impede EPA's ability to conduct CERCLA response activities at operable units not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion or partial deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management.

The following procedures were used for the intended partial deletion of this site:

(1) EPA, Region VIII has recommended the partial deletion of the California Gulch Site and has prepared the relevant documents.

(2) The State of Colorado through the Colorado Department of Public Health and Environment (CDPHE) has concurred with EPA's recommendation for a partial deletion.

(3) Concurrent with this Notice of Intent to pursue a partial deletion, a notice has been published in local newspapers and has been distributed to appropriate Federal, State and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and a newspaper of record.

(4) EPA, Region VIII has made all relevant documents available in the Regional Office, Superfund Record Center.

EPA is requesting only dissenting comments on the Direct Final Action to Delete. For deletion of the release from the Site, EPA's Regional Office will accept and evaluate public comments on EPA's Final Notice before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary responding to each significant comment submitted during the public comment period. Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this document, § 300.425 (e)(3) of the NCP states that the deletion of a release from a site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for proposing deletion of OU 10 from the NPL and EPA's findings that the criteria in 40 CFR 300.425(e) are satisfied.

Background

The California Gulch Superfund Site is located in Lake County, Colorado approximately 100 miles southwest of Denver. The California Gulch Superfund Site was listed on the National Priorities List on September 8, 1983, 48 Fed. Reg. 40,658 (1983). The Site is in a highly mineralized area of the Colorado Rocky Mountains covering 16 ½ square miles of a watershed that drains along California Gulch to the Arkansas River. Mining, mineral processing, and smelting activities have occurred at the Site for more than 130 years.

Mining in the District began in 1860, when placer gold was discovered in California Gulch. As the placer deposits were exhausted, underground workings became the principle method for removing gold, silver, lead, and zinc ore. As these mines were developed, waste rock was excavated along with the ore and placed near the mine entrances. Ore was crushed and separated into metallic concentrates at mills, with mill tailing generally slurried into tailing impoundments. The Site was placed on the NPL because of concerns about the impact of mine drainage on surface waters in California Gulch and the impact of heavy metals loading in the Arkansas River.

The Site includes the City of Leadville, various parts of the Leadville Historic Mining District, and a section of the Arkansas River from the confluence of California Gulch to the confluence of Lake Fork Creek.

A site-wide Phase I Remedial Investigation (Phase I RI), which primarily addressed surface and groundwater contamination, was issued in January 1987. As a result of the Phase I RI, EPA developed the first operable unit at the Site, the Yak Tunnel. This first operable unit was designed to address the largest single source of metallic loading.

The Phase I RI was followed by a number of additional site-wide studies, including the Tailing Disposal Area Remedial Investigation Report, Baseline Human Health Risk Assessment Part A, Part B, and Part C, Ecological Risk Assessment for Terrestrial Ecosystems, Baseline Aquatic Ecological Risk Assessment, Groundwater RI, Surface Water RI, Waste Rock RI, and Site-wide Screening Feasibility Study. In addition, OU 10 specific studies were also conducted, including the Final Engineering Evaluation/Cost Analysis for Stream Sediments within Oregon Gulch OU 10, and the Final Focused Feasibility Study for Oregon Gulch.

In order to expedite the clean-up of the Site, EPA agreed, pursuant to the 1994 Consent Decree, to divide the Site into eleven additional Operable Units. With the exception of OU 12, the operable units pertain to distinct geographical areas corresponding to areas of responsibility for the identified responsible parties and/or to distinct sources of contamination. EPA has taken responsibility for operable units where either no responsible party could be identified, the United States was a responsible party, or cash-out settlements had been reached with the responsible parties. Under the 1994 Consent Decree, OUs 2 through 11 were designated to deal with areas where the appropriate responsible party or the United States would conduct source remediation. The Consent Decree recognized that additional source remediation or other appropriate response actions related to surface or ground water could occur as part of OU 12 anywhere within the 16.5 square mile of the Site. The OUs are as follows:

1. Yak Tunnel/Water Treatment Plant
2. Malta Gulch Tailing Impoundments and Lower Malta Gulch Fluvial Tailing
3. D&RG Slag piles and Railroad Yard/ Easement
4. Upper California Gulch
5. Asarco Smelter sites/Slag/Mill sites
6. Starr Ditch/Stray Horse Gulch/ Lower Evans Gulch/Penrose Mine Waste Pile
7. Apache Tailing Impoundments
8. Lower California Gulch
9. Residential and Commercial Populated Areas
10. Oregon Gulch
11. Arkansas River Valley Floodplain
12. Site-wide Surface and Ground Water

Operable Unit 10 of the California Gulch Site is defined as the 500-year flood plain of Oregon Gulch from its headwaters to its confluence with California Gulch. Sources of metal loading within OU 10 include the Oregon Gulch Tailing Impoundment and miscellaneous tailing and stream sediment contained within the 500-year flood plain of lower Oregon Gulch. Lower Oregon Gulch is defined as the portion of the gulch downstream of the tailing impoundment. The general location of OU 10 is shown on the maps appearing as Exhibits 1 & 2. Pursuant to the 1994 Consent Decree, Resurrection Mining Company is responsible for conducting all appropriate response actions at OU 10.

OU 10 Response Actions

OU 10 (Oregon Gulch) is located approximately one-half mile south of the City of Leadville, Colorado. The Oregon Gulch Tailing Impoundment and the flood plain of Oregon Gulch, i.e., Lower Oregon Gulch, comprise approximately 14.2 and 1.6 acres, respectively. Oregon Gulch is a small V-shaped valley with surface water

flowing in a northwesterly direction. The gulch extends approximately one mile from its headwaters to the confluence with California Gulch. The tailing impoundment is located approximately ½ mile upstream of the confluence of Oregon and California gulches.

The Oregon Gulch Tailing Impoundment received tailing from the Resurrection-Asarco mill in California Gulch from approximately 1942 through 1957. The impoundment contains a volume of material estimated at 485,000 cubic yards.

The studies have shown that due to erosion of tailing, surface water runoff from the impoundment and a seep at the toe of the impoundment, the stream sediment within lower Oregon Gulch has been contaminated with inorganic metals. Resurrection completed the Final Engineering Evaluation/Cost Analysis (EE/CA) for Stream Sediments within Oregon Gulch OU 10, California Gulch Superfund Site, Leadville, Colorado in June 1995. The EE/CA was prepared to evaluate and identify a removal action for miscellaneous tailings and stream sediment contained within the 500-year floodplain of Oregon Gulch. Pursuant to the August 1995 Action memorandum, Resurrection conducted a Non-Time Critical Removal Action in 1995 and 1996. This removal action was directed at addressing eroded tailing and contaminated sediment in Lower Oregon Gulch and involved:

(1) Construction of haul roads.

(2) Installation of erosion control measures (straw bails, gabion check dams, and silt fencing).

(3) Construction of a sediment control pond approximately 500 feet downstream of the toe of the tailing impoundment.

(4) Excavation of sediment from the Oregon Gulch channel to a depth of 1.5 to 2.5 feet (approximately 4923 cubic yards) and placement of the sediment on top of the tailing impoundment.

(5) Construction of a riprap-lined triangular channel, 1-foot deep with 3H:1V side slopes capable of conveying the 10-year flood.

(6) Construction of a riprap-lined trapezoidal channel with a 6-foot bottom width and 3H:1V side slopes capable of conveying the 500-year flood within the Cultural Resource Area.

(7) Reconstruction of the flood plain by placing, grading and seeding amended soil from the borrow area and regrading and constructing temporary storm water diversion ditches as needed.

(8) Material from a borrow area was used to build sediment control structures and to reconstruct the floodplain in lower Oregon Gulch. The borrow material was analyzed to ensure that it would be satisfactory for such use. Analytical results for samples collected from the borrow area are available in the aforementioned EE/CA.

(9) Removal of eroded tailing and contaminated sediment was based on visual inspection.

The removal action successfully addressed eroded tailing and contaminated sediment in lower Oregon Gulch.

Resurrection completed the Final Focused Feasibility Study for Oregon Gulch, Operable Unit 10, California Gulch Site, June 1997. The purpose of the Focused Feasibility Study (FFS) was to identify and evaluate remedial alternatives for the Oregon Gulch Tailing Impoundment and miscellaneous tailing and contaminated sediment within the 500-year floodplain of Oregon Gulch. The FFS provided a detailed analysis of five remediation alternatives. EPA then issued the Record of Decision, Oregon Gulch, Operable Unit 10, California Gulch Superfund Site, Leadville, Colorado on August 7, 1997.

Resurrection commenced the remedial action in 1998 and completed the work in 1999. The major components of the remedial action included:

- Reconstruction of Lower California Gulch and Floodplain.
- Installation of erosion control structures using straw bales and silt fencing and, after work was complete, removal of all straw bales and silt fencing that were no longer needed.
- Fluvial tailing excavated from Operable Unit 8 of the California Gulch Site, (Lower California Gulch) consisted of a mix of stream sediment, including cobbles, gravel and fine-grained fluvial tailing. Approximately 7,100 cubic yards of this material was transported from OU8 to the Oregon Gulch Tailing Impoundment. This work was performed from July 27, 1998 to October 7, 1998. Additional information regarding the OU 8 work is available in the Removal Action Work Plan for Selected Fluvial Tailing and Stream Sediment in Operable Unit 8, April 1998. (This work was done pursuant to Operable Unit 8 and is included here solely because the Oregon Gulch Tailing Impoundment served as the repository for the OU8 tailing.)
- Installation of an upgradient groundwater interceptor trench.
- Regrading the surface of the Oregon Gulch tailing impoundment and construction and revegetation of the tailing impoundment cover. Material from the borrow area previously described in the Removal Action, was also used in the Remedial Action.
- Installation of a seep collection system.
- Installation of a seep management system consisting of a seep storage tank, pump, float control unit, electric hook-up, a drainage basin and pipe, and a discharge line to the YAK Tunnel Water Treatment Plant. A heated and insulated housing unit was constructed around the system.
- The goal of this response action was to prevent infiltration of water into the tailing, prevent erosion of the tailing, and to treat the impoundment seep until it was gone.

A final inspection was completed on September 20, 1999. The remedy was operating as intended. Operation and maintenance of the Oregon Gulch Tailing Impoundment and related systems is required to assure that the remedy remains effective. This includes inspection of the tailing impoundment cap and the seep collection and pumping systems. The Operation and Maintenance Plan for the Seep Collection System, the Seep Management System, the Tailing Impoundment Cover and Diversion Structures, are described in detail in Section 4.0 of the Final Remedial Design for Oregon Gulch, Operable Unit 10, California Gulch Superfund Site, Leadville, Colorado, June 1998. The O&M program for this is being implemented by Resurrection. Resurrection commenced this program in September 1999.

Cultural Resources

Foothill Engineering Consultants, Inc. (FEC) performed a cultural resource inventory that identified a historic trash dump in lower Oregon Gulch. This dump site, identified as 5LK844, begins near the intersection of the gulch and County Road 6 and extends approximately 500 feet upstream. FEC recommended Site 5LK844 as potentially eligible for nomination to the National Register of Historic Places. The Removal Action and the Remedial Action were designed and constructed to avoid any adverse impact to Site 5LK844.

Community Involvement

In May 1995, the public was notified in the local newspaper that the draft Engineering Evaluation/Cost Analysis (EE/CA) for the Stream Sediments within Oregon Gulch, California Gulch Superfund Site, Leadville, Colorado, dated February 1995 was available for public review and comment. EPA held a public meeting in Leadville on June

15, 1995. Comments were submitted and they are attached to the final EE/CA report in a separate Responsiveness Summary. An Action Memorandum was issued on August 4, 1995.

A notice of availability of the Proposed Plan for OU 10 and supporting documents was published in the Leadville Herald Democrat on March 13, 1997. The public comment period was held from March 19, 1997 to April 18, 1997. A Public meeting was held on March 19, 1997. No comments were received during the public comment period. On August 7, 1997, EPA issued a ROD for OU 10 presenting EPA's selected remedy for OU 10 the California Gulch Superfund Site.

Current Status:

Based on the successful completion of the Removal Action and the Remedial Action, there are no further response actions planned or scheduled for this OU.

Because this decision results in hazardous substances remaining on site, above health based levels, five-year reviews of the previous response actions will be required pursuant to the NCP. These reviews will be conducted in conjunction with site-wide five-year reviews. The next five-year review at the California Gulch Site is scheduled to be initiated in October 2000 for completion by March 30, 2001. In addition to the five-year reviews, the Consent Decree establishes an institutional control by requiring deed notices that refer back to the Consent Decree and its associated requirements. Such a deed notice would apply to properties owned by Resurrection, or the Res-Asarco joint venture, within OU 10.

EPA, with concurrence from the State of Colorado, has determined that all appropriate CERCLA Response actions have been completed at OU 10 and protection of human health and the environment has been achieved. Therefore EPA is deleting OU 10 of the California Gulch Superfund Site from the NPL. This action will be effective April 16, 2001. However, if EPA receives dissenting comments by March 19, 2001, EPA will publish a document that withdraws this action.

While EPA does not believe that any future response actions within Operable Unit 10 will be needed, if future conditions warrant such action, the deleted area of Oregon Gulch will remain eligible for future response actions. Furthermore, this partial deletion does not alter the status of the Site-wide Surface and Ground Water operable unit of the California Gulch Superfund Site which is not proposed for deletion and remains on the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 19, 2000.

Jack W. McGraw,

Acting Regional Administrator, US EPA Region 8.

Part 300, title 40 of chapter 1 of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

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

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by revising the entry under Colorado for "California Gulch" to read as follows:

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
*	*	*	*
CO	California Gulch	Lake County	P
*	*	*	*

[FR Doc. 01–3614 Filed 2–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 300

[FRL–6939–5]

National Oil and Hazardous; Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final partial deletion of Release Block D and Release Block H of the Department of Energy (DOE) Mound Superfund Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 announces the deletion of the portions of the Department of Energy Mound Superfund Site (Mound Site) known as Release Block D and Release Block H from the National Priorities List (NPL). EPA requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

This partial deletion pertains to Release Block D, a 12-acre parcel of property along the eastern border of the Mound Site, containing two industrial buildings. This also pertains to Release Block H, a 14-acre parcel of property consisting of the Mound plant parking lot. The Department of Energy (DOE), with the concurrence of EPA, Region 5, and the Ohio Environmental Protection Agency (OEPA), has issued Records of Decision (RODs) for Release Blocks D and H, selecting institutional controls as the final remedy for both areas. The purpose of institutional controls is to ensure that these properties will be restricted to industrial uses. EPA bases its partial deletion of Release Blocks D and H on the determination by EPA and the State of Ohio, through OEPA, that all appropriate actions under CERCLA have been implemented to protect human health and the environment at Release Blocks D and H.

This partial deletion pertains only to Release Blocks D and H. EPA may propose to delete additional portions of the Mound Site in the future. Until then, however, all parts of the Mound Site, other than Release Blocks D and H, will remain on the NPL.

DATES: This "direct final" action will be effective April 16, 2001 unless U.S. EPA receives dissenting comments by March 19, 2001. If written dissenting comments are received, U.S. EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Timothy Fischer, Remedial Project Manager or Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA Region, 5 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the Mound Site is available at U.S. EPA's Region 5 office and at the local information repository located at: The CERCLA Public Reading Room, Miamisburg Senior Adult Center, 305 Central Avenue, Miamisburg, OH 45342. Requests for comprehensive copies of documents should be directed formally to the Region 5 Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Timothy Fischer, Remedial Project Manager, at (312) 886–5787 (SR–6J), or Gladys Beard, Associate Remedial Project Manager, Superfund Division (SR–6J), U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253, or Stuart Hill (P–19J), Office of Public Affairs, U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–0689.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA) Region 5 announces the deletion of two portions of the Department of Energy Mound Superfund Site (Mound Site), located in Miamisburg, Montgomery County, Ohio, from the National Priorities List (NPL). The NPL constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA, Region 5, requests comments on this action. This partial deletion pertains to Release Block D, a 12-acre parcel of property along the eastern border of the Mound Site, containing two industrial buildings. Release Block D is bounded on the south by undeveloped Mound property, on the east by Mound Road, on the north by a parking lot and small group of buildings, and on the west by a fenced storage area. This partial deletion also pertains to Release Block H, a 14-acre parcel of property consisting of the Mound plant parking lot. Release Block H is bounded on the south by the main plant entrance, on the east by Mound Road and an offsite community golf course, on the north by offsite residences, and on the west by a fenced parking lot.

For both Release Blocks D and H, DOE, EPA, and OEPA identified buildings and potential release sites, evaluated them, and addressed any significant contamination through removal actions. At the conclusion of these activities, residual risk assessments were performed. These assessments assumed that the land comprising Release Blocks D and H would continue to be used for industrial purposes only, and concluded that, on that basis, they posed no significant risks to human health or the environment. On February 25, 1999, DOE issued a Record of Decision for Release Block D, selecting institutional controls as the final remedy. The ROD called for imposing deed restrictions on the property, limiting it to industrial use and preventing any exposure to children. The Proposed Plan and Record of Decision listed the restriction as: (1) Ensure that industrial land use is maintained; (2) Prohibit the use of bedrock groundwater; (3) Provide site access for federal and state agencies for the purpose of taking response actions, including sampling and monitoring; and (4) Prohibit removal of RB H soils from the DOE Mound property (as owned in 1998) boundary without approval from Ohio Department of Health (ODH) and the Ohio Environmental Protection Agency (OEPA) or their successor agencies. The ROD also committed DOE to ensure compliance with the deed restrictions over the long term. On June 18, 1999, DOE issued a similar Record of Decision for Release Block H, selecting institutional controls as the final remedy. Once again, DOE committed itself to impose and enforce deed restrictions on the property, limiting it to industrial use and preventing any exposure to children. Subsequently, DOE conveyed both Release Blocks D and H to the Miamisburg Mound Community Improvement Corporation. The sales contracts and deeds for these transactions incorporated the land use restrictions set forth in the two Records of Decision.

EPA is deleting Release Blocks D and H because all appropriate CERCLA response activities have been completed in those areas. EPA may propose to delete additional portions of the Mound Site in the future. Until then, however, all parts of the Mound Site, other than Release Blocks D and H, will remain on the NPL.

The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to public health, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments on this notice for thirty (30) days after publication of this notice in the **Federal Register** and a newspaper of record.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites or portions of a Site may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i): Responsible parties or other persons have implemented all appropriate response actions required; or Section 300.425(e)(1)(ii): All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or Section 300.425(e)(1)(iii). The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been either totally or partially deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. (Note that in this case, because the remainder of the Mound Site is federally owned, Fund-financed activities would be subject to the limitations set forth in Section 111(e)(3) of CERCLA.) In addition, deletion of a portion of a site

from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

The following procedures were used for the intended deletion of Release Blocks D and H at the Mound Site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Ohio, through OEPA, has concurred by letter dated November 22, 2000, with this partial deletion.

(3) Concurrent with this national Direct Final Partial Deletion, a notice has been published in a newspaper of record and has been distributed to appropriate Federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and a newspaper of record.

(4) EPA has made all relevant documents available at the information repositories listed previously.

This **Federal Register** notice, and a concurrent notice in a newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Direct Final Partial Deletions. EPA is requesting only dissenting comments on this Notice. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the information repositories.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. If necessary, EPA will prepare a Responsiveness Summary responding to each significant comment submitted during the public comment period. The Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are encouraged to contact EPA Region 5 to obtain a copy of the Responsiveness Summary.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of Release Blocks D and H of the Mound Site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied:

Background

The Mound Site is located in Miamisburg, Ohio, about 10 miles south of Dayton and 45 miles north of Cincinnati. The 306-acre site consists of a number of industrial buildings in the northern portion of the Mound site, and open land in the southern portion. Most of the Site is owned by the United States Department of Energy, which began operations there in 1948 involving the manufacture of triggering devices for nuclear weapons. The Mound Site is located near an ancient Indian mound; hence the name of the DOE facility—the Mound Plant. As a result of past disposal practices and contaminant releases to the environment, including radioactive contaminants, the Mound Site was listed on the NPL on November 21, 1989 (54 FR 48184). DOE signed a CERCLA Section 120 Federal Facility Agreement (FFA) with EPA in October, 1990. In 1993, this agreement was modified and expanded to include OEPA. DOE serves as the lead agency for CERCLA-related activities at the Mound Site.

DOE, EPA, and OEPA originally planned to address the Mound Site's environmental restoration issues under a set of Operable Units (OUs), each of which would include a number of Potential Release Sites (PRSs). For each OU, the site would follow the traditional CERCLA process: a Remedial Investigation/Feasibility Study (RI/FS), followed by a Record of Decision (ROD) and Remedial Design/Remedial Action (RD/RA). In 1995, after beginning remedial investigations for several OUs, DOE and its regulators concluded that the OU approach was inefficient for Mound due to the number and variety of contaminants on the Site. DOE, EPA, and OEPA agreed that it would be better to evaluate each PRS or building separately, use removal action authority to remediate each one as needed, and establish a goal of no additional remediation other than institutional controls for the final remedy. Following completion of removal actions, a residual risk evaluation would be conducted to ensure that industrial use of the block or building would be safe. DOE, EPA, and OEPA called this approach the "Mound 2000 Process."

The Mound 2000 Process established a Core Team consisting of representatives of DOE, EPA, and OEPA. The Core Team evaluates each of the potential contamination problems at the Mound Site and recommends the appropriate response. It uses information gathered from site visits, existing data, and knowledge of Mound Plant processes to determine whether or not any action is warranted for potential release sites. If a decision cannot be made based on the information on hand, the Core Team identifies the specific, additional information needed. The Core Team also receives input from technical experts and from the public. Thus, all stakeholders have an opportunity to express their opinions or suggestions for each potential problem area.

Block D Response Actions

Under the Mound 2000 Process, the Core Team identified 18 potential release sites, including 2 buildings, within the limits of Block D. Only one—an area used to dispose of soil contaminated with thorium—needed an active response. DOE carried out a removal action in October, 1998. Following completion of the removal action, a residual risk assessment determined that furture industrial use of Block D posed no significant risk to human health or the environment. In order to ensure that future use of Block D conforms to the industrial uses contemplated in the risk assessment, DOE, with the concurrence of EPA and OEPA, selected institutional controls as the final remedy for Block D in a Record of Decision issued on February 25, 1999. The ROD called for imposing deed restrictions on the property, limiting it to industrial use and preventing any exposure to children. The ROD also committed DOE to ensure compliance with the deed restrictions over the long term.

Block H Response Actions

Under the Mound 2000 Process, the Core Team identified only one potential release site within the limits of Block H. DOE, EPA, and OEPA determined that no active response was required. A residual risk assessment determined that industrial use of Block H posed no significant risk to human health or the environment. In order to ensure that future use of Block H conforms to the industrial uses contemplated in the risk assessment, DOE, with the concurrence of EPA and OEPA, selected institutional controls as the final remedy for Block H in a Record of Decision issued on June 18, 1999. The ROD called for imposing deed restrictions on the property, limiting it to industrial use and preventing any exposure to children. The ROD also committed DOE to ensure compliance with the deed restrictions over the long term.

Community Involvement

Public participation activities for Release Blocks D and H have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617. As part of the Mound 2000 Process, DOE routinely solicited public comment on the Core Team's recommended response at each Potential Release Site (PRS) and on the residual risk assessments. The final remedy decisions for Release Blocks D and H were each preceded by the issuance of a proposed plan, a notice in the local newspapers commencing a 30-day public comment period, and a public meeting where citizens could ask questions and make comments. All documents DOE relied upon in making its remedy decisions were available for public inspection at the The CERCLA Public Reading Room, Miamisburg Senior Adult Center, 305 Central Avenue, Miamisburg, OH 45342. When it issued its remedy decisions, DOE included a written response to all significant comments.

Current Status

DOE has implemented the RODs for Release Blocks D and H by placing restrictions in the deeds for each property. DOE conveyed Release Block D to the Miamisburg Mound Community Improvement Corporation on March 18, 1999. DOE conveyed Release Block H to the Miamisburg Mound Community Improvement Corporation on August 5, 1999. Because the remedies for Release Blocks D and H do not allow unlimited use of and unrestricted exposure to each property, DOE, in consultation with EPA, OEPA, and the Ohio Department of Health, will review the remedial actions each year to assure that human health and the environment are being protected by the remedial actions being implemented.

While EPA does not believe that any future response actions for Release Blocks D and/or H will be needed, if future conditions warrant such action, these areas of the Mound Site would be eligible for future Fund-financed response actions. This partial deletion does not alter the status of the remainder of the Mound Site, which is not proposed for deletion and remains on the NPL.

V. Action

EPA, with concurrence from the State of Ohio, has determined that all appropriate CERCLA response actions have been completed at Release Blocks D and H, and that protection of human health and the environment has been achieved in these areas. Therefore, EPA is deleting Release Blocks D and H of the Mound Superfund Site from the NPL.

This action will be effective April 16, 2001. However, if EPA receives dissenting comments by March 19, 2001, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

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

Dated: January 19, 2001.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region 5.

Part 300, title 40 of chapter 1 of the Code of Federal Regulations is amended as follow:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

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

Appendix B—[Amended]

2. Table 2 of appendix B to Part 300 is amended by revising the entry for "Mound Plant (USDOE)" Miamisburg, Ohio to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 2.—FEDERAL FACILITIES SECTION

State	Sitename	City/County	(Notes) [1]
* * * * * * *			
OH	Mound Plant (USDOE)	Miamisburg	P
* * * * * *			

[1] P=Sites with partial deletion(s).

* * * * *

[FR Doc. 01–3612 Filed 2–14–01; 8:45 am]
BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 99–168; FCC 00–330]

Service Rules for the 746–764 and 776–794 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this document, the Commission dismisses a petition for reconsideration as moot and adopts a special rule on default payments for auctions of licenses in the 746–764 and 776–794 MHz Bands using a package bidding design.

DATES: February 15, 2001.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Attorney, Auctions Legal Branch at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Second Memorandum Opinion and Order (Second MO&O) in the Amendment of the Commission's Rules Regarding Service Rules for the 746–764 and 776–794 MHz Bands. The complete text of the *Second MO&O* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov/wtb/auctions.*

Synopsis of the Second Memorandum Opinion and Order

I. Introduction

1. In this Second Memorandum Opinion and Order (*Second MO&O*), we address a petition for reconsideration

asking that in the auction of licenses in the 747–762 and 777–792 MHz bands ("Auction No. 31"), we apply to bidders that seek a 20 MHz nationwide aggregation any limits on bid withdrawal payments made available to bidders that seek a nationwide 30 MHz aggregation. We also address the question whether the competitive bidding rules, particularly the default payment rule, need to be modified for Auction No. 31 in light of the decision of the Wireless Telecommunications Bureau ("the Bureau") to offer combinatorial (package) bidding for this auction.

2. In an earlier ruling in this docket, we found that in designing the procedures for Auction No. 31, we should not use a combinatorial (package) bidding design because of the time required to further develop such an auction design. *See 700 MHz First Report and Order*, 65 FR 3139 (January 20, 2000). Instead, we directed the Bureau to adopt, if operationally feasible, a special nationwide bid withdrawal procedure to limit the exposure of bidders seeking a 30 megahertz nationwide aggregation. In response to this ruling, one party filed a petition for reconsideration. In the *700 MHz MO&O*, 65 FR 42879 (July 12, 2000), we deferred ruling on the petition and stated that the Bureau may implement a combinatorial bidding design for Auction No. 31, if appropriate. In that regard, the Bureau issued a *Auction No. 31 Package Bidding Comment Public Notice*, 65 FR 35636 (June 5, 2000), that sought comment on procedures for implementing combinatorial (package) bidding for Auction No. 31. The *Auction No. 31 Package Bidding Comment Public Notice* also sought comment on application to a package bidding auction of the general competitive bidding rules regarding default. After careful review of the comments, the Bureau issued a *Auction No. 31 Package Bidding Procedures Public Notice*, 65 FR 43361 (July 13, 2000), that set forth specific procedures for conducting a simultaneous multiple round auction with combinatorial or package bids. For the reasons set forth, we dismiss the petition as moot and adopt a special default payment rule for Auction No. 31.

II. US West Petition for Reconsideration

A. Background

3. In the *700 MHz First Report and Order*, we adopted service and auction rules for the commercial use of the 746–764 MHz and 776–794 MHz bands. These bands had been reallocated from use solely for broadcast service. The new service rules established 12 licenses (six regional licenses of 10 MHz each and six regional licenses of 20 MHz each) for the 30 megahertz of spectrum in the 747–762 MHz and 777–792 MHz bands. In that ruling, we noted that there may be bidders that do not wish to acquire any licenses if they cannot acquire a nationwide aggregation of 30 MHz licenses. We further noted that the bid withdrawal provisions of our general competitive bidding rules at part 1, subpart Q, might discourage bidders from attempting a nationwide aggregation. To address this concern, we directed the Bureau to adopt, if operationally feasible, a nationwide bid withdrawal procedure to limit the exposure of bidders that seek a 30 MHz aggregation. The Bureau adopted such a procedure. *See* Auction No. 31 Procedures Public Notice 65 FR 12251 (March 8, 2000). The petition asks that we apply the same nationwide bid withdrawal provisions to any bidder that seeks a 20 MHz nationwide aggregation, as may be applied to a bidder seeking a 30 MHz nationwide aggregation.

B. Discussion

4. In the *Auction No. 31 Package Bidding Procedures Public Notice*, the Bureau determined that bidders may place bids on individual licenses and may also place bids on up to twelve different packages of each bidder's choosing. By providing for package bidding, the Bureau has addressed the problem that may exist for a bidder that desires all or none of the licenses in a particular aggregation. For example, a bidder that seeks a 20 MHz or a 30 MHz nationwide aggregation can now bid on a package that includes these licenses and thus avoid the risk of winning only some of the desired licenses. Because, under package bidding, bidders that seek a 30 MHz nationwide aggregation no longer run the risk of being left with unwanted licenses in a failed nationwide aggregation, we conclude that the 30 MHz nationwide bid withdrawal procedure established by the Bureau at our direction is no longer necessary and the Bureau need not apply the procedure in Auction No. 31. Because the Bureau stated that, upon Commission approval, it will not apply the nationwide bid withdrawal procedure in Auction No. 31, the request that we implement a similar bid withdrawal procedure for 20 MHz aggregation is moot. Accordingly, we dismiss the petition.

III. Default

A. Introduction

5. In the *700 MHz MO&O*, we stated that we would adopt any necessary rule changes after the Bureau had determined whether to implement package bidding for Auction No. 31. In the *Auction No. 31 Package Bidding Comment Public Notice*, the Bureau sought comment on application of the Commission's rules regarding bidder defaults. We received three comments and one reply comment on this issue.

B. Licenses Subject to Auction After a Default

6. Under our part 1 auction rules, if a bidder defaults on a bid (or bids), we may sell the license(s) for the spectrum in a new auction. For Auction No. 31, the Bureau proposed that if a bidder defaults on a package bid, it would auction the licenses making up the package on which the party defaulted, and only those licenses. The Bureau would do this even if, under the package bidding procedures, a different set of packages would have won had the defaulting bidder not bid. For example, if the winning set of bids contains a 20 MHz nationwide package and a 10 MHz nationwide package, and the 20 MHz winner then defaults, the Bureau would auction only the six licenses making up the nationwide 20 MHz package. The 10 MHz package would be unaffected. The Bureau proposed to take this approach even if, had the 20 MHz winner not submitted its winning bid, the licenses would have been sold in a different set of packages (for example, the six 30 MHz regional packages).

7. Two parties file joint comments objecting to this proposal. They are concerned that bidders may strategically default, and argue that we should not award any licenses after a default unless the non-defaulting winners clearly would have won absent the default. They instead propose that we "rewind" the auction to before the round where it is clear the defaulting bidder was attempting to manipulate the outcome.

8. While we recognize the possibility that a bidder may attempt to strategically default, we are not inclined to adopt the proposal that we "rewind" the auction. We believe that attempting to "rewind" an auction would be largely unworkable and unreasonable. First, bidders may default for other reasons, and determining when a bidder began "manipulating" the outcome, if indeed it was attempting to do so, could be extremely difficult. Second, if the auction were subject to being "rewound" in the event of a default, the prevailing bidders would be only

contingent winners until all long form applications were approved and all money was paid, possibly some months after the auction closed. For each winner, the contingency would not be under the winner's control, but rather would depend on the actions of others. Moreover, all bidders, both those that prevailed and those that did not, would have to be at the ready during this time to continue the auction from the point to where it was unwound. We therefore do not believe that this proposal is feasible.

9. We also believe that these joint commenters underestimate the deterrence value of the current default rule. We believe that the better course is to increase the additional default payment rather than attempt to "rewind" the auction.

10. No other commenter supports the proposal to rewind the auction, nor does any other commenter object to this portion of the proposal. Moreover, these joint commenters note that any alternative following a default (including its own) is problematic. Accordingly, we adopt the procedure proposed in the *Auction No. 31 Package Bidding Comment Public Notice* to hold another auction only for the license(s) on which bidders default.

C. Calculation of Default Payments

11. The Commission's rules provide that if a bidder defaults, it is liable for a default payment that contains a deficiency portion, equal to the difference between the amount it bid and the amount of the winning bid the next time the Commission offers the license, plus an additional payment, equal to three percent of the subsequent winning bid (or three percent of the bidder's bid, whichever is less). Default payments are calculated on a license-by-license basis; that is, where a bidder that defaults has more than one winning bid, the payments are calculated separately for each bid. Gains realized from the subsequent auction of licenses for which the subsequent winning bid is higher than the defaulter's bid are not used to offset losses incurred on those licenses for which the winning bid is lower than the defaulter's bid.

12. In an auction with package bidding, a bidder that bids on a package is not placing separate bids on the individual licenses making up that package. Thus, in an auction with package bidding, it is not possible to apply the default rules in the same manner as they are applied in a simultaneous multiple round auction without package bidding. The Bureau therefore proposed to modify the default rules for Auction No. 31 as follows. Where a bidder defaults on a package bid(s), the payment would be calculated on a bid-by-bid basis, rather than on a license-by-license basis. The deficiency portion would be equal to the difference between the amount bid for the package and the amount of the subsequent winning bid for the same package or the aggregate of the subsequent winning bids for the licenses that make up the package. The Bureau also proposed that, similar to the rule for individual licenses, if a bidder defaults on two or more packages, the default payment due for each defaulted package would be calculated separately and would not be not offset against one another. If one package was subsequently auctioned for more than the original package bid amount and the other package subsequently was auctioned for less, the excess bid price from the first package would not be used to reduce the amount owed on the second package.

13. We will not alter the rule for calculating default payments when a bidder has defaulted on more than one license or package. For the reasons we expressed in the *BDPCS MO&O*, 15 FCC Rcd. 17590 (2000), we believe that the rule is a correct one. However, the rule needs to be modified with respect to how we will calculate default payments when, after default(s) by one or more bidders, the affected licenses are won in different packages or groupings in the subsequent auction, particularly in light of the Bureau's package bidding procedures which allow bidders in Auction No. 31 to design their own packages. Our procedures do not currently provide a method for calculating a default payment when defaulted licenses are subsequently won in a package(s). While we would prefer to use our current rule for calculating default payments and not aggregate default payments or apportion payments among defaulting bidders, where licenses are won in different packages in a subsequent auction there is no choice but to do so. Thus, we set forth a rule for Auction No. 31 that will allow the calculation of default payments in those situations where the subsequent auction results in a completely different set of winning packages. Where, however, we are able to apply the current method for calculating default payments, or apply an analogous rule, we will do so.

14. Accordingly, we modify § 27.501 of the Commission's rules for calculating the deficiency portion of default payments in Auction No. 31 when a package bidding design is employed.

D. Additional Default Payment

15. Because of the widespread implications of default under package bidding, two commenters recommend that we modify our rules to provide a stronger deterrent against default. One commenter recommends that we raise the additional payment portion of the default payment from three percent to 25 percent to discourage strategic defaults and avoid potentially inefficient auction results. The other recommends that: (i) Bidders be required to deposit 50 percent of their winning bids within eight business days after the close of the auction; (ii) each defaulter and the real party in interest be jointly and severally responsible for the entire revenue shortfall; (iii) each defaulter and its real party in interest be jointly and severally responsible for a default penalty of 25 percent of the total revenue on all licenses that are placed in different hands because of the default; and (iv) to the extent allowable, all of a bidder's lines of business and those of its real party in interest be subject to suspension during the time a default penalty remains uncollected.

16. We agree that the effects of a default in a package bidding auction require a strong deterrent against insincere bidding and strategic default. In an auction without package bidding, a default on a license mostly affects only the bidders for that license; if the defaulting bidder had not bid, the other licenses in the auction likely still would have been won by the same bidders. In an auction with package bidding, however, a default may reasonably be expected to affect multiple licenses (and perhaps every license in the auction); if the defaulting bidder had not bid, the licenses may well have been sold in different packages. We believe, however, that the protections proposed by one commenter are too stringent. We believe that another commenter offers a more measured approach in recommending that the additional default payments of three percent be raised to 25 percent of the defaulted bid or the subsequent bid, whichever is smaller. We agree that a 25 percent additional default payment will adequately discourage defaults and prevent strategic skewing of our auction and we believe that it is not so high as to be punitive. We are also concerned that in this auction a lesser amount would be inadequate to deter bidders from insincere bidding or strategically defaulting. Finally, we believe that increasing the default payment is an appropriate response to this risk, as the very purpose of the default payment rule, *inter alia*, is to deter frivolous or

insincere bidding and generally protect the integrity of the auction process. Therefore, for Auction No. 31, bidders that default on their bids will be subject to an additional payment of 25 percent of the subsequent winning bid(s) or the defaulting bids, whichever is less.

IV. Procedural Matters and Ordering Clauses

17. This action is taken pursuant to sections 1, 4(i), 301, 303, 308, 309(j), and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303, 308, 309(j), and 337, and the Consolidated Appropriations Act, 2000, Public Law 10–113, 113 Stat. 1501, section 213.

18. Accordingly, it is ordered that part 27 of the Commission's rules is amended to modify the default payment rule for an auction of licenses in the 747–762 and 777–792 MHz Bands using a package bidding design, and that, in accordance with section 213 of the Consolidate Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501 (1999), this rule shall be effective February 15, 2001.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 27 as follows:

PART 27—WIRELESS COMMUNICATIONS SERVICE

1. The authority citation for part 27 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.501 is amended by redesignating the undesignated text as paragraph (a) and adding new paragraph (b) to read as follows:

§ 27.501 746–764 MHz and 776–794 MHz bands subject to competitive bidding.

* * * * *

(b) For auctions of licenses in the 747–762 and 777–792 MHz Bands using a package bidding design, the payments imposed on bidders who default on payments due after an auction closes or who are disqualified, set forth in § 1.2104(g) of this chapter, shall be calculated as follows. The default payment consists of a deficiency portion and an additional payment. The additional payment shall be 25 percent of the subsequent winning bid or the defaulted bid, whichever is less. In the case that either the subsequent winning bid or the defaulted bid is subject to bidding credits, the additional payment will be calculated in an analogous manner to that used in § 1.2104(g)(2) of this chapter. The deficiency portion of the default payment shall be calculated as set forth in § 27.501(b)(1) through (b)(4). In the case that any of the relevant bids are subject to bidding credits, the default payment will be adjusted in an analogous manner to that used in § 1.2104(g)(1) of this chapter.

(1) Where a defaulting bidder won licenses individually (*i.e.*, not as part of a package), and in a subsequent auction the licenses are also won individually, we will calculate the deficiency portion as we do in our simultaneous multiple round auctions, and on a license-by-license basis (*i.e.*, the differences between the amount originally bid and the amount subsequently bid will not be aggregated to determine a net amount owed). Where a license is sold individually and not as part of a package, we find no reason to modify the calculation of the deficiency portion of the default payment.

(2) Where a defaulting bidder won licenses in package(s), and in a subsequent auction the licenses are won either in the same package(s), or in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis, and the differences between the amount originally bid and the amount(s) subsequently bid will not be aggregated to determine a net amount owed. Thus, in this situation, we will calculate the deficiency portion in a manner analogous to where the licenses are sold individually. However, because a bid on a package does not imply any specific allocation of the total amount to the individual licenses making up that package, where the licenses are subsequently sold individually or as part of smaller packages, we believe we should aggregate the amounts received in the subsequent auction in order to determine any deficiency.

(3) Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in § 27.501(b)(2)), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses. As stated in § 27.501(b)(2), a bid on a package does not imply any specific allocation of the total amount to the licenses making up that package. We believe that in this situation we should aggregate the amounts bid on the various packages in order to calculate the deficiency portion owed.

(4) When in the situation described in § 27.501(b)(3), there are multiple defaulting bidders, the default payment (both the deficiency portion and the additional amount portion) will be allocated to the defaulting bidders in proportion to the amount they originally bid. For example, if Bidder 1 defaults on Package ABC for $200, and Bidder 2 defaults on Package DE for $400, and in a subsequent auction the licenses are won in Package AB for $150 and Package CDE for $350, Bidder 1 would be liable for ⅓ of the default payment and Bidder 2 would be responsible for ⅔. The total default payment would be equal to the difference between the total of the original bids ($600) and the total of the subsequent amounts bid ($500) plus an additional amount of 25 percent of the total of the subsequent amounts bid. The total default payment therefore would equal $100 ($600–$500) plus 25 percent of $500 ($125), for a total default payment of $225.

[FR Doc. 01–3786 Filed 2–14–01; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 66, No. 32
Thursday, February 15, 2001

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–357–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–V Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Gulfstream Model G–V series airplanes. This proposal would require repetitively replacing the existing nose wheel steering actuator with a new or reworked actuator having the same part number. This action is necessary to prevent loss of nose wheel steering control without a corresponding alert message annunciation due to the effects of moisture intrusion into the rotary variable displacement transducer (RVDT) inside the steering actuator, and consequently, an over steering condition. If an over steering condition were to occur during landing, the airplane could depart the runway. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–357–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–357–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Frank Mokry, Systems Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6066; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–357–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–357–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of oscillations and/or over steering of the nose wheel steering system without a "STEER BY WIRE FAIL" message being annunciated. All but one of these events occurred during landing on certain Gulfstream Model G–V series airplanes. None of these airplanes left the runway, but some have experienced minor nose wheel tire damage. An investigation revealed that the cause of these events was moisture intrusion into the rotary variable displacement transducer (RVDT) inside the steering actuator. The pedal steering and hand tiller use the RVDT to determine the position of the nose wheel. At cold temperatures, the moisture can freeze and cause the RVDT feedback shaft to bind. This binding causes nose wheel position data errors of 10 to 12 degrees to be transmitted to the tiller, which could result in oversteering of the airplane.

Loss of nose wheel steering control (i.e., unresponsive steering or uncommanded oscillations) without a corresponding "STEER BY WIRE FAIL" message annunciation could result in an over steering condition. If an over steering condition were to occur during landing (i.e., high speed conditions), the airplane could depart the runway.

Actions Since Reported Incidents

The manufacturer has advised the FAA that all operators, worldwide, of the subject Gulfstream Model G–V series airplanes, serial numbers 501 through

605 inclusive, have replaced all nose wheel steering actuators, part number (P/N) 1159SCL500–41, with new or restored actuators, P/N 1159SCL500–41 Rev. D, per Gulfstream Alert Customer Bulletin 9A, dated September 25, 2000. The upgraded steering actuator, P/N 1159SCL500–41 Rev. D, is one that has been sealed with an improved sealing procedure. The manufacturer also has advised the FAA that it currently is developing a redesigned steering actuator, which prevents moisture intrusion and incorporates an improved spring design to prevent the RVDT shaft from binding.

Therefore, until this redesigned steering actuator is developed, approved, and available, the FAA has determined that the steering actuator, P/N 1159SCL500–41 Rev. D, needs to be replaced with an actuator having the same P/N every 450 flight hours or 12 months, whichever occurs first, to address the identified unsafe condition. The FAA also has determined that, in addition to airplanes having serial numbers 501 through 605 inclusive, airplanes having serial numbers subsequent to 605 (in production airplanes) will be equipped with steering actuator, P/N 1159SCL500–41 Rev. D, and therefore, should be subject to the requirement of the proposed AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitively replacing the nose wheel steering actuator, P/N 1159SCL500–41 Rev. D, with a new or reworked actuator having the same part number. The repetitive replacement would be required to be accomplished per the Gulfstream Maintenance Manual.

Interim Action

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

Cost Impact

There are approximately 94 Model G–V series airplanes of the affected design in the worldwide fleet. The FAA estimates that 89 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $15,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,367,040, or $15,360 per airplane, per replacement.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace Corporation: Docket 2000–NM–357–AD.

Applicability: Model G–V series airplanes, serial numbers 501 and subsequent, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of nose wheel steering control, without a corresponding alert message annunciation, due to the effects of moisture intrusion into the rotary variable displacement transducer (RVDT) inside the steering actuator, which could result in the airplane departing the runway if an over steering condition were to occur during landing, accomplish the following:

Repetitive Replacement

(a) Replace the nose wheel steering actuator, part number (P/N) 1159SCL500–41 Rev. D, with a new or restored actuator having the same part number, per Gulfstream V Maintenance Manual Chapter 05–10–00, dated September 15, 2000; at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Repeat this replacement thereafter every 450 flight hours or 12 months, whichever occurs first.

(1) Within 450 flight hours or 12 months after replacing the nose wheel steering actuator, P/N 1159SCL500–41 Rev. D, with a new or restored actuator having the same part number, whichever occurs first.

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

Alternative Methods of Compliance

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

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

Special Flight Permit

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

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

Issued in Renton, Washington, on February 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–3853 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–32 Series Airplanes Modified per Supplemental Type Certificate SA4371NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–9–32 series airplanes modified per Supplemental Type Certificate SA4371NM. This proposal would require an inspection to determine if certain ground wires on the water heater of each lavatory are installed, and corrective action, if necessary. This action is necessary to detect improper grounding of a water heater, which, coupled with an internal short in the water heater, could result in heat or smoke damage or a fire on the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–207–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Hexcel Interiors, 3225 Woburn Street, Bellingham, Washington 98226; or Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2788; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–207–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that overheating of the water heater in an aft lavatory caused heat and smoke damage on a McDonnell Douglas Model DC–9–32 series airplane. The water heater was installed per Hexcel Supplemental Type Certificate (STC) SA4371NM, which was approved by the Seattle Aircraft Certification Office. Investigation revealed that the affected water heater was not grounded correctly. Further investigation revealed that the water heater in the other aft lavatory on the airplane also was not grounded correctly. The missing ground wires should have been installed during the installation of the lavatory on the airplane. If not corrected, in the event of an internal short in the water heater, this condition could result in heat or smoke damage or a fire on the airplane. Incorrect grounding could also cause an electric shock to a person who touches the water heater.

Explanation of Relevant Service Information

The FAA has reviewed and approved Hexcel Service Bulletin 110000–25–001, dated March 31, 2000, which describes procedures for a one-time general visual inspection to determine if ground wires are installed between the top of the water heater and the sink unit, and between the sink unit and the mounting flange of the toilet flush timer module, on each lavatory. The service bulletin also describes procedures for installation of a ground wire assembly if any ground wire is not installed. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions

specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends accomplishing the inspection at the next convenience maintenance check, the FAA has determined that a more specific compliance time is needed to ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection. In light of all of these factors, the FAA finds an 18-month compliance time for completing the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 30 airplanes of the affected design in the worldwide fleet. The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,200, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2000–NM–207–AD.

Applicability: Model DC–9–32 series airplanes modified per Hexcel Supplemental Type Certificate (STC) SA4371NM, as listed in Hexcel Service Bulletin 110000–25–001, dated March 31, 2000; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect improper grounding of a water heater, which, coupled with an internal short in the water heater, could result in heat or smoke damage or a fire on the airplane, accomplish the following:

Inspection and Corrective Action

(a) Within 18 months after the effective date of this AD, perform a one-time general visual inspection to determine if ground wires are installed between the top of the water heater and the sink unit and between the sink unit and the mounting flange of the toilet flush timer module on each lavatory, per Hexcel Service Bulletin 110000–25–001, dated March 31, 2000. If any ground wire is not installed, before further flight, install a ground wire assembly per the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on February 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–3854 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–160–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310, and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes. The existing AD requires a detailed visual inspection to detect damage to the terminal lugs on the 12XC and 15XE connectors and the mounting lugs on the 15XE connector; corrective actions, if necessary; and certain conditional repetitive inspections. This action would add requirements for installation of a new mounting bracket for the 15XE connector, modification of the cable attachment adjacent to the connector, and replacement of certain terminal lugs on the 15XE connector by terminal lugs with a thicker contact area. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent excessive vibrations generated by the mounting configuration of the 15XE connector, which could cause breakage of the terminal and mounting lugs on the 15XE connectors in the 101VU panel in the avionics compartment, resulting in loss of electrical power from the standby generator.

DATES: Comments must be received by March 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000-NM–160-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM–160-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–160–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 10, 1999, the FAA issued AD 99–19–40, amendment 39–11327 (64 FR 51190, September 22, 1999), applicable to certain Model A310 and Model A300–600 series airplanes. That AD requires a detailed visual inspection to detect damage to the terminal lugs on the 12XC and 15XE connectors and the mounting lugs on the 15XE connector; and repair or replacement of the terminal lugs or the 15XE connector with new parts, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct broken terminal and mounting lugs on the 12XC and the 15XE connectors in the 101VU panel in the avionics compartment, which could result in loss of electrical power from the standby generator.

Actions Since Issuance of AD 99–19–40

In the Notice of Proposed Rule Making that preceded issuance of AD 99–19–40, the FAA stated that preliminary indications were that the mounting configuration of connector 12XE was transmitting vibration to the terminal lugs of both connectors and to the mounting lugs of connector 15XE. Subsequently, in the preamble to AD 99–19–40, the FAA stated that the actions required by that AD were considered "interim action" until final action was identified, at which time the agency might consider further rulemaking.

Since the issuance of that AD, laboratory analyses and flight tests conducted by Airbus have shown that excessive vibration is generated by the mounting configuration of the 15XE connector. That condition, if not corrected, could result in breakage of the mounting lugs on the 15XE connector and the terminal lugs on the 15XE and 12XC connectors in the 101VU panel in the avionics compartment, resulting in loss of electrical power from the standby generator to the AC essential bus. Therefore, the FAA has determined that

further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A310–24–2080 (for Model A310 series airplanes) and A300–24–6070 (for Model A300–600 series airplanes), both dated December 15, 1999. The service bulletins describe procedures for replacing the mounting bracket for the 15XE connector, modifying the cable attachment adjacent to the connector, and replacing certain terminal lugs on the 15XE connector with lugs having a thicker contact area. The modification is intended to eliminate excessive vibration and prevent the possible consequent breakage of the mounting lugs on the 15XE connector and the terminal lugs on the 15XE and 12XC connectors. The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 2000–145–306(B), dated April 5, 2000, in order to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

An unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States. The proposed AD would supersede AD 99–19–40 to continue to require inspecting the terminal lugs on the 12XC and 15XE connectors and the mounting lugs on the 15XE connectors for damage, and corrective action, if necessary. The proposed AD would add requirements for installation of a new mounting bracket for the 15XE connector, modification of the cable attachment adjacent to the connector, and replacement of certain terminal lugs on the 15XE connector with lugs having a thicker contact area. The proposed AD would require accomplishment of the actions specified in the service bulletins described previously, as applicable.

Explanation of Applicability of the Proposed AD

Sections of AD 99–19–40 that pertain to applicability identify certain Airbus modifications by incorrect numbers. Those modification numbers have been corrected in this proposed AD.

Because of this error in modification numbers in AD 99–19–40, it is possible that certain airplanes—Model A310 series airplanes on which Airbus Modification 05910 had been installed and Model A300–600 series airplanes on which Airbus Modification 06213 had been installed—did not comply with that AD. Therefore, the requirements of AD 99–19–40 are re-stated in the proposed AD. The compliance time for the inspection would be reset from the effective date of the AD.

Operators of these airplanes who did comply with the requirements of AD 99–19–40 need not repeat the detailed visual inspections and corrective action required by that AD. However, such operators who elected to repair rather than replace a 15XE connector with damaged mounting lugs must continue to perform periodic inspections and periodic re-repairs of the connector until it is replaced with a new 15XE connector.

Additional Changes to Applicability

This proposed AD and AD 99–19–40 are applicable to the same airplane models. However, the model designation of the affected airplanes has been revised to conform to the type certificate data sheet listing for these airplanes. This proposed AD identifies these airplanes as "Model A310, and Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes."

Cost Impact

There are approximately 109 airplanes of U.S. registry that would be affected by this proposed AD. The following information describes the estimated cost impact on U.S. operators of the proposed actions:

Action	Work hours	Hourly labor rate	Parts cost	Per-airplane cost	Fleet cost
Inspection	2	$60	$0	$120	$13,080
Modification	5	60	490	790	86,110

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11327 (64 FR 51190, September 22, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 2000–NM–160–AD. Supersedes AD 99–19–40, Amendment 39–11327.

Applicability: The following airplanes, certificated in any category and equipped with a standby generator (FIN 25XE); excluding airplanes on which Airbus Modification 12135 has been accomplished: Model A310 series airplanes on which Airbus Modification 05910 has been installed, and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600) series airplanes on which Airbus Modification 06213 has been installed.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive vibrations generated by the mounting configuration of the 15XE connector, which could cause breakage of the terminal and mounting lugs on the 15XE connector in the 101VU panel in the avionics compartment, resulting in loss of electrical power from the standby generator, accomplish the following:

Restatement of Certain Actions Required by AD 99–19–40

Inspection and Corrective Actions

(a) Prior to the accumulation of 5,000 total flight hours, or within 600 flight hours after the effective date of this AD, whichever occurs later: Accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD in accordance with Airbus All Operators Telex (AOT) 24–09, Revision 01, dated August 13, 1998.

(1) Perform a detailed visual inspection of the terminal lugs on the 12XC and 15XE connectors to detect damage (i.e., overheat, cracking, twisting, or total rupture). If any damage is detected, prior to further flight, replace the terminal lugs with new terminal lugs, part number (P/N) NSA936501TA1004.

(2) Perform a detailed visual inspection of the mounting lugs on the 15XE connector to detect damage (i.e., cracking or breaking). If any damage is detected, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

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

(i) Replace connector 15XE with a new connector, P/N 25811BOSHUNTKL, vendor code F0214 ECE. Or,

(ii) Repair connector 15XE in accordance with Airbus AOT 24–09, Section 4.2.2.3. Repeat the detailed visual inspection required by paragraph (a)(2) of this AD of the repaired connector thereafter at intervals not to exceed 1 week, and repeat the repair with new cable ties thereafter at intervals not to exceed 3 months, until the replacement required by paragraph (a)(2)(i) of this AD is accomplished.

New Actions Required by This AD

Installation

(b) Within 20 months after the effective date of this AD, install a new mounting bracket for the 15XE connector, modify the cable attachment adjacent to the connector, and replace certain terminal lugs with lugs having a thicker contact area, in accordance with Airbus Service Bulletin A310–24–2080 (for Model A310 series airplanes) or A300–24–6070 (for Model A300–600 series airplanes), both dated December 15, 1999, as applicable.

Replacement

(c) Continue the detailed visual inspection of a repaired 15XE connector which is required by paragraph (a)(2)(ii) of this AD at intervals not to exceed 1 week, and continue the repair with new cable ties at intervals not to exceed 3 months, until the repaired 15XE connector is replaced by a new 15XE connector.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–145–306(B), dated April 5, 2000.

Issued in Renton, Washington, on February 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–3855 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–159–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 737, 757–200, 757–200CB, and 757–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727, 737, 757–200, 757–200CB, and 757–300 series airplanes. This proposal would require modification of the latch assembly of the escape slides. For certain airplanes, this proposal would also require installation of a cover assembly on the trigger housing of the inflation cylinder on the escape slides. This action is necessary to prevent failure of an escape slide to deploy or inflate correctly, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–159–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–159-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–159–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–159–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that latch assemblies on the emergency escape slides have failed on several Boeing Model 727, 737, 757–200, 757–200CB, and 757–300 series airplanes. Several operators have reported failures due to corrosion of the spring pins in the latch assemblies, while others have reported finding discrepant (e.g., deformed or incorrectly soldered) split rings attaching the chain assembly to the latch block assembly. Failed spring pins or discrepant split rings in the escape slide latch assembly could result in failure of the escape slide latch assembly in service, and consequent failure of the escape slide to deploy.

The FAA has also received reports that, during functional tests of escape slides prior to delivery of Boeing Model 737–600, –700, and –800 series airplanes, the trigger housing of the inflation cylinder of an escape slide caught on the jumper cable of the escape slide compartment. The interference between these two parts caused the escape slide to fail to completely drop from the door before inflating, which resulted in the escape slides failing to inflate correctly.

Failure of an escape slide to deploy or inflate correctly in an emergency situation could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing Service Bulletins:

Service bulletin	Date	For model * * *	Actions
727–25–0294	May 25, 2000	727–100 and 727–200 series	Modification of escape slide latch assembly.
737–25–1405	.....do	737–100, –200, –300, –400, and –500 series.	Do.
737–25–1403	May 4, 2000	737–600, –700, and –800 series	Installation of a cover assembly on the trigger housing of the inflation cylinder on the escape slides.
737–25–1404	May 25, 2000	737–600, –700, and –800 series	Modification of escape slide latch assembly.
757–25–0217	.....do	757–200 and –200CB series	Do.
757–25–0218	.....do	757–300 series	Do.

The modification of the escape slide latch assembly for all airplanes involves replacement of existing spring pins with new spring pins made from more corrosion-resistant material. For certain airplanes, the modification also involves replacement of the existing split ring, which attaches the chain assembly to the latch block assembly, with a clevis.

Boeing Service Bulletin 737–25–1403 refers to BF Goodrich Service Bulletin 5A3307–25–309, dated October 29, 1999, as an additional source of service information for the installation of a cover assembly on the trigger housing of the inflation cylinder on the escape slides on Model 737–600, –700, and –800 series airplanes.

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletins

Operators should note that, although the service bulletins do not recommend a specific compliance time, the FAA has determined that a specific compliance time is needed to ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this proposed AD for these airplanes, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the average utilization of the affected fleets.

Considering these factors, the FAA finds a 36-month compliance time for completing the proposed actions on Model 727, 737–100, 737–200, 737–300, 737–400, 737–500, 757–200, 757–200CB, and 757–300 series airplanes to be warranted, in that this represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

For Model 737–600, –700, and –800 series airplanes, the FAA finds an 18-month compliance time for completing the proposed actions to be warranted. In developing an appropriate compliance time for this proposed AD for these airplanes, the FAA considered not only the manufacturer's recommendations for installing a cover assembly on the trigger housing of the inflation cylinder on the escape slides, but also the degree of urgency associated with failure of an escape slide to inflate correctly due to interference between the trigger housing of the inflation cylinder and the jumper cable of the escape slide compartment. Considering these factors, and the fact that it will be convenient for affected operators to modify the escape slide latch assembly at the same time they install the cover assembly, the FAA has determined that 18 months represents an appropriate interval for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 5,759 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2,906 airplanes of U.S. registry would be affected by this proposed AD. The following table shows the estimated cost impact for airplanes affected by this AD. "Action 1" is the modification of the escape slide latch assembly, and "Action 2" is the installation of a cover assembly on the trigger housing of the inflation cylinder on the escape slide. The average labor rate is $60 per work hour. The cost impact is as follows:

Models/series	Action	U.S.-registered airplanes	Work hours per airplane (estimated)	Parts cost (estimated maximum)	Cost per airplane (estimated)	Maximum fleet cost (estimated)
727	1	955	2	$1,068	$1,188	$1,134,540
737–100, –200, –300, –400, –500	1	1,156	2	1,192	1,312	1,516,672
737–600, –700, –800	1	277	2	1,424	1,544	427,688
737–600, –700, –800	2	277	4	Free	240	66,480
757–200, –200CB, –300	1	518	3	1,602	1,782	923,076

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–159–AD.

Applicability: The following airplanes, certificated in any category:

Model	As listed in * * *	Service bulletin date
727–100 and 727–200 series	Boeing Service Bulletin 727–25–0294	May 25, 2000.
737–100, –200, –300, –400, and –500 series	Boeing Service Bulletin 737–25–1405	Do.

Model	As listed in * * *	Service bulletin date
737–600, –700, and –800 series	Boeing Special Attention Service Bulletin 737–25–1403 ...	Do.
737–600, –700, and –800 series	Boeing Service Bulletin 737–25–1404	Do.
757–200 and –200CB series	Boeing Service Bulletin 757–25–0217	Do.
757–300 series	Boeing Service Bulletin 757–25–0218	Do.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of an escape slide to deploy or inflate correctly, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers, accomplish the following:

Modification

(a) At the schedule specified in the following table, do the actions in the "Do these actions * * *" column, per the service bulletin specified in the "As listed in * * *" column:

TABLE 1.—REQUIRED ACTIONS

For model * * *	As listed in * * *	Dated * * *	Do these actions * * *	No later than * * *
727–100 and 727–200 series.	Boeing Service Bulletin 727–25–0294.	May 25, 2000	Modify the escape slide latch assembly.	36 months after the effective date of this AD.
737–100, –200, –300, –400, and –500 series.	Boeing Service Bulletin 737–25–1405.	.....do	.....do	Do.
737–600, –700, and –800 series.	Boeing Special Attention Service Bulletin 737–25–1403.	May 4, 2000	Install a cover assembly on the trigger housing of the inflation cylinder on the escape slides.	18 months after the effective date of this AD.
737–600, –700, and –800 series.	Boeing Service Bulletin 737–25–1404.	May 25, 2000	Modify the escape slide latch assembly.	Do.
757–200 and –200CB series.	Boeing Service Bulletin 757–25–0217.	.....do	.....do	36 months after the effective date of this AD.
757–300 series	Boeing Service Bulletin 757–25–0218.	.....do	.....do	Do.

Spares

(b) After the effective date of this AD, no person may install an escape slide assembly or escape slide latch assembly listed in the "Existing Part Number" column of the table under paragraph 2.E. in the following service bulletins, on any airplane:

TABLE 2.—SPARE PARTS

For Models * * *	Listed in * * *	Service bulletin date
727–100 and 727–200 series	Boeing Service Bulletin 727–25–0294	May 25, 2000
737–100, –200, –300, –400, and –500 series	Boeing Service Bulletin 737–25–1405	Do.
737–600, –700, and –800 series	Boeing Special Attention Service Bulletin 737–25–1403	May 4, 2000.
737–600, –700, and –800 series	Boeing Service Bulletin 737–25–1404	May 25, 2000.
757–200 and –200CB series	Boeing Service Bulletin 757–25–0217	Do.
757–300 series	Boeing Service Bulletin 757–25–0218	Do.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on February 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–3856 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–330–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Powered By Pratt & Whitney JT9D–3 and –7 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure, and corrective actions, if necessary. The existing AD also provides for optional terminating action for the repetitive inspections and checks. This action would mandate certain new repetitive torque checks and the previously optional terminating action. The actions specified by the proposed AD are intended to prevent loose fasteners and associated damage to the hanger fittings and bulkhead of the forward engine mount, which could result in separation of the engine from the airplane.

DATES: Comments must be received by April 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–330–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–330–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–330–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–330–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 8, 2000, the FAA issued AD 2000–23–16, amendment 39–11988 (65 FR 69862, November 21, 2000), applicable to certain Boeing Model 747 series airplanes, to require repetitive inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure, and corrective actions, if necessary. (On December 21, 2000, a correction to that AD was published in the **Federal Register** (65 FR 80301).) That action also provides for optional terminating action for the repetitive inspections and checks. That action was prompted by reports indicating the detection of loose fasteners of the hanger fittings and strut forward bulkhead of the forward engine mount. The requirements of that AD are intended to detect and correct loose fasteners and associated damage to the hanger fittings and bulkhead of the forward engine mount, which could result in separation of the engine from the airplane.

Actions Since Issuance of Previous Rule

In the preamble to AD 2000–23–16, the FAA indicated that the actions required by that AD were considered "interim action" and that it was considering a separate rulemaking action to mandate accomplishment of the terminating action described in Part 6 of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, which would terminate the repetitive inspections and checks required by that AD. The FAA also indicated that it was considering mandating the torque checks described in Part 3 of the alert service bulletin. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

The FAA previously reviewed and approved Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, which describes procedures for repetitive detailed visual inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure to detect loose fasteners, cracking, and/or damage; and corrective actions, if necessary. The corrective actions consist of a torque check, before further flight, if any loose fasteners are detected; rework of loose hanger fittings and damaged or cracked fittings that are within the allowable rework limits; and replacement if damage or cracks are detected that are outside the allowable rework limits.

If certain damage of the strut forward bulkhead, bulkhead chords, lower spar web, or bulkhead channel is detected, the alert service bulletin specifies contacting Boeing for rework/replacement instructions. The alert service bulletin also describes procedures for a terminating action, which eliminates the need for the repetitive inspections and checks. The

terminating action involves rework or replacement of the fittings.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–23–16 to continue to require repetitive inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure, and corrective actions, if necessary. This proposed AD would mandate certain new repetitive torque checks and the previously optional terminating action. The actions would be required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This Proposed AD

Operators should note that, although the effectivity section of the alert service bulletin includes Boeing Model 747 series airplanes having serial numbers 21048 and 20887, these airplanes have been modified and are now powered by General Electric CF6–50 series engines, and are not affected by the actions required by this proposed rule.

Operators also should note that, although the alert service bulletin specifies that the manufacturer may be contacted for certain rework and/or replacement instructions, this AD requires such rework and/or replacement to be done in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 366 airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD.

The detailed visual inspections that are currently required by AD 2000–23–16 take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections currently required by the existing AD on U.S. operators is estimated to be $55,200, or $480 per airplane, per inspection.

The torque checks that are currently required by AD 2000–23–16 take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the torque checks currently required by the existing AD on U.S. operators is estimated to be $165,600, or $1,440 per airplane, per check.

The new torque checks proposed in this AD action also would take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this torque check on U.S. operators is estimated to be $55,200, or $480 per airplane, per check.

The terminating action proposed in this AD action would take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $300 per airplane. Based on these figures, the cost impact of the terminating action proposed by this AD on U.S. operators is estimated to be $200,100, or $1,740 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11988 (65 FR 80301, December 21, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000–NM–330–AD. Supersedes AD 2000–23–16, Amendment 39–11988.

Applicability: Model 747 series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000; except Model 747 series airplanes having serial numbers 21048 and 20887.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loose fasteners and associated damage to the hanger fittings and strut forward bulkhead of the forward engine mount, which could result in separation of the engine from the airplane, accomplish the following:

Restatement of Requirements of AD 2000–23–16

Repetitive Inspections/Checks

(a) Within 60 days after December 6, 2000 (the effective date of AD 2000–23–16, amendment 39–11988): Perform a detailed visual inspection and torque check as

specified in Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, to detect loose fasteners and associated damage to the hanger fittings and bulkhead of the forward engine mount, in accordance with Figure 1 of the alert service bulletin.

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

(1) If no loose fastener or associated damage is detected, repeat the inspections/checks thereafter at the applicable intervals specified in Figure 1 of the alert service bulletin until accomplishment of the terminating action specified in paragraph (c) of this AD.

Note 3: Where there are differences between the AD and the alert service bulletin, the AD prevails.

Corrective Actions

(2) If any loose fastener or associated damage is detected, before further flight, perform the applicable corrective actions (torque check, rework or replacement of fittings), as specified in Figure 1 of the alert service bulletin. Repeat the inspections/checks thereafter at the applicable intervals specified in Figure 1 of the alert service bulletin until accomplishment of the terminating action specified in paragraph (c) of this AD. Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain corrective actions (rework or replacement of fittings), this AD requires such rework and/or replacement to be done in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

New Requirements of This AD

Repetitive Checks/Inspections/Corrective Actions

(b) Within 18 months after the effective date of this AD: Do the torque check specified in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, to detect loose fasteners of the hanger fittings of the forward engine mount.

(1) If no loose fastener is detected, repeat the torque check thereafter at intervals not to exceed 1,200 flight cycles or 18 months, whichever occurs first, until accomplishment of the terminating action specified in paragraph (c) of this AD.

(2) If any loose fastener is detected, before further flight, perform the applicable corrective actions as specified in Figure 4, Figure 5, or Part 6, as applicable, of the Accomplishment Instructions of the alert service bulletin.

(i) If Figure 4 or Figure 5 of the Accomplishment Instructions of the alert service bulletin is used to do the corrective actions for the fitting; thereafter, repeat the detailed visual inspection required by paragraph (a) of this AD at the applicable intervals specified in Figure 1 of the alert service bulletin, and repeat the torque check for that fitting at intervals not to exceed 180 flight cycles. Accomplish the terminating action for that fitting as specified in Part 6 of the Accomplishment Instructions of the alert service bulletin within 18 months after finding any loose fastener or 60 months after the effective date of this AD, whichever occurs first.

(ii) If Part 6 of the Accomplishment Instructions of the alert service bulletin is used to do the corrective actions for the fitting, this constitutes terminating action for the repetitive inspections/checks for that fitting only.

(3) If any associated damage is found, before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. If any damage to any fitting is found, before further flight, do the applicable corrective actions specified in Part 4 or Part 5 of the Accomplishment Instructions of the alert service bulletin; this constitutes terminating action for the repetitive inspections/checks for that fitting only.

(4) If any loose fastener is detected during any repeat inspection/check specified in paragraph (b)(2)(i) of this AD, before further flight, accomplish the terminating action for that fitting as specified in Part 6 of the Accomplishment Instructions of the alert service bulletin.

Terminating Action

(c) Within 60 months after the effective date of this AD: Accomplish all actions in the terminating action specified in Part 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000. Accomplishment of this paragraph constitutes terminating action for the repetitive inspections/checks required by paragraphs (a) and (b) of this AD. Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain corrective actions (rework or replacement of fittings), this AD requires such rework and/or replacement to be done in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Note 4: Installation of two BACW10BP*APU washers on Group A fasteners accomplished during modification in accordance with Boeing Service Bulletin 747–54A2159, dated November 3, 1994, Revision 1, dated June 1, 1995, or Revision 2, dated March 14, 1996; and pin or bolt protrusion as specified in the 747 Structural Repair Manual, Chapter 51–30–02 (both referenced in Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000); is considered acceptable for compliance with the terminating action specified in paragraph (c) of this AD.

Alternative Methods of Compliance

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on February 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–3857 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–327–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

directive (AD) that is applicable to all Boeing Model 737–100 and –200 series airplanes. This proposal would require repetitive inspections to find fatigue cracking in the main deck floor beams located at certain body stations, and repair, if necessary. This proposal also provides for optional terminating action for the repetitive inspections. This action is necessary to prevent failure of the main deck floor beams at certain body stations due to fatigue cracking, which could result in rapid decompression and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–327–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–327–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1221; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM–327-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–327–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports from the manufacturer indicating several operators have found cracking in the body buttock line (BBL) 0.07 floor beams. On airplanes having between 27,000 and 55,000 total flight cycles, cracks were found in the upper chord at body station (BS) 663. On airplanes having between 31,000 and 51,000 total flight cycles, cracks were found in the web at BS 663. On airplanes having between 18,000 and 54,000 total flight cycles, cracks were found in the lower chord at BS 727. On airplanes having between 23,000 and 39,000 total flight cycles, cracks were found in the web at BS 706 through 711. Investigation revealed that the cracks were caused by fatigue resulting from pressurization flexure. Failure of the main deck floor beams at certain body stations due to fatigue cracking could result in rapid decompression and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–57–1210, dated April 4, 1991, which describes procedures for repetitive visual inspections of the main deck floor beams located between BS 650 and BS 730, around BS 710 and BS 727, and at BS 650 through 675, to find cracking; and repair of any cracking found. If no cracking is found after doing the visual inspection, the service bulletin provides an option for a one-time eddy current inspection of the fastener holes. If no cracking is found during the eddy current inspection, doing the modification (change) of the applicable floor beams would end the repetitive visual inspections for that area. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Service Bulletin and This Proposed Rule

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD requires the repair of those conditions to be done per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Operators also should note that the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue instead of doing a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by doing the repetitive inspections to find cracking before it represents a hazard to the airplane.

Cost Impact

There are approximately 935 airplanes of the affected design in the

worldwide fleet. The FAA estimates that 340 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to do the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $163,200, or $480 per airplane.

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

Should an operator elect to do the optional terminating action rather than continue the repetitive inspections, it would take approximately 96 work hours per airplane to do the change, at an average labor rate of $60 per work hour. Required parts would cost between $218 and $1,426 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be between $5,978 and $7,186 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–327–AD.

Applicability: All Model 737–100 and –200 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main deck floor beams at certain body stations (BS) due to fatigue cracking, which could result in rapid decompression and consequent reduced controllability of the airplane, do the following:

Inspections

(a) Before the accumulation of 20,000 total flight cycles, or within 6,000 flight cycles after the effective date of this AD, whichever occurs later: Do a detailed visual inspection to find cracking of the main deck floor beams [body buttock line (BBL) 0.07] located between BS 650 and BS 730, per the Accomplishment Instructions of Boeing Service Bulletin 737–57–1210, dated April 4, 1991. If no cracking is found, do the requirements in paragraph (a)(1) or (a)(2) of this AD at the applicable times specified.

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

(1) If no cracking is found around BS 710 (Figure 1) or BS 727 (Figure 2), do the requirements in either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the detailed visual inspection at intervals not to exceed 6,000 flight cycles until accomplishment of the change specified in paragraph (c) of this AD. Or

(ii) Before further flight, do a one-time eddy current inspection for cracking of the fastener holes. If no cracking is found, before further flight, install the change at BS 710 (Figure 6) or BS 727 (Figure 7), as applicable, per the Accomplishment Instructions of the service bulletin. Doing the change ends the repetitive inspections for that area.

(2) If no cracking is found at BS 650 through BS 675 (Figure 8), do the requirements in either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Repeat the detailed visual inspection at intervals not to exceed 3,000 flight cycles until accomplishment of the change specified in paragraph (c) of this AD. Or

(ii) Before further flight, do a one-time eddy current inspection for cracking of the fastener holes. If no cracking is found, before further flight, install the change at BS 663 (Figure 9) per the Accomplishment Instructions of the service bulletin. Doing the change ends the repetitive inspections for that area.

Repair

(b) If any cracking is found during any inspection required by paragraph (a) of this AD, before further flight, either do the repair per the Accomplishment Instructions of Boeing Service Bulletin 737–57–1210, dated April 4, 1991, or do the change specified in paragraph (c) of this AD. Where the service bulletin specifies to contact Boeing for repair instructions: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Optional Terminating Action

(c) Accomplishment of the main deck floor beam change in the applicable areas [BS 710 (Figure 6), BS 727 (Figure 7), or BS 650 through 675 (Figure 9)], specified in the Accomplishment Instructions of Boeing Service Bulletin 737–57–1210, dated April 4, 1991, ends the repetitive inspections for that area.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal

Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permit

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

Issued in Renton, Washington, on February 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–3858 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–317–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), which applies to all Boeing Model 747 series airplanes. The existing AD currently requires, for certain airplanes, revising the Airplane Flight Manual, and, for all airplanes, performing repetitive inspections for wear or damage of the inlet check valves and inlet adapters of the override/jettison pumps, and corrective actions, if necessary. This action would apply to fewer airplanes than the existing AD and require rework of certain components, which would end the repetitive inspection requirement. These actions are necessary to ensure that the flight crew is advised of the hazards of dry operation of the override/jettison pumps of the center wing fuel tank, and to prevent wear or damage to the inlet check valves and inlet adapters of the override/jettison pumps, which could result in a fire or explosion in the fuel tank during dry (no fuel) operation. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–317–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–317–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–317–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–317–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 30, 1998, the FAA issued AD 98–16–19, amendment 39–10695 (63 FR 42210, August 7, 1998), applicable to all Boeing Model 747 series airplanes. That AD requires, for certain airplanes, revising the Airplane Flight Manual (AFM) to advise the flightcrew of limitations on dry (no fuel) operation of the override/jettison pumps of the center wing fuel tank. That AD also requires repetitive inspections for wear or damage of the inlet check valves and inlet adapters of the override/jettison pumps, and replacement of the check valves and pumps with new or serviceable parts, if necessary. For affected airplanes, such replacement allows the AFM revision to be removed. That AD was prompted by a report that inlet adapters of override/jettison pumps were found to be worn excessively, which allowed contact to occur between the inlet check valve and the inducer. The requirements of that AD are intended to ensure that the flightcrew is advised of the hazards of dry operation of the override/jettison pumps of the center wing fuel tank, and to detect and correct wear or damage to the inlet check valves and inlet adapters of the override/jettison pumps. Such conditions, if not corrected, could result in a fire or explosion in the fuel tank during dry operation.

Actions Since Issuance of Previous Rule

The preamble to AD 98–16–19 stated that the FAA considered the requirements of that AD to be "interim action" and that the manufacturer was

developing a modification to positively address the unsafe condition. The FAA indicated that it might consider further rulemaking action once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and the FAA has determined that further rulemaking action is indeed necessary. This proposed AD follows from that determination.

Also, the existing AD applies to all Boeing Model 747 series airplanes. Boeing has informed the FAA that the approved modification will be installed on all Model 747 series airplanes having line number 1252 and subsequent. The FAA has determined that installation of the modification during production is adequate to address the unsafe condition. Therefore, the FAA finds that the actions required by the existing AD and the actions in this proposed AD are not necessary for airplanes modified in production, which leads the FAA to remove those airplanes from the applicability of this proposed AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–28A2212, Revision 3, dated August 3, 2000. That service bulletin describes actions identical to those in Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998, which was referenced in the existing AD as the appropriate source of service information. Revision 3 of the service bulletin also describes procedures for a terminating action that entails rework of the existing pump housing and impeller motor assembly, which includes replacement of the existing inlet check valve and inlet adapter with new, improved parts, and reidentification of the pump housing and impeller motor assembly with new part numbers. This rework eliminates the need for the currently required repetitive inspections. Accomplishment of the actions specified in Revision 3 of the service bulletin is intended to adequately address the identified unsafe condition.

Revision 3 of the service bulletin refers to Crane Hydro-Aire Service Bulletins 60–703–28–33, 60–703–28–35, 60–721–28–5, and 60–723–28–5, as secondary sources of information for the rework of the pump housing and impeller motor assembly. The FAA has reviewed Revision 1 of these service bulletins, all dated November 20, 2000, and finds them acceptable secondary sources of information for the rework.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–16–19 to continue to require repetitive inspections for wear or damage of the inlet check valves and inlet adapters of the override/jettison pumps, and corrective actions, if necessary. This proposed AD would also continue to require, for certain airplanes, revising the Airplane Flight Manual (AFM) to advise the flightcrew of limitations on dry (no fuel) operation of the override/jettison pumps of the center wing fuel tank, until the repetitive inspections described above have been done. This action would apply to fewer airplanes than the existing AD, and would add a new requirement for rework of the existing pump housing and impeller motor assembly, which would end the repetitive inspection requirement. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between This Proposed AD and the Service Bulletin

As stated above, Revision 3 of the service bulletin describes procedures for rework of the existing pump housing and impeller motor assembly, which gets rid of the need for the repetitive inspections. The service bulletin provides for the rework as optional. The FAA finds it necessary to require operators to do this rework. The decision to propose the rework is based on the FAA's position that modifications or design changes to remove the source of a problem will ensure continued operational safety over the long term better than repetitive inspections. The view that repetitive inspections may be inadequate to ensure the safety of the transport airplane fleet, along with consideration of the human factors associated with repetitive inspections, has led the FAA to place less emphasis on special procedures, such as repetitive inspections, and more emphasis on design improvements.

In developing the 18-month compliance time for this action, the FAA considered these factors:

- The urgency of the subject unsafe condition,
- The amount of time it takes to do the replacement (10 work hours), and
- The amount of time needed to allow most operators to do the replacement during normal scheduled maintenance.

The FAA finds that 18 months is the optimal amount of time that will allow the rework to be done on all affected airplanes without compromising flight safety.

Cost Impact

There are approximately 1,100 airplanes of the affected design in the worldwide fleet. The FAA estimates that 250 airplanes of U.S. registry would be affected by this proposed AD.

For affected airplanes, the AFM revision currently required by AD 98–16–19 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the FAA estimates that the cost impact of this action is $60 per airplane.

The inspections currently required by AD 98–16–19 take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the FAA estimates that the cost impact of this action on U.S. operators is $180,000, or $720 per airplane, per inspection cycle.

The rework proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,978 per airplane. Based on these figures, the FAA estimates that the cost impact of the proposed replacement on U.S. operators is $584,500, or $2,338 per airplane. The FAA has been advised that manufacturer warranty remedies may be available for labor costs and parts associated with accomplishing the proposed rework. Therefore, the future economic cost impact of this action on U.S. operators may be less than the cost impact figure indicated above.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10695 (63 FR 42210, August 7, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000–NM–317–AD. Supersedes AD 98–16–19, Amendment 39–10695.

Applicability: Model 747 series airplanes, line numbers 1 through 1251 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of the hazards of dry operation of the override/jettison pumps of the center wing fuel tank, and to prevent wear or damage to the inlet check valves and inlet adapters of the override/jettison pumps, which could result in a fire or explosion in the fuel tank during dry operation, accomplish the following:

Restatement of Requirements of AD 98–16–19

Airplane Flight Manual Revision

(a) For airplanes that have accumulated 20,000 total hours time-in-service or more as of August 24, 1998 (the effective date of AD 98–16–19, amendment 39–10695): Within 14 days after August 24, 1998, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

"If the center tank override/jettison fuel pumps are to be used, there must be at least 17,000 pounds (7,720 kilograms) of fuel in the center tank prior to engine start.

"Do not operate the center tank override/jettison fuel pumps with less than 7,000 pounds (3,200 kilograms) of fuel in the center tank. For airplanes with an inoperative center tank scavenge system, this 7,000 pounds of center tank fuel must be considered unusable.

"If the center tank override/jettison fuel pumps circuit breakers are tripped, do not reset."

Repetitive Inspections and Corrective Actions

(b) Prior to the accumulation of 10,000 total hours time-in-service, or within 90 days after August 24, 1998, whichever occurs later, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD, in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998, or Revision 3, dated August 3, 2000.

(1) Perform a detailed visual inspection for wear or damage of the inlet check valve of the left and right override/jettison pumps of the center wing fuel tank.

(i) If the inlet check valve passes all wear and damage criteria, as specified in Figure 3 of the service bulletin, accomplish the actions specified in paragraph (b)(1)(i)(A), (b)(1)(i)(B), or (b)(1)(i)(C) of this AD, as applicable.

(A) If the wear to the stainless steel disk is less than or equal to 0.70 inch, and does not penetrate the disk, repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(B) If the wear to the stainless steel disk is greater than 0.70 inch, and does not penetrate the disk, repeat the inspection thereafter at intervals not to exceed 1,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(C) If the wear penetrates the stainless steel disk of the inlet check valve, prior to further flight, accomplish the actions specified in paragraph (b)(1)(ii) of this AD.

(ii) If the inlet check valve fails any wear or damage criteria, as specified in Figure 3 of the service bulletin, prior to further flight, replace the existing check valve with a new or serviceable check valve, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(2) Perform a detailed visual inspection for wear or damage of the inlet adapter of the left and right override/jettison pumps of the center wing fuel tank.

(i) If the wear to the inlet adapter is less than or equal to 0.50 inch, prior to further flight, reinstall the existing override/jettison pump, in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(ii) If the wear to the inlet adapter is greater than 0.50 inch, but less than 0.60 inch, prior to further flight, accomplish the actions required by either paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B), in accordance with the service bulletin.

(A) Install a new or serviceable override/jettison pump, and repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done. Or

(B) Reinstall the existing override/jettison pump, and repeat the inspection thereafter at intervals not to exceed 1,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(iii) If the wear to the inlet adapter is greater than or equal to 0.60 inch, prior to further flight, install a new or serviceable override/jettison pump, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

Note 2: Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998, and Revision 3, dated August 3, 2000, include figures that illustrate specific areas to inspect for wear and damage.

Note 3: Accomplishment of the actions specified in paragraph (b) of this AD prior to August 24, 1998, in accordance with Revision 1 of Boeing Alert Service Bulletin 747–28A2212, dated April 23, 1998, is considered acceptable for compliance with paragraph (b) of this AD.

Terminating Action for Paragraph (a)

(c) Accomplishment of the actions specified by paragraph (b) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD. Following accomplishment of those actions, the AFM revision may be removed from the AFM.

New Requirements of This AD

Replacement of Pump Housing and Impeller Motor Assembly

(d) Within 18 months after the effective date of this AD: Rework the existing pump

housing and impeller motor assembly, including replacing the existing inlet check valve and inlet adapter with new, improved parts; in accordance with Boeing Service Bulletin 747–28A2212, Revision 3, dated August 3, 2000. This replacement ends the requirements of paragraphs (a) and (b) of this AD.

Note 4: Boeing Service Bulletin 747–28A2212, Revision 3, references Crane Hydro-Aire Service Bulletins 60–703–28–33, 60–703–28–35, 60–721–28–5, and 60–723–28–5, as secondary sources of information for the rework of the pump housing and impeller motor assembly.

Spares

(e) As of the effective date of this AD, no person may install a pump housing or impeller motor assembly with a part number listed in the "Existing Part Number" column of the table in Paragraph 2.E. of Boeing Service Bulletin 747–28A2212, Revision 3, dated August 3, 2000, on any airplane.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 98–16–19, amendment 39–10695, are approved as alternative methods of compliance with the corresponding requirements of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on February 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–3859 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, and 26

[REG–106513–00]

RIN 1545–AX96

Definition of Income for Trust Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations revising the definition of income under section 643(b) of the Internal Revenue Code to take into account changes in the definition of trust accounting income under state laws. The proposed regulations also clarify the situations in which capital gains are included in distributable net income under section 643(a)(3). Conforming amendments are made to regulations affecting ordinary trusts, pooled income funds, charitable remainder trusts, trusts that qualify for the gift and estate tax marital deduction, and trusts that are exempt from generation-skipping transfer taxes. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by May 18, 2001. Outlines of topics to be discussed at the public hearing scheduled for June 8, 2001 must be received by May 18, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–106513–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–106513–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at: *http://www.irs.ustreas.gov/tax_regs/regslist.html*. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Bradford Poston at (202) 622–3060 (not a toll-free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor, 202–622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 643(b) provides a definition of the term income for purposes of subparts A through D of part I of subchapter J of the Internal Revenue Code (Code) . The term income, when not modified by any other term, means the amount of income of the trust or estate determined under the terms of the governing instrument and applicable local law. Section 1.643(b)–1 further provides that trust provisions that depart fundamentally from the concepts of local law in determining what constitutes income will not be recognized.

These statutory and regulatory provisions date back to a time when, under state statutes, dividends and interest were considered income and were allocated to the income beneficiary while capital gains were allocated to the principal of the trust. Changes in the types of available investments and in investment philosophies have caused states to revise, or to consider revising, these traditional concepts of income and principal.

The prudent investor standard for managing trust assets has been enacted by many states and encourages fiduciaries to adopt an investment strategy designed to maximize the total return on trust assets. Under this investment strategy, trust assets should be invested for total positive return, that is, ordinary income plus appreciation, in order to maximize the value of the trust. Thus, under certain economic circumstances, equities, rather than bonds, would constitute a greater portion of the trust assets than they would under traditional investment standards.

One of the concerns with shifting trust investments toward equities and away from bonds is the potential adverse impact on the income beneficiary. Based on the traditional concepts of income and principal, the income beneficiary is entitled only to the dividends and interest earned by the trust assets. The dividend return on equities as a percentage of their value traditionally has been substantially less than the interest return on bonds.

To ensure that the income beneficiary is not penalized if a trustee adopts a total return investment strategy, many states have made, or are considering making, revisions to the definitions of

income and principal. Some state statutes permit the trustee to make an equitable adjustment between income and principal if necessary to ensure that both the income beneficiary and the remainder beneficiary are treated impartially, based on what is fair and reasonable to all of the beneficiaries. Thus, a receipt of capital gains that previously would have been allocated to principal may be allocated by the trustee to income if necessary to treat both parties impartially. Conversely, a receipt of dividends or interest that previously would have been allocated to income may be allocated by the trustee to principal if necessary to treat both parties impartially.

Other states are proposing legislation that would allow the trustee to pay a unitrust amount to the income beneficiary in satisfaction of that beneficiary's right to the income from the trust. This unitrust amount will be a fixed percentage, sometimes required to be within a range set by state statute, of the fair market value of the trust assets determined annually.

Questions have arisen concerning how these state statutory changes affect the definition of income provided in section 643(b) and the other Code provisions that rely on the section 643(b) definition of income. This definition of income affects trusts including, but not limited to, ordinary trusts, charitable remainder trusts, pooled income funds, and qualified subchapter S trusts.

In addition, trusts that qualify for the gift or estate tax marital deduction must pay to the spouse all the income from the property. All the income is considered paid to the spouse if the effect of the trust is to give the spouse substantially that degree of beneficial enjoyment of the trust property that the principles of trust law accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Section 25.2523(e)–1(f) of the Gift Tax Regulations and § 20.2056(b)–5(f) of the Estate Tax Regulations. Questions have arisen whether the spouse is entitled to all the income from the property in a state that permits equitable adjustments or unitrust payments.

Similarly, questions have arisen as to whether an otherwise exempt trust which uses equitable adjustments or unitrust payments will be subject to the generation-skipping transfer tax provisions of chapter 13 of the Code.

Explanation of Provisions

Definition of Income

The proposed regulations will amend the definition of income under § 1.643(b)–1 to take into account certain state statutory changes to the concepts of income and principal. Under the proposed regulations, trust provisions that depart fundamentally from traditional concepts of income and principal (that is, allocating ordinary income to income and capital gains to principal) will generally continue to be disregarded, as they are under the current regulations. However, amounts allocated between income and principal pursuant to applicable state law will be respected if state law provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust for the year, taking into account ordinary income, capital gains, and, in some situations, unrealized appreciation. For example, a state law that provides for the income beneficiary to receive each year a unitrust amount of between 3% and 5% of the annual fair market value of the trust assets is a reasonable apportionment of the total return of the trust. Similarly, a state law that permits the trustee to make equitable adjustments between income and principal to fulfill the trustee's duty of impartiality between the income and remainder beneficiaries is a reasonable apportionment of the total return of the trust.

In addition, an allocation of capital gains to income will be respected under certain circumstances. Such an allocation will be respected if directed by the terms of the governing instrument and applicable local law. Similarly, if a trustee, pursuant to a discretionary power granted to the trustee by local law or by the governing instrument (if not inconsistent with local law), allocates capital gains to income, the allocation will be respected, provided the power is exercised in a reasonable and consistent manner.

The proposed changes to the regulations will permit trustees to implement a total return investment strategy and to follow the applicable state statutes designed to treat the income and remainder beneficiaries impartially. At the same time, the limitations imposed by the proposed regulations ensure that the Code provisions relying on the definition of income under section 643(b) are not undermined by an unlimited ability of the trustee to allocate between income and principal.

Pooled Income Funds

A special rule is proposed to be added to the regulations covering pooled income funds to address the problems arising from the potential application of the new state statutes to these funds. A pooled income fund as defined in section 642(c)(5) is a split-interest trust created and maintained by certain types of charitable organizations. Noncharitable beneficiaries receive the income from the commingled fund during their lives and the charitable organization receives the remainder interests. The income that is to be paid to the noncharitable beneficiaries is income as defined in section 643(b). § 1.642(c)–5(i).

A pooled income fund is a trust subject to taxation under section 641. It is entitled to a distribution deduction under section 661 for income distributed to the noncharitable beneficiaries. In addition, it receives a charitable deduction under section 642(c)(3) for any amount of net long-term capital gain which pursuant to the terms of the governing instrument is permanently set aside for charitable purposes. A pooled income fund is taxed on any net short-term capital gain that is not required to be distributed to the income beneficiaries pursuant to the terms of the governing instrument and applicable local law.

Under traditional principles of income and principal, ordinary income would be paid to the income beneficiaries. Any net long-term capital gain would be allocated to principal to be held for the ultimate benefit of the charitable remainderman and therefore would qualify for the charitable deduction under section 642(c)(3).

If a pooled income fund were to pay the income beneficiaries a unitrust amount in satisfaction of their right to income, as provided by proposed state statutes, long-term capital gains would no longer qualify for the charitable deduction. Any net long-term capital gain not required to be distributed during the current year would be added to principal. However, the amount of the gain would not be permanently set aside for charitable purposes because this amount may be used in the future to make the unitrust payment to the income beneficiaries. A similar situation arises if the trustee is permitted under state law to make equitable adjustments with respect to unrealized appreciation in the value of the trust assets. A portion of any subsequently realized capital gain may already have been treated as distributed to the income beneficiaries in accordance with an equitable adjustment distribution.

The proposed regulations will amend § 1.642(c)–2(c) to address these issues for pooled income funds. Thus, no net long-term capital gain qualifies for the charitable deduction if, under the terms of the governing instrument and applicable state law, income may be a

unitrust amount or may include an equitable adjustment with respect to unrealized appreciation in the value of the trust assets.

Charitable Remainder Unitrusts

A charitable remainder unitrust is a split-interest trust that provides for a specified distribution to one or more noncharitable beneficiaries for life or a term of years, with an irrevocable remainder interest held for the benefit of a charitable organization. Under section 664(d)(2), the amount distributed to the noncharitable beneficiaries is a fixed percentage (not less than 5% and not more than 50%) of the annual fair market value of the trust assets. Alternatively, under section 664(d)(3), the unitrust amount may be the lesser of this fixed percentage amount or trust income (with or without a make-up amount). For this purpose, trust income means income as defined under section 643(b) and the applicable regulations. § 1.664–3(a)(1)(i)(b).

Under proposed state statutes, trust income could be a fixed percentage of the annual fair market value of the trust assets, and the fixed percentage may be less than 5%. A net income charitable remainder unitrust using such a state statutory definition of income would in substance be a fixed percentage unitrust with a percentage less than the 5% required by section 664(d)(2). Therefore, the proposed regulations will amend § 1.664–3(a)(1)(i)(b) to provide that income under the terms of the governing instrument and applicable local law may not be determined by reference to a fixed percentage of the annual fair market value of the trust property. If the applicable state law defines income as a unitrust amount, the governing instrument of a net income charitable remainder unitrust must provide its own definition of trust income. In addition, the proposed regulations will provide that capital gains attributable to appreciation in the value of assets after the date contributed to the trust or purchased by the trust may be allocated to income under the terms of the governing instrument and applicable local law. Such an allocation, however, may not be discretionary with the trustee. The section 664 regulations already prohibit the allocation of pre-contribution gains to income.

Capital Gains and Distributable Net Income

Section 643(a)(3) provides that gains from the sale or exchange of capital assets are excluded from distributable net income to the extent that these gains are allocated to corpus and they are not either paid, credited, or required to be distributed, to a beneficiary during the year, or paid, permanently set aside, or to be used for a charitable purpose. The circumstances in which capital gains are considered paid or credited to a beneficiary during the year, and therefore included in distributable net income, are not entirely clear. In addition, the revisions to state law definitions of income have precipitated additional questions in this area. The question arises, for example, whether realized capital gains are included in the unitrust amount distributed to the income beneficiary under local law, if the unitrust amount exceeds the trust's ordinary income.

The proposed regulations will amend § 1.643(a)–3(a) to clarify the circumstances in which capital gains are includible in distributable net income for the year. In general, capital gains are included in distributable net income to the extent they are, pursuant to the terms of the governing instrument or local law, or pursuant to a reasonable and consistent exercise of discretion by the fiduciary (in accordance with a power granted to the fiduciary by the governing instrument or local law): allocated to income; allocated to corpus but treated by the fiduciary on the trust's books, records, and tax returns as part of a distribution to a beneficiary; or allocated to corpus but utilized by the fiduciary in determining the amount which is distributed or required to be distributed to a beneficiary. As is the case under the current regulations, capital gains that are paid, permanently set aside, or to be used for the purposes specified in section 642(c) are included in the distributable net income. Capital losses are netted at the trust level against any capital gains, except for a capital gain that is utilized in determining the amount that is distributed or required to be distributed to a particular beneficiary.

Under the proposed regulations, capital gains will be included in distributable net income under certain circumstances that are directed by the terms of the governing instrument and applicable local law. Thus, any capital gain that is included in the section 643(b) definition of income is included in distributable net income. Similarly, any capital gain that is used to determine the amount or the timing of a distribution to a beneficiary is included in distributable net income.

Capital gains are also included in distributable net income if the fiduciary, pursuant to a discretionary power granted by local law or by the governing instrument (if not inconsistent with local law), treats the capital gains as distributed to a beneficiary, provided the power is exercised in a reasonable and consistent manner. Thus, if a trustee exercises a discretionary power by consistently treating any distribution in excess of ordinary income as being made from realized capital gains, any capital gain so distributed is included in distributable net income.

The provisions of sections 643(b) and 643(a)(3) are further intertwined when consideration is given to the new state statutory provisions defining income. If, under the terms of the governing instrument or applicable local law, realized capital gains are treated as income to the extent the unitrust amount or the equitable adjustment amount exceeds ordinary income, capital gains so treated are included in distributable net income. A similar result is achieved for capital gains consistently allocated to income by the fiduciary pursuant to a discretionary power. In any other situation, capital gains will be excluded from distributable net income and will be taxed to the trust.

Distributions in Kind

The proposed regulations will clarify the consequences of certain distributions of property in kind for purposes of the distribution deductions under sections 651 and 661. Thus, if property is distributed to a beneficiary in satisfaction of the beneficiary's right to income, the trust will be treated as having sold the property for its fair market value on the date of distribution.

Trusts Qualifying for Gift and Estate Tax Marital Deduction

Certain transfers of property in trust for the benefit of the spouse qualify for the marital deduction for gift and estate tax purposes. These transfers include a life estate with a general power of appointment described in sections 2523(e) and 2056(b)(5) and qualified terminal interest property described in sections 2523(f) and 2056(b)(7). One of the requirements of these provisions is that the spouse must be entitled for life to all the income from the trust property. The rules for determining whether the spouse is entitled to all the income from either a life estate with a general power of appointment trust or a qualified terminable interest trust are set forth in § 20.2056(b)–5(f) of the Estate Tax Regulations and § 25.2523(e)–1(f) of the Gift Tax Regulations. These rules provide that if an interest is transferred in trust, the spouse is entitled for life to all the income from the entire interest or a specific portion of the entire interest if the effect of the trust is to give the spouse substantially that degree of beneficial enjoyment of the trust

property during the spouse's life which the principles of the law of trusts accord a person who is unqualifiedly designated as the life beneficiary of a trust.

The proposed regulations will provide that a spouse's interest satisfies the income standard set forth in §§ 20.2056(b)–5(f) and 25.2523(e)–1(f) if the spouse is entitled to income as defined under a state statute that provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and that meets the requirements of § 1.643(b)–1(a). As the examples under § 1.643(b)–1(a) make clear, reasonable apportionment can be accomplished through a unitrust definition of income or by giving the trustee the power to make equitable adjustments between income and principal. In addition, a conforming amendment is made to § 20.2056A–5(c)(2) providing rules regarding distributions of income from a qualified domestic trust.

Trusts Exempt From Generation-Skipping Transfer Tax

In general, under the effective date rules accompanying the generation-skipping transfer (GST) tax statutory provisions, a trust that was irrevocable on September 25, 1985, is not subject to the GST tax provisions, unless a GST transfer is made out of corpus added to the trust after that date. Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (TRA), Public Law 99–514 (100 Stat. 2085, 2731), 1986–3 (Vol. 1) C.B. 1, 634. The regulations provide guidance on when certain changes made to the terms of an exempt trust will not be treated as causing the trust to lose its exempt or grandfathered status. One safe-harbor in § 26.2601–1(b)(4)(i)(D) is for modifications that will not shift a beneficial interest in the trust to a lower generation beneficiary or increase the amount of a GST transfer.

Under the proposed regulations, the administration of a pre-September 25, 1985 trust in conformance with a state law that defines income as a unitrust amount, or permits equitable adjustments between income and principal to ensure impartiality, and that meets the requirements of § 1.643(b)–1(a) will not be treated as a modification that shifts a beneficial interest to a lower generation beneficiary, or increases the amount of a generation-skipping transfer.

Proposed Effective Date

The regulations are proposed to apply to trusts and estates for taxable years that begin on or after the date that final regulations are published in the **Federal Register**.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) and comments sent via the Internet that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing has been scheduled for June 8, 2001, in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Owing to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by May 18, 2001. A period of 10 minutes will be allotted to each person making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

Various personnel from offices of the IRS and the Treasury Department participated in the development of these proposed regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, and 26 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.642(c)–2, paragraph (c) is amended by adding a sentence after the first sentence to read as follows:

§ 1.642(c)–2 Unlimited deduction for amounts permanently set aside for a charitable purpose.

* * * * *

(c) * * * No amount of net long-term capital gain shall be considered permanently set aside for charitable purposes if it is possible, under the terms of the fund's governing instrument or applicable local law, that the income beneficiaries' right to income may, at any time, be satisfied by the payment of either an amount equal to a fixed percentage of the annual fair market value of the trust property or any amount based on unrealized appreciation in the value of the trust property. * * *

* * * * *

Par. 3. Section 1.643(a)–3 is revised to read as follows:

§ 1.643(a)–3 Capital gains and losses.

(a) *In general.* Except as provided in § 1.643(a)–6 and in paragraph (b) of this section, gains from the sale or exchange

of capital assets are ordinarily excluded from distributable net income and are not ordinarily considered as paid, credited, or required to be distributed to any beneficiary.

(b) *Capital gains included in distributable net income.* Gains from the sale or exchange of capital assets are included in distributable net income to the extent they are, pursuant to the terms of the governing instrument and applicable local law, or pursuant to a reasonable and consistent exercise of discretion by the fiduciary (in accordance with a power granted to the fiduciary by local law or by the governing instrument, if not inconsistent with local law)—

(1) Allocated to income;

(2) Allocated to corpus but treated by the fiduciary on the trust's books, records, and tax returns as part of a distribution to a beneficiary; or

(3) Allocated to corpus but utilized by the fiduciary in determining the amount which is distributed or required to be distributed to a beneficiary.

(c) *Charitable contributions included in distributable net income.* If capital gains are paid, permanently set aside, or to be used for the purposes specified in section 642(c), so that a charitable deduction is allowed under that section in respect of the gains, they must be included in the computation of distributable net income.

(d) *Capital losses.* Losses from the sale or exchange of capital assets shall first be netted at the trust level against any gains from the sale or exchange of capital assets, except for a capital gain that is utilized under paragraph (b)(3) of this section in determining the amount that is distributed or required to be distributed to a particular beneficiary. See § 1.642(h)–1 with respect to capital loss carryovers in the year of final termination of an estate or trust.

(e) *Examples.* The following examples illustrate the rules of this section:

Example 1. Under the terms of Trust's governing instrument, all income is to be paid to *A* for life. Trustee is given discretionary powers to invade principal for *A*'s benefit and to deem discretionary distributions to be made from capital gains realized during the year. During Trust's first taxable year, Trust has $5,000 of dividend income and $10,000 of capital gain from the sale of securities. Pursuant to the terms of the governing instrument and applicable local law, Trustee allocates the $10,000 capital gain to principal. During the year, Trustee distributes to *A* $5,000, representing *A*'s right to trust income. In addition, Trustee distributes to *A* $12,000, pursuant to the discretionary power to distribute principal. Trustee does not exercise the discretionary power to deem the discretionary distributions of principal as being paid from capital gains realized during the year. Therefore, the capital gains realized during the year are not included in distributable net income and the $10,000 of capital gain is taxed to the trust.

Example 2. The facts are the same as in *Example 1*, except that Trustee intends to follow a regular practice of treating discretionary distributions as being paid first from any net capital gains realized by Trust during the year. Trustee evidences this treatment by including the $10,000 capital gain in distributable net income on Trust's federal income tax return so that it is taxed to *A*. This treatment of the capital gains is a reasonable exercise of Trustee's discretion. In future years Trustee must treat all discretionary distributions as being made first from any realized capital gains.

Example 3. The facts are the same as in *Example 1*, except that pursuant to the terms of the governing instrument (in a provision not inconsistent with applicable local law), capital gains realized by Trust are allocated to income. Because the capital gains are allocated to income pursuant to the terms of the governing instrument, the $10,000 capital gain is included in Trust's distributable net income for the taxable year.

Example 4. The facts are the same as in *Example 1*, except that Trustee decides that discretionary distributions will be made only to the extent Trust has realized capital gains during the year and thus the discretionary distribution to *A* is $10,000, rather than $12,000. Because Trustee will consistently use the amount of any realized capital gain to determine the amount of the discretionary distribution to the beneficiary, the $10,000 capital gain is included in Trust's distributable net income for the taxable year.

Example 5. Trust's assets consist of Blackacre and other property. Under the terms of Trust's governing instrument, Trustee is directed to hold Blackacre for ten years and then sell it and distribute all the sales proceeds to *A*. Because Trustee uses the amount of the sales proceeds that includes any realized capital gain to determine the amount required to be distributed to *A*, any capital gain realized from the sale of Blackacre is included in Trust's distributable net income for the taxable year.

Example 6. Under the terms of Trust's governing instrument, all income is to be paid to *A* during the Trust's term. When *A* reaches 35, Trust is to terminate and all the principal is to be distributed to *A*. All capital gains realized in the year of termination are included in distributable net income. See § 1.641(b)–3 for the determination of the year of final termination and the taxability of capital gains realized after the terminating event and before final distribution.

Example 7. The facts are the same as *Example 6*, except Trustee is directed to distribute only one-half of the principal to *A* when *A* reaches 35. Trust assets consist entirely of stock in corporation M. If Trustee sells one-half of the stock and distributes the sales proceeds to *A*, all the capital gain attributable to that sale is included in distributable net income. If Trustee sells all the stock and distributes one-half of the sales proceeds to *A*, one-half of the capital gain attributable to that sale is included in distributable net income.

Example 8. The facts are the same as *Example 6*, except Trustee is directed to pay *B* $10,000 before distributing the remainder of Trust assets to *A*. No portion of the capital gains is allocable to *B* because the distribution to *B* is a gift of a specific sum of money within the meaning of section 663(a)(1).

Example 9. State law provides that a trustee may make an election to pay an income beneficiary an amount equal to four percent of the annual fair market value of the trust assets in full satisfaction of that beneficiary's right to income. State law provides that this unitrust amount shall be considered paid first from ordinary income, then from net short-term capital gain, then from net long-term capital gain, and finally from return of principal. Trust's governing instrument provides that *A* is to receive each year income as defined under State law. Trustee makes the unitrust election under State law. At the beginning of the taxable year, Trust assets are valued at $500,000. During the year, Trust receives $5,000 of dividend income and realizes $80,000 of net long-term gain from the sale of capital assets. Trustee distributes to *A* $20,000 (4% of $500,000) in satisfaction of *A*'s right to income. Net long-term capital gain in the amount of $15,000 is allocated to income pursuant to the State law ordering rule and is included in distributable net income for the taxable year.

Example 10. The facts are the same as in *Example 9*, except that neither State law nor Trust's governing instrument has an ordering rule for the character of the unitrust amount, but leaves such a decision to the discretion of Trustee. Trustee intends to follow a regular practice of treating principal as distributed to the beneficiary to the extent that the unitrust amount exceeds Trust's ordinary income. Trustee evidences this treatment by not including any capital gains in distributable net income on Trust's Federal income tax return so that the entire $80,000 capital gain is taxed to Trust. This treatment of the capital gains is a reasonable exercise of Trustee's discretion. In future years Trustee must consistently follow this treatment with respect to all realized capital gains.

Example 11. The facts are the same as in *Example 9*, except that neither State law nor Trust's governing instrument has an ordering rule for the character of the unitrust amount, but leaves such a decision to the discretion of Trustee. Trustee intends to follow a regular practice of treating net capital gains as distributed to the beneficiary to the extent the unitrust amount exceeds Trust's ordinary income. Trustee evidences this treatment by including $15,000 of the capital gain in distributable net income on Trust's Federal income tax return. This treatment of the capital gains is a reasonable exercise of Trustee's discretion. In future years Trustee must consistently treat realized capital gain, if any, as distributed to the beneficiary to the extent that the unitrust amount exceeds ordinary income.

Par. 4. Section 1.643(b)–1 is revised to read as follows:

§ 1.643(b)–1 Definition of income.

For purposes of subparts A through D, part I, subchapter J, chapter 1 of the Internal Revenue Code, *income,* when not preceded by the words "taxable," "distributable net," "undistributed net," or "gross," means the amount of income of an estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Trust provisions that depart fundamentally from traditional principles of income and principal, that is, allocating ordinary income to income and capital gains to principal, will generally not be recognized. However, amounts allocated between income and principal pursuant to applicable local law will be respected if local law provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust for the year, including ordinary income, capital gains, and appreciation. For example, a state law that provides for the income beneficiary to receive each year a unitrust amount of between 3% and 5% of the annual fair market value of the trust assets is a reasonable apportionment of the total return of the trust. Similarly, a state law that permits the trustee to make equitable adjustments between income and principal to fulfill the trustee's duty of impartiality between the income and remainder beneficiaries is generally a reasonable apportionment of the total return of the trust. These adjustments are permitted when the trustee invests and manages the trust assets under the state's prudent investor standard, the trust describes the amount that shall or must be distributed to a beneficiary by referring to the trust's income, and the trustee after applying the state statutory rules regarding allocation of income and principal is unable to administer the trust impartially. In addition, an allocation of capital gains to income will be respected if the allocation is made either pursuant to the terms of the governing instrument and local law, or pursuant to a reasonable and consistent exercise of a discretionary power granted to the fiduciary by local law or by the governing instrument, if not inconsistent with local law.

Par. 5. In § 1.651(a)–2, paragraph (d) is added to read as follows:

§ 1.651(a)–2 Income required to be distributed currently.

* * * * *

(d) If a trust distributes property in kind as part of its requirement to distribute currently all the income as defined under section 643(b) and the applicable regulations, the trust shall be treated as having sold the property for its fair market value on the date of distribution. If no amount in excess of the amount of income as defined under section 643(b) and the applicable regulations is distributed by the trust during the year, the trust will qualify for treatment under section 651 even though property in kind was distributed as part of a distribution of all such income.

Par. 6. In § 1.661(a)–2, paragraph (f) is revised to read as follows:

§ 1.661(a)–2 Deduction for distributions to beneficiaries.

* * * * *

(f) Gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of a distribution of property in kind if the distribution is in satisfaction of a right to receive a distribution of a specific dollar amount, of specific property other than that distributed, or of income as defined under section 643(b) and the applicable regulations, if income is required to be distributed currently. In addition, gain or loss is realized if the trustee or executor makes the election to recognize gain or loss under section 643(e).

Par. 7. In § 1.664–3, paragraph (a)(1)(i)(*b*)(*3*) is revised to read as follows:

§ 1.664–3 Charitable remainder unitrust.

(a) * * *

(1) * * *

(i) * * *

(*b*) * * *

(*3*) For purposes of this paragraph (a)(1)(i)(*b*), trust income generally means income as defined under section 643(b) and the applicable regulations. However, trust income may not be determined by reference to a fixed percentage of the annual fair market value of the trust property. If applicable state law provides that income is a unitrust amount, the trust's governing instrument must contain its own definition of trust income. In addition, capital gain attributable to appreciation in the value of a trust asset after the date it was contributed to the trust or purchased by the trust may be allocated to income pursuant to applicable local law and the terms of the governing instrument but not pursuant to a discretionary power granted the trustee.

* * * * *

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 8. The authority citation for part 20 continues to read in part as follows:

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

Par. 9. Section 20.2056(b)–5 is amended by adding a new sentence to the end of paragraph (f)(1) to read as follows:

§ 20.2056(b)–5 Marital deduction; life estate with power of appointment in surviving spouse.

* * * * *

(f) * * * (1) * * * In addition, the surviving spouse's interest shall meet the condition set forth in paragraph (a)(1) of this section, if the spouse is entitled to income as defined by a state statute that provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and that meets the requirements of § 1.643(b)–1 of the chapter.

* * * * *

Par. 10. Section 20.2056(b)–7 is amended by adding a new sentence to the end of paragraph (d)(1) to read as follows:

§ 20.2056(b)–7 Election with respect to life estate for surviving spouse.

* * * * *

(d) * * * (1) * * * A power under applicable state law that permits the trustee to adjust between income and principal to fulfill the trustee's duty of impartiality between the income and remainder beneficiaries that meets the requirements of § 1.643(b)–1 of this chapter will not be considered a power to appoint trust property to a person other than the surviving spouse.

* * * * *

Par. 11. Section 20.2056(b)–10 is amended by adding a new sentence at the end of the section to read as follows:

§ 20.2056(b)–10 Effective dates.

* * * In addition, the rule in the last sentence of § 20.2056(b)–5(f)(1) and the rule in the last sentence of § 20.2056(b)–7(d)(1) regarding the spouse's right to income if the state statute provides for the reasonable apportionment between the income and remainder beneficiaries of the total return of the trust are applicable with respect to trusts for taxable years that begin on or after the date that final regulations are published in the **Federal Register**.

Par. 12. Section 20.2056A–5 is amended by adding a new sentence in paragraph (c)(2) after the third sentence to read as follows:

§ 20.2056A–5 Imposition of section 2056A estate tax.

* * * * *

(c) * * *

(2) * * * However, distributions made to the surviving spouse as the income beneficiary in conformance with

applicable state law that defines the term income as a unitrust amount, or permits the trustee to adjust between principal and income to fulfill the trustee's duty of impartiality between income and principal beneficiaries, will be considered distributions of trust income, if the state statute provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and meets the requirements of § 1.643(b)–1 of this chapter. * * *

* * * * *

Par. 13. Section 20.2056A–13 is revised to read as follows:

§ 20.2056A–13 Effective dates.

Except as provided in this section, the provisions of §§ 20.2056A–1 through 20.2056A–12 are applicable with respect to estates of decedents dying after August 22, 1995. The rule in the fourth sentence of § 20.2056A–5(c) regarding unitrusts and distributions of income to the surviving spouse in conformance with applicable state law that provides for the reasonable apportionment between the income and remainder beneficiaries of the total return of the trust is applicable with respect to trusts for taxable years that begin on or after the date that final regulations are published in the **Federal Register**.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 14. The authority citation for part 25 continues to read in part as follows:

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

Par. 15. Section 25.2523(e)–1 is amended by adding a new sentence to the end of paragraph (f)(1) to read as follows:

§ 25.2523(e)–1 Marital deduction; life estate with power of appointment in donee spouse.

* * * * *

(f) * * * (1) * * * In addition, the spouse's interest shall meet the condition set forth in paragraph (a)(1) of this section, if the spouse is entitled to income as defined by a state statute that provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and that meets the requirements of § 1.643(b)–1(a) of this chapter.

* * * * *

Par. 16. Section 25.2523(h)–2 is amended by adding a new sentence to the end of the section to read as follows:

§ 25.2523(h)–2 Effective dates.

* * * In addition, the rule in the fourth sentence of § 25.2523(e)–1(f)(1) regarding the spouse's right to income if the state statute provides for reasonable apportionment between the income and remainder beneficiaries of the total return of the trust is applicable with respect to trusts and estates for taxable years that begin on or after the date the final regulations are published in the **Federal Register**.

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Par. 17. The authority citation for part 26 continues to read in part as follows:

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

Par. 18. Section 26.2601–1 is amended as follows:

1. Paragraph (b)(4)(i)(D)(*2*) is amended by adding a new sentence to the end of the paragraph.

2. Paragraph (b)(4)(i)(E) is amended by adding *Examples 11* and *12*.

3. Paragraph (b)(4)(ii) is revised to read as follows.

The additions and revisions read as follows:

§ 26.2601–1 Effective dates.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(D) * * *

(*2*) * * * In addition, administration of a trust in conformance with applicable state law that defines the term income as a unitrust amount, or permits the trustee to adjust between principal and income to fulfill the trustee's duty of impartiality between income and principal beneficiaries, will not be considered to shift a beneficial interest in the trust, if the state statute provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and meets the requirements of § 1.643(b)–1 of this chapter.

(E) * * *

Example 11. Conversion of income interest to unitrust interest under state statute. In 1980, Grantor, a resident of State X, established an irrevocable trust for the benefit of Grantor's child, *A*, and *A*'s issue. The trust provides that trust income is payable to *A* for life and upon *A*'s death the remainder is to pass to *A*'s issue, per stirpes. In 2002, State X amends its income and principal statute to define "income" as a unitrust amount of 4% of the fair market value of the trust assets valued annually. For a trust established prior to 2002, the statute provides that the new definition of income will apply only if all the beneficiaries who have an interest in the trust consent to the change within two years after the effective date of the statute. The statute provides specific procedures to establish the consent of the beneficiaries. *A* and *A*'s issue consent to the change in the definition of income within the time period, and in accordance with the procedures, prescribed by the state statute. The administration of the trust, in accordance with the state statute defining income to be a 4% unitrust amount, will not be considered to shift any beneficial interest in the trust. Therefore, the trust will not be subject to the provisions of chapter 13 of the Internal Revenue Code.

Example 12. Equitable adjustments under state statute. The facts are the same as in *Example 11*, except that in 2002, State X amends its income and principal statute to permit the trustee to make equitable adjustments between income and principal when the trustee invests and manages the trust assets under the state's prudent investor standard, the trust describes the amount that shall or must be distributed to a beneficiary by referring to the trust's income, and the trustee after applying the state statutory rules regarding allocation of income and principal is unable to administer the trust impartially. The provision permitting the trustees to make these equitable adjustments is effective in 2002 for trusts created at any time. The trustee invests and manages the trust assets under the state's prudent investor standard, and pursuant to authorization in the state statute, the trustee allocates receipts between the income and principal accounts in a manner to ensure the impartial administration of the trust. The administration of the trust in accordance with the state statute will not be considered to shift any beneficial interest in the trust. Therefore, the trust will not be subject to the provisions of chapter 13 of the Internal Revenue Code.

(ii) Effective dates. The rules in this paragraph (b)(4) are applicable on and after December 20, 2000. However, the rule in the last sentence of paragraph (b)(4)(i)(D)(*2*) of this section regarding the administration of a trust in conformance with applicable state law providing for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust is applicable with respect to trusts for taxable years that begin on or after the date that final regulations are published in the **Federal Register**.

* * * * *

Bob Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–1686 Filed 2–14–01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–025–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposes revisions to its rules concerning permit revisions. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Oklahoma program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., c.s.t., March 19, 2001. If requested, we will hold a public hearing on the amendment on March 12, 2001. We will accept requests to speak at the hearing until 4 p.m., c.s.t. on March 2, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Oklahoma program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: mwolfrom@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions concerning the Oklahoma program at 30 CFR 936.15 and 936.16.

II. Description of the Proposed Amendment

By letter dated January 25, 2001 (Administrative Record No. OK–990), the Oklahoma Department of Mines (Department) sent us an amendment to the Oklahoma program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Oklahoma sent the amendment at its own initiative. Oklahoma is amending its rules at OAC 460:20–17–3 concerning permit revisions by providing guidelines for determining when a permit revision is major/significant or minor and by specifying a time period for approval or disapproval of a permit revision application. Below is a summary of the changes proposed by Oklahoma.

1. *OAC 460:20–17–3(a) General.* At Section 460:20–17–3(a) Oklahoma is adding the following provision:

Any revision application to the approved mining or reclamation plan will be subject to review and approval by the Department. During the revision review, the revision will be classified as either: (1) Major or Significant; or (2) Minor.

2. *OAC 460:20–17–3(b) Application requirements and procedures.* Oklahoma is removing the existing provisions in Section 460:20–17–3(b), and adding the following new provisions:

(b) Application requirements and procedures. A permittee is required to submit any permit revision applications to the Chief of Technical Services for review. The Technical Service review shall determine:

(1) Whether the permittee has provided all technical and public notice requirement information the Department deems necessary to adequately evaluate and find that the revision meets the requirements of the statutes and of this Chapter; and

(2) Whether the revision application contains any deficiencies. The Department is required to send written notification to the permittee of any deficiencies along with a response date deadline for answering the deficiencies noted. Any deadline extension requests shall be in writing and are subject to the approval of the Chief of Technical Services. Failure of the permittee to file written responses within the required time frames, will result in the denial of the revision application.

3. *OAC 460:20–17–3(c) Significant revisions.* Oklahoma is moving the existing provision in Section 460:20–17–3(c) to new Section 460:20–17–3(f), and is adding the following provision to Section OAC 460:20–17–3(c):

A significant revision to the mining or reclamation plan will be subject to the permit application information requirements and procedures of this Subchapter, including notice, public participation, and notice of decision requirements of Sections 460:20–15–5, 460:20–15–8(b)(1) and (3), and 460:20–23–9 prior to approval by the Department and implementation by the permittee.

4. *OAC 460:20–17–3(d) Departmental consideration.* Oklahoma is moving the existing provision in Section 460:20–17–3(d) to new Section 460:20–17–3(g), and is adding the following new provisions to Section OAC 460:20–17–3(d):

(d) Departmental consideration. The Department will consider any proposed revision to be significant if its implementation could reasonably be expected, in the opinion of the Director, to result in any adverse impact to persons, property, or the environment outside the permit area. Revisions with impacts confined to the permit area will be evaluated on a case by case basis to determine if significant. While consideration will be given to the size, location, type and extent of impact in classifying a revision, the following will typically be considered significant:

(1) Incidental boundary changes;

(2) Hydrology plan changes which could have adverse impacts outside the permit acres, such as:

(A) The addition or relocation of permanent impoundments;

(B) The addition, deletion, or relocation of stream diversions; and

(C) The addition or deletion of acid mine drainage treatment facilities;

(3) The addition of a coal wash plant;

(4) The addition of or changes to a non coal waste storage plan;

(5) Construction or relocation of county roads;

(6) Addition of blasting plans;

(7) Postmining land use changes to residential, industrial or commercial (except for changes involving oil and gas wells and private roads), recreation, or developed water resources as discussed 460:20–27–14(a)(2);

(8) Changes impacting historical or cultural areas, high value wildlife habitat, and parks and public places;

(9) Permanent changes which could have a limiting or adverse effect on the long term future of the land; and

(10) Other changes deemed significant by the Director which affect the landowner and or the public.

4. *OAC 460:20–17–3(e) Minor revisions.* Oklahoma is adding the following new provisions at OAC 460:20–17–3(e):

(e) Minor revisions. The following revisions are typically considered minor revisions:
(1) Changes to pond designs;
(2) Addition or deletion of dewatering pipes on ponds;
(3) Addition, deletion or changes to office facilities, explosive storage areas, temporary haul roads, and coal pads;
(4) Changes to surface and groundwater monitoring plans;
(5) Vegetation changes;
(6) Change of operator without a change of permittee; and
(7) Conversion to incremental bonding or change to bond increments, pursuant to the requirements of Subchapter 37 of this Chapter.

5. *OAC 460:20–17–3(h) Application decisions.* Oklahoma is adding the following new provision at Section 460:20–17–3(h):

The Department will make a decision of approval or denial of a revision application within six months of receipt of the application unless the application, or some aspect of the application, is under technical, administrative or judicial review.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Oklahoma program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. OK–025–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on March 2, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of this section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of

section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5. U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 6, 2001.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01–3837 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–132–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Pennsylvania regulatory program (Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of excerpts of House Bill 393 containing costs in mine proceedings legislation. The amendment is intended to revise the Pennsylvania program to be consistent with the corresponding federal regulations.

DATES: If you submit written comments, they must be received by 4 p.m. (local time), March 19, 2001. If requested, a public hearing on the proposed amendment will be held on March 12, 2001. Requests to speak at the hearing must be received by 4 p.m. (local time), on March 2, 2001.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Robert J. Biggi, at the address listed below.

You may review copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Robert J. Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717)782–4036, e-mail: bbiggi@osmre.gov.

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717)787–5103.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717)782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the July 31, 1982, **Federal Register** (47 FR 33050). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated January 3, 2001, (Administrative Record No. PA–848.25), Pennsylvania submitted a proposed amendment to its program at the Pennsylvania Consolidated Statutes, Title 27 (Environmental Resources), Chapter 77, section 7708. The full text of the amendment is:

Excerpts of House Bill 393 Containing Costs in Mine Proceedings Legislation

Amending Title 27

(Environmental Resources) of the Pennsylvania Consolidated Statutes, providing for participation in environmental law or regulation and for costs in mining proceedings.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 27 of the Pennsylvania Consolidated Statutes is amended by adding chapters to read:

Subpart A

General provisions

Chapter 77. Costs and fees

Sec. 7708. Costs for mining proceedings.

(A) Purpose.—This section establishes costs and fees available in proceedings involving coal mining activities. The purpose of this section is to provide costs and fees to the same extent of section 525(e) of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95–87, 30 U.S.C. § 1201

et seq.) and the regulations promulgated pursuant thereto. It is hereby determined that it is in the public interest for the Commonwealth to maintain primary jurisdiction over the enforcement and administration of the Surface Mining Control and Reclamation Act of 1977 and that the purpose of this section is to maintain primary jurisdiction over coal mining in this Commonwealth but in no event to authorize standards which are more stringent than federal standards for the award of costs and fees.

(B) General rule.—Any party may file a petition for award of costs and fees reasonably incurred as a result of that party's participation in any proceeding involving coal mining activities which results in a final adjudication being issued by the Environmental Hearing Board or a final order being issued by an appellate court.

(C) Recipients of awards.—Appropriate costs and fees incurred for a proceeding concerning coal mining activities may be awarded:

(1) To any party from the permittee, if:

(i) The party initiates or participates in any proceeding reviewing enforcement actions upon a finding that a violation of a commonwealth coal mining act, regulation or permit has occurred or that an imminent hazard existed.

(ii) The Environmental Hearing Board determines that the party made a substantial contribution to the full and fair determination of the issues.

Except that the contribution of a party who did not initiate a proceeding shall be separate and distinct from the contribution made by a party initiating the proceeding.

(2) To any party, other than a permittee or his representative, from the department, if that party:

(i) Initiates or participates in any proceeding concerning coal mining activities.

(ii) Prevails in whole or in part, achieving at least some degree of success on the merits.

Upon a finding that the party made a substantial contribution to a full and fair determination of the issues.

(3) To a permittee from the department when the permittee demonstrates that the department in a matter concerning coal mining activities issued an order of cessation, a compliance order or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee.

(4) To a permittee from any party where the permittee demonstrates that the party, in bad faith and for the purpose of harassing or embarrassing the permittee:

(i) Initiated a proceeding under one or more of the coal mining acts or the regulations promulgated pursuant to any of those acts concerning coal mining activities;

Or

(ii) participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.

(D) Time for filing.—the petition for an award of costs and fees shall be filed with the Environmental Hearing Board within 30 days of the date an adjudication of the Environmental Hearing Board becomes final.

(E) Contents of petition.—A petition filed under this section shall include the name of the party from whom costs and fees are sought and the following shall be submitted in support of the petition:

(1) An affidavit setting forth in detail all reasonable costs and fees reasonably incurred for or in connection with the party's participation in the proceeding.

(2) Receipts or other evidence of such costs and fees.

(3) Where attorney fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area and the experience, reputation and ability of the individual or individuals performing the services.

(F) Answer.—Any party shall have 30 days from service of the petition within which to file an answer to such petition.

(G) Exclusive remedy.—Except for section 601 of the act of June 22, 1937 (Pub. L. 1987, No. 394), known as the Clean Streams Law, Section 18.3 of the act of May 31, 1945 (Pub. L. 1198, No. 418), known as the Surface Mining Conservation and Reclamation Act, Section 13 of the Act of April 27, 1966 (1st Sp.Sess., Pub. L. 31, No. 1), known as the Bituminous Mine Subsidence and Land Conservation Act and Section 13 of the act of September 24, 1968 (Pub. L. 1040, No. 318), known as the Coal Refuse Disposal Control Act, this section shall be the exclusive remedy for the awarding of costs and fees in proceedings involving coal mining activities.

(H) Definitions.—The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

Coal mining activities. The extraction of coal from the earth, waste or stockpiles, pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip mining, auger mining, dredging, quarrying and leaching and all surface activity connected with surface or underground coal mining, including, but not limited to, exploration, site preparation, coal processing or cleaning, coal refuse disposal, entry, tunnel, drift, slope, shaft and borehole drilling and construction, road construction, use, maintenance and reclamation, water supply restoration or replacement, repair or compensation for damages to structures caused by underground coal mining and all activities related thereto.

Coal mining acts. The provisions of the act of June 22, 1937 (Pub. L. 1987, No. 394), known as the Clean Streams Law, the act of May 31, 1945 (Pub. L. 1198, No. 418), known as the Surface Mining Conservation and Reclamation Act, the Act of April 27, 1966 (1st 27 Sp.Sess., Pub. L. 31, No. 1), known as the Bituminous Mine Subsidence and Land Conservation Act, and the act of September 24, 1968 (Pub. L. 1040, No. 318), known as the Coal Refuse Disposal Control Act, which govern coal mining or activities related to coal mining.

Costs and fees. All reasonable costs and expenses, including attorney fees and expert witness fees, reasonably incurred as a result of participation in a proceeding involving coal mining activities.

Department. The Department of Environmental Protection of the Commonwealth.

Proceeding. Appeals of final Department of Environmental Protection actions before the Environmental Hearing Board and judicial review of Environmental Hearing Board adjudications.

Section 2. (A) The following acts or parts of acts are repealed:

The fifth sentence of section 4(b) and subsection (f)(5) of section 4.2 of the act of May 31, 1945 (Pub. L. 1198, No. 418), known as the Surface Mining Conservation and Reclamation Act.

The last sentence of section 5(g) of the act of April 27,1966 (1st Sp.Sess., Pub. L. 31, No. 1), known as the Bituminous Mine Subsidence and Land Conservation Act.

The last sentence of section 5(i) of the act of September 24, 1968 (Pub. L. 1040, No. 318), known as the Coal Refuse Disposal Control Act.

(B) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 3. The addition of 27 Pa.C.S. Section 7708 shall apply to all proceedings and petitions for costs and fees filed after the effective date of this act.

Section 4. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The addition of 27 Pa.C.S. Section 7708.

(ii) this section.

(2) The remainder of this act shall take effect in 60 days.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. PA–132–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782–4036.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on March 2, 2001. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 18, 2001.

Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 01–3836 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR Part 551

Semipostal Stamp Program

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would create implementation regulations for the Semipostal Authorization Act, which authorizes the Postal Service to issue and sell semipostal postage stamps. Semipostal stamps are intended to raise funds for causes determined by the Postal Service to be in the public interest and appropriate. The proposed regulations relate to the selection procedures for causes and recipient executive agencies, the offices and authorities responsible for making decisions related to causes and recipient executive agencies, the criteria to be applied in evaluating proposals for causes and recipient executive agencies, sales limitations, the calculation of amounts to be transferred to executive agencies, and the determination of costs to be offset from differential revenue.

DATES: Comments must be received on or before March 19, 2001.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Stamp Services, ATTN: Semipostal Proposed Rules, 475 L'Enfant Plaza SW., Room 5670, Washington, DC 20260–2435, or sent via e-mail at the address posted on the Postal Service's Internet Web site at www.usps.com. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Postal Service Library, at the above address. Arrangements should be made in advance for inspection by contacting (202) 268–2900.

FOR FURTHER INFORMATION CONTACT: Cindy Tackett, (202) 268–6555.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Semipostal Authorization Act, Pub. Law No. 106–253, 114 Stat. 634 (2000) (hereinafter "Act"), authorizes the Postal Service to establish a ten-year program to sell semipostal stamps. The differential between the price of a semipostal stamp and the First-Class Mail® service rate, less an offset for the reasonable costs of the Postal Service, consists of an amount to fund causes that the "Postal Service determines to be in the national public interest and appropriate." By law, revenue from sales, net of postage and the reasonable costs of the Postal Service, is to be transferred to selected executive agencies within the meaning of 5 U.S.C. 105.

The Governors of the Postal Service are authorized to set prices for semipostal stamps according to a formula prescribed in the Act. Specifically, the Act prescribes that the price of a semipostal stamp is the "rate of postage that would otherwise regularly apply," plus a differential, i.e., the difference between sales revenue and postage, of not to exceed 25 percent. This is essentially the same formula prescribed by the Stamp Out Breast Cancer Act, Pub. L. No. 105–41, 111 Stat. 1119 (1997).

II. Statutory Requirements for Regulations

The Act provides that the Postal Service is to promulgate certain regulations via a notice and comment rulemaking. Specifically, the Postal Service must identify the "office or other authority within the Postal Service" to make decisions on the "appropriate causes and agencies" eligible to receive amounts becoming available from differential revenue less an offset for the reasonable costs of the Postal Service. The Postal Service is also directed to issue regulations on the "criteria and procedures" to be applied in making decisions on recipient executive agencies and causes. The Act further requires the Postal Service to identify "what limitations shall apply, if any, relating to the issuance of semipostals (such as whether more than one semipostal may be offered for sale at the same time)." Finally, the Postal Service's regulations must "specifically address how the costs incurred by the Postal Service . . . shall be computed, recovered, and kept to a minimum."

III. Summary of Proposed Regulations

The proposed rules are intended to enable the Postal Service to fulfill the Act's objectives. Proposed section 551.1 provides that the office of Stamp Services is primarily responsible for the Semipostal Stamp Program, and that the office of Controller has primary responsibility for financial issues related to the program.

Proposed section 551.2 describes semipostal stamps, and defines the differential to be the difference between the sales price and the postage value of semipostal stamps at the time of purchase.

Proposed section 551.3 establishes a procedure for the selection of causes and recipient executive agencies. From time to time, the Postal Service will publish a request for proposals in the **Federal Register** inviting interested persons to submit proposals for consideration. Proposals will be reviewed by the office of Stamp Services for consistency with the selection criteria in proposed section 551.4. Those proposals deemed to be eligible for consideration will be forwarded to the Citizens' Stamp Advisory Committee (CSAC).[1] CSAC will review the eligible proposals and make recommendations to the Postmaster General, who will act on those recommendations. Special rules would apply if more than one proposal is submitted for the same cause, with different executive agencies proposed to receive the funds. In those cases, the funds would be evenly divided, unless an agency can demonstrate it is entitled to a larger share. In those instances, the Postal Service's vice president and Consumer Advocate would determine the share for each executive agency.

Proposed section 551.4 would establish the submission requirements and selection criteria. Interested persons, defined to include individuals, corporations, associations, and executive agencies, may submit proposals. Proposals must satisfy certain technical requirements, and provide a description of the cause to be funded. The submission must also demonstrate that the cause has broad national appeal, and the cause is in the national public interest and furthers human welfare. Submissions must be accompanied by a letter from an executive agency designated to receive the funds. The letter provides assurance that the agency is qualified to receive

[1] CSAC is an advisory body created by the Postal Service to provide technical information, advice, and recommendations to the Postal Service on subjects for postage stamps. See "Administrative Support Manual" § 644.5. It also provides broad judgment and experience on various factors that lead to the issuance of stamps and establishes criteria for selecting stamp subjects. CSAC's fifteen members reflects a wide range of educational, artistic, historical, and professional expertise. Members are appointed by, and serve at the pleasure of, the Postmaster General.

funds under the Act, and also ensures that the proposal can be successfully executed if it is selected. Consideration would not be given to proposals that support a number of enumerated factors, including: anniversaries; historical events; public works; people; specific organizations or associations; commercial enterprises or products; cities, towns, municipalities, counties, or secondary schools; hospitals, libraries, or similar institutions; religious institutions; any cause that has been previously supported by a semipostal stamp, including the stamp issued pursuant to 39 U.S.C. § 414; causes that do not further human welfare; or causes determined by the Postal Service or the Citizens' Stamp Advisory Committee to be inconsistent with the spirit, intent, or history of the Semipostal Authorization Act. These enumerated factors are intended to give effect to the Act's intent that only causes in the national public interest should be funded. Proposed section 551.4 also makes clear that proposal submissions become the property of the Postal Service.

Proposed section 551.5 specifies the frequency and other limitations on semipostal stamps. The Act provides that the period within which the Postal Service may sell semipostal stamps under 39 U.S.C. 416 is limited to ten years. The sales period will commence after sales of the Breast Cancer Research Stamp are discontinued. The sales period of the Breast Cancer Research Stamp was extended by the Semipostal Authorization Act to July 29, 2002. New semipostal stamps will accordingly not be issued until after this time. To ensure that the Semipostal Stamp Program reflects the broad spectrum of causes that further the national public interest, proposed section 551.5 specifies that the sales period for any given semipostal would be limited to no more than two years. While the Postal Service expects that most semipostal stamps will be offered for the full two-year period, changes in the sales period may be made by the office of Stamp Services to coincide with changes in the First-Class Mail® service single-piece first ounce rate. To minimize costs, avoid customer confusion, and facilitate ease of administration, no more than one semipostal stamp would be offered for sale at any given time. Proposed 551.5 also reserves the right to withdraw a semipostal stamp.

Proposed section 551.6 establishes that the price of semipostal stamps will be based on the First-Class Mail® service single-piece first-ounce rate. Prices are to be determined by the Governors of the Postal Service in accordance with the requirements of 39 U.S.C. 416.

Proposed section 551.7 identifies the procedure for calculation of the funds to be transferred to executive agencies. A special account identifier code (AIC) will be used to record sales revenue. The amounts to be transferred consist of the differential revenue less an amount for the reasonable costs of the Postal Service. Funds are to be transferred to recipient executive agencies pursuant to mutual agreement.

Proposed section 551.8 sets forth the Postal Service's policy to recover from the differential those costs determined to be attributable to the semipostal and that would not normally be incurred for commemorative stamps having similar sales objectives; physical characteristics; and marketing, promotional, and public relations activities. Such commemorative stamps are defined as "comparable stamps." The office of the Controller will identify comparable stamps and develop a cost profile for purposes of comparison. Costs that may be recovered from the differential include packaging costs in excess of those for comparable stamps, printing costs for flyers or special receipts, costs of changes to equipment, costs of developing and executing marketing and promotional plans in excess of those for comparable stamps, and other costs that would not normally have been incurred for comparable stamps. Other specified costs would not be recovered from the differential, but rather would be "recovered" through retention of revenue from the postage portion of semipostal stamps. The office of the Controller would bear responsibility for tracking specified costs in proposed section 551.8. The Postal Service intends to maximize differential revenues by avoiding, to the extent practicable, promotional costs that exceed those of comparable stamps, establishing restrictions on the number of concurrently issued semipostals, and making financial and retail system changes in conjunction with regularly scheduled revisions.

IV. Conclusion

In accordance with 39 U.S.C. 416(e)(2), the Postal Service invites public comment on the following proposed amendments to the "Code of Federal Regulations."

An appropriate amendment to 39 CFR part 551 to reflect these changes will be published if the proposal is adopted.

List of Subjects in 39 CFR Part 551

Administrative practice and procedure, Postal Service.

For the reasons set out in this document, the Postal Service proposes to add 39 CFR part 551 as follows:

PART 551—SEMIPOSTAL STAMP PROGRAM

Sec.

Authority: 39 U.S.C. 101, 201, 203, 401, 403, 404, 410, 414, and 416.

§ 551.1 Semipostal stamp program.

The Semipostal Stamp Program is established under the Semipostal Authorization Act, Pub. Law No. 106–253, 114 Stat. 634 (2000). The office of Stamp Services has primary responsibility for administering the Semipostal Stamp Program. The office of the Controller has primary responsibility for financial aspects of the Semipostal Stamp Program.

§ 551.2 Semipostal stamps.

Semipostal stamps are stamps that are sold for a price that exceeds the postage value of the stamp. The difference between the price and postage value of semipostal stamps, also known as the differential, less an offset for reasonable costs, as determined by the Postal Service, consists of a contribution to fund causes determined by the Postal Service to be in the national public interest and appropriate. Funds are to be transferred to selected recipient executive agencies, as defined under 5 U.S.C. 105. The office of Stamp Services determines the print quantities of semipostal stamps.

§ 551.3 Procedure for selection of causes and recipient executive agencies.

The Postal Service is authorized to select causes and recipient executive agencies to receive funds raised through the sale of semipostal stamps. The procedure for selection of causes and recipient executive agencies is as follows:

(a) In advance of the issuance of a semipostal stamp, the office of Stamp Services will publish a request for proposals in the **Federal Register** inviting interested persons to submit proposals for a cause and recipient executive agency for a future semipostal stamp. The notice will specify the beginning and ending dates of the period during which proposals may be

submitted. The notice will also specify the approximate period in which the semipostal stamp for which proposals are solicited is to be sold. The office of Stamp Services may publicize the request for proposals through other means, as it determines in its discretion.

(b) Proposals will be received by the office of Stamp Services, which will review each proposal under § 551.4.

(c) Those proposals that the office of Stamp Services determines satisfy the requirements of § 551.4 will be forwarded to the Citizens' Stamp Advisory Committee for consideration.

(d) The Citizens' Stamp Advisory Committee will review eligible proposals forwarded by the office of Stamp Services. Based on the proposals submitted, the Citizens' Stamp Advisory Committee will make recommendations to the Postmaster General on a cause and eligible recipient executive agency(ies) to the Postmaster General. If no eligible proposals are recommended, the Postal Service will solicit additional proposals through publication of a notice in the **Federal Register** and through other means as it determines in its discretion.

(e) Meetings of the Citizens' Stamp Advisory Committee are closed, and deliberations of the Citizens' Stamp Advisory Committee are predecisional in nature.

(f) The Postmaster General will act on the recommendations of the Citizens' Stamp Advisory Committee. The decision of the Postmaster General shall consist of the final agency decision.

(g) The office of Stamp Services will notify the executive agency(ies) in writing of a decision designating the agency(ies) as recipients of funds from a semipostal stamp.

(h)(1) A proposal submission may designate one or two recipient executive agencies to receive funds, but if more than one executive agency is proposed, the proposal must specify the percentage shares of differential revenue, net of the Postal Service's reasonable costs, to be given to each agency. If percentage shares are not specified, it is presumed that the proposal intends that the funds be split evenly between the agencies. If more than two recipient executive agencies are proposed to receive funds and the proposal is selected, the proposal is treated as prescribed by paragraph (h)(3) of this section.

(2) If more than one proposal is submitted for the same cause, and the proposals would have different executive agencies receiving funds, the funds would be evenly divided between the executive agencies, with no more than two agencies being designated to receive funds, as determined by the vice president and Consumer Advocate.

(3) Within ten days of receipt of a notice indicating that it has been selected to receive funds, a selected agency could request a proportionately larger share if it can demonstrate that its share of total funding of the cause from other sources (excluding any additional funds available as a result of the semipostal stamp) exceeds that of the other recipient executive agency. The request must be in writing and must be sent to the Manager of Stamp Services. In those cases, the determination regarding the proportional share to be divided among the recipient executive agencies is made by the Postal Service's vice president and Consumer Advocate.

(i) As either a separate matter, or in combination with recommendations on a cause and a recipient executive agency(ies), the Citizens' Stamp Advisory Committee will recommend to the Postmaster General a design (i.e., artwork) for the semipostal stamp. The Postmaster General will make a final determination on the design to be featured.

§ 551.4 Submission requirements and selection criteria.

(a) Proposals on recipient executive agencies and causes must satisfy the following requirements:

(1) An original and twenty copies of the proposal submission must be timely submitted by an interested person. For purposes of this section, interested persons include, but are not limited to, individuals, corporations, associations, and executive agencies under 5 U.S.C. 105. Interested persons submitting proposals are also encouraged to submit an Adobe Acrobat (.pdf) file saved on a 3.5 inch diskette or CD–ROM diskette containing the entire contents of the submission. In extraordinary circumstances, the office of Stamp Services may, in its discretion, consider a late-filed proposal.

(2) The proposal submission must be signed by the individual or a duly authorized representative and must provide the mailing address, phone number, fax number (if available), and e-mail address (if available) of a designated point of contact.

(3) The submission must describe the cause and the purposes for which the funds would be spent.

(4) The submission must demonstrate that the cause to be funded has broad national appeal, and that the cause is in the national public interest and furthers human welfare. Respondents are encouraged to submit supporting documentation demonstrating that funding the cause would benefit the national public interest.

(5) The submission must be accompanied by a letter from an executive agency on agency letterhead representing that:

(i) It is an executive agency as defined under 5 U.S.C. 105,

(ii) It is willing and able to implement the proposal, and

(iii) It is willing and able to meet the requirements of the Semipostal Authorization Act, if it is selected. The letter must be signed by a duly authorized representative of the agency.

(b) Proposal submissions become the property of the Postal Service and are not returned to interested persons who submit them. Interested persons who submit proposals are not entitled to any remuneration, compensation, or any other form of payment, whether their proposal submissions are selected or not, for any reason.

(c) The following persons are disqualified from submitting proposals:

(1) Any contractor of the Postal Service that may stand to benefit financially from the Semipostal Stamp Program; or

(2) Members of the Citizens' Stamp Advisory Committee and their immediate families, and employees or contractors of the Postal Service, and their immediate families, who are involved in any decisionmaking related to causes, recipient agencies, or artwork for the Semipostal Stamp Program.

(d) Consideration for evaluation would not be given to proposals that request support for the following: anniversaries; historical events; public works; people; specific organizations or associations; commercial enterprises or products; cities, towns, municipalities, counties, or secondary schools; hospitals, libraries, or similar institutions; religious institutions; any cause that has been previously supported by a semipostal stamp, including the stamp issued pursuant to 39 U.S.C. 414; causes that do not further human welfare; or causes determined by the Postal Service or the Citizens' Stamp Advisory Committee to be inconsistent with the spirit, intent, or history of the Semipostal Authorization Act.

(e) Artwork and stamp designs should not be submitted with proposals.

§ 551.5 Frequency and other limitations.

(a) The Postal Service is authorized to issue semipostal stamps for a ten-year period beginning on the date on which semipostal stamps are first sold to the public under 39 U.S.C. 416. The ten-year period will commence after the sales period of the Breast Cancer Research Stamp is concluded in

accordance with the Stamp Out Breast Cancer Act, as amended by the Semipostal Authorization Act. The office of Stamp Services will determine the date of commencement of the ten-year period.

(b) The Postal Service will offer only one semipostal stamp for sale at any given time during the ten-year period.

(c) The sales period for any given semipostal stamp is limited to no more than two years, as determined by the office of Stamp Services.

(d) Prior to or after the issuance of a given semipostal stamp, the Postal Service reserves the right to withdraw the semipostal stamp from sale, or to reduce the sales period, if, inter alia:

(1) Its sales or revenue statistics are lower than expected,

(2) The sales or revenue projections are lower than previously expected, or

(3) The cause or recipient executive agency does not further, or comply with, the statutory purposes or requirements of the Semipostal Authorization Act. The decision to withdraw a semipostal stamp is to be made by the Postmaster General, after review of supporting documentation prepared by the office of Stamp Services.

§ 551.6 Pricing.

(a) The Semipostal Authorization Act prescribes that the price of a semipostal stamp is the "rate of postage that would otherwise regularly apply." For purposes of this provision, the First-Class Mail single-piece first-ounce rate of postage will be considered "the rate of postage that would otherwise regularly apply."

(b) The prices of semipostal stamps are determined by the Governors of the United States Postal Service in accordance with the requirements of 39 U.S.C. 416.

§ 551.7 Calculation of funds for recipient executive agencies.

(a) The Postal Service is to determine its reasonable costs in executing its responsibilities pursuant to the Semipostal Authorization Act, as specified in § 551.8. These costs are offset against the revenue received through sale of each semipostal stamp in excess of the First-Class Mail single-piece first-ounce rate in effect at the time of purchase.

(b) Any reasonable costs offset by the Postal Service shall be retained by it, along with revenue from the sale of the semipostal stamps, as recorded by sales units through the use of a specially-designated account information code.

(c) The Postal Service is to pay designated recipient executive agency(ies) the remainder of the differential revenue less an amount to recover the reasonable costs of the Postal Service, as determined under § 551.8.

(d) The amounts for recipient executive agencies are transferred in a manner and frequency determined by mutual agreement, consistent with the requirements of 39 U.S.C. 416.

§ 551.8 Cost offset policy.

(a) Postal Service policy is to recover from the differential revenue for each semipostal stamp those costs determined to be attributable to the semipostal stamp and that would not normally be incurred for commemorative stamps having similar sales objectives; physical characteristics; and marketing, promotional, and public relations activities (hereinafter "comparable stamps").

(b) Overall responsibility for tracking costs associated with semipostal stamps will rest with the office of the Controller. Individual organizational units incurring costs will provide supporting documentation to the office of the Controller.

(c) For each semipostal stamp, the office of the Controller shall, based on judgment and available information, identify the comparable commemorative stamp(s) and create a profile of the typical cost characteristics of the comparable stamp(s), thereby establishing a baseline for cost comparison purposes. The determination of comparable commemorative stamps may change during or after the sales period, if the projections of stamp sales differ from actual experience.

(d) Except as specified, all costs associated with semipostal stamps will be tracked by the office of the Controller. Costs that will not be tracked include:

(1) Costs that the Postal Service determines to be inconsequentially small;

(2) Costs for which the cost of tracking would be burdensome (e.g., costs for which the cost of tracking exceeds the cost to be tracked);

(3) Costs attributable to mail to which semipostal stamps are affixed (which are attributable to the appropriate class and/or subclass of mail); and

(4) Administrative and support costs that the Postal Service would have incurred whether or not the Semipostal Stamp Program had been established.

(e) Cost items recoverable from the differential revenue may include, but are not limited to, the following:

(1) Packaging costs in excess of the cost to package comparable stamps;

(2) Printing costs for flyers and special receipts;

(3) Cost of changes to equipment;

(4) Cost of developing and executing marketing and promotional plans in excess of the cost for comparable stamps; and

(5) Other costs specific to the stamp that would not normally have been incurred for comparable stamps.

(f) The Semipostal Stamp Program incorporates the following provisions that are intended to maximize differential revenues available to the selected causes. These include, but are not limited to, the following:

(1) Avoiding, to the extent practicable, promotional costs that exceed those of comparable stamps;

(2) Establishing restrictions on the number of concurrently issued semipostals; and

(3) Making financial and retail system changes in conjunction with regularly scheduled revisions.

(g) Other costs attributable to semipostals but which would normally be incurred for comparable stamps would be recovered through the postage component of the semipostal stamp price. These include, but are not limited to, the following:

(1) Costs for stamp design (including market research);

(2) Costs for stamp production and printing;

(3) Costs of stamp shipping and distribution;

(4) Estimated training costs for field staff, except for special training associated with semipostal stamps;

(5) Costs of stamp sales (including employee salaries and benefits);

(6) Costs associated with the withdrawal of the stamp issue from sale;

(7) Costs associated with the destruction of unsold stamps; and

(8) Costs associated with the incorporation of semipostal stamp images into advertising for the Postal Service as an entity.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–3845 Filed 2–14–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6927–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed partial deletion of the California Gulch Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) proposes to delete Operable Unit 10 (OU10) of the California Gulch Superfund Site, located in Leadville, Colorado, from the National Priorities List (NPL). The NPL is the National Oil and Hazardous Substances Pollution and Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). This action is being taken because EPA, with concurrence from the State of Colorado Department of Public Health and Environment (CDPHE), has determined that all appropriate response actions have been taken and that no further response at the Site is appropriate.

A detailed rationale for this Proposal to Delete is set forth in the direct final rule which can be found in the Rules and Regulations section of this **Federal Register.** The direct final rule is being published because EPA views this deletion action as a noncontroversial revision and anticipates no significant adverse or critical comments. If no significant adverse or critical comments are received, no further activity is contemplated. If EPA receives significant adverse or critical comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this action must be received by EPA by March 19, 2001.

ADDRESSES: Comments may be mailed to Rebecca Thomas, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR-SR, 999 18th Street, Suite 300, Denver, Colorado 80202. Telephone: (303) 312-6552.

Information Repositories:
Comprehensive information on the California Gulch Site is available through the EPA, Region 8 public docket, which is located at the EPA, Region 8 Superfund Records Center. The address for the Region 8 Superfund Records Center is: U.S. Environmental Protection Agency, Region 8, Superfund Records Center, 999 18th Street, 5th Floor, Denver, CO 80202, Telephone (303) 312–6473.

FOR FURTHER INFORMATION CONTACT: Rebecca Thomas (EPR-SR), Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 999 18th Street, Suite 300, Denver, CO 80202. Telephone: (303) 312–6552.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: December 19, 2000.

Jack W. McGraw,

Acting Regional Administrator, U.S. EPA Region 8.

[FR Doc. 01–3615 Filed 2–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6939–4]

National Oil and Hazardous Substances; Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed partial deletion of portions of the Department of Energy (DOE) Mound Superfund Site (Mound Site) known as release block D and release block H from the national priorities list (NPL).

SUMMARY: The EPA proposes to delete Release Block D, a 12-acre parcel of property along the eastern border of the Mound Site, containing two industrial buildings. This proposal also pertains to Release Block H, a 14 acre parcel of property consisting of the Mound plant parking lot portions of the Department of Energy Mound Superfund Site from the NPL. This proposal also requests public comment on this action. The NPL constitutes appendix B to Part 300 of the National and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA has determined that these portions of the Site currently pose no significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures under CERCLA are not appropriate. EPA is publishing this proposed rule without prior notification because the Agency views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this approval is set forth in the direct final rule. If no dissenting comments are received, the deletion will become effective. If EPA receives dissenting comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this Action must be received by March 19, 2001.

ADDRESSES: Comments should be mailed to Timothy Fischer, Remedial Project Manager, or Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson, Chicago, IL 60604. Comprehensive information on this Site is available through the public docket, which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region 5, Administrative Records 7th Floor, 77 W. Jackson Boulevard, Chicago, Il 60604 (312)–886–0900: and The CERCLA Public Reading Room, Miamisburg Senior Adult Center, 305 Central Avenue, Miamisburg, OH 45342.

FOR FURTHER INFORMATION CONTACT: Timothy Fischer, Remedial Project Manager, at (312) 886–5787 or Gladys Beard, Associate Remedial Project Manager at (312) 886–7253. Written correspondence can be directed to either Mr. Fischer or Ms. Beard at U.S. Environmental Protection Agency, (SR–6J) 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the rules section of this **Federal Register**.

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

Dated: January 19, 2001.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA Region V.

[FR Doc. 01–3613 Filed 2–14–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, and 43

[CC Docket No. 99–301, FCC 01–19]

Local Competition and Broadband Reporting

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission seeks comment about whether it should modify a program to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband.

DATES: Comments are due on or before March 19, 2001 and reply comments are due on or before April 2, 2001. Written comments by the public on the proposed information collections are due on or before March 19, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before April 16, 2001.

ADDRESSES: Comments and replies shall be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, with a copy to Ms. Suzanne McCrary of the Common Carrier Bureau, Federal Communications Commission, 445 12th Street, SW., 6–A220, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20037. Parties may file electronically through the Internet at *http://www.fcc.gov/e-file/ecfs.html.* In addition to filing comments and replies with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Ellen Burton, Industry Analysis Division, Common Carrier Bureau, at (202) 418–0958, or Thomas J. Beers, Deputy Chief of the Industry Analysis Division, Common Carrier Bureau, at (202) 418–0952. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) released January 19, 2001 (FCC 01–19). The full text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 1231 20th Street, NW., Washington, DC 20037. Additionally, the complete item is available on the Commission's website at *http://www.fcc.gov/Bureaus/Common—Carrier/Notices/2001/.* This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OBM) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

This NPRM contains a proposed information collection. 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(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0816.

Title: "Local Competition and Broadband Reporting, CC Docket No. 99–301".

Form No.: FCC Form 477.

Type of Review: Revision of Existing Collection.

Respondents: Business or Not-for-profit institutions, including small businesses.

Number of Respondents: Up to 490.

Estimated Time Per Response: 65–70 person-hours.

Total Annual Burden: Up to 32,924 person-hours.

Cost to Respondents: $0.

Needs and Uses: The information collection is a proposed modification of an already authorized program. As before, the program will be used by the Commission to gather information on the state of the development of local competition and broadband deployment. Without such information, the Commission faces significant difficulty in assessing the development of these markets and, therefore, is less able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Summary of the Notice of Proposed Rulemaking

1. In the NPRM summarized here, we seek comment whether we should make changes to a previously implemented FCC program (Form 477) to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband. We seek comment about certain specific changes to broadband information submitted pursuant to Form 477, but propose only relatively minor changes to the portions of Form 477 that cover local competition data or data about mobile telephone services. We do, however, generally solicit comment about all aspects of the data collection program including those that deal with local competition and mobile services data. Overall, our re-examination of the existing data gathering program is driven by concern that we require additional data about the deployment and availability of broadband services to discrete geographic areas and among distinct demographic groups in order to satisfy the statutory mandate of section 706 of the Telecommunications Act of 1996, 47 U.S.C. 706 nt. Nevertheless, we continue to attempt to balance the burdens imposed by the Form 477 program on data providers against the usefulness of the data. Throughout the NPRM, we explain our reasons for seeking comment on specific proposals.

2. *Reporting Thresholds.* For purposes of this data gathering program, we continue to define "broadband services" to refer to those services that deliver an information carrying capacity in excess of 200 kbps in at least one direction; where the service delivers capacity in excess of 200 kbps in both directions, we call it "full broadband" or "full, two-way broadband."

3. Our data collection program currently requires broadband, local competition and mobile telephone service providers to complete only those portions of Form 477 for which they meet or exceed defined reporting thresholds. For broadband reporting, that means that facilities-based providers with at least 250 full two-way or one-way broadband lines—or wireless channels—in a given state must report broadband data per applicable portions of the Form 477; providers who fall below the threshold may report data on a voluntary basis. Driven by concern that the existing broadband threshold may be too high for us to collect sufficient information about broadband deployment, particularly in rural and other sparsely populated areas, we ask whether we should keep the existing broadband threshold, lower that threshold, raise it, or eliminate it altogether. We encourage commenters to explain how any alternative would balance our competing desires to obtain comprehensive broadband information without imposing undue burdens on entities that serve comparatively few customers. In particular, we take note of a Petition for Reconsideration of our Report and Order adopting the Form 477 program filed by Iowa Telecom. In its petition, Iowa Telecom asks the Commission to create an exemption for "mid-sized LECs * * * " which serve primarily rural communities" and employ statistical sampling to gather needed information. We specifically ask commenters to address the Iowa Telecom petition which we will consider as part of this proceeding. (Note: We do not propose to change existing thresholds for local telephone service and mobile telephone service reporting.)

4. *Data to be Reported.* Currently, pursuant to Form 477, providers must report information about subscribership to their broadband, local telephone, and mobile telephone services offerings per two classes of users: (1) Residential and small business users; and (2) Large business and institutional users. In the NPRM we seek comment whether we should alter Form 477 so that it more precisely captures distinctions between broadband deployment to residential and business users. We ask, accordingly, whether we should require broadband providers to report subscribership information per three user classes: (1) residential users; (2) small business users; and (3) large business and institutional users. We seek comment about what criteria should be used to distinguish among these classes of users, and whether reporting providers should also distinguish between subscribers who subscribe to full, two-way broadband service and those who subscribe to one-way broadband service offerings. We note our continued belief that information about broadband deployment by zip code is the administratively simplest way to obtain finer geographic granularity of subscribership information. We seek comment whether providers should report actual subscribership by zip code—with a separate breakdown for residential subscribership—rather than the current requirement that merely lists zip codes where broadband service is delivered. We ask whether additional information, including distinctions between the types of technology used to provide broadband services, should be provided at the zip code level. We seek comment about alternatives to zip code-specific data; and ask commenters generally, per the mandate of section 706, whether collecting additional subscribership information would necessarily increase our understanding of whether broadband is being made available to all Americans.

5. We tentatively conclude that we should require providers to report data on the availability of broadband as well as on actual subscribership. We seek comment on such measures of availability as (1) number of homes passed by broadband-capable infrastructure; (2) zip codes where service is currently offered to all or some percentage of customers within the zip code; (3) for providers of telephone or cable video services, the number of their customers who have broadband services available to them; (4) any other measure. We seek comment on other issues related to availability and also whether there is other useful information we should collect to inform the Commission's understanding why broadband subscribership rates remain low in some areas where broadband is available. We ask, in particular, whether there are alternative sources of availability, demand, and subscribership information about low income consumers, those living in sparsely populated areas, and others who the Commission has found may be particularly vulnerable to not receiving timely access to broadband services.

6. Our existing broadband data gathering is limited to broadband lines connected to the Internet or to another public network. We seek to clarify the scope of broadband services subject to Form 477 by asking whether we also should collect information about broadband lines that are not connected to the Internet, for example, so-called "private" broadband lines that connect multiple locations of one customer. Examples could include corporate intranet configurations or private networks for educational or health care institutions. We seek specific comment about how to define such services in order to ensure data accuracy and comparability with other collected broadband data.

7. We seek comment on relatively minor revisions to the local competition and mobile telephone service portions of the Form 477 by, *inter alia,* proposing to reorganize certain sections of the form and to eliminate data requests that may have caused confusion.

8. *Confidentiality Issues.* Currently we attempt to make publicly available as much local competition and broadband data as possible, while affording providers full opportunity to file data pursuant to requests for confidential treatment. Moreover, in the case of broadband data, we publish in our reports only data aggregations that do not identify particular providers regardless whether they have requested confidential treatment. We seek comment whether we should establish a rebuttable presumption that some or all Form 477 data do not typically meet our standards for competitively sensitive information. We also seek comment on how other proposals proffered in the NPRM affect the need for confidential treatment of data.

9. *Frequency of Filing.* Our current Form 477 program requires providers to file data twice each year. Given dynamic growth in the broadband market, we seek comment whether we require more frequent filings. Alternatively, we ask whether we should reduce increased burdens potentially imposed pursuant to this NPRM by reducing the number of Form 477 filings to one per year.

10. *Analysis of Data.* We seek comment whether the additional data proposed to be collected make possible relatively more sophisticated statistical and other analyses by the Commission. We also seek comment about associated issues, including whether the Commission should—and how the Commission could—share data with academics and others, and whether we should give outside parties the

opportunity to review and comment on preliminary findings and methodologies before we adopt any final section 706 reports.

Procedural Matters

Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice. 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 this Notice, which are set out in paragraph 33 of the Notice. The Commission will send a copy of this Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this Notice and IRFA (or summaries thereof) will be published in the **Federal Register.**

I. Need for, and Objectives of, the Proposed Action

12. The Commission has initiated this proceeding to seek comment on how it might refine or improve the data gathering effort that we authorized on March 30, 2000 to assess the degree of deployment of broadband services and the development of local competition. In considering revisions to this program, we seek to develop more fully our understanding of the deployment and availability of broadband services and the development of local competition. At the same time, we seek to eliminate any unnecessary or unduly burdensome aspects of the program and identify aspects of the program that may need further clarification. In particular, we believe that additional data about deployment of broadband services to discrete geographic areas and amongst distinct demographic groups is essential in order to satisfy more fully our obligations under section 706 of the 1996 Act.

II. Legal Basis

1. The legal basis for the action as proposed for this rulemaking is contained in sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

III. Description and Estimate of the Number of Small Entities to Which the Proposed Action May Apply

14. The Commission seeks comment on whether it should revise its rules so that any entity that provides broadband services must comply with the reporting requirement. Out of an abundance of caution, we set out below a detailed description of the types of entities that could possibly be required to comply with the proposed reporting requirement and we detail our understanding of the number of small entities within each of these categories.

15. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. To estimate the number of small entities that may be affected by the proposed rules, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "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, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

16. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,822 interstate service providers. These providers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

17. We have included small incumbent local exchange carriers (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. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

18. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules proposed in the Notice.

19. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one

employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that are small entities or small incumbent LECs and that may be affected by the rules proposed in the Notice.

20. *Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition of small LECs, competitive access providers (CAPs), interexchange carriers (IXCs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service. According to our most recent data, there are 1,395 LECs, 349 CAPs, 204 IXCs, 21 OSPs, and 541 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,395 small entity LECs or small incumbent LECs, 348 CAPs, 204 IXCs, 21 OSPs, and 541 resellers that may be affected by the decisions and rules proposed in the Notice.

21. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for wireless (radiotelephone) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned or operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules proposed in the Notice.

22. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. We will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies, however, to the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 806 companies reported that they are engaged in the provision of Wireless Telephony services and 44 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 806 small entity Wireless Telephony Providers and fewer than 44 small entity Other Mobile Service Providers that might be affected by the decisions and rules proposed in the Notice.

23. *Broadband PCS Licensees.* The broadband 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 less than $40 million 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 regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition 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% of the 1,479 licenses for Blocks D, E, and F. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

24. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 and 900 MHz SMR has been approved by the SBA. The proposed rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the rules proposed in the Notice.

25. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules proposed in the

Notice includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and rules proposed in the Notice.

26. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition, some of which may be affected by the decisions and rules proposed in the Notice.

27. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, 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 $3 million for the preceding three years. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (Regional) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of October 7, 1999, the Commission had granted 681 of the Phase II 220 MHz licenses won at a first auction and an additional 221 Phase II licenses won at a second auction.

28. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

29. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

30. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

31. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number, if any, of small businesses that could be impacted by the proposed rules. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States. We note, however, that because the vast majority of these licensees are end-users, not providers of telephony or broadband services, they would not be directly affected by the rules proposed in this Notice.

32. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.,* an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

33. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used

for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

34. *Wireless Communications Services.* This service can be used for fixed, mobile, radio-location 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 Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules proposed in the Notice includes these eight entities.

35. *Satellite Services.* The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. The Census report does not provide more precise data.

36. In addition to the estimates provided above, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

37. *Cable services or systems.* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.

38. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

39. The Communications Act also contains a definition of a small cable system operator, 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 there are 66,690,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 666,900 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 666,900 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

40. *Multipoint Distribution Systems (MDS).* This service has historically provided primarily point-to-multipoint one-way video services to subscribers. The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.

41. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million. The Commission established this small business definition in the context of this particular service and with the approval of the SBA. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas. Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

42. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by the proposals in this Notice.

43. *Electric Services (SIC 4911).* The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reports that 447 of the 1379 firms listed had total revenues below five million dollars.

44. *Electric and Other Services Combined (SIC 4931).* The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars.

45. *Combination Utilities, Not Elsewhere Classified (SIC 4939).* The SBA defines this utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end

of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

IV. Description of Proposed Reporting, Recordkeeping, and Other Compliance Requirements

46. The Notice sets out in detail, and seeks comment on, various proposals to modify the Commission's existing Local Competition and Broadband reporting program. Pursuant to the current reporting program, certain providers of broadband services and of local telephone services must complete FCC Form 477, which collects data on their deployment of those services. Since the adoption of the reporting program, providers have reported data twice and the Commission has issued its *Second Report on Advanced Telecommunications Capability* based in significant part on the data collected through this program. Thus, the Notice seeks comment, in light of these experiences, on ways that the Commission might improve this data gathering effort. The Notice asks whether certain measures to gain additional data might assist the Commission in its efforts to understand the degree and status of deployment of broadband services, without imposing an undue burden on reporting providers. For example, the Notice seeks comment on possible revisions to FCC Form 477 that might more precisely capture distinctions between the deployment of broadband services to residential and business users. Similarly, the Notice seeks comment on whether we should revise the form so that providers report the actual subscribership by zip code, in lieu of the current requirement that providers report a list of zip codes where broadband service is being delivered. Further, the Notice asks whether it is possible to eliminate any unnecessary or unduly burdensome aspects of the reporting program. In addition to seeking comment on the types of data to be reported, the Notice seeks comment on whether to adjust the current reporting thresholds, whether the Commission should alter its confidentiality procedures for data collected, whether it would be appropriate to alter the frequency of filing, and whether there are additional steps that the Commission might take to promote additional analyses of the data. The Notice asks commenters to document, insofar as possible, the burdens that are imposed by our current requirements and the additional burdens that would be imposed by more detailed reporting requirements.

I. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

47. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (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.

48. As mentioned previously, the Notice seeks comment, in light of our experiences since the adoption of the reporting program, on ways that we might improve this data gathering effort. The Notice asks whether there is additional data that would enhance the Commission's ability to understand the status and degree of broadband and local telephone service deployment. At the same time, the Notice asks whether it is possible to eliminate any unnecessary or unduly burdensome aspects of the reporting program. This proposal would reduce burdens on all respondents, including any small entities that must report under the program. Among the alternatives considered in the Notice that might affect small entities is a proposal by Iowa Telecom seeking to create an exemption for "mid-size LECs * * * which serve primarily rural communities." Small entities are specifically encouraged to comment on such an exemption. The Notice seeks comment on whether the burdens imposed on smaller providers by our reporting requirements outweigh the benefits of these requirements. At the same time, the Commission also asks whether access to more complete information about broadband subscribership in rural areas—areas that are often served by smaller telephone and cable companies—might enable us to better fulfill the congressional directive to assess the state of deployment of broadband services to all Americans. The Notice expressly states the Commission's desire and intention to work closely with service providers, including small entities, to minimize burdens wherever possible, particularly for smaller providers that may have limited resources.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

49. None.

VII. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

50. None.

Ordering Clauses

51. Pursuant to sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503, and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this [notice], with all attachments, is hereby [adopted].

52. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Second Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects

47 CFR Parts 1 and 43

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 20

Communications common carriers.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 01–3787 Filed 2–14–01; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH83

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Chorizanthe robusta* var. *robusta* (Robust Spineflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Chorizanthe robusta* var. *robusta* (robust spineflower). Approximately 660 hectares (1,635 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Cruz County, California.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation and our approaches for handling any future habitat conservation plans. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until April 16, 2001. Public hearing requests must be received by April 2, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493, Portola Road, Suite B, Ventura, California 93003.

You may also send comments by electronic mail (e-mail) to *robustsf@fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver comments to our Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Chorizanthe robusta var. *robusta*, also known as robust spineflower and Aptos spineflower, is endemic to sandy soils in coastal areas in southern Santa Cruz and northern Monterey Counties. In California, the spineflower genus (*Chorizanthe*) in the buckwheat family (Polygonaceae) comprises species of wiry annual herbs that inhabit dry sandy soils, both along the coast and inland. Because of the patchy and limited distribution of such soils, many species of *Chorizanthe* tend to be highly localized in their distribution.

Like other spineflowers, *Chorizanthe robusta* var. *robusta* is branched from the base and subtended by a rosette of basal leaves. The overall appearance of *C. r.* var. *robusta* is that of a low-growing herb that is soft-hairy and grayish or reddish in color. The plant has an erect to spreading or prostrate habit, with large individuals reaching 50 centimeters (cm) (20 inches (in.)) or more in diameter. This taxon is distinguished by white (rarely pinkish) scarious (translucent) margins on the lobes of the involucre (circle or collection of modified leaves surrounding a flower cluster) or head that subtend the white- to rose-colored flowers. The aggregate of flowers (heads) tend to be 1.5 to 2.0 cm (0.6 to 0.8 in.) across in diameter and distinctly aggregate. *Chorizanthe robusta* var. *robusta* is one of two varieties of the species *Chorizanthe robusta*. The other variety (*Chorizanthe robusta* var. *hartwegii*), known as Scotts Valley spineflower, is restricted to the Scotts Valley area in the Santa Cruz Mountains. The range of *Chorizanthe robusta* var. *robusta* partially overlaps with *Chorizanthe pungens* var. *pungens* (Monterey spineflower), another closely related taxon in the Pungentes section of the genus, in southern Santa Cruz County. *Chorizanthe pungens* var. *pungens* is a threatened species and *Chorizanthe robusta* var. *robusta* is an endangered species; for a detailed description of these related taxa, see the Draft Recovery Plan for the Robust Spineflower (Service 2000) and references within this plan. We are proposing critical habitat for *Chorizanthe pungens* var. *pungens* and *Chorizanthe robusta* var. *hartwegii* separately but concurrently with this proposal.

Chorizanthe robusta var. *robusta* is a short-lived annual species. It germinates during the winter months and flowers from April through June; although pollination ecology has not been studied for this taxon, pollinators observed include leaf cutter bees (megachilids), at least 6 species of butterflies, flies, and sphecid wasps (Randy Morgan, biologist, Soquel, California, pers. comm. 2000). Each flower produces one seed; depending on the vigor of the individual plant, dozens, if not hundred of seeds could be produced. The importance of pollinator activity in seed set has been demonstrated by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000). Seed is collectable through August. The plants turn a rusty hue as they dry through the summer months, eventually shattering during the fall. Seed dispersal is facilitated by the involucral spines, which attach the seed to passing animals. While animal vectors most likely facilitate dispersal between colonies and populations, the prevailing coastal winds undoubtedly play a part in scattering seed within colonies and populations.

The locations where *Chorizanthe robusta* var. *robusta* occurs are subject to a mild maritime climate, where fog helps keep summer temperatures cool and winter temperatures relatively warm, and provides moisture in addition to the normal winter rains. *Chorizanthe robusta* var. *robusta* is currently known from a total of seven sites. Two sites are located on active coastal dunes, while the other five sites are located inland from the immediate coast in sandy openings within scrub, maritime chaparral, or oak woodland habitats. All of these habitat types include microhabitat characteristics that are favored by *C. r.* var. *robusta*. First, all sites are on sandy soils; whether the origin of the soils are from active dunes or interior fossil dunes is apparently unimportant. Second, these sites are relatively open and free of other vegetation; sandy soils tend to be nutrient-poor, which limits the abundance of other herbaceous species that can grow on them. However, if these soils have been enriched, either through the accumulation of organic matter or importation of other soils, these sandy soils may support more abundant herbaceous vegetation which may then compete with *C. r.* var. *robusta*. Management of the herb cover, either through grazing, mowing or fire, may allow the spineflower to persist. In scrub and chaparral communities, *C. r.* var. *robusta* does not occur under dense stands, but will occur between more widely spaced shrubs.

According to information included in the California Natural Diversity Data Base (CNDDB), *Chorizanthe robusta* var. *robusta* once ranged from Alameda County, on the eastern side of San Francisco Bay, south to northern

Monterey County—a range of 160 kilometers (100 miles). The identity of the Alameda collections, however, is still unresolved; Reveal and Hardham (1989) noted that these collections may be more closely related to other spineflowers in the *Pungentes* section of the genus, but that resolution is unlikely since the Alameda population was last collected in 1948. Other historic collections were made from Colma in San Mateo County, Los Gatos and San Jose in Santa Clara County, and several locations in Santa Cruz and Monterey counties.

Other collections of putative *Chorizanthe robusta* var. *robusta* have been made from northern Monterey County and from one location near Soledad. Barbara Ertter (1990, *in litt.* 1997) has suggested that these collections may form a separate morphological "phase," whose ultimate taxonomic affinities lay either with *Chorizanthe pungens* var. *pungens* or *Chorizanthe robusta* var. *robusta*. For purposes of this rule, these collections are recognized as belonging to *C. r.* var. *robusta*.

The current distribution of *Chorizanthe robusta* var. *robusta* is restricted to coastal and near-coastal sites in southern Santa Cruz County and northern Monterey County, ranging from Pogonip Park in the city of Santa Cruz, southeast to coastal dunes between Marina and Seaside that were formerly part of Fort Ord. With the discovery of two new populations in the year 2000, a total of seven populations are now known to exist. There is a high likelihood that other populations will be discovered in the future.

At Pogonip Park, two colonies occur on sandy soils derived from the Santa Margarita sandstone formation; one colony is growing in sandy openings within a mixed forest community (CNDDB 2000; S. Baron, *in litt.* 1999a). Within the city of Santa Cruz, near where Highway 1 crosses Carbonera Creek, (referred to as the Branciforte site) a population occurs in a field that supports grassland species, including *Avena barbata* (wild oats), *Vulpia* sp. (vulpia), *Lupinus* sp. (sky lupine), *Eschscholzia californica* (California poppy), *Conyza* sp. (telegraph weed), *Navarettia atractyloides* (navaretia), and *Erodium* sp. (filaree) (R. Morgan, pers. comm. 2000). At the Aptos site, *Chorizanthe robusta* var. *robusta* occurs in an opening within maritime chaparral on inland marine sand deposit (CNDDB 2000). At the Freedom site, *C. r.* var. *robusta* occurs in a grassy opening within maritime chaparral and oak woodland (Dean Taylor, Jepson Herbarium, Berkeley, CA, *in litt.* 2000). At the Buena Vista site, *C. r.* var. *robusta* occurs on sandy soils in openings within oak forest and maritime chaparral (S. Baron, *in litt.* 1999b). The Buena Vista site also supports the endangered Santa Cruz long-toed salamander (*Ambystoma californiense*).

At Sunset State Beach, *Chorizanthe robusta* var. *robusta* is found at the base of backdunes in openings of coastal scrub, including *Eriophyllum staechadifolium* (seaside woolly sunflower), *Artemisia pycnocephala* (coastal sagewort), *Ericameria ericoides* (mock heather), and *Baccharis pilularis* (coyote bush) (CNDDB 2000). *Chorizanthe pungens* var. *pungens* grows in a band parallel to the *C. r.* var. *robusta*, in the foredunes along the beach (CNDDB 2000). In 1992, a population of *C. r.* var. *robusta* was discovered on the coastal dunes between Marina and Seaside, in the course of surveys performed in preparation for the transfer of Department of Defense lands formerly known as Fort Ord to the California Department of Parks and Recreation; this same stretch of dunes also supports the threatened *C. p.* var. *pungens* and the threatened western snowy plover (*Charadrius alexandrinus nivosus*) (U.S. Army Corps of Engineers (ACOE) 1997). The distribution of suitable habitat on coastal dunes is subject to dynamic shifts caused by patterns of dune mobilization, stabilization, and successional trends in coastal dune scrub that increase in cover over time. Individual colonies of *C. r.* var. *robusta*, found in gaps between stands of scrub, shift in distribution and size over time.

Portions of the coastal dune, coastal scrub, grassland, chaparral, and oak woodland communities that support *Chorizanthe robusta* var. *robusta* have been eliminated or altered by recreational use, conversion to agriculture, and urban development. Dune communities have also been altered in composition by the introduction of non-native species, especially *Carpobrotus* spp. (sea-fig or iceplant) and *Ammophila arenaria* (European beachgrass), in an attempt to stabilize shifting sands. In the last decade, significant efforts have been made to restore native dune communities, including the elimination of these non-native species.

Previous Federal Action

On May 16, 1990, we received a petition from Steve McCabe and Randall Morgan of the Santa Cruz Chapter of the California Native Plant Society to list *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower) as endangered. Based on a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted (55 FR 46080), we initiated a status review of this taxon. During that time we also reviewed the status of *Chorizanthe robusta* var. *robusta*. We proposed endangered status for the *C. r.* var. *robusta* on October 24, 1991 (56 FR 55107). The final rule, published on February 4, 1994, (59 FR 5499) listed *C. robusta*, inclusive of var. *robusta* and var. *hartwegii*, as endangered.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Chorizanthe robusta* was listed, inclusive of var. *robusta* and var. *hartwegii*, we found that designation of critical habitat for *Chorizanthe robusta*, inclusive of var. *robusta* and var. *hartwegii*, was prudent but not determinable and that designation of critical habitat would occur once we had gathered the necessary data.

On June 30, 1999, our failure to designate critical habitat for *Chorizanthe robusta*, inclusive of var. *robusta* and var. *hartwegii*, within the time period mandated by 16 U.S.C. 1533(b)(6)(C)(ii) was challenged in *Center for Biological Diversity* v. *Babbitt* (Case No. C99–3202 SC). On August 30, 2000, the U.S. District Court for the Northern District of California (Court) directed us to publish a proposed critical habitat designation within 60 days of the Court's order and a final critical habitat designation no later than 120 days after the proposed designation is published. On October 16, 2000, the Court granted the government's request for a stay of this order. Subsequently, by a stipulated settlement agreement signed by the parties on November 20, 2000, we agreed to propose critical habitat for *Chorizanthe robusta* var. *robusta* by January 15, 2001. Because the two varieties of *Chorizanthe robusta* are geographically and ecologically separated, proposed critical habitat designations have been developed separately. This proposed rule addresses critical habitat for *Chorizanthe robusta*

var. *robusta*. A proposed critical habitat designation for *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower) is being proposed concurrently.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of *Chorizanthe robusta* var. *robusta*. This information included information from the California Natural Diversity Data Base (CNDDB 2000), soil survey maps (Soil Conservation Service 1979), recent biological surveys and reports, our draft recovery plan for this species, additional information provided by interested parties, and discussions with botanical experts. We also conducted site visits, either cursory or more extensive, at five of the seven locations (Pogonip, Freedom, Buena Vista, Sunset

State Beach, and dunes at former Fort Ord).

Each of the critical habitat units includes areas that are unoccupied by *Chorizanthe robusta* var. *robusta*. Determining the specific areas that this taxon occupies is difficult for several reasons: (1) The distribution of *Chorizanthe robusta* var. *robusta* appears to be more closely tied to the presence of sandy soils than to specific plant communities; the plant communities may undergo changes over time, which, due to the degree of cover that is provided by that vegetation type, may either favor the presence of *Chorizanthe robusta* var. *robusta* or not; (2) the way the current distribution of *Chorizanthe robusta* var. *robusta* is mapped can be variable, depending on the scale at which patches of individuals are recorded (e.g. many small patches versus one large patch); and (3) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or, if there is a residual seedbank present, enlarge and cover a more extensive area. Therefore, patches of unoccupied habitat are interspersed with patches of occupied habitat; the inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of this taxon.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Little is known about the specific physical and biological requirements of *Chorizanthe robusta* var. *robusta* beyond that described in the Background section of this proposed rule. Based on the best available information at this time, the primary constituent elements of critical habitat for *C. r.* var. *robusta* are:

(1) sandy soils associated with active coastal dunes and inland sites with sandy soils;

(2) plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, and oak woodland communities, and have a structure such that there are openings between the dominant elements (e.g. scrub, shrub, oak trees, clumps of herbaceous vegetation);

(3) plant communities that contain no or little cover by nonnative species which would compete for resources available for growth and reproduction of *Chorizanthe robusta* var. *robusta;*

(4) Pollinator activity between existing colonies of *Chorizanthe robusta* var. *robusta;*

(5) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas; and

(6) Seed dispersal mechanisms between existing colonies and other potentially suitable sites.

We selected critical habitat areas to provide for the conservation of *Chorizanthe robusta* var. *robusta,* at the two coastal sites and five inland sites where it is known to occur. Historic locations for which there are no recent records of occupancy (within the last 25 years) were not proposed for designation. At a number of these sites, including Alameda in Alameda County, Colma in San Mateo County, and Los Gatos and San Jose in Santa Clara County, the plant has not been seen for approximately 100 years; this, combined with the consideration that these locations have been urbanized, leads us to conclude that a critical habitat designation would be inappropriate for these sites.

We considered proposing critical habitat in two areas where *Chorizanthe robusta* var. *robusta* has been documented within the last 25 years, but not within the last few years. The first is at Manresa State Beach, just seaward from the community of La Selva Beach in Santa Cruz County. *Chorizanthe robusta* var. *robusta* was observed near the entrance to the Beach in 1979, but it has not been seen since then and may be extirpated (CNDDB 2000). However, Manresa State Beach is being proposed as critical habitat for *Chorizanthe pungens* var. *pungens.* Should that final critical habitat designation include Manresa State Beach, the designation may afford benefits to *C. r.* var. *robusta* through increased awareness of the importance of this habitat, particularly if the *C. r.* var. *robusta* is found to still persist at this site.

The second area where *Chorizanthe robusta* var. *robusta* has been documented within the last 25 years is an area north of the community of Soquel in Santa Cruz County, and bounded by Paul Sweet Road to the west, Rodeo Gulch Road to the east, and as far north as Mountain View Road. Collections from this area were made in 1936, 1960, and 1977; although this area has undergone some scattered development, much of the area remains rural, and populations of *C. r.* var. *robusta* may persist in this area. However, due to the size of this area and our lack of information needed to delineate boundaries more specifically, we are not proposing critical habitat in this area at this time.

We do not believe that critical habitat designation, in this proposed rule, will be sufficient to conserve *Chorizanthe robusta* var. *robusta,* a species in danger of extinction due to the precariously few sites where it is still extant. The draft recovery plan for *C. r.* var. *robusta* (Service 2000) proposes as a recovery task "the reestablishment of populations within the historic range of the species if appropriate habitat can be located". The task of locating appropriate habitat, which would entail developing a predictive model based on habitat characteristics (similar to, but more detailed than, the constituent elements described in this proposed rule), followed by field surveys and coordination with other agencies, has not yet been initiated. Once these data have been gathered and the recovery plan is finalized, we may revisit critical habitat designation for this species, if appropriate.

The long-term probability of the survival and recovery of *Chorizanthe robusta* var. *robusta* is dependent to a great extent upon the protection of existing population sites, and of maintaining ecologic functions within these sites, including connectivity between sites within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (for example dune dynamics at the coastal sites, and fire disturbance at inland site) that maintain the openness of vegetative cover upon which the species depends. Threats to the habitat of *Chorizanthe robusta* var. *robusta* include: residential development, recreational use, and the introduction of non-native species (February 4, 1994; 59 FR 5499). The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *C. r.*

var. *robusta*. Given the species' need for an open plant community structure and the risk of non-native species, we believe that these areas may require special management considerations or protection.

In our delineation of the critical habitat units, we believed it was important to designate all the known areas where *Chorizanthe robusta* var. *robusta* occurs. When possible, areas that were in close geographic proximity were included in the same unit to emphasize the need to maintain connectivity between different populations. We also included habitat for *C. r.* var. *robusta* adjacent to and contiguous to areas of known occurrences to maintain landscape scale processes. Each mapping unit contains habitat that is occupied by *C. r.* var. *robusta;* none of the mapping units are comprised entirely of unoccupied habitat. Some units were mapped with a greater precision that others, based on the available information, the size of the unit, and the time allotted to complete this proposed rule. We anticipate that in the time between the proposed rule and the final rule, and based upon the additional information received during the public comment period, that the boundaries of certain mapping units will be refined.

The proposed critical habitat units were delineated by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of *Chorizanthe robusta* var. *robusta,* using information from the California Natural Diversity Data Base (CNDDB 2000), recent biological surveys and reports, our draft recovery plan for this species, and discussions with botanical experts. These data layers were created on a base of USGS 7.5′ quadrangle maps obtained from the State of California's Stephen P. Teale Data Center. We defined the boundaries for the proposed critical habitat units using a combination of (1) Public Land Survey (PLS) coordinates of township, range, and section; (2) known landmarks and roads; and (3) a protracted PLS grid system used to infill grid coordinates within Spanish land grant areas where actual PLS does not exist.

In selecting areas of proposed critical habitat, we made an effort to avoid developed areas, such as housing developments, that are unlikely to contribute to the conservation of *Chorizanthe robusta* var. *robusta*. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. r.* var. *robusta*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the conservation and recovery of the *Chorizanthe robusta* var. *robusta*. Critical habitat being proposed for *C. r.* var. *robusta* includes seven units that currently sustain the species. This proposed critical habitat is essential for the conservation of the species because the geographic range that *C. r.* var. *robusta* occupies has been reduced to so few sites that the species is in danger of extinction (56 FR 55107). The areas being proposed as critical habitat are either along the coast (Sunset State Beach and the dunes at former Fort Ord), or are at inland sites ranging from Pogonip Park southeast to the Buena Vista property in southern Santa Cruz County, and include the appropriate dune, scrub, maritime chaparral, or oak woodland habitat that include the sandy openings which support *Chorizanthe robusta* var. *robusta*.

A brief description of each critical habitat unit is given below:

Unit A: Pogonip Unit

Unit A consists of sandy openings within mixed forest habitat within Pogonip Park in the city of Santa Cruz. Of the 166-ha (411-acre) unit, 100 ha (248 ac) are owned and managed by the city; a portion of the remaining 66 adjacent hectares (163 ac) are owned by the University of California, and the remainder are privately owned.

Unit B: Branciforte Unit

Unit B consists of an old field/grassland unit within the city limits of Santa Cruz. The 5 ha (11-ac) unit is privately owned.

Unit C: Aptos Unit

Unit C consists of sandy openings within maritime chaparral. The 32-ha (78-ac) unit is comprised entirely of private lands.

Unit D: Freedom Unit

Unit D consists of grasslands and sandy areas in openings within maritime chaparral and oak woodland. This 3.8-ha (9.5-ac) unit is comprised of local agency lands (Aptos High School District) and private lands.

Unit E: Buena Vista Unit

Unit E consists of grasslands within maritime chaparral and oak woodland on the Buena Vista parcel. The 75-ha (185-ac) unit is comprised entirely of private lands. The Service has prepared a proposal to allow addition of the Buena Vista parcel into the Ellicott Slough National Wildlife Refuge (Service 1998b); however, its future disposition is uncertain.

Unit F: Sunset Unit

Unit F consists of coastal dune habitat, and is identical to critical habitat that is being proposed for the *Chorizanthe pungens* var. *pungens*. All of this 53-ha (132-ac) unit is within Sunset State Beach.

Unit G: Marina Unit

Unit G consists of coastal dune habitat on the dunes at former Fort Ord, and is south of Marina State Beach and north of Del Monte. All this 326-ha (804-ac) unit consists of former Fort Ord lands that are being transferred to the California State Parks system.

The approximate areas of proposed critical habitat by land ownership are shown in Table 5. Lands proposed are under private, City, and State jurisdiction, with Federal lands including lands managed by the DOD at former Fort Ord.

TABLE 5.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC) [1], OF PROPOSED CRITICAL HABITAT FOR *Chorizanthe robusta* VAR. *robusta* BY LAND OWNERSHIP.

Unit name	State lands	Private lands	City and other local jurisdictions	Federal lands	Total
A. Pogonip	20 ha (50 ac)	45 ha (115 ac)	100 ha (250 ac)		165 ha (410 ac)
B. Branciforte		5 ha (10 ac)			5 ha (10 ac)
C. Aptos		30 ha (80 ac)			30 ha (80 ac)

TABLE 5.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC) [1], OF PROPOSED CRITICAL HABITAT FOR *Chorizanthe robusta* VAR. *robusta* BY LAND OWNERSHIP.—Continued

Unit name	State lands	Private lands	City and other local jurisdictions	Federal lands	Total
D. Freedom		2 ha (6 ac)	2 ha (4 ac)		4 ha (10 ac)
E. Buena Vista		75 ha (185 ac)			75 ha (185 ac)
F. Sunset	55 ha (130 ac)				55 ha (130 ac)
G. Marina				325 ha (805 ac)	325 ha (805 ac)
Total	75 ha (180 ac)	157 ha (396 ac)	102 ha (254 ac)	325 ha (805 ac)	659 ha (1,635 ac)

[1] Approximate acres have been converted to hectares (1 ha = 2.47 ac). Based on the level of imprecision of mapping of each unit, hectares and acres greater than 10 have been rounded to the nearest 5; hectares and acres less than or equal to 10 have been rounded to the nearest whole number. Totals are sums of units.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. Destruction or adverse modification of critical habitat is defined by our regulations as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical (50 CFR 402.02). Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act means that Federal agencies must evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If, at the conclusion of consultation, we issue a biological opinion concluding that project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on lands being proposed as critical habitat for the *Chorizanthe robusta* var. *robusta* or activities that may indirectly affect such lands and that are conducted by a Federal agency, funded by a Federal agency or that require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Chorizanthe robusta* var. *robusta* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy native dune, scrub, maritime chaparral, and oak woodland communities, including but not limited to inappropriately managed livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as 404 permits from the Army Corps of Engineers or permits from Housing and Urban Development, military activities of the Department of Defense on their lands or lands under their jurisdiction, the release of authorization of release of biological control agents by the Department of Agriculture, regulation by the Environmental Protection Agency of activities affecting point source pollution discharges into waters of the U.S., authorization of Federal grants or loans, and land acquisition by the Service's Refuges Division. These

actions would be subject to the section 7 consultation process. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process. Several other species that are listed under the Act occur in the same general areas as *Chorizanthe robusta* var. *robusta*. *Chorizanthe pungens* var. *pungens* occurs in close proximity to *Chorizanthe robusta* var. *robusta* at Sunset State Beach and the dunes at former Fort Ord; sand gilia (*Gilia tenuiflora* ssp. *arenaria*) occurs at Sunset State Beach and the dunes at former Fort Ord; western snowy plover occurs at Sunset State Beach and the dunes at former Fort Ord; and the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) occurs on the Buena Vista property.

We have prepared a proposal to allow addition of the Buena Vista parcel into the Ellicott Slough National Wildlife Refuge (Service 1998). At this time, the parcel remains in private ownership and its future disposition is uncertain. However, should the parcel be acquired by the Service in the future, this action would be subject to the section 7 consultation process.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–6131, FAX 503/231–6243).

Relationship To Habitat Conservation Plans

Currently, there are no HCPs that include *Chorizanthe robusta* var. *robusta* as a covered species. However, we believe that in most instances the benefits of excluding habitat conservation plans (HCPs) from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs covering *C. r.* var. *robusta* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *C. r.* var. *robusta*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *C. r.* var. *robusta* and appropriate management for those lands. The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a comment period at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Chorizanthe robusta* var. *robusta* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Chorizanthe robusta* var. *robusta* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs); and

(6) The methods we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods. You may mail comments to the Assistant Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may also comment via the Internet to robustsf@r1.fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: [1018–AH83] and your name and return address in your Internet message." If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Please note that the Internet address "robustsf@r1.fws.gov" will be closed out at the termination of the public comment period. Finally, you may hand-deliver comments to our Ventura office at 2493 Portola Road, Suite B, Ventura, California. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There

also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing and designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the "Supplementary Information" section of the preamble helpful in understanding the notice? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the office identified in the **ADDRESSES** section at the beginning of this document.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). We are preparing a draft analysis of this proposed action, which will be available for public comment to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with this species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act in areas occupied by the species. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons that do not have a Federal "sponsorship" in their actions are not restricted by the designation of critical habitat.

TABLE 2.—IMPACTS OF *Chorizanthe robusta* VAR. *robusta* LISTING AND CRITICAL HABITAT DESIGNATION.

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal Activities Potentially Affected [2]	Activities conducted by the Army Corps of Engineers, the Department of Housing and Urban Development, and any other Federal Agencies.	Activities by these Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation

TABLE 2.—IMPACTS OF *Chorizanthe robusta* VAR. *robusta* LISTING AND CRITICAL HABITAT DESIGNATION.—Continued

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for *Chorizanthe robusta* var. *robusta* by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Chorizanthe robusta* var. *robusta* since its listing in 1994. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands.

We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This proposed rule, if made final, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (required under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas where section 7 consultations would have occurred as a result of the species being listed under the Act. We will also evaluate whether designation includes any areas where section 7 consultations would occur only as a result of the critical habitat designation, and in such cases determine if it will significantly affect a substantial number of small entities. As indicated on Table 1 (see "Proposed Critical Habitat Designation" section), we have proposed to designate property owned by Federal, State, and County governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private lands requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Military activities of the U.S. Department of Defense (Navy and Army) on their lands or lands under their jurisdiction;

(4) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(5) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act.;

(6) Authorization of Federal grants or loans; and

(7) The potential acquisition of the Buena Vista parcel by the Service's Refuges Division. Potentially, some of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current, applicable restrictions of the Act remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas where section 7 consultations should occur regardless of the critical habitat designation. We will evaluate through our economic analysis any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000, *et seq.*):

(a) We believe this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the

extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease current restrictions on private property concerning this plant species. We do not anticipate that property values will be affected by the critical habitat designations. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with State law and with the continued survival of the plant species.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Chorizanthe robusta* var. *robusta* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Chorizanthe robusta* var. *robusta*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951) and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. The proposed designation of critical habitat for *Chorizanthe robusta* var. *robusta* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The author of this proposed rule is Constance Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h), remove the entry for *Chorizanthe robusta* (incl. vars. *robusta* and *hartwegii*) and add the following, in alphabetical order under "FLOWERING PLANTS" to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Chorizanthe robusta var. *robusta*	Robust Spineflower	U.S.A. (CA)	Polygonaceae—Buckwheat.	T		17.96(b)	NA
*	*	*	*	*	*	*	*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, amend paragraph (b) by adding an entry for *Chorizanthe robusta* var. *robusta* in alphabetical order under Polygonaceae to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(b) *Single-species critical habitat—Flowering plants.*

Family Polygonaceae: *Chorizanthe robusta* var. *robusta* (robust spineflower)

(1) Critical habitat units are depicted for Santa Cruz and Monterey counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Chorizanthe robusta* var. *robusta* are the habitat components that provide:

(i) Sandy soils associated with active coastal dunes, coastal bluffs with a deposition of windblown sand, inland sites with sandy soils, and interior floodplain dunes;

(ii) Plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, oak woodland, and interior floodplain dune communities, and have a structure such that there are openings between the dominant elements (e.g, scrub, shrub, oak trees, clumps of herbaceous vegetation);

(iii) Plant communities that contain no or little cover by nonnative species which would compete for resources available for growth and reproduction of *Chorizanthe robusta* var. *robusta;*

(iv) Pollinator activity between existing colonies of *Chorizanthe robusta* var. *robusta;*

(v) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas; and

(vi) Seed dispersal mechanisms between existing colonies and other potentially suitable sites.

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

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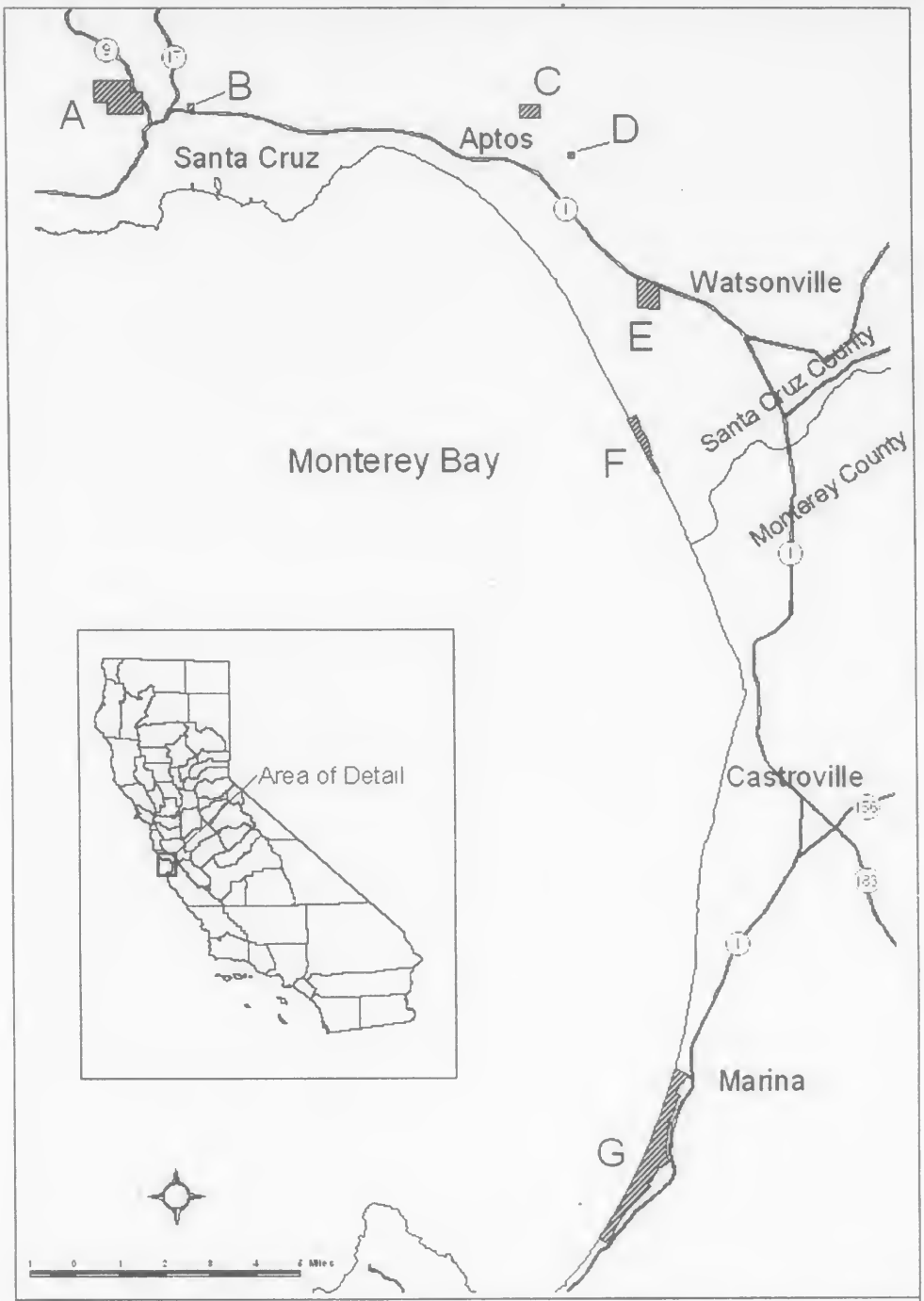
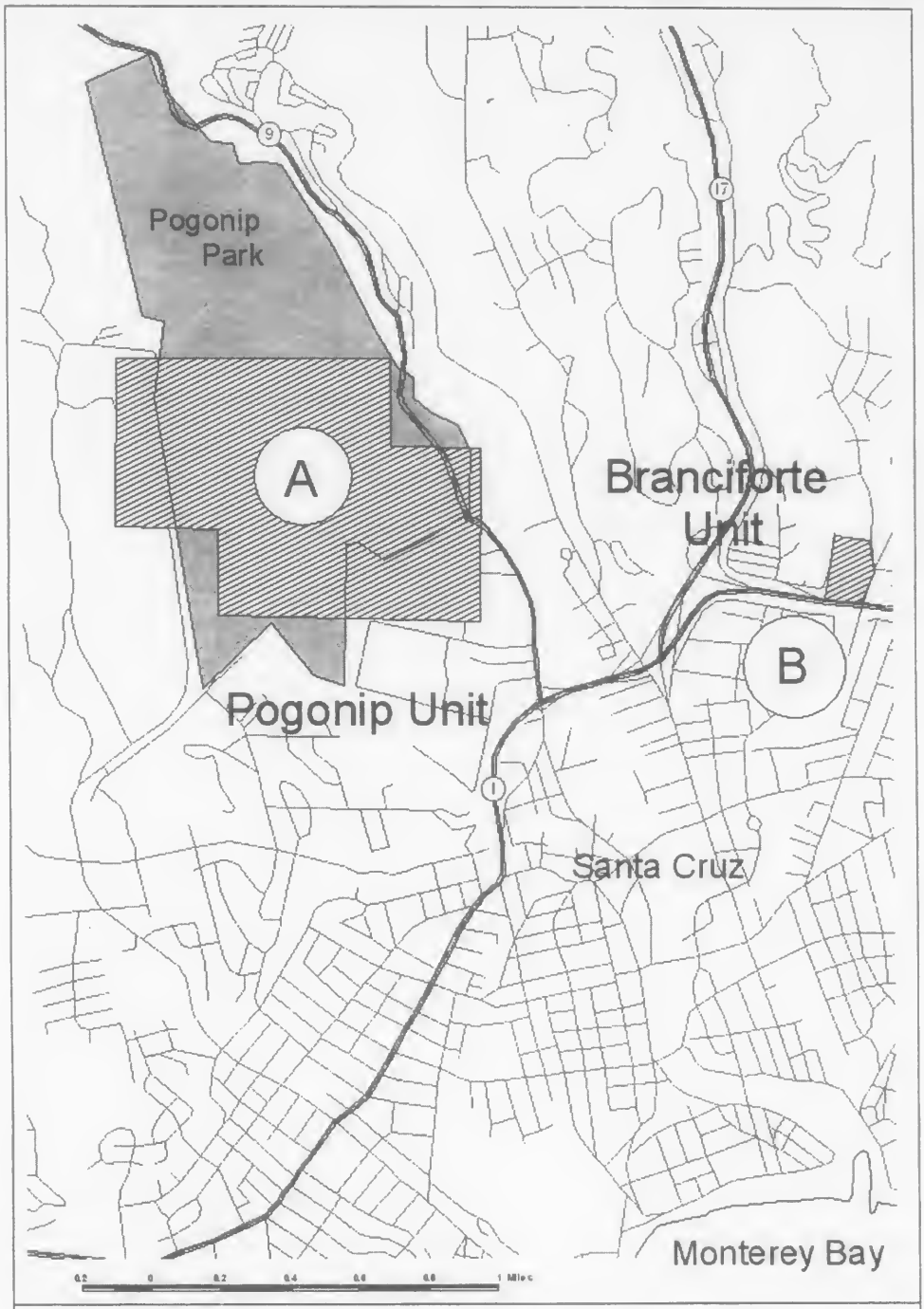


Robust Spineflower Proposed Critical Habitat Units, Santa Cruz and Monterey Counties

Map Unit A (Pogonip): Santa Cruz County, California. From USGS 7.5' quadrangle map Santa Cruz, California. The following lands within the Canada del Rincon en El Rio San Lorenzo de Santa Cruz Land Grant: T. 11 S., R. 2 W., S.E.¼ of S.W.½ and S.½ of S.E.¼, Mount Diablo Principal Meridian, sec. 2 (protracted); T. 11 S., R. 2 W., N.E.¼ of N.W.¼ and N.E.¼, Mt. Diablo Principal Meridian, sec. 11 (protracted); W.½ of N.W.¼, Mt. Diablo Principal Meridian, sec. 12 (protracted); bounded on the north by State Highway 9.

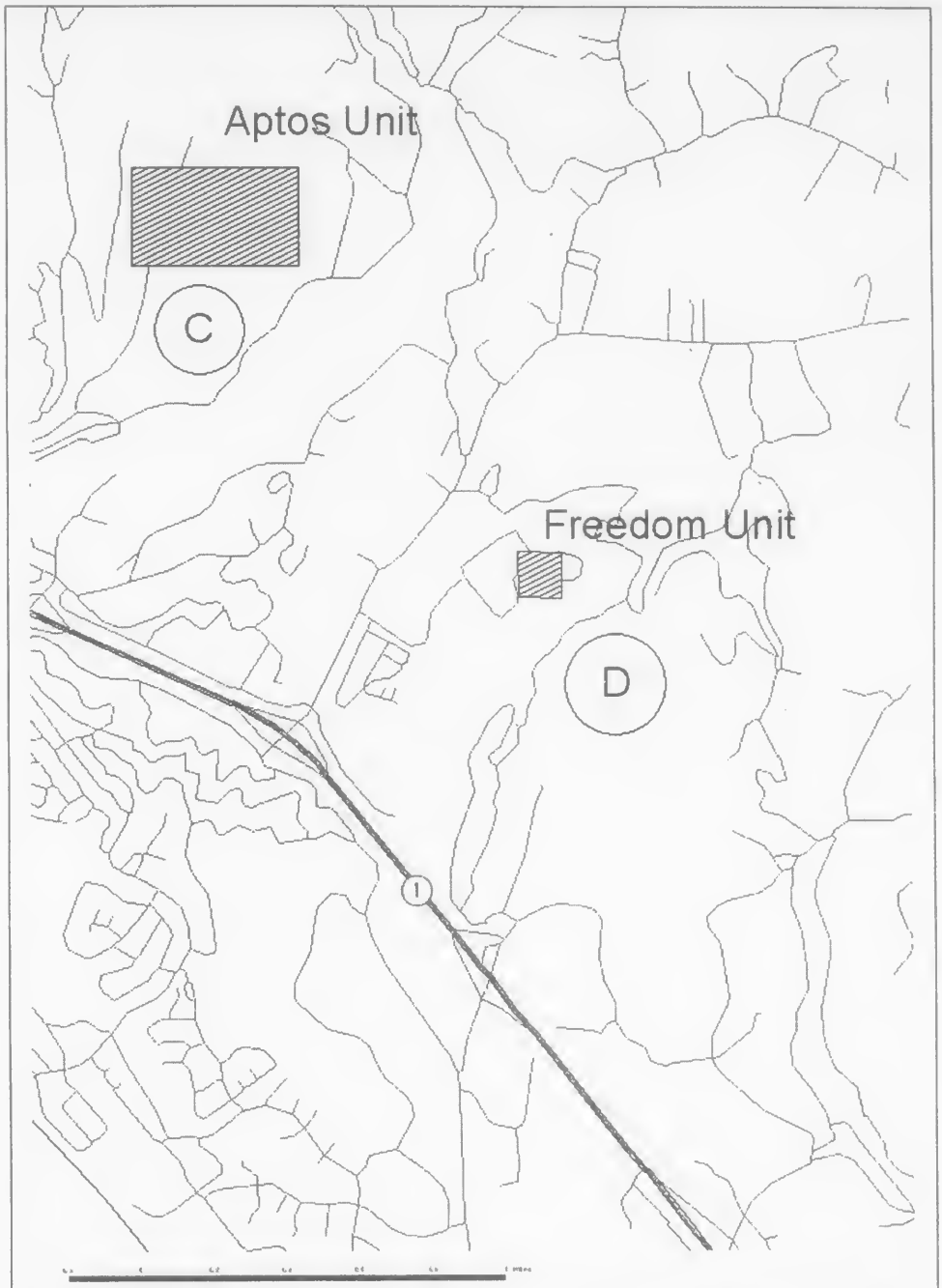
Map Unit B (Branciforte). Santa Cruz County, California. From USGS 7.5' quadrangle map Santa Cruz, California. Lands within: T. 11 S., R. 1 W., Mt. Diablo Principal Meridian, sec. 7; bounded on the west by Branciforte Creek, on the south by Highway 101, on the east by Market Street and Isbel Drive, and on the north by an east-west trending line connecting the terminus of Lee Street (west side of Branciforte Creek) to Isbel Drive.



Robust Spineflower Proposed Critical Habitat, Units A & B

Map Unit C (Aptos). Santa Cruz County, California. Santa Cruz County, California. From USGS 7.5′ quadrangle map Soquel, California. The following lands within the Aptos Land Grant: T. 11 S., R. 1 E., S½ of the N.E.¼, Mt. Diablo Principal Meridian, sec. 8 (protracted).

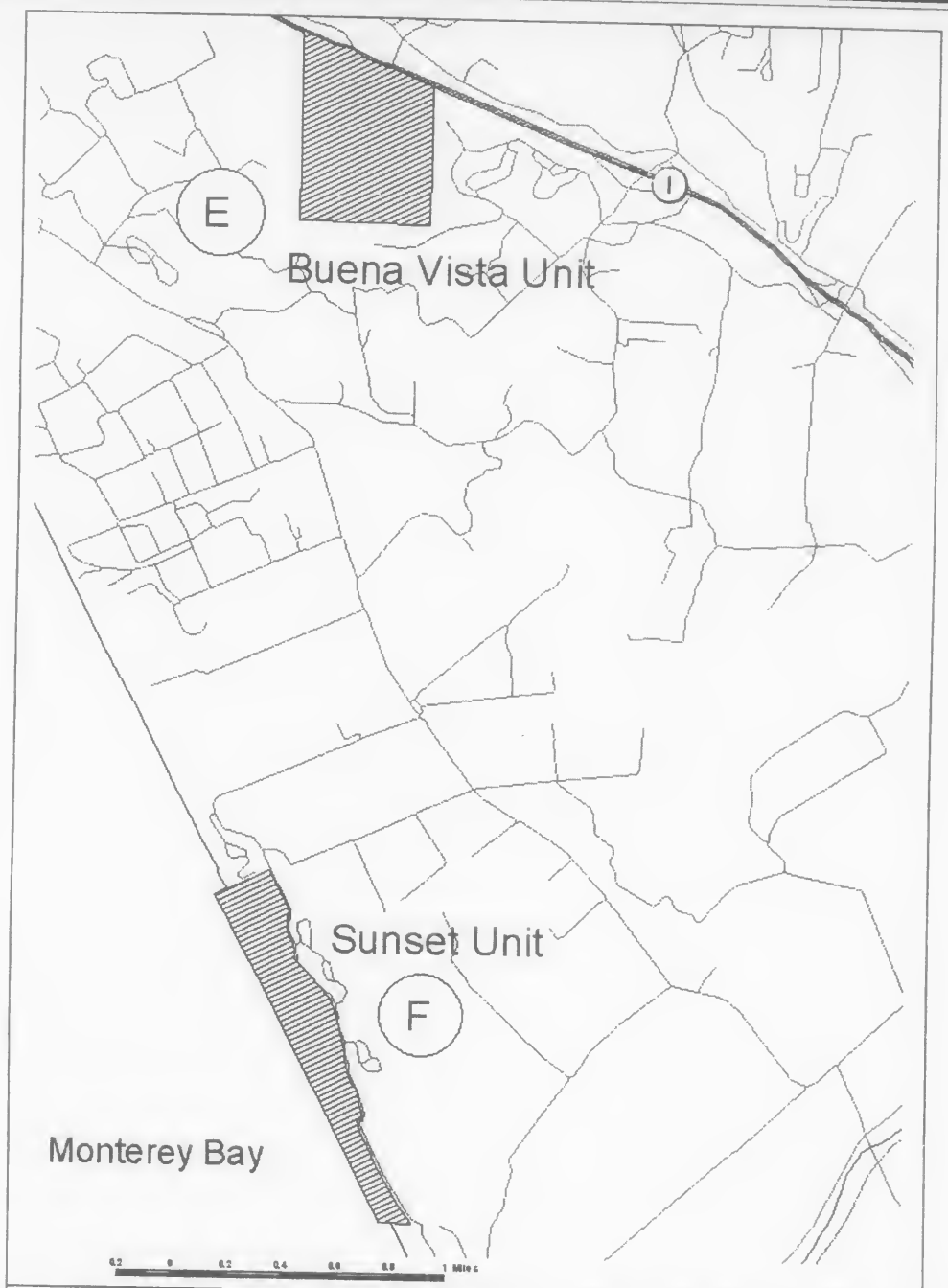
Map Unit D (Freedom). Santa Cruz County, California. From USGS 7.5′ quadrangle map Watsonville West, California. The following lands within the Languna de los Calabasas and Aptos Land Grants: T. 11 S., R. 1 E., N.E.¼ of S.W.¼ of N.E.¼, Mt. Diablo Principal Meridian, sec. 16 (protracted).



Robust Spineflower Proposed Critical Habitat, Units C & D

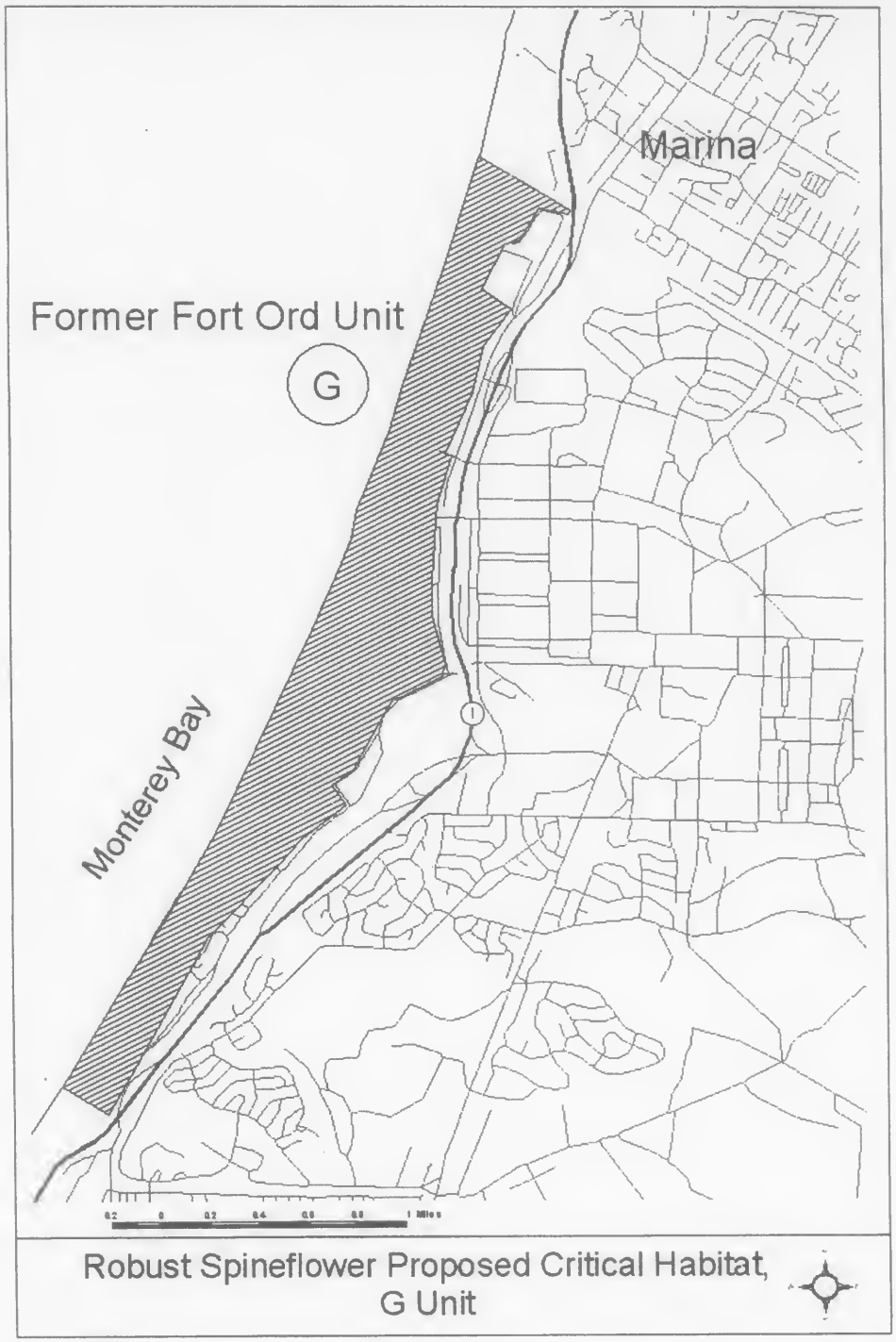
Map Unit E (Buena Vista). Santa Cruz County, California. From USGS 7.5′ quadrangle map Watsonville West, California. The following lands within the San Andreas Land Grant: T. 11 S., R. 1 E., N.W.¼ of S.W.¼, and N.W.¼ of N.W.¼, and W.½ of N.E. ¼, Mt. Diablo Principal Meridian, sec. 35 (protracted).

Map Unit F (Sunset). Santa Cruz County, California. From USGS 7.5′ quadrangle map Watsonville West, California. Lands within: T.12 S., R.1 E., Mt. Diablo Principal Meridian, secs. 14 and 23; bounded at the N. by Sunset State Beach at Monte Vista Way, N.W. along Monte Vista Way to Shell Road; S.E. 2.33 km (1.45 mi) along Shell Road, W. at the point at which Shell Road veers E. and then W. to mean high water, N.W. along mean high water 2.17 km (1.35 mi) to a point perpendicular to the boundary of Sunset State Beach; proceeding N.E. to point of beginning.



Robust Spineflower Proposed Critical Habitat, Units E & F

Map Unit G (Marina). Monterey County, California. From USGS 7.5′ quadrangle maps Marina and Seaside, California. The following lands within the former Ft. Ord beaches: From the northern boundary of former Fort Ord, S. about .8 km (0.5 mi) along the Southern Pacific Railroad to its intersection with Beach Range Road, S. about 5.6 km (3.5 mi) along Beach Range Road to its terminus; S. to the southern boundary of former Fort Ord, W. to the mean high tide line, N. along the mean high tide line to the northern boundary of former Fort Ord.



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Dated: January 16, 2001

Kenneth L. Smith.

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–1837 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AHO4

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Chorizanthe pungens* var. *pungens* (Monterey Spineflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Chorizanthe pungens* var. *pungens* (Monterey spineflower). Approximately 10,400 hectares (25,800 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Cruz and Monterey counties, California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

Proposed critical habitat does not include lands covered by the one existing legally operative incidental take permit issued under section 10(a)(1)(B) of the Act that includes *Chorizanthe pungens* var. *pungens* as a covered species. Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that the benefits of excluding HCPs from the critical habitat designation for *Chorizanthe pungens* var. *pungens* will outweigh the benefits of including them. In areas where HCPs have not yet had permits issued, we have proposed critical habitat according to the factors outlined in this rule.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation and our approaches for handling HCPs. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until April 16, 2001. Public hearing requests must be received by April 2, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California, 93003.

You may also send comments by electronic mail (e-mail) to *montereysf@fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver comments to our Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford or Diane Pratt, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Chorizanthe pungens var. *pungens* is endemic to sandy soils in coastal areas in southern Santa Cruz and northern Monterey Counties, and in the Salinas Valley in interior Monterey County. In California, the spineflower genus (*Chorizanthe*) in the buckwheat family (Polygonaceae) comprises species of wiry annual herbs that inhabit dry sandy soils, both along the coast and inland. Because of the patchy and limited distribution of such soils, many species of *Chorizanthe* tend to be highly localized in their distribution.

The overall appearance of *Chorizanthe pungens* var. *pungens* is of a low-growing herb that is soft-hairy and grayish or reddish in color. The plant has a prostrate to slightly ascending habit, with large individuals reaching 50 centimeters (cm) (20 inches (in)) or more in diameter. This taxon is distinguished by white (rarely pinkish) scarious margins on the lobes of the involucre that subtend the white- to rose-colored flowers. The aggregate of flowers (heads) tend to be small (less than cm (0.4 in) in diameter) and either distinctly or indistinctly aggregate. *Chorizanthe pungens* var. *pungens* is one of two varieties of the species *Chorizanthe pungens*. The other variety (*Chorizanthe pungens* var. *hartwegiana*), known as Ben Lomond spineflower, is restricted to the Santa Cruz Mountains, generally between Scotts Valley and Ben Lomond. The range of *C. p.* var. *pungens* partially overlaps with *Chorizanthe robusta* var. *robusta* (robust spineflower), another closely related taxon in the *Pungentes* section of the genus, in southern Santa Cruz County. *Chorizanthe pungens* var. *hartwegiana* and *Chorizanthe robusta* var. *robusta* are both endangered species; for a detailed description of these related taxa see the Recovery Plan for Seven Coastal Plants and the Myrtle's Silverspot Butterfly (Service 1998), the Draft Recovery Plan for the Robust Spineflower (Service 2000), and references within these plans.

Chorizanthe pungens var. *pungens* is a short-lived annual species. It germinates during the winter months and flowers from April through June; although pollination ecology has not been studied for this taxon, *C. p.* var. *pungens* is likely visited by a wide array of pollinators; observations of pollinators on other species of *Chorizanthe* that occur in Santa Cruz County have included leaf cutter bees (megachilids), at least six species of butterflies, flies, and sphecid wasps (R. Morgan, biologist, Soquel, CA, pers. comm. 2000). Each flower produces one seed; depending on the vigor of an individual plant, dozens, if not hundred of seeds could be produced. The importance of pollinator activity in seed set has been demonstrated by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000). Seed is collectable through August. The plants turn a rusty hue as they dry through the summer months, eventually shattering during the fall. Seed dispersal is facilitated by the involucral spines, which attach the seed to passing animals. While animal vectors most likely facilitate dispersal between colonies and populations, the prevailing coastal winds undoubtedly play a part in scattering seed within colonies and populations.

The locations where *Chorizanthe pungens* var. *pungens* occurs, with the exception of one (Soledad), are subject to a mild maritime climate, where fog helps keep summer temperatures cool and winter temperatures relatively warm, and provides moisture in addition to the normal winter rains. *Chorizanthe pungens* var. *pungens* is found in a variety of seemingly disparate habitat types, including active coastal dunes, grassland, scrub,

chaparral, and woodland types on interior upland sites; and interior floodplain dunes. However, all of these habitat types include microhabitat characteristics that are favored by *C. p.* var. *pungens*. First, all sites are on sandy soils; whether the origin of the soils are from active dunes, interior fossil dunes, or floodplain alluvium is apparently unimportant. Second, these sites are relatively open and free of other vegetation. In grassland and oak woodland communities, abundant annual grasses may outcompete *C. p.* var. *pungens*, while management of grass species, either through grazing, mowing or fire, may allow the spineflower to persist. In scrub and chaparral communities, *C p.* var. *pungens* does not occur under dense stands, but will occur between more widely spaced shrubs.

Chorizanthe pungens var. *pungens* is generally distributed along the rim of Monterey Bay in southern Santa Cruz and northern Monterey Counties, and inland along the coastal plain of the Salinas Valley. At coastal sites ranging from the Monterey Peninsula north to Manresa State Beach, *C. p.* var. *pungens* is found in active coastal dune systems, and on coastal bluffs upon which windblown sand has been deposited. At one historical site on the coast near San Simeon in San Luis Obispo County, the *C. p.* var. *pungens* has not been seen since it was first collected in 1842 (CNDDB 2000, D. Keil, California Polytechnic University, San Luis Obispo, pers. comm. 2000).

On coastal dunes, the distribution of suitable habitat is subject to dynamic shifts caused by patterns of dune mobilization, stabilization, and successional trends in coastal dune scrub that increase in cover over time. Accordingly, individual colonies of *Chorizanthe pungens* var. *pungens*, found in gaps between stands of scrub, shift in distribution and size over time. Other native plants associated with *C. p.s* var. *pungens* include *Ambrosia chamissonis* (beach bur), *Artemisia pycnocephala* (coastal sagewort), *Ericameria ericoides* (mock heather), *Castilleja latifolia* (Monterey Indian paintbrush), and *Lathyrus littoralis* (beach pea). At some northern Monterey County locations, *C. p.* var. *pungens* occurs in close proximity to the endangered *Gilia tenuiflora* ssp. *arenaria* (sand gilia), *Erysimum menziesii* ssp. *menziesii* (Menzies' wallflower), *Euphilotes enoptes smithi* (Smith's blue butterfly), and the threatened *Charadrius alexandrinus nivosus* (snowy plover).

Portions of the coastal dune and coastal scrub communities that support *Chorizanthe pungens* var. *pungens* have been eliminated or altered by recreational use, industrial and urban development, and military activities. Dune communities have also been altered in composition by the introduction of non-native species, especially *Carpobrotus* species (sea-fig or iceplant) and *Ammophila arenaria* (European beachgrass), in an attempt to stabilize shifting sands. In the last decade, significant efforts have been made to restore native dune communities, including the elimination of these non-native species.

At more inland sites, *Chorizanthe pungens* var. *pungens* occurs on sandy, well-drained soils in a variety of plant communities, most frequently maritime chaparral, valley oak woodlands, and grasslands. The plant probably has been extirpated from a number of historical locations in the Salinas Valley, primarily due to conversion of the original grasslands and valley oak woodlands to agricultural crops (Reveal & Hardham 1989). Significant populations of *C. p.* var. *pungens* occur on lands that are referred to as former Fort Ord (U.S. Army Corps of Engineers (ACOE) 1992). Within grassland communities, *C. p.* var. *pungens* occurs along roadsides, in firebreaks, and in other disturbed sites, while in oak woodland, chaparral, and scrub communities, they occur in sandy openings between shrubs. In older stands with a high cover of shrubs, the plant are restricted to roadsides, firebreaks, and trails that bisect these communities. At former Fort Ord, the highest densities of *C. p.* var. *pungens* are located in the central portion of the firing range, where disturbance is the most frequent. This pattern of distribution and densities of the *C. p.* var. *pungens* on former Fort Ord indicate that the very activities that have disturbed *C. p.s* var. *pungens* habitat have also created the open conditions that result in high densities of the plant. Prior to onset of human use of this area, *C. p.* var. *pungens* may have been restricted to openings created by wildfires within these communities (Service 1998).

The southwestern edge of *Chorizanthe pungens* var. *pungens* habitat on former Fort Ord was once continuous with habitat found in the community of Del Rey Oaks and at the Monterey Airport (Deb Hillyard, ecologist, California Department of Fish and Game, pers. comm. 2000). Other inland sites that support *C. p.* var. *pungens* are located in the area between Aptos and La Selva Beach in Santa Cruz County, and near Prunedale in northern Monterey County. At some of these locations, *C. p.* var. *pungens* occurs in close proximity with the endangered *Piperia yadonii* (Yadon's piperia) and *Chorizanthe robusta* var. *robusta*.

Farther up the Salinas River, *Chorizanthe pungens* var. *pungens* was recently found on a dune located within the river floodplain near Soledad, Monterey County (CNDDB 2000). Two historic sites for *C. p.* var. *pungens* occur near here. One, near Mission Soledad, was collected once in 1881; the other, near San Lucas along the Salinas River, was collected once in 1935. Due to conversion to agriculture and channelization activities along the Salinas River over the last century, *C. p.* var. *pungens* has most likely been extirpated from these locations. The dune near Soledad is the only one of its size and extent between there and the river mouth (Brad Olsen, East Bay Regional Parks District, pers. comm. 2000).

Previous Federal Action

Federal government actions for *Chorizanthe pungens* var. *pungens* began when we published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Chorizanthe pungens* var. *pungens* as a category 2 candidate (species for which data in our possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). In the September 27, 1985, revised notice of review for plants (50 FR 39526) and in the February 21, 1990 (55 FR 6184) revised notice of review for plants, *Chorizanthe pungens* var. *pungens* was again included as a category 2 candidate.

On October 24, 1991 (56 FR 55107), we published a proposal to list *Chorizanthe pungens* var. *pungens*, along with three other varieties of *Chorizanthe*, (*Chorizanthe pungens* var. *hartwegiana*, *Chorizanthe robusta* var. *hartwegii*, *Chorizanthe robusta* var. *robusta*), and *Erysimum teretifolium* as endangered species. The final rule listing *C. p.* var. *pungens* as a threatened species was published on February 4, 1994 (59 FR 5499).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or

other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Chorizanthe pungens* var. *pungens* was listed, we found that designation of critical habitat for *C. p.* var. *pungens* was prudent but not determinable at the time of listing, and that designation of critical habitat would occur once we have gathered the necessary data.

On June 30, 1999, our failure to designate critical habitat for *Chorizanthe pungens* var. *pungens* and three other species within the time period mandated by 16 U.S.C. 1533(b)(6)(C)(ii) was challenged in *Center for Biological Diversity* v. *Babbitt* (Case No. C99–3202SC). On August 30, 2000, the U.S. District Court for the Northern District of California (Court) directed us to publish a proposed critical habitat designation within 60 days of the Court's order and a final critical habitat designation no later than 120 days after the proposed designation is published. On October 16, 2000, the Court granted the government's request for a stay of this order. Subsequently, by a stipulated settlement agreement signed by the parties on November 20, 2000, we agreed to proposed critical habitat for the *C. p.* var. *pungens* by January 15, 2001.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ". . . the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases.

Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods for Selection of Areas for Proposed Critical Habitat Designation

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of *Chorizanthe pungens* var. *pungens.* This information included information from the California Natural Diversity Data Base (CNDDB 2000), soil survey maps (Soil Conservation Service 1978, 1979), recent biological surveys and reports, our recovery plan for this species, additional information provided by interested parties, and discussions with botanical experts. We also conducted site visits, either cursory or more extensive, and frequently accompanied by agency representatives, at a number of locations managed by local, state or Federal agencies, including Manresa, Sunset, Marina, and Asilomar State Beaches, Bureau of Land Management lands at former Fort Ord, Moss Landing Marine Laboratory, and Manzanita County Park.

Each of the critical habitat units includes areas that are unoccupied by *Chorizanthe pungens* var. *pungens.* Determining the specific areas that this taxon occupies is difficult for several reasons: (1) the distribution of *Chorizanthe pungens* var. *pungens* appears to be more closely tied to the presence of sandy soils than to specific plant communities; the plant communities may undergo changes over time, which, due to the degree of cover that is provided by that vegetation type, may either favor the presence of *Chorizanthe pungens* var. *pungens* or not; (2) the way the current distribution of *Chorizanthe pungens* var. *pungens* is mapped can be variable, depending on the scale at which patches of individuals are recorded (e.g. many small patches versus one large patch); and (3) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or, if there is a residual seedbank present, enlarge and cover a more extensive area. Therefore, patches of unoccupied habitat are interspersed with patches of occupied habitat; the inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of this taxon.

Primary Constituent Elements

In accordance with section 3(5)(A)(I) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Little is known about the specific physical and biological requirements of *Chorizanthe pungens* var. *pungens* beyond that described in the Background section of this proposed rule.

Several coastal dune restoration efforts have included measures to propagate and reintroduce *Chorizanthe pungens* var. *pungens,* notably at Moss Landing North Harbor, Pajaro Dunes, and the University of California's Moss Landing Marine Laboratory (MLML). Such efforts have contributed to our understanding that *C. p.* var. *pungens* readily grows where suitable sandy substrates occur and competition with other plant species is minimal (Harding Lawson Associates 2000; Joey Dorell-Canepa, biologist, pers. comm. 2000; Peter Slattery, dune ecologist, MLML, pers. comm. 2000). Where *C. p.* var. *pungens* occurs within native plant communities, along the coast as well as at more interior sites, it occupies microhabitat sites found between scrub and shrub stands where there is little cover from other herbaceous species. Where *C. p.* var. *pungens* occurs within grassland communities, the density of *C. p.* var. *pungens* may decrease with an increase of the density of other herbaceous species.

As has been observed at Fort Ord, human caused disturbance, such as scraping along roadsides and firebreaks can favor the abundance of *Chorizanthe pungens* var. *pungens* by reducing competition from other herbaceous species. However, because such disturbance can also promote the spread and establishment of non-native species, the disturbance would need to be repeated frequently to maintain the establishment of *C. p.* var. *pungens.* Such intensive management may not be practical in all areas where *C. p.* var. *pungens* habitat includes a complement of non-native species. Moreover, while the presence of *C. p.s* var. *pungens* could be maintained in areas with a high abundance of non-native species, the habitat quality of these areas may be less than areas where the presence of non-native species is minimal.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Chorizanthe pungens* var. *pungens* are:

(1) sandy soils associated with active coastal dunes, coastal bluffs with a deposition of windblown sand, inland sites with sandy soils, and interior floodplain dunes;

(2) plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, oak woodland, and interior floodplain dune communities, and have a structure such that there are openings between the dominant elements (e.g. scrub, shrub, oak trees, clumps of herbaceous vegetation);

(3) no or little cover by non-native species which compete for resources available for growth and reproduction of *Chorizanthe pungens* var. *pungens*;

(4) Pollinator activity between existing colonies of *Chorizanthe pungens* var. *pungens*;

(5) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas; and

(6) Seed dispersal mechanisms between existing colonies and other potentially suitable sites.

We selected critical habitat areas to provide for the conservation of *Chorizanthe pungens* var. *pungens* at five coastal sites and six inland sites where it is known to occur. Historic locations for which there are no recent records of occupancy (within the last 20 years) were not proposed for designation, including large areas of the Salinas Valley floodplain that have been converted to agriculture over the last 100 years, potentially suitable areas around San Simeon in San Luis Obispo County, and along the Salinas River near San Lucas in Monterey County.

The long-term probability of the survival and recovery of *Chorizanthe pungens* var. *pungens* is dependent upon the protection of existing population sites, and the maintenance of ecological functions within these

sites, including connectivity between sites within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (for example dune dynamics in the coastal sites, and fire disturbance at inland site) that maintain the openness of vegetative cover that the species depends on. Threats to the habitat of *Chorizanthe pungens* var. *pungens* include: industrial and recreational development, road development, human and equestrian recreational use, and dune stabilization as a result of the introduction of non-native species (59 FR 5499; February 4, 1994). The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *C. p.* var. *pungens*. Given the species' need for an open plant community structure and the risk of non-native species, we believe that these areas may require special management considerations or protection.

In our delineation of the critical habitat units, we believed it was important to designate core areas as well as areas that occur on the periphery of the *Chorizanthe pungens* var. *pungens'* range. When possible, areas that were in close geographic proximity were included in the same unit to emphasize the need to maintain connectivity between different populations. We also included habitat for *C. p.* var. *pungens* adjacent to and contiguous to areas of known occurrences to maintain landscape scale processes. Each mapping unit contains habitat that is occupied by *C. p.* var. *pungens*. Some units were mapped with a greater precision than others, based on the available information, the size of the unit, and the time allotted to complete this proposed rule. We anticipate that in the time between the proposed rule and the final rule, and based upon the additional information received during the public comment period, that the boundaries of certain mapping units will be refined.

The proposed critical habitat units were delineated by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of *Chorizanthe pungens* var. *pungens*, using information from the California Natural Diversity Data Base (CNDDB 2000), recent biological surveys and reports, our recovery plan for this species, and discussions with botanical experts. These data layers were created on a base of USGS 7.5' quadrangles obtained from the State of California's Stephen P. Teale Data Center. We defined the boundaries for the proposed critical habitat units using roads and known landmarks and, if necessary, township, range, and section numbers from the public land survey.

We also considered the status of habitat conservation plan (HCP) efforts in proposing areas as critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. The only HCP that is operative and has an executed Implementation Agreement (IA) within critical habitat being proposed for *Chorizanthe pungens* var. *pungens* is the HCP for the North of Playa project site (Zander Associates 1995), within Sand City. Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

Habitat for *Chorizanthe pungens* var. *pungens* in the HCP plan area is already managed for the benefit of this and other covered species under the terms of the associated section 10(a)(1)(B) permit. The assurances provided through the HCP and permit are believed sufficient to provide for the conservation of *C. p.* var. *pungens*, and any additional benefit provided by designating these lands as critical habitat would be minimal at best. In contrast, the benefits of excluding lands covered by this HCP would be significant in preserving positive relationships with our conservation partners, particularly by reinforcing the regulatory assurances provided for in the implementation agreement for the HCP. Although these benefits may be relatively small in this case, we believe they outweigh the negligible benefits of designating this area as critical habitat. Furthermore, we have determined that excluding this area from critical habitat designation will not result in the extinction of the species. Consequently, these lands have not been included in this proposed critical habitat designation.

A large effort is currently underway to address the conservation needs for a number of threatened and endangered species, in addition to sensitive unlisted species, for the lands formerly known as Fort Ord. The Defense Base Realignment and Closure Commission selected the 11,340-ha (28,000-ac) Fort Ord for closure in 1991. As a requirement of a biological opinion issued by the Service in 1993, the *Installation-wide Multispecies Habitat Management Plan for Former Fort Ord, California* (HMP), was prepared in 1994 and revised in 1997 by the Army to address listed, proposed, candidate, and sensitive species and their habitat. The HMP provides a comprehensive plan for minimizing and mitigating impacts to sensitive species and their habitats while allowing disposal and redevelopment of the base. Over 6,070 ha (15,000 ac) would be designated for habitat conservation. Bureau of Land Management (BLM) would receive approximately 5,670 ha (14,000 ac) of undeveloped land to be managed for habitat and sensitive species. California Department of Parks and Recreation (CDPR) would receive the coastal properties, a large portion of which would be restored and managed for sensitive species. Several other entities would also receive property which they would manage for conservation of habitat and sensitive species. The remaining areas of the base, including many areas that have already been developed as part of the base operations, would be available for land development. As of September 2000, a total of approximately 4,290 ha (10,600 ac) of former Fort Ord had been transferred. Approximately 3,190 ha (7,880 ac) identified as habitat reserve were transferred, of which about 2,910 ha (7,200 ac) were transferred to BLM, 260 ha (640 ac) were transferred to the University of California, Santa Cruz, and 16 ha (40 ac) were transferred to the City of Marina.

On former Fort Ord lands, the HMP would be the basis of each HCP submitted by a non-Federal land recipient applying for a section 10(a)(1)(B) incidental take permit. A draft programmatic HCP submitted by the Fort Ord Reuse Authority is under review by the Service. Recently, the Army's ability to fully implement the HMP has come into question. If the Army is not able to fully implement those measures in the HMP that protect and conserve listed and sensitive species, then the design of reserve and development lands may need to be reevaluated. Due to this uncertainty and because the cleanup and transfer of lands is not yet complete, we are not excluding from the proposed Fort Ord critical habitat unit those portions of former Fort Ord that support *Chorizanthe pungens* var. *pungens* and are designated for development in the HMP. However, if the HMP is fully implemented and the anticipated HCPs for former Fort Ord lands are completed and implemented, then we anticipate

that development according to the current HMP would not result in an adverse modification of critical habitat for *C. p.* var. *pungens*.

Throughout this designation, in selecting areas of proposed critical habitat we made an effort to avoid developed areas, such as housing developments, that are unlikely to contribute to the conservation of *Chorizanthe pungens* var. *pungens*. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. p.* var. *pungens*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the conservation and recovery of *Chorizanthe pungens* var. *pungens*. Critical habitat being proposed for *C. p.* var. *pungens* includes 11 units that currently sustain the species. Protection of this proposed critical habitat is essential for the conservation of the species because the geographic range that *C. p.* var. *pungens* occupies has been reduced to so few sites that the species is threatened with extinction (59 FR 5499). The areas being proposed as critical habitat are either along the coast between Manresa State Beach in Santa Cruz County, south to Asilomar State Beach in Monterey County, or are at inland sites ranging from the Aptos area in Santa Cruz County, south to the confluence of Arroyo Seco Creek and the Salinas River in Monterey County, California, and include the appropriate dune, maritime chaparral, or oak woodland habitat that supports *C. p.* var. *pungens*. We propose to designate approximately 10,400 ha (25,800 acres) of land as critical habitat for *C. p.* var. *pungens*. Approximately 54 percent of this area consists of federal lands, while State lands comprise approximately 8 percent, County lands comprise approximately 5 percent, and private lands comprise approximately 33 percent of the proposed critical habitat.

A brief description of each critical habitat unit is given below:

Coastal Units

Unit A: Manresa Unit

Unit A consists of coastal beaches and bluffs southwest of the community of La Selva Beach in southern Santa Cruz County. This entire unit is within Manresa State Beach.

Unit B: Sunset Unit

Unit B consists of coastal beaches, dunes and bluffs west of Watsonville in southern Santa Cruz County. This entire unit is within Sunset State Beach. The unit includes land from Sunset Beach Road south to Beach Road, just north of the mouth of the Pajaro River.

Unit C: Moss Landing Unit

Unit C consists of coastal beaches, dunes and bluffs to the north and south of the community of Moss Landing in northern Monterey County. It includes lands owned and managed by the state, including portions of Zmudowski State Beach, Moss Landing State Beach, Salinas River State Beach, and Moss Landing Marine Laboratory. Local agency lands (Moss Landing North Harbor District) comprise 1 percent of the unit, while State lands comprise 66 percent, and private lands comprise 33 percent of the unit.

Unit D: Marina Unit

Unit D consists of coastal beaches, dunes and bluffs ranging from just south of the mouth of the Salinas River, south to the city of Monterey in northern Monterey County. Federal lands include a portion of the Salinas River National Wildlife Refuge, lands known as former Fort Ord, and the U.S. Navy Postgraduate School, and comprise 42 percent of the unit. State lands include Marina State Beach and Monterey State Beach and comprise 12 percent of the unit. Private lands account for 46 percent of the unit. This unit excludes an area of 1.9 ha (4.6 ac) within Sand City known as North of Playa, because a habitat conservation plan for this restoration site included *Chorizanthe pungens* var. *pungens* as a covered species.

Unit E: Asilomar Unit

Unit E consists of coastal dunes and bluffs near the communities of Pacific Grove and Pebble Beach on the Monterey Peninsula in northern Monterey County. The unit is comprised of state lands at Asilomar State Beach (about 24 percent) and private lands, including those near Spanish Bay (about 76 percent).

Inland Units

Unit F: Freedom Boulevard Unit

Unit F consists of grassland, maritime chaparral, and oak woodland habitat near the western terminus of Freedom Boulevard and northeast of Highway 1 in Santa Cruz County. This entire unit consists of privately owned lands.

Unit G: Bel Mar Unit

Unit G consists of maritime chaparral habitat near the terminus of Bel Mar Dive, between Larkin Valley Road and Highway 1 in southern Santa Cruz County. This entire unit consists of privately owned lands.

Unit H: Prunedale Unit

Unit H consists of grassland, maritime chaparral, and oak woodland in the area around Prunedale in northern Monterey County. On the west side of Highway 101, the unit includes Manzanita County Park located between Castroville Boulevard and the highway. On the east side of the highway, the unit includes the area between Pesante Canyon Road and Vierra Canyon Road. Approximately 8 percent of the unit consists of county park land, and 92 percent is privately owned.

Unit I: Fort Ord Unit

Unit I consists of grassland, maritime chaparral, coastal scrub, and oak woodland on the former DOD base at Fort Ord, east of the city of Seaside in northern Monterey County. Portions of Fort Ord have been transferred to the Bureau of Land Management (BLM); University of California, Santa Cruz; California State University at Monterey Bay; and local city and county jurisdictions. As of September 2000, approximately 4,290 ha (10,600 ac) of former Fort Ord had been transferred, of which about 3,190 ha (7,880 ac) have been designated as habitat reserve in the *Installation-wide Multispecies Habitat Management Plan for Former Fort Ord, California* (HMP). As a result of these recent transfers, approximately 7 percent of this critical habitat unit is state land and 5 percent is under local jurisdiction. We considered all other land within this unit to be under federal jurisdiction (about 88 percent).

Unit J: Del Rey Oaks Unit

Unit J consists of grassland, maritime chaparral, and oak woodland near the community of Del Rey Oaks, southeast of the city of Seaside in northern Monterey County. Approximately 34 percent of the unit is owned by Monterey County Airport, and 66 percent is privately owned. At one time, *Chorizanthe pungens* var. *pungens*

habitat in this area was most likely continuous with habitat in the southern portion of Fort Ord. However, development in the Del Rey Oaks area has destroyed most of the intervening habitat.

Unit K: Soledad Unit

Unit K consists of an interior dune in the floodplain of the Salinas River channel just south of the town of Soledad in central Monterey County. This entire unit is privately owned.

The approximate areas of proposed critical habitat by land ownership are shown in Table 1. Lands proposed are under private, County, State, and Federal jurisdiction, with Federal lands including lands managed by the DOD and BLM.

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC)[1] OF PROPOSED CRITICAL HABITAT FOR *Chorizanthe pungens* VAR. *pungens* BY LAND OWNERSHIP.

Unit Name	State lands	Private lands	County and other local jurisdictions	Federal lands	Total
A. Manresa	40 ha (100 ac)				40 ha (100 ac)
B. Sunset	50 ha (130 ac)				50 ha (130 ac)
C. Moss Landing	190 ha (465 ac)	95 ha (230 ac)	3 ha (8 ac)		283 ha (703 ac)
D. Marina	105 ha (265 ac)	410 ha (1,010 ac)		370 ha (915 ac)	885 ha (2,190 ac)
E. Asilomar	35 ha (85 ac)	110 ha (270 ac)			145 ha (355 ac)
F. Freedom Blvd.		90 ha (220 ac)			90 ha (220 ac)
G. Bel Mar		40 ha (95 ac)			40 ha (95 ac)
H. Prunedale		1,970 ha (4,875 ac)	165 ha (405 ac)		2,135 ha (5,280 ac)
I. Fort Ord	440 ha (1,085 ac)		310 ha (765 ac)	5,245 ha (12,960 ac)	5,995 ha (14,810 ac)
J. Del Rey Oaks		185 ha (460 ac)	95 ha (240 ac)		280 ha (700 ac)
K. Soledad		500 ha (1,235 ac)			500 ha (1,235 ac)
Total	860 ha (2,130 ac)	3,400 ha (8,395 ac)	573 ha (1,418 ac)	5615 ha (13,875 ac)	10,443 ha (25,818 ac)

[1] Approximate acres have been converted to hectares (1 ha = 2.47 ac). Based on the level of imprecision of mapping of each unit, hectares and acres greater than 10 have been rounded to the nearest 5; hectares and acres less than or equal to 10 have been rounded to the nearest whole number. Totals are sums of units.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. Destruction or adverse modification of critical habitat is defined by our regulations as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical (50 CFR 402.02). Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7 (a) of the Act means that Federal agencies must evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If, at the conclusion of consultation, we issue a biological opinion concluding that project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10 (d)).

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on lands being proposed as critical habitat for the *Chorizanthe pungens* var. *pungens* or activities that may indirectly affect such lands and that are conducted by a Federal agency, funded by a Federal agency or that require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such

designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Chorizanthe pungens* var. *pungens* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain the maritime chaparral and oak woodland communities at the inland sites. Such activities adverse to *Chorizanthe pungens* var. *pungens* could include, but are not limited to, maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture, row crops, and livestock grazing; and vegetation manipulation such as chaining or harvesting firewood in the watershed upslope from *Chorizanthe pungens* var. *pungens*;

(2) Activities that appreciably degrade or destroy native maritime chaparral and oak woodland communities at interior sites, including but not limited to livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers or permits from other Federal agencies such as Housing and Urban Development, military activities of the U.S. Department of Defense (Navy and Army) on their lands or lands under their jurisdiction, activities of the Bureau of Land Management on their lands or lands under their jurisdiction, activities of the Federal Aviation Authority on their lands or lands under their jurisdiction, the release or authorization of release of biological control agents by the U.S. Department of Agriculture, regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act, construction of communication sites licensed by the Federal Communications Commission, and authorization of Federal grants or loans. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process. Several other species that are listed under the Act occur in the same general areas as *Chorizanthe pungens* var. *pungens*. *Chorizanthe robusta* var. *robusta* occurs in close proximity to *Chorizanthe pungens* var. *pungens* at Sunset State Beach and the dunes at former Fort Ord; sand gilia (*Gilia tenuiflora* ssp. *arenaria*) occurs at Sunset State Beach, Marina State Beach, dunes at former Fort Ord, Asilomar State Beach, and Spanish Bay; Menzies' wallflower (*Erysimum menziesii* ssp. *menziesii*) occurs at Asilomar State Beach; Smith's blue butterfly occurs at dunes from Salinas River National Wildlife Refuge south to the Naval Postgraduate School, and western snowy plover ranges from Zmudowski State Beach south along the coast to Monterey State Beach.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–6131, FAX 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a comment period at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Chorizanthe pungens* var. *pungens* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Polygonum* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values", and reductions in administrative costs); and

(6) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods. You may mail comments to the Assistant Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may also comment via the Internet to montereysf@r1.fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: [1018–AHO4] and your name and return address in your Internet message." If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our

Ventura Fish and Wildlife Office at phone number 805–644–1766. Please note that the Internet address "montereysf@r1.fws.gov" will be closed out at the termination of the public comment period. Finally, you may hand-deliver comments to our Ventura office at 2493 Portola Road, Suite B, Ventura, California. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing and designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Endangered Species Act provides for one or more public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the Federal Register and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the "Supplementary Information" section of the preamble helpful in understanding the notice? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the office identified in the **ADDRESSES** section at the beginning of this document.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). We are preparing a draft analysis of this proposed action, which will be available for public comment to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with this species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act in areas occupied by the species. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons that do not have a Federal "sponsorship" in their actions are not restricted by the designation of critical habitat.

TABLE 2.—IMPACTS OF *Chorizanthe pungens* VAR. *pungens* LISTING AND CRITICAL HABITAT DESIGNATION

Categories of Activities	Activities Potentially Affected by Species Listing Only	Additional Activities Potentially Affected by Critical Habitat Designation [1]
Federal Activities Potentially Affected [2].	Activities conducted by the Army Corps of Engineers, the Department of Housing and Urban Development, and any other Federal Agencies.	Activities by these Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for *Chorizanthe pungens* var. *pungens* by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Chorizanthe pungens* var. *pungens* since its listing in 1994. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands.

We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This proposed rule, if made final, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (required under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas where section 7 consultations would have occurred as a result of the species being listed under the Act. We will also evaluate whether designation includes any areas where section 7 consultations would occur only as a result of the critical habitat designation, and in such cases determine if it will significantly affect a substantial number of small entities. As indicated on Table 1 (see "Proposed Critical Habitat Designation" section), we have proposed to designate property owned by Federal, State, and County governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private lands requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Military activities of the U.S. Department of Defense (Navy and Army) on their lands or lands under their jurisdiction;

(4) Activities of the Bureau of Land Management on their lands or lands under their jurisdiction;

(5) Activities of the Federal Aviation Authority on their lands or lands under their jurisdiction;

(6) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(7) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act;

(8) Construction of communication sites licensed by the Federal Communications Commission; and,

(9) Authorization of Federal grants or loans.

Potentially, some of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current, applicable restrictions of the Act remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas where section 7 consultations should occur regardless of the critical habitat designation. We will

evaluate through our economic analysis any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000, *et seq.*):

(a) We believe this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease current restrictions on private property concerning this plant species. We do not anticipate that property values will be affected by the critical habitat designations. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with State law and with the continued survival of the plant species.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Chorizanthe pungens* var. *pungens* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Chorizanthe pungens* var. *pungens*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951) and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. The proposed designation of critical habitat for *Chorizanthe pungens* var. *pungens* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The authors of this proposed rule are Constance Rutherford and Diane Pratt, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Chorizanthe pungens* var. *pungens* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Chorizanthe pungens var. *pungens.*	Spineflower	Monterey U.S.A. (CA)	Polygonaceae—Buckwheat.	T		17.96(b)	NA
*	*	*	*	*	*		*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, amend paragraph (b) by adding an entry for *Chorizanthe pungens* var. *pungens* in alphabetical order under Family Polygonaceae to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(b) * * *

Family Polygonaceae: *Chorizanthe pungens* var. *pungens* (Monterey spineflower)

(1) Critical habitat units are depicted for Santa Cruz and Monterey counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Chorizanthe pungens* var. *pungens* are the habitat components that provide:

(i) Sandy soils associated with active coastal dunes, coastal bluffs with a deposition of windblown sand, inland sites with sandy soils, and interior floodplain dunes;

(ii) the plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, oak woodland, and interior floodplain dune communities, and have a structure such that there are openings between the dominant elements (e.g scrub, shrub, oak trees, clumps of herbaceous vegetation);

(iii) the plant communities that contain no or little cover by nonnative species which would compete for resources available for growth and reproduction of *Chorizanthe pungens* var. *pungens;* and

(iv) Pollinator activity between existing colonies of *Chorizanthe pungens* var. *pungens;*

(v) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas; and

(vi) Seed dispersal mechanisms between existing colonies and other potentially suitable sites.

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

Critical Habitat Map Units

Township/Range/Section boundaries are based upon Public Land Survey System. Within the historical boundaries of former Spanish Land Grants, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by the Service from the State of California's Stephen P. Teale Data Center.

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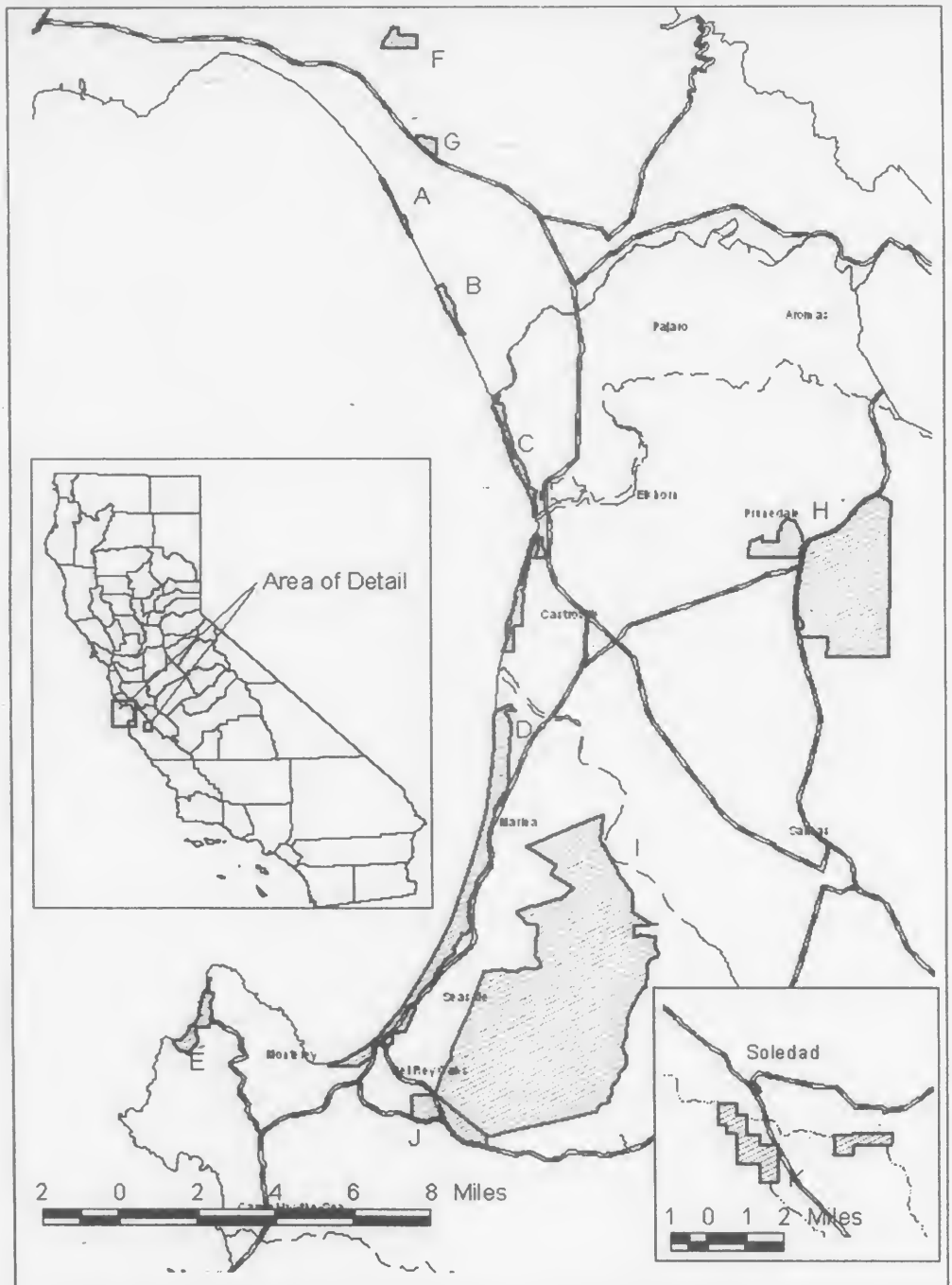
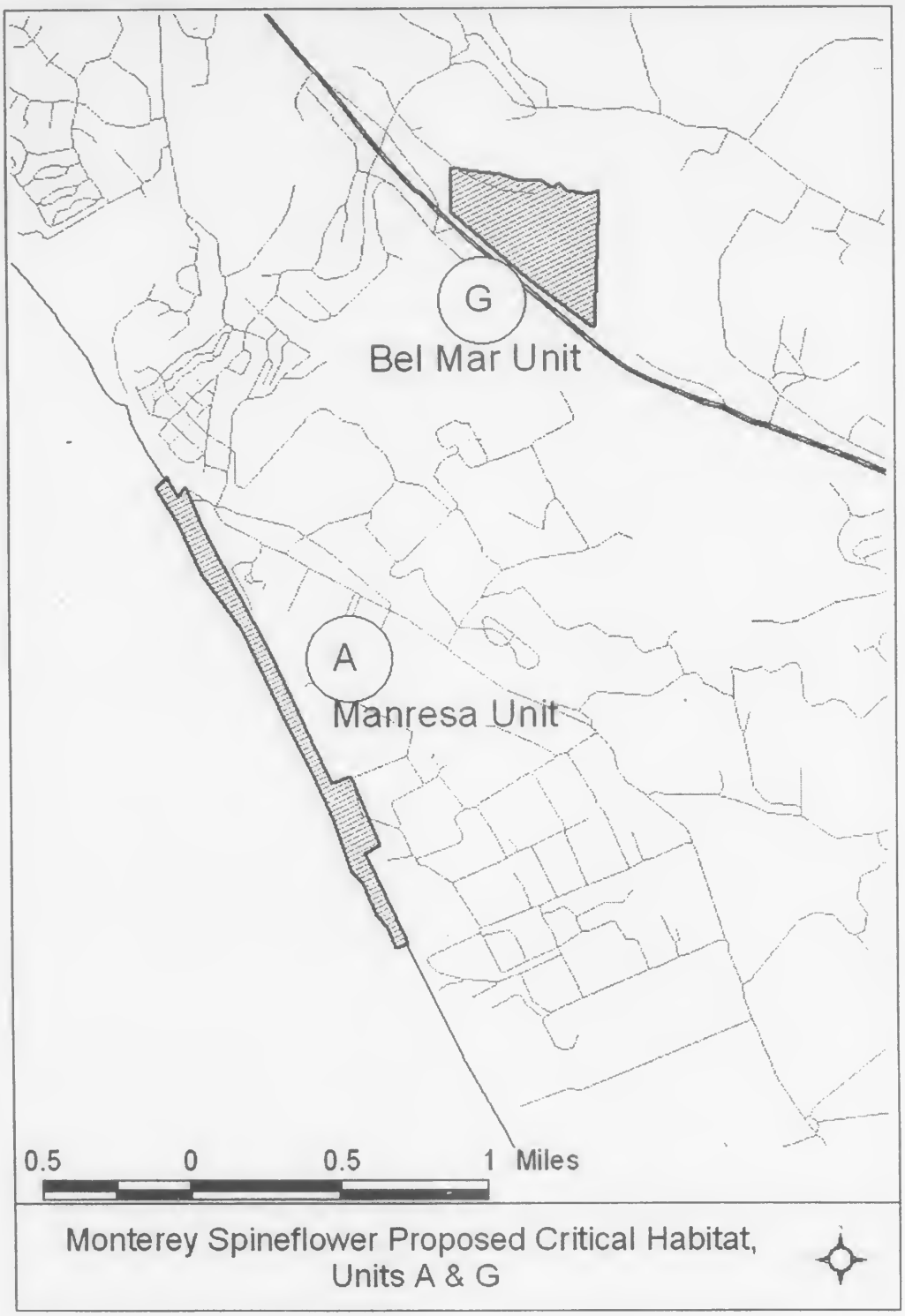


Monterey Spineflower Proposed Critical Habitat Units, Santa Cruz and Monterey Counties

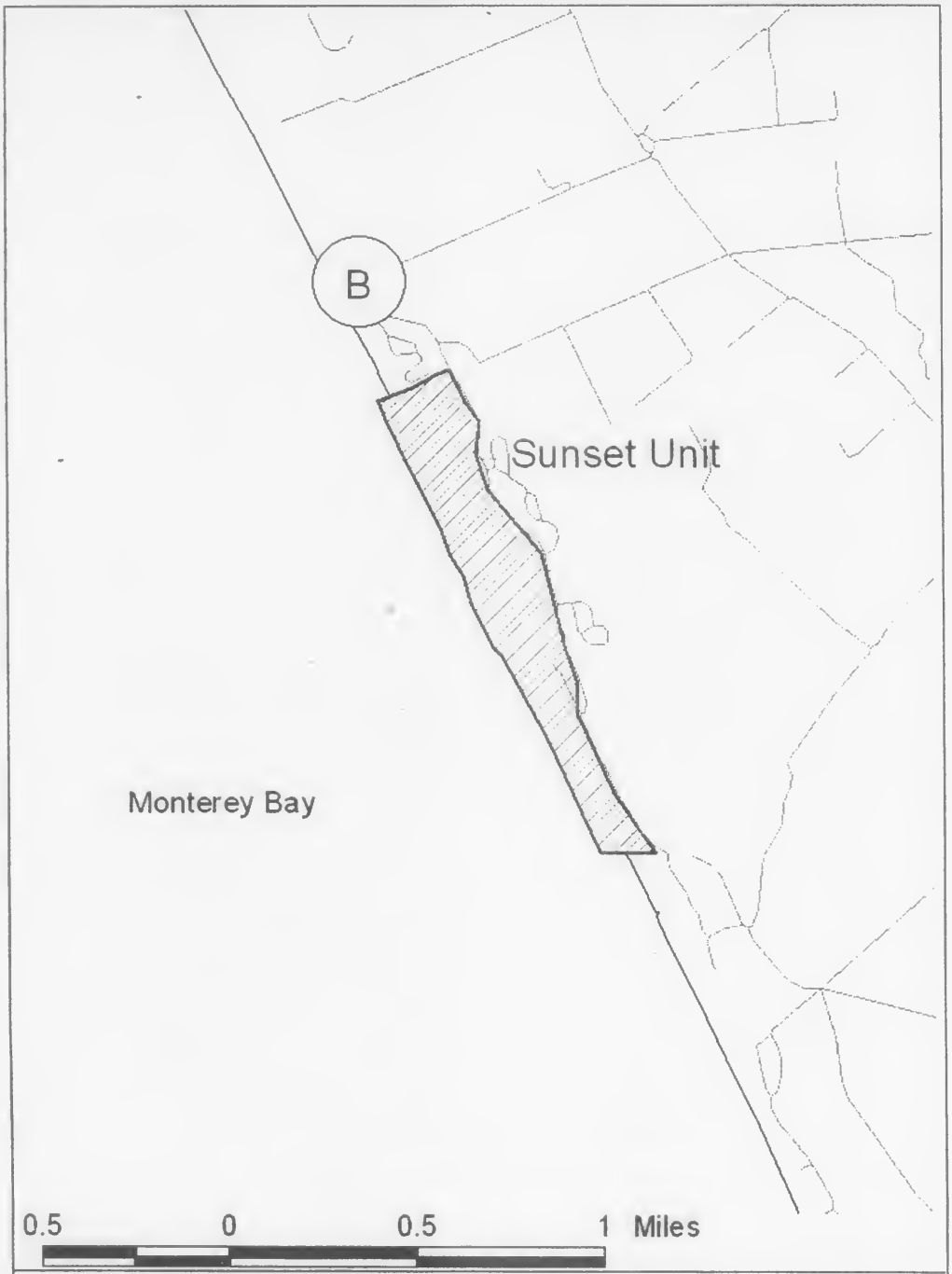
Coastal Units:

Unit A: Manresa Unit. Santa Cruz County, California. From USGS 7.5′ quadrangle map Watsonville West, California. Lands located within T.11 S., R.1 E., sec. 33 and T.12 S., R.1 E., sec. 4, W½ sec. 3 are being proposed for critical habitat. The outer perimeter of this unit is bounded by the following: Beginning at the northern boundary of Manresa State Beach, proceeding southeast and then northeast along the eastern boundary of Manresa State Beach until reaching a point just northwest of the Access Road; proceeding 0.2 km (0.10 mi) southeast to the boundary of Manresa State Beach, then proceeding northeast following the boundary of Manresa State Beach until reaching a point 0.24 km (0.15 mi) northwest of Sea View Terrace; proceeding southeast to Sea View Terrace and continuing southeast along Sea View Terrace to the intersection with Crest Drive; then proceeding west to the eastern boundary of Manresa State Beach; proceeding southeast to the southern boundary of Manresa State Beach; proceeding west to mean high tide following the southern boundary of Manresa State Beach; then proceeding northwest along mean high tide to the northern boundary of Manresa State Beach.



Monterey Spineflower Proposed Critical Habitat, Units A & G

Unit B: Sunset Unit. Santa Cruz County, California. From USGS 7.5′ quadrangle map Watsonville West, California. Lands located within T.12 S., R.1 E., sec. 14 and sec. 23 are being proposed for critical habitat. The outer perimeter of this unit is bounded by the following: Beginning at the northern boundary of Sunset State Beach at Monte Vista Way; proceeding northwest along Monte Vista Way to Shell Road; proceeding southeast 2.33 km (1.45 mi) along Shell Road; turning west at the point at which Shell Road veers to the east and then proceeding west to mean high water; proceeding northwest along mean high water 2.17 km (1.35 mi) to a point perpendicular to the boundary of Sunset State Beach; proceeding northeast to point of beginning.



Monterey Spineflower Proposed Critical Habitat, Unit B

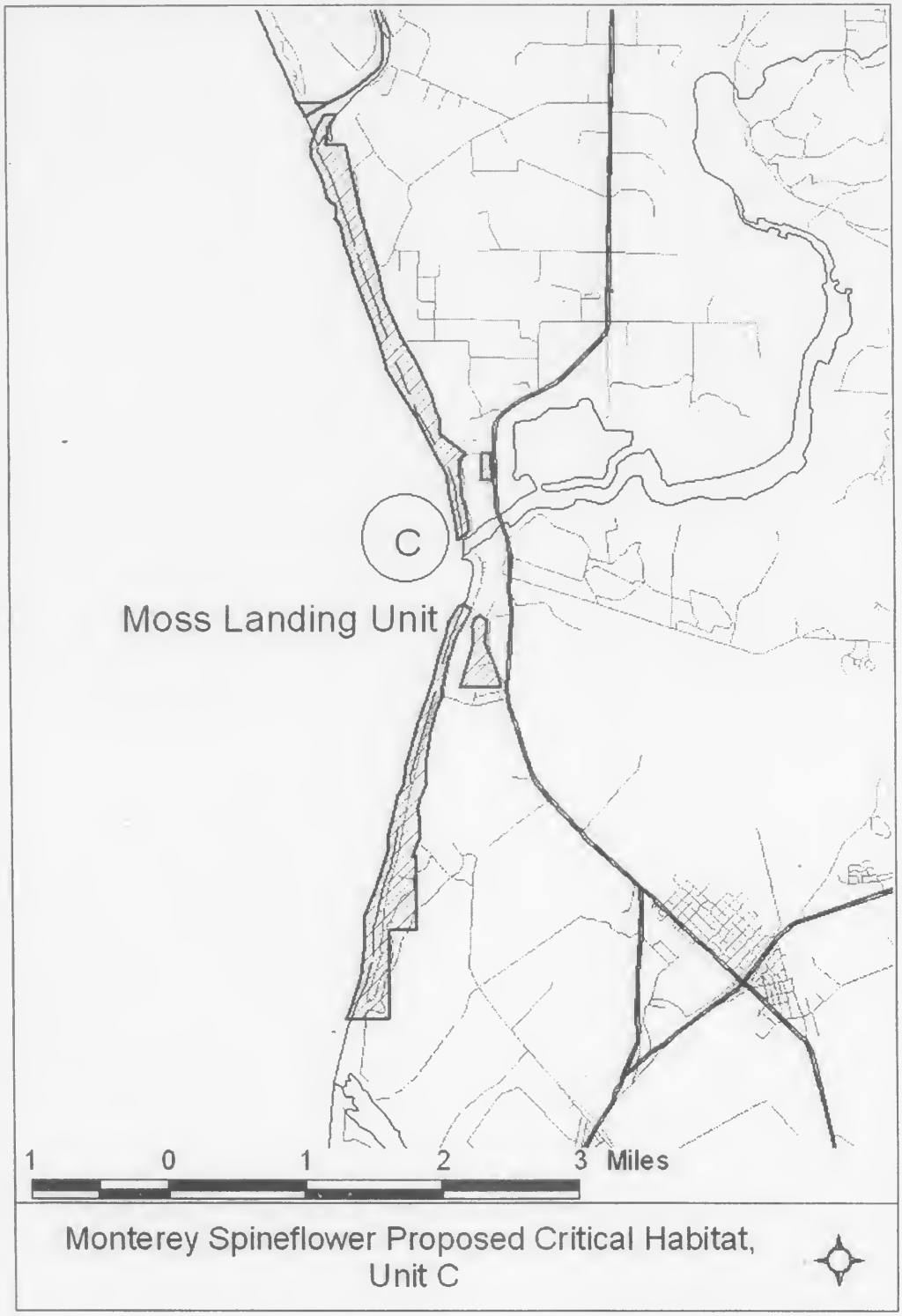
Unit C: Moss Landing Unit. Santa Cruz County, California. From USGS 7.5′ quadrangle map Moss Landing, California. This unit contains portions of Zmudowski State Beach, Moss Landing State Beach, Moss Landing North Harbor, Moss Landing Marine Laboratory, and Salinas River State Beach.

The boundaries of Zmudowski, Moss Landing, and Salinas River State Beaches reflect the boundaries indicated on the USGS map as of 1994. Lands located within T.12 S., R.1 E., sec. 36; T.13 S., R.1 E., sec. 1; T.13 S., R.2 E., sec. 6, sec. 7 are being proposed for critical habitat. The outer perimeter of this subunit is bounded by the following: Beginning at northern boundary of Zmudowski State Beach just south of the Pajaro River, proceeding east then southwest then east along the eastern boundary of Zmudowski State Beach; proceeding 2.7 km (1.7 mi) southeast along the eastern boundary to the southern boundary of Zmudowski State Beach; continuing southeast for 0.6 km (0.4 mi) to the northeastern boundary of Moss Landing State Beach; proceeding southeast along the eastern boundary of Moss Landing State Beach west of Bennett Slough to Jetty Road; proceeding south along Jetty Road 1.0 km (0.6 mi) and then southwest along Jetty Road near the mouth of Elkhorn Slough to mean high water; proceeding northwest along mean high water to the mouth of Pajaro River; proceeding northeast to the northern boundary of Zmudowski State Beach.

In addition, an area known as Moss Landing North Harbor, located within T.13 S., R.2 E., sec. 7, is being proposed for critical habitat. The outer perimeter of this subunit is bounded by the following: Beginning at the southwest corner of the Highway 1 and Jetty Road intersection; proceeding south 0.3 km (0.2 mi) to the Elkhorn Yacht club; proceeding west to the shoreline of North Harbor; proceeding north along the shoreline to Jetty Road; proceeding east along Jetty Road to its intersection with Highway 1.

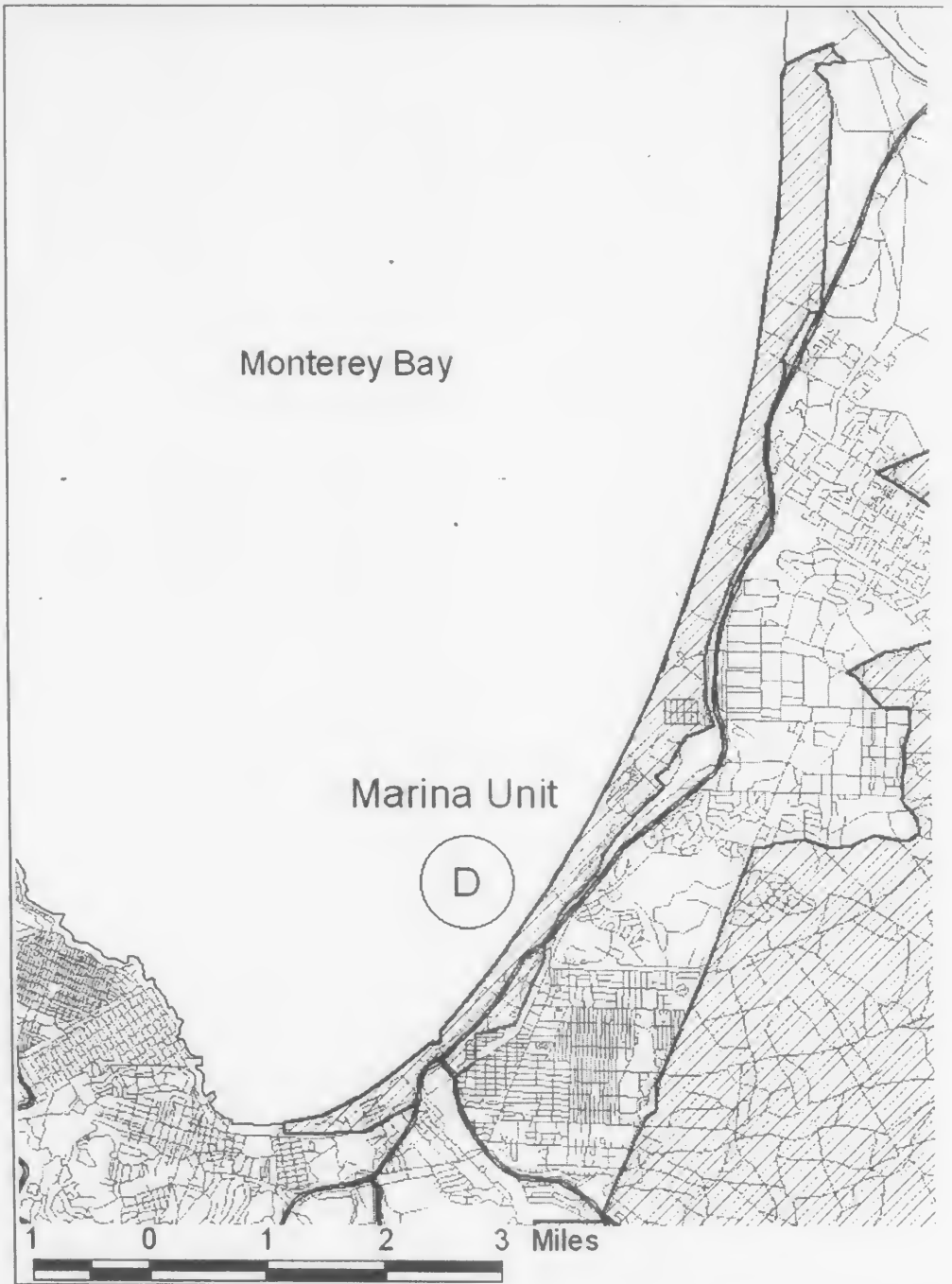
South of Elkhorn Slough, lands located within T.13 S., R.1 E., sec. 25, N½ sec. 36; T.13 S., R.2 E., sec. 18, sec. 19, W½ of NW¼ of SW¼ sec. 30, W¼ of NW¼ sec. 30 are being proposed for critical habitat. The outer perimeter of this subunit is bounded by the following: Beginning at the corner of Sandholdt Road and a bridge over the Salinas River; proceeding south along Sandholdt Road to its terminus at Potrero Road; proceeding south along the eastern boundary of Salinas River State Beach to its terminus; continuing south about 0.5 km (0.3 mi) along the line of W¼ of NW¼ sec. 30 (T.13 S., R.2 E.); continuing south about 0.4 km (0.25 mi) along the line of W½ of NW¼ of SW¼ sec. 30 (T.13 S., R.2 E.); proceeding west about 0.23 km (0.14 mi) to the section line of T.13 S., R.1 E., sec. 25; proceeding south about 0.40 km (0.25 mi) along the section line of T.13 S., R.1 E., sec. 25; proceeding west 0.08 km (0.05 mi) to the western line of Township 13, Range 1; proceeding south about 0.8 km (0.5 mi) to the line of T.13 S., R.1 E., N½ sec. 36; proceeding west 0.56 km (0.35 mi) to the mean high tide; proceeding north about 5.23 km (3.25 mi) along mean high tide to the road extending from the bridge over the Salinas River; proceeding southeast about 0.16 km (0.10 mi) to the corner of Sandholdt Road and a bridge over the Salinas River.

An additional area located within section 18, which encompasses portions of Moss Landing Marine Laboratory, is being proposed for critical habitat and is bounded by the following: beginning west of Moro Cojo Slough at the intersection of Moss Landing Road and the bridge over Salinas River; proceeding south 0.8 km (0.5 mi) along Moss Landing Road; proceeding west 0.5 km (0.3 mi) along the section line of T.13 S., R.2 E., sec. 18 (north of Potrero Road) to the Salinas River; proceeding north 0.8 km (0.5 mi) along the Salinas River to the bridge; proceeding southeast along the bridge to the its intersection with Moss Landing Road.



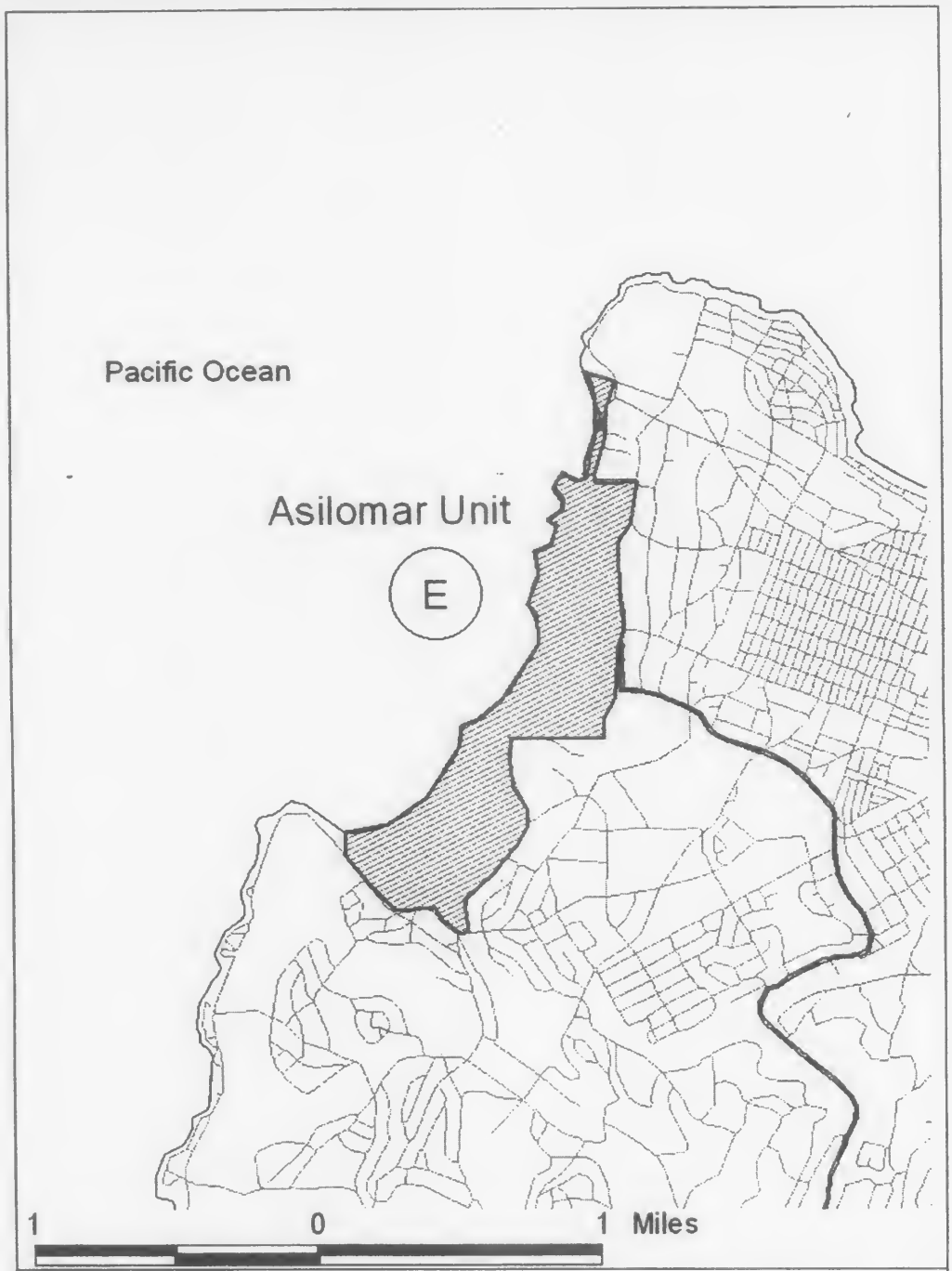
Monterey Spineflower Proposed Critical Habitat, Unit C

Unit D: Marina Unit. Monterey, California. From USGS 7.5′ quadrangle maps Marina, Seaside, and Monterey, California. The boundaries of Salinas National Wildlife Refuge and Marina State Beach, and the township and range lines reflect the boundaries indicated on USGS map as of 1983. Lands located within the following sections are being proposed for critical habitat: T.14 S., R.1 E., S½ sec. 1, sec. 12, sec. 13, sec. 24, sec. 25, sec. 26, sec. 35, sec. 36; T.15 S., R.1 E., sec. 2, sec. 10, sec. 11, sec. 15, sec. 16, NW¼sec. 22, sec. 21, sec. 20, NW¼ sec. 28, NE¼ sec. 29. The outer perimeter of this unit is bounded by the following: Beginning at the southwestern corner of the boundary of the Salinas River National Wildlife Refuge; proceeding north along mean high water to an existing trail south of the saline pond; proceeding northeast about 0.8 km (0.5 mi) along the trail to the intersection of the trail with an existing access road; proceeding southeast about 0.3 km (0.2 mi) along the access road to its intersection with an access road just west of the terminus of Neponset Road; proceeding west 0.40 km (0.25 mi) along the access road to another existing access road; proceeding southeast 0.56 km (0.35 mi) along this access road to the western line of Township 14, Range 1; proceeding south approximately 2 miles along the eastern line of Range 1 to its intersection with Highway 1; proceeding west 0.1 mile to Dunes Drive; proceeding southwest approximately 0.8 km (0.5 mi) along Dunes Drive to the northern boundary of Marina State Beach; following the northern and then eastern boundary of Marina State Beach for approximately 2.1 km (1.3 mi) to the northern boundary of former Fort Ord; proceeding south about 0.8 km (0.5 mi) along the Southern Pacific Railroad to its intersection with Beach Range Road; proceeding south about 5.6 km (3.5 mi) along Beach Range Road to its terminus; proceeding south to the Southern Pacific Railroad; proceeding south 0.5 km (0.3 mi) along Southern Pacific Railroad to its intersection with Highway 1; continuing south about 1.20 km (0.75 mi) along the Southern Pacific Railroad, just west of Del Monte Boulevard; proceeding southwest along California Boulevard to its terminus; proceeding south along Contra Costa Street to its intersection with Del Monte Boulevard; proceeding southwest along Del Monte Boulevard to its intersection with Canyon Del Rey Boulevard; proceeding northwest along Canyon Del Rey Boulevard to Highway 1; proceeding south about 0.72 km (0.45 mi) along Highway 1 to its intersection with Del Monte Avenue; proceeding southwest and then west about 1.9 km (1.2 mi) along Del Monte Avenue to the half section line of T.15 S., R.1 E, sec. 29; proceeding north to mean high tide; proceeding northeast and then north about 17.1 km (10.6 mi) along mean high tide to the southwestern corner of the boundary of the Salinas River National Wildlife Refuge. This habitat unit excludes all areas covered under the Habitat Conservation Plan for the North of Playa Redevelopment Project in Sand City.



Monterey Spineflower Proposed Critical Habitat, Unit D

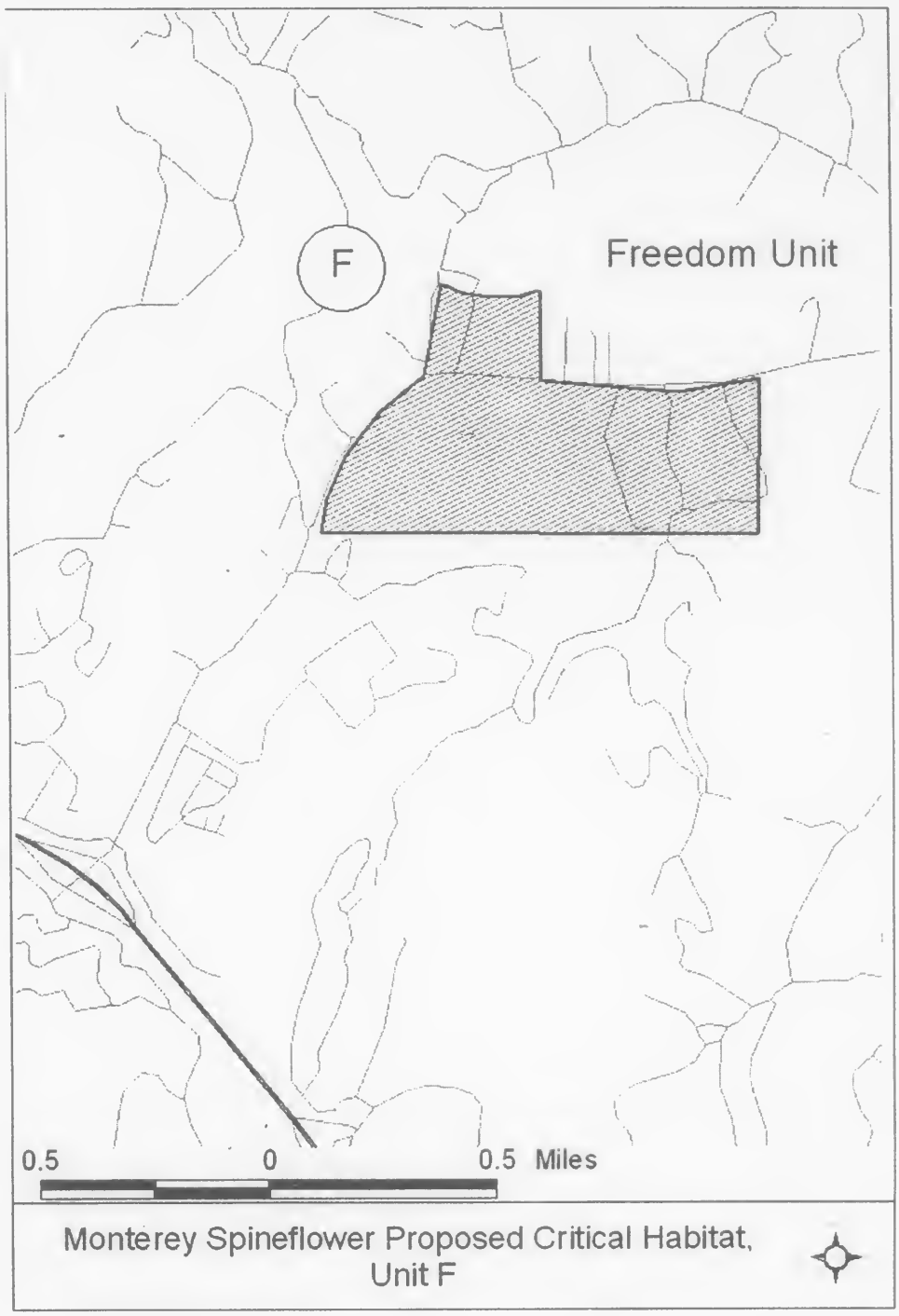
Unit E: Asilomar Unit. Monterey County, California. From USGS 7.5′ quadrangle map Monterey, California. Lands located within T.18 S., R.1 W., sec. 11, sec. 14, sec. 15, and sec. 22 are being proposed for critical habitat. The outer perimeter of this critical habitat unit is bounded by the following: Beginning at the corner of Sunset Drive and Lighthouse Avenue; proceeding south 0.56 km (0.35 mi) along Sunset Drive to its intersection with Arena Avenue; proceeding east 0.24 km (0.15 mi) along Arena Avenue to its terminus; proceeding south about 1.2 km (0.75 mi) along Asilomar Boulevard to its terminus at Sunset Drive; proceeding south 0.24 km (0.15 mi) to the section line of T.18 S., R.1 W., sec. 14; proceeding west 0.56 km (0.35 mi) along the section line of T.18 S., R.1 W., sec. 14 to Seventeen Mile Drive; proceeding south along Seventeen Mile Drive about 1.2 km (0.75 mi); proceeding west about 1.0 km (0.6 mi) along Seventeen Mile Drive; proceeding north to mean high tide; proceeding north about 3.5 km (2.2 mi) along mean high tide to a point west of Lighthouse Avenue; proceeding east about 0.16 km (0.10 mi) to the corner of Sunset Drive and Lighthouse Avenue.



Monterey Spineflower Proposed Critical Habitat, Unit E

Inland units:

Unit F: Freedom Boulevard Unit. Santa Cruz County, California. From USGS 7.5′ quadrangle map Watsonville West, California. The following lands are being proposed for critical habitat: T.11 S., R.1 E., SW¼ sec. 10, excluding land north of Freedom Boulevard, and SE¼ sec. 9, bounded to the west by Freedom Boulevard and McDonald Road (formerly southwest leg of Day Valley Road) and to the north by Apple Lane.

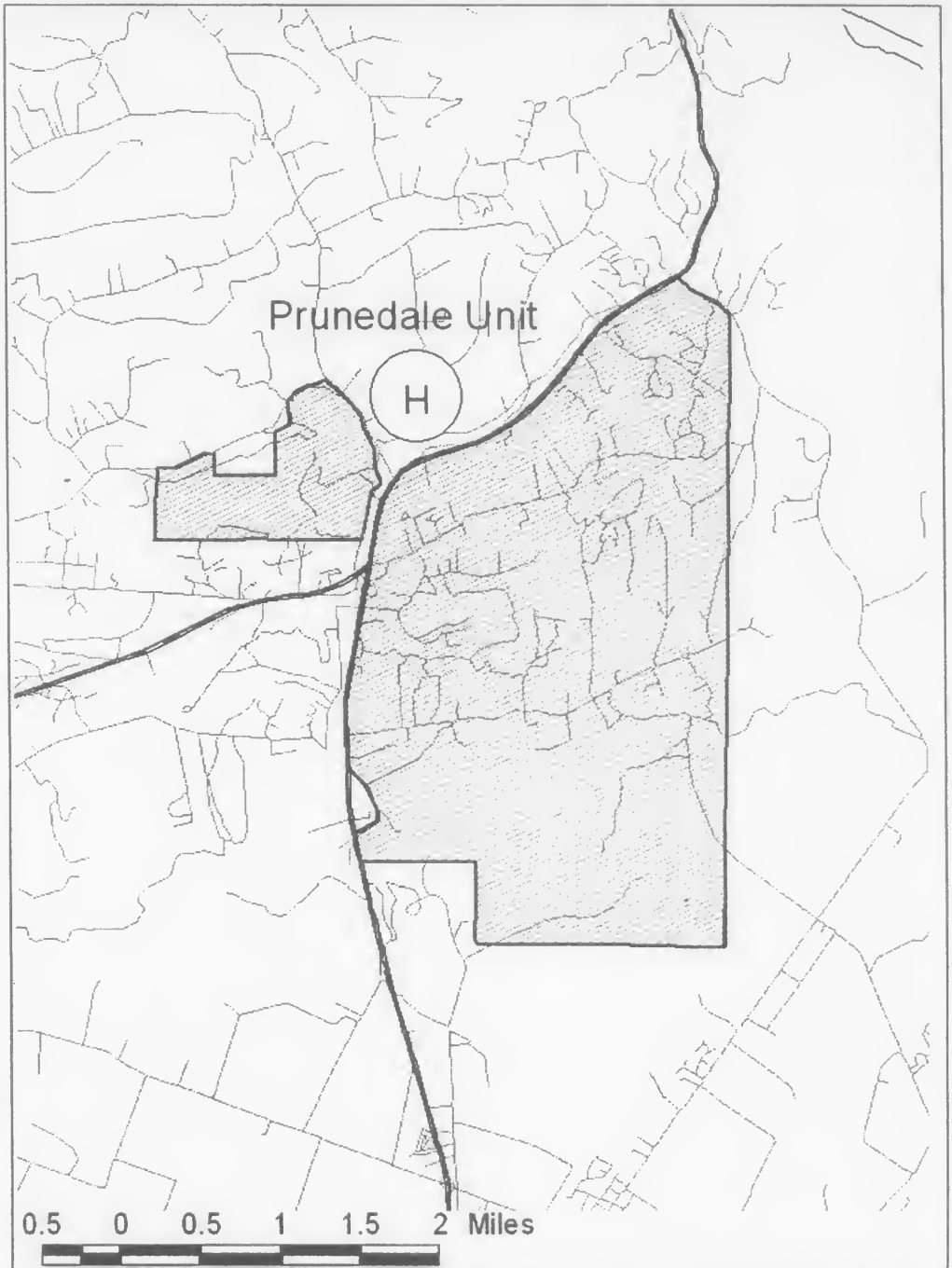


Unit G: Bel Mar unit. Santa Cruz County, California. From USGS 7.5′ quadrangle map Watsonville West, California. The following lands are being proposed for critical habitat: T.11 S., R.1 E., E½ sec. 27, bounded to the north by East Bel Mar Drive and to the south by Highway 1.

Unit H: Prunedale Unit. Monterey County, California. From USGS 7.5′ quadrangle map Prunedale, California. The boundary of Manzanita Regional Park reflect the boundary indicated on USGS map as of 1993.

West of Highway 101, the following areas of Manzanita Regional Park located within T.13 S., R.3 E., sec. 18, sec. 17, sec. 19 are being proposed for critical habitat: E½ of NE¼ and S½ sec. 18, excluding all areas outside of the boundary of Manzanita Regional Park and the area north of Castroville Boulevard; W½ sec. 17, excluding the area east of San Miguel Canyon Road and the area north of Castroville Boulevard. N½ of N½ of sec. 19, excluding all areas outside of the boundary of Manzanita Regional Park. In addition, the following portions of section 18 are excluded from this unit: the NE¼ of NE¼ of SW¼ sec.18, and the N½ of NW¼ of SE¼ sec. 18.

East of Highway 101, lands located within T.13 S., R.3 E., W½ sec.10, sec. 9, W½ sec. 15, sec. 16, sec. 17, W½ sec. 22, sec. 21, sec. 20, W½ sec. 27, sec. 28, sec. 29, NW¼ sec. 34, N½ sec. 33 are being proposed for critical habitat. This subunit excludes land west and north of Highway 101, land north of Crazy Horse Road (in sec. 10) and the area between Reese Circle and Highway 101 (in sec. 29).

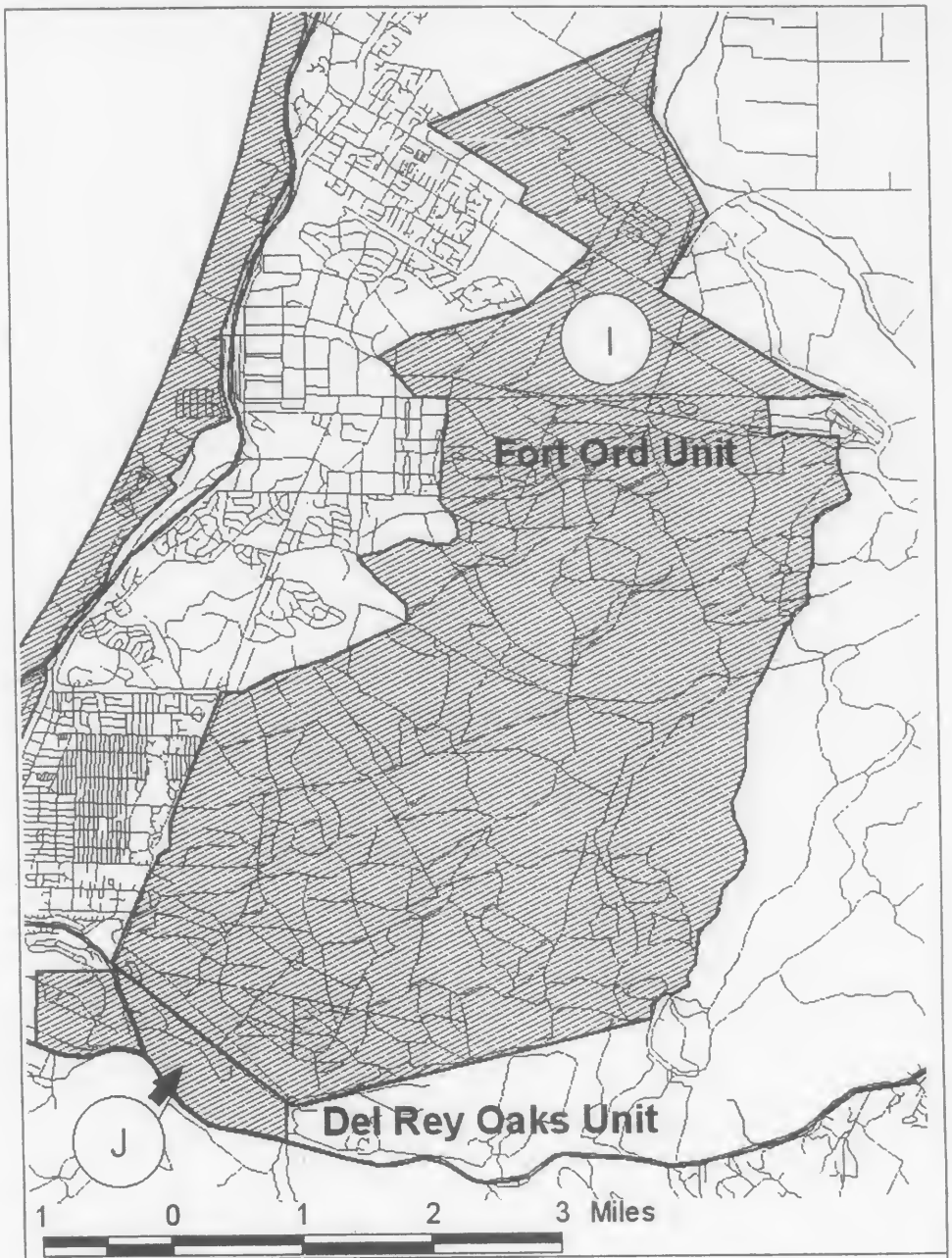


Monterey Spineflower Proposed Critical Habitat, Unit H

Unit I: Fort Ord Unit: Monterey County, California. From USGS 7.5′ quadrangle maps Seaside, Marina, Salinas, and Spreckels, California. The boundaries of former Fort Ord reflect the boundaries indicated on USGS maps as of 1983 and 1984. The following sections located within former Fort Ord are being proposed for critical habitat: T.14 S., R.2 E., E½ sec. 30, sec. 29, SE¼ of SE¼ sec. 20, SW¼ sec. 21, W½ sec. 28, sec. 32, sec. 33, E½ sec. 31; T.15 S., R.2 E., sec. 3 through sec. 10, sec. 15 through sec. 21, sec. 28 through sec. 32, NW¼ sec. 33; T.15 S., R.1 E. sec. 12, sec. 13, E½ sec. 14, sec. 24 through sec. 35; T.16 S., R.1 E, sec. 1.

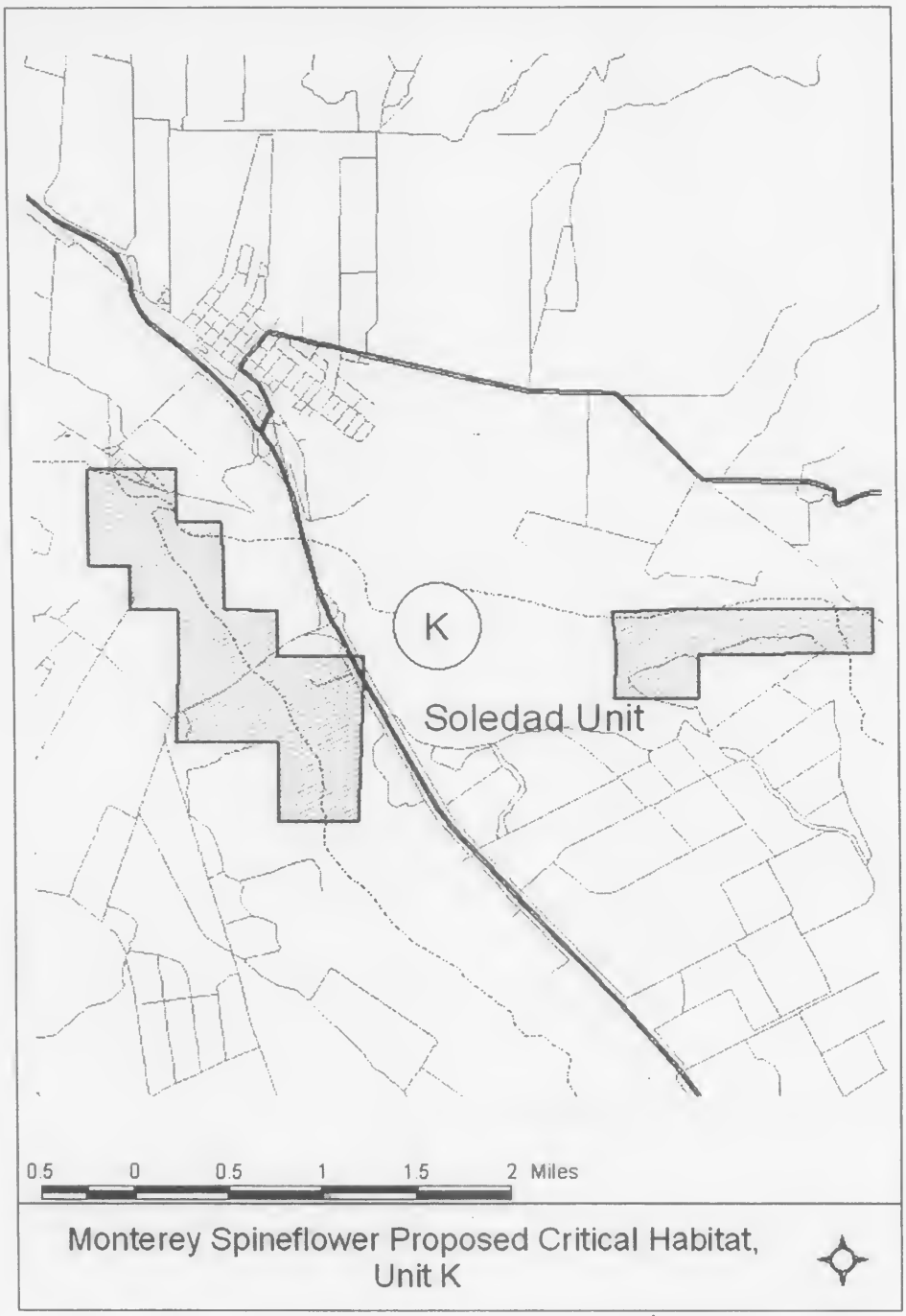
The outer perimeter of this unit is bounded by the following: Beginning at the northeastern corner of the former Fort Ord boundary in T.14 S., R.2 E. sec. 21; proceeding south 1.20 km (0.75 mi) along the eastern boundary of former Ford Ord to its intersection with the Salinas River; proceeding southeast 0.8 km (0.5 mi) along the eastern edge of the Salinas River; continuing southeast 0.40 km (0.25 mi) to West Blanco Road; proceeding southwest along West Blanco Road to Reservation Road; proceeding southeast along Reservation Road to Inter-Garrison Road; proceeding west along Inter-Garrison Road to Old Country Road; proceeding south along Old Country Road to Watkins Gate Road; proceeding east along Watkins Gate Road to Barloy Canyon Road; proceeding south 5.25 miles south to the southern boundary of former Fort Ord, just east of Laguna Seca; proceeding 4.3 km (2.7 mi) southwest then 2.7 km (1.7 mi) northwest along the southern boundary of former Fort Ord to General Jim Moore Boulevard (formerly North-South Road); proceeding northeast about 3.62 km (2.25 mi) along General Jim Moore Boulevard to Eucalyptus Road; proceeding northeast 2.4 km (1.5 mi) along Eucalyptus Road to Parker Flats Cut Off; proceeding north then northwest along Parker Flats Cut Off to Parker Flats Road; proceeding east then north along Parker Flats Road to Gigling Road; continuing north along 8th Avenue to Inter-Garrison Road; proceeding west along Inter-Garrison Road to the 8th Street Cut Off; proceeding northwest along 8th Street Cut Off to Imjin Road; proceeding northeast along Imjin Road to Reservation Road; proceeding northwest along Reservation Road to the western boundary of former Fort Ord; proceeding northeast then northwest along the western boundary of former Fort Ord; then proceeding about 3 km (2 mi) along the northern boundary to the northeastern corner of the boundary of former Fort Ord. This unit excludes paved areas of Marina Airport, located north of Reservation Road, and the campus of California State University at Monterey Bay, located south of Reservation Road.

Unit J: Del Rey Oaks Unit. Monterey County, California. From USGS 7.5′ quadrangle map Seaside, California. The boundaries of former Fort Ord reflect the boundaries indicated on USGS maps as of 1983 and 1984. The following lands are being proposed for critical habitat: T.15 S., R.1 E., E½ sec. 34, excluding lands south of Highway 68; T.15 S., R.1 E., sec. 35, excluding land south and west of highway 68; T.15 S., R.1 E., SW¼ sec. 36, excluding lands north of the former boundary of Fort Ord; T.16 S., R.1 E., NW¼ sec. 1 and NE¼ sec. 2, excluding lands south of Highway 68.



Monterey Spineflower Proposed Critical Habitat, Units I & J

Unit K: Soledad Unit. Monterey County, California. From USGS 7.5′ quadrangle map Soledad, California. The following lands are being proposed for critical habitat: T.17 S., R.6 E., NE¼ sec. 32, NE¼ of SE¼ sec. 32, SW¼ of NW¼ sec. 33, NW¼ of SW¼ sec. 33, S¼ of SW¼ sec. 33, S½ of SE¼ sec. 35, S½ of S½ sec. 36; T.18 S., R.6 E., E½ and NW¼ sec. 4, N½ of NE¼ sec. 2.



* * * * *

Dated: January 16, 2001

Kenneth L. Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–1836 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH82

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Polygonum hickmanii* (Scotts Valley Polygonum) and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley Spineflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Polygonum hickmanii* (Scotts Valley polygonum) and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Approximately 125 hectares (310 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Cruz County, California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until April 16, 2001. Public hearing requests must be received by April 2, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493, Portola Road, Suite B, Ventura, California, 93003.

You may also send comments by electronic mail (e-mail) to *svpolyg&sf@fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver comments to our Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Polygonum hickmanii and *Chorizanthe robusta* var. *hartwegii* are endemic to Purisima sandstone and Santa Cruz mudstone in Scotts Valley in the Santa Cruz Mountains. *Chorizanthe robusta* var. *hartwegii* was listed as endangered on February 4, 1994 (59 FR 5499). *Polygonum hickmanii* was proposed as endangered on November 9, 2000 (65 FR 67335).

Polygonum hickmanii is a small, erect, taprooted annual in the buckwheat family (Polygonaceae). It grows from 2 to 5 centimeters (cm) (1 to 2 inches (in.)) tall, and can be either single stemmed or profusely branching near the base in more mature plants. The linear-shaped leaves are 0.5 to 3.5 cm (0.2 to 1.4 in.) long and 1 to 1.5 cm (0.4 to 0.6 in.) wide and tipped with a sharp point. The single white flowers consist of two outer tepals and three inner tepals and are found in the axils of the bracteal leaves. The plant flowers from late May to August. Seed production ranges from a few dozen in a typical individual to as many as two hundred in a particularly robust individual (R. Morgan, pers. comm. 1998). Although pollination for this species has not been studied, Morgan observed a sphecid wasp (family Sphecidae) visitation to an individual of *P. hickmanii* (Morgan, pers. comm. 1998). Other potential pollinators have not been identified at this time, and the degree to which *P. hickmanii* depends on insect pollinators (rather than being self-pollinated) has not been determined. The nearest location of a closely related species, *P. parryi*, is at Mount Hamilton, about 48 kilometers (km) (30 miles (mi)) inland. *Polygonum hickmanii* differs from *P. parryi* in its larger white flowers, longer leaves, larger anthers and achenes, and longer, straight stem sheath (Hinds and Morgan 1995).

Chorizanthe robusta var. *hartwegii* is a low-growing herb with rose-pink involucral margins confined to the basal portion of the teeth and an erect habit. The aggregate flowers (heads) are medium in size (1 to 1.5 cm (0.4 to 0.6 in.) in diameter) and distinctly aggregate. The plant germinates during the winter months and flowers from April through June. Although pollination ecology has not been studied for this taxon, it is likely visited by a wide array of pollinators; observations of pollinators on other species of *Chorizanthe* that occur in Santa Cruz County have included leaf cutter bees (megachilids), at least 6 species of butterflies, flies, and sphecid wasps. Each flower produces one seed; depending on the vigor of individual plants, dozens, if not hundreds, of seeds could be produced. The importance of pollinator activity in seed set has been demonstrated in another species of *Chorizanthe* by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000). Seed dispersal is facilitated by the involucral spines, which attach the seed to passing animals. *Chorizanthe robusta* var. *hartwegii* is one of two varieties of the species *C. robusta*. The other variety (*C. robusta* var. *robusta*), known as the robust spineflower, is known from the coast of southern Santa Cruz and northern Monterey counties and also is listed as endangered.

Polygonum hickmanii and *Chorizanthe robusta* var. *hartwegii* are known from two sites about one mile apart at the northern end of Scotts Valley in Santa Cruz County, California. The plants are found on gently sloping to nearly level fine-textured shallow soils over outcrops of Santa Cruz mudstone and Purisima sandstone (Hinds and Morgan 1995). Together they occur with other small annual herbs in patches within a more extensive annual grassland habitat. These small patches have been referred to as "wildflower fields" because they support a large number of native herbs, in contrast to the adjacent annual grasslands that support a greater number of non-native grasses and herbs. While the wildflower fields are underlain by shallow, well-draining soils, the surrounding annual grasslands are underlain by deeper soils with a greater water-holding capacity, and therefore more easily support the growth of non-native grasses and herbs.

The surface soil texture in the wildflower fields tends to be consolidated and crusty rather than loose and sandy (Biotic Resources Group (BRG) 1998). Elevation of the sites is from 215 to 245 meters (m) (700 to 800 feet (ft)) (Hinds and Morgan 1995). The climate in the city of Santa Cruz, 13 km (8 mi) to the south, is characterized by an average of 76.7 cm (30 in.) of rain per year, and an average temperature of 14 degrees Celsius (57 degrees Fahrenheit) per year, while the city of Los Gatos, 16 km (10 mi) to the north, averages 129.9 cm (51 in.) of rain per year, and an average temperature of 15 degrees Celsius (58 degrees Fahrenheit) per year (Worldclimate 1998).

Polygonum hickmanii and *Chorizanthe robusta* var. *hartwegii* are associated with a number of native herbs including *Lasthenia californica* (goldfields), *Minuartia douglasii* (sandwort), *Minuartia californica* (California sandwort), *Gilia clivorum* (gilia), *Castilleja densiflora* (owl's clover), *Lupinus nanus* (sky lupine), *Brodiaea terrestris* (brodiaea), *Stylocline amphibola* (Mount Diablo cottonweed), *Trifolium grayii* (Gray's clover), and *Hemizonia corymbosa* (coast tarplant). Non-native species present include *Filago gallica* (filago) and *Vulpia myuros* (rattail) (California Natural Diversity Data Base (CNDDB) 1998; Randy Morgan, biological consultant, pers. comm. 1998). In many cases, the habitat also supports a crust of mosses and lichens (Biotic Resources Group 1998).

For purposes of this rule, a cluster of individuals of either *Polygonum hickmanii* or *Chorizanthe robusta* var. *hartwegii* will be referred to as a "colony". Because of the close proximity of many of the clusters to each other, it is uncertain whether clusters of each species biologically represent patches within a metapopulation, true colonies, or separate populations. The general location of the colonies will be referred to as a "site". Although clusters of *P. hickmanii* co-occur with *C. robusta* var. *hartwegii* at all sites, *C. robusta* var. *hartwegii* may occur without this association. Thus, of the two species, *P. hickmanii* tends to be the most restricted in distribution.

Approximately 11 colonies of *Polygonum hickmanii* occur on the 2 sites. *Chorizanthe robusta* var. *hartwegii* generally occurs at all the locations where *Polygonum hickmanii* occurs; in addition, colonies of *Chorizanthe robusta* var *hartwegii* occur at other locations at the Glenwood site and the Polo Ranch site without *Polygonum hickmanii*. The total number of colonies of *Chorizanthe robusta* var. *hartwegii* is difficult to count for several reasons: 1) depending on the scale at which colonies are mapped, a larger or smaller number of colonies may result, and 2) depending on the climate and other annual variations in habitat conditions, the extent of colonies may either shrink and temporarily disappear, or enlarge and merge into each other, thus appearing as larger but fewer colonies. Additional patches of suitable but unoccupied habitat for *Polygonum hickmanii*, *Chorizanthe robusta* var *hartwegii*, and other wildflower field taxa have been mapped on these parcels as well (Denise Duffy and Associates 1998). However, some of these patches, as well as those patches occupied by *Chorizanthe robusta* var *hartwegii*, were destroyed in 1999 during construction of Scotts Valley High School.

The first site is located north of Casa Way and west of Glenwood Drive in northern Scotts Valley. Referred to as the Glenwood site, it contains five colonies of *Polygonum hickmanii* and a larger number of colonies of *Chorizanthe robusta* var *hartwegii* that occur on two privately owned parcels of land. Colonies of both of these taxa are situated within a 4-hectare (ha) (9-acre (ac) preserve on a 19-ha (48-ac) parcel that is owned by the Scotts Valley Unified School District and is referred to as the "School District" colony (Denise Duffy and Associates 1998). Other colonies of both plants at the Glenwood site are located approximately 0.08 km (0.13 mi) to the west of the School District colony on a parcel of land owned by the Salvation Army (CNDDB 1998) and are referred to as the "Salvation Army" colonies. Additional colonies of *Chorizanthe robusta* var *hartwegii* are located on a parcel owned by American Dream/ Glenwood L.P. which is being proposed for development. On the west side of Glenwood Drive, colonies are located in proposed open space near the proposed Seacliff neighborhood; on the east side of Glenwood Drive, colonies are located in the southern portion of the parcel that is being proposed for open space (Impact Sciences 2000a).

The second site is referred to as the "Polo Ranch" site. Located just east of Highway 17 and north of Navarra Road in northern Scotts Valley; this site is approximately 1.6 km (1 mi) east of the Salvation Army and School District colonies. Colonies within the Polo Ranch site occur on a parcel of land owned by Greystone Homes (Lyons *in litt.* 1997). Six colonies of *Polygonum hickmanii* and a larger number of colonies of *Chorizanthe robusta* var *hartwegii* occur within 0.2 km (0.1 mi) of each other on the Polo Ranch site (Lyons *in litt.* 1997; Impact Sciences 2000b).

Both *Polyonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* are threatened with extinction by habitat alteration due to secondary impacts of urban development occurring within close proximity. Urban development includes the recent construction and operation of a high school; installation and maintenance of water delivery pipelines, access roads, and water tanks; and currently existing and proposed housing. Over the last decade a variety of housing proposals have been considered for two of the parcels; active proposals currently exist for both of these parcels.

The kinds of habitat alterations expected to impact *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* as a result of development include changes in the hydrologic conditions, soil compaction; increased disturbance due from humans, pets, and bicycle traffic; the inadvertent application of herbicides and pesticides; dumping of yard wastes; and the introduction of non-native species. The proposed preserves and open space areas intended to protect *P. hickmanii* and *C. robusta* var. *hartwegii* are inadequate for maintaining viable populations of these species (Service *in litt.* 1998). Studies on habitat fragmentation and preserves established in urbanized settings have shown that these preserves gradually become destabilized from external forces (i.e., changes in the hydrologic conditions, soil compaction, etc.), resulting in preserves that are no longer able to support the species that they were established to protect (Kelly and Rotenberry 1993).

The chance of random extinction for both *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* is also increased due to the small numbers of individuals and limited area occupied by these species (Shaffer 1981). A random environmental event (e.g., fire) or human disturbance potentially could destroy all colonies occurring on a parcel, thus reducing the advantages of redundant populations and diminishing the likelihood of long-term persistence.

Previous Federal Action

On May 16, 1990, we received a petition from Steve McCabe and Randall Morgan of the Santa Cruz Chapter of the California Native Plant Society to list *Chorizanthe robusta* var. *hartwegii* as endangered. Based on a 90-day finding that the petition presented substantial

information indicating that the requested action may be warranted (55 FR 46080), we initiated a status review of this taxon. On October 24, 1991 (56 FR 55107), we published a proposal to list *C. robusta* var. *hartwegii*, as an endangered species. On February 4, 1994, we published a final rule that listed *C. robusta* var. *hartwegii*, inclusive of *C. robusta* var. *robusta*, as endangered (59 FR 5499). Proposed designation of critical habitat for these taxa was believed prudent but not determinable at the time of listing. A Recovery Plan covering two insect species and four plant species from the Santa Cruz Mountains, including *C. robusta* var. *hartwegii*, was published in 1998 (Service 1998).

We first became aware of *Polygonum hickmanii* in 1992 during the course of proposing to list *Chorizanthe robusta* var. *hartwegii*. At that time, however, a name for the taxon had not formally been published, and therefore it could not be considered for Federal listing. Once the name, *Polygonum hickmanii*, was published by Hinds and Morgan (1995), we reviewed information in our existing files, in the California Natural Diversity Data Base, and new information on proposed projects being submitted to us for our review, and determined that sufficient information existed to believe that listing might be warranted. *Polygonum hickmanii* was included in the list of candidate species published in the **Federal Register** on October 25, 1999 (64 FR 57534). A proposal to list *P. hickmanii* as endangered was published on November 9, 2000 (65 FR 67335). At the time of the proposed listing, we determined that critical habitat for *P. hickmanii* was prudent, but deferred proposing critical habitat designation until a proposal to designate critical habitat could be developed for both *P. hickmanii* and *C. robusta* var. *hartwegii* because the two taxa share the same ecology and geographic location. Due to the ecological and geographic isolation of the two varieties of *Chorizanthe, C. robusta* var. *robusta* and *C. robusta* var. *hartwegii*, we are proposing critical habitat for *C. robusta* var. *robusta* separately but concurrently with this proposal.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Chorizanthe robusta* var. *hartwegii* was listed, we found that designation of critical habitat for the species was prudent but not determinable, and that designation of critical habitat would occur once we had gathered the necessary data.

On June 30, 1999, our failure to designate critical habitat for *Chorizanthe robusta* (including *C. robusta* var. *hartwegii* as well as *C. robusta* var. *robusta*) and three other species within the time period mandated by 16 U.S.C. 1533(b)(6)(C)(ii) was challenged in *Center for Biological Diversity* v. *Babbitt* (Case No. C99–3202 SC). On August 30, 2000, the U.S. District Court for the Northern District of California (Court) directed us to publish a proposed critical habitat designation within 60 days of the Court's order, and a final critical habitat designation no later than 120 days after the proposed designation is published. On October 16, 2000, the Court granted the government's request for a stay of this order. Subsequently, by a stipulated settlement agreement signed by the parties on November 20, 2000, the Service agreed to proposed critical habitat for the Scotts Valley spineflower by January 15, 2001.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which

provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.*, gray literature).

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*. This information included information from the California Natural Diversity Data Base (CNDDB 2000), soil survey maps (Soil Conservation Service 1978, 1979), recent biological surveys and reports, our recovery plan for these species, additional information provided by interested parties, and discussions with botanical experts. We also conducted multiple site visits to the two locations that are being proposed for designation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The long-term probability of the survival and recovery of *Chorizanthe robusta* var. *hartwegii* and *Polygonum hickmanii* is dependent upon the protection of existing population sites, and the maintenance of ecologic functions within these sites, including connectivity between colonies within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (for example, fire disturbance) that maintain the openness of plant cover that the species depend on. In addition, the small range of these two taxa makes them vulnerable to edge effects from adjacent human activities, including disturbance from trampling and recreational use, the introduction and spread of non-native species, and the application of herbicides, pesticides, and other contaminants (Conservation Biology Institute 2000).

The primary constituent elements of critical habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* are:

(1) Thin soils that have developed over outcrops of Santa Cruz mudstone and Purisima sandstone;

(2) "Wildflower field" habitat that has developed on these thin-soiled sites;

(3) A grassland plant community that supports the "wildflower field" habitat, which is stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for growth and reproduction of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*;

(4) Sites that allow each population to survive catastrophic events and recolonize adjacent suitable microhabitat sites,

(5) Pollinator activity between existing colonies of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*;

(6) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas;

(7) Seed dispersal mechanisms between existing colonies and other potentially suitable sites; and

(8) Sufficient integrity of the watershed above habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* to maintain edaphic and hydrologic conditions that provide the seasonally wet substrate for growth and reproduction of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*.

Criteria Used To Identify Critical Habitat

In our delineation of the critical habitat units, we selected areas to provide for the conservation of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* at the only two sites where they are known to occur. The two species are currently growing on less than 0.4 ha (1 ac) of land; however, habitat is not restricted solely to the area actually occupied by the species. It must include an area that is large enough to maintain the ecological functions upon which the species

depends (*e.g.*, the hydrologic and edaphic conditions). We believe it is important to designate the area currently occupied by the two taxa that is of sufficient size to maintain landscape scale processes and to minimize the secondary impacts resulting from human occupancy and human activities occurring in adjacent areas.

The units were mapped with a degree of precision commensurate with the available information, the size of the unit, and the time allotted to complete this proposed rule. We anticipate that in the time between the proposed rule and the final rule, and based upon the additional information received during the public comment period, that the boundaries of the two mapping units will be refined. The proposed critical habitat units were delineated by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* using information from the California Natural Diversity Data Base (CNDDB 2000) and the other information sources listed above. These data layers were created on a base of USGS 7.5′ quadrangle maps obtained from the State of California's Stephen P. Teale Data Center. Because the areas within proposed critical habitat boundaries are portions of the San Augustin Spanish Land Grant, they have not been surveyed according to the State Plan Coordinate System. Therefore, instead of defining proposed critical habitat boundaries using a grid of township, range, and section, we defined the boundaries for the proposed critical habitat units using known landmarks and roads.

In selecting areas of proposed critical habitat, we made an effort to avoid developed areas, such as housing developments, which are unlikely to contribute to the conservation of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *P. hickmanii* and *C. robusta* var. *hartwegii*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the species' conservation. Critical habitat is being proposed for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* at the only two sites where they are known to occur. We are not proposing any critical habitat units that do not contain the plants of both species. In accordance with section 3(5)(C) of the Act, we are proposing to designate critical habitat in the entire geographical area which can be occupied by the species as we find that the areas included in the proposed designation are essential to the conservation of the two species. The areas we are proposing provide the essential life cycle needs of the species and provide some or all of the habitat components essential for the conservation (primary constituent elements) of *C. robusta* var. *hartwegii* and *P. hickmanii*. The two areas being proposed as critical habitat are both within the city limits of Scotts Valley in Santa Cruz County, California, and include the grassland habitat that contains the smaller "wildflower field" patches. Given the threats to the habitat of these species discussed above, we believe that these areas may require special management considerations or protection.

Table 1. Approximate proposed critical habitat area (ha (ac)) by Proposed Critical Habitat Unit and land ownership. Estimates reflect the total area within critical habitat unit boundaries.

Unit	Local agency	Private
Unit 1	9 ha (22 ac)	81 ha (200 ac)
Unit 2	0 ha (0 ac) ...	35 ha (86 ac)

Because we consider maintaining hydrologic and edaphic conditions in these grasslands so important, the proposed critical habitat area extends outward to the following limits-(1) upslope from the occurrences of *P. hickmanii* and *C. robusta* var. *hartwegii* to include the upper limit of the immediate watershed; (2) downslope from the occurrences of *P. hickmanii* and *C. robusta* var. *hartwegii* to the point at which grassland habitat is replaced by forest habitats (oak forest, redwood forest, or mixed conifer-hardwood forest); and (3) to the boundary of existing development.

The following general areas are proposed as critical habitat (see legal descriptions for exact critical habitat boundaries).

Unit 1: Glenwood Site

Unit 1 consists of approximately 90 ha (222 acres) to the west of Glenwood Drive and north and northwest of Casa Way, in the City of Scotts Valley, including land owned and managed by the Salvation Army, land owned and managed by the Scotts Valley High School District as a Preserve, but excluding the rest of the High School, and to the east of Glenwood Drive, encompassing the parcel known as the Glenwood Development. All of the land proposed within this unit is privately owned.

Unit 2: Polo Ranch Site

The Polo Ranch site consists of approximately 35 ha (86 ac) to the east of Carbonera Creek on the east side of Highway 17 and north and northeast of Navarra Drive, in the City of Scotts Valley, known as the Polo Ranch, both in the County of Santa Cruz, California. All of the land being proposed for critical habitat designation is privately owned.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. Destruction or adverse modification of critical habitat is defined by our regulations as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical (50 CFR 402.02). Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7 (a) of the Act means that Federal agencies must evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If, at the conclusion of consultation, we issue a

biological opinion concluding that project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10 (d)).

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on lands being proposed as critical habitat for the *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* or activities that may indirectly affect such lands and that are conducted by a Federal agency, funded by a Federal agency or that require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Polygonum hickmanii* or *Chorizanthe robusta* var. *hartwegii* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain natural grassland communities and the "wildflower field" habitat. Such activities adverse to *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* could include, but are not limited to, vegetation manipulation such as chaining or harvesting timber in the watershed upslope from *P. hickmanii* and *C. robusta* var. *hartwegii*; maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture, row crops, and livestock grazing;

(2) Activities that appreciably degrade or destroy native grassland communities, including but not limited to livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers, or permits from Housing and Urban Development, or authorization of Federal grants or loans. Such activities would be subject to the section 7 consultation process. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process. The Ohlone tiger beetle (*Cicindela ohlone*), a species that is proposed for listing under the Act, occurs in close proximity to *P. hickmanii* and *C. robusta* var. *hartwegii* at their western site on Salvation Army and Scotts Valley High School property.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–6131, FAX 503/231–6243).

Relationship To Habitat Conservation Plans

Currently, there are no HCPs that include *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* as covered species. However, we believe that in most instances the benefits of excluding habitat conservation plans (HCPs) from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs covering *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of these species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Polygonum hickmanii* and *Chorizanthe*

robusta var. *hartwegii* and appropriate management for those lands. The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a comment period at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs); and

(6) The methods we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods. You may mail comments to the Assistant Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may also comment via the Internet to svpolyg&sf@r1.fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 1018–AH82 and your name and return address in your Internet message." If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Please note that the Internet address "svpolyg&sf@r1.fws.gov" will be closed out at the termination of the public comment period. Finally, you may hand-deliver comments to our Ventura office at 2493 Portola Road, Suite B, Ventura, California. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing and designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the "Supplementary Information" section of the preamble helpful in understanding the notice? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the office identified in the **ADDRESSES** section at the beginning of this document.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore, we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based upon our experience with these species and their needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act in areas occupied by the species. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat.

TABLE 2.—IMPACTS OF *Polygonum hickmanii* AND *Chorizanthe robusta* VAR. *hartwegii* LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal Activities Potentially Affected [2]	Activities conducted by the Army Corps of Engineers, the Department of Housing and Urban Development, and any other Federal Agencies.	Activities by these Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Chorizanthe robusta* var. *hartwegii* since its listing in 1994. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This proposed rule, if made final, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation, will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (required under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas where section 7 consultations would have occurred as result of the species being listed under the Act. We will also evaluate whether designation includes any areas where section 7 consultations would occur only as result of the critical habitat designation, and in such cases determine if it will significantly affect a substantial number of small entities. As

indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by local governments and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private lands requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Authorization of Federal grants or loans.

Potentially some of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current, applicable restrictions of the Act remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas where section 7 consultations would occur regardless of the critical habitat designation. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) We believe this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease current restrictions on private property concerning these plant species. We do not anticipate that property values will be affected by the critical habitat designations. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with State law and with the continued survival of the plant species.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 as amended need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951) and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. The proposed designation of

critical habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Constance Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) as proposed to be amended at 65 FR 67343, November 9, 2000, revise the entry for *Polygonum hickmanii* and remove the entry for *Chorizanthe robusta* var. *hartwegii* (incl. vars. robusta & hartwegii) and add the following entry in alphabetical order under "FLOWERING PLANTS" to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Chorizanthe robusta var. *hartwegii.*	Scotts Valley Spineflower.	U.S.A. (CA)	Polygonaceae Buckwheat.	E	.....	17.96(a)	NA
*	*	*	*	*	*		*
Polygonum hickmanii	Scotts Valley Polygonum.	U.S.A. (CA)	Polygonaceae Buckwheat.	E	17.96(a)	NA	
*	*	*	*	*	*		*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add paragraph (a)(2) to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

(2) *California.*

(i) *Maps and critical habitat unit descriptions.* The following paragraphs contain the legal descriptions of the critical habitat units designated for multiple plant species in the State of California. Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements described for the species in paragraph (a)(2)(ii)(A) of this section. Therefore, these features or structures are not included in the critical habitat designation.

(A) *Polygonum hickmanii,* Scotts Valley polygonum and *Chorizanthe robusta* var. *hartwegii,* Critical habitat includes the grasslands and other native plant communities upslope from them identified on the maps below and adjacent areas out to the beginning of existing development and downslope out to other plant communities, including oak woodland, redwood forest, and mixed conifer-hardwood forest. Critical habitat units are depicted for Santa Cruz County, California, on the maps below.

Unit 1

Santa Cruz County, California. From USGS 7.5′ quadrangle map Felton, California. Mt. Diablo Meridian, California. Because this area was part of the San Augustin Spanish Land Grant, it has not been surveyed according to the State Plan Coordinate System. The outer perimeter of this critical habitat unit is bounded by the following: beginning at a point west of Glenwood Drive and north of Casa Way at the southeastern corner of the Scotts Valley High School Preserve; proceeding west along the southern boundary of the Preserve until reaching the southwest corner of the Preserve; proceeding south to the southern boundary of the Salvation Army property; proceeding west along the southern boundary of the Salvation Army property until the point at which the grassland community gives way to the oak woodland community; then following the treeline in a generally northern direction, skirting around the west side of "cupcake hill" and "teacup hill"; proceeding to the pint at which treeline intersects with the ridgeline on the north side of "teacup hill", proceeding north-northeasterly along the ridgeline, essentially paralleling the eastern boundary of the Salvation Army property; proceeding to the summit of the subsequent rock outcrop; proceeding east-southeasterly to Glenwood Drive, essentially following the treeline downslope; proceeding north along Glenwood Drive to Canham Road; proceeding 0.3 km (0.2 mi) east on Canham Road; then proceeding south for approx. 0.3 km (0.2 mi), then veering southeasterly and heading toward the summit near the northern terminus of Tabor Drive; proceeding south along the western edge of the existing homesites on the west side of Tabor Drive until reaching the northern boundary of Vine Hill School; proceeding west along the northern boundary of Vine Hill School until reaching the northeast corner of Siltanen Park; proceeding south for approx. 0.2 km (0.1 mi), approaching the 90 degree bend in Vine Hill Road; proceeding west for approx. 0.2 km (0.1 mi) to Glenwood Drive; and proceeding west across Glenwood Drive for approx. 0.08 km (0.05 mi) to the southwest corner of the Scotts Valley High School Preserve. Inside of this boundary, the following is excluded from critical habitat: approximately 16 ha (40 acres) where the Scotts Valley High School is

situated, excepting the Scotts Valley High School Preserve; and the existing homesites between Glenwood Drive and the eastern boundary of the Scotts Valley High School Preserve.

Unit 2

Santa Cruz County, California. From USGS 7.5′ quadrangle map Laurel, California. Because this area was part of the San Augustin Spanish Land Grant, it has not been surveyed according to the State Plan Coordinate System. The outer perimeter of this critical habitat unit is bounded by the following: beginning at Sucinto Drive; proceeding directly west to the closest point on Carbonera Creek; proceeding north-northeasterly along Carbonera Creek to the point where Carbonera Creek crosses under Highway 17; proceeding east, then slightly east-southeasterly for approx. 0.6 km (0.4 mi) following the ridgeline until reaching the summit of a hill that is 310 m (1,020 ft) in elevation; proceeding southeasterly for approx. 0.08 km (0.05 mi) to another hill that is 310 m (1,020 ft) in elevation; proceeding south along the ridgeline for approx. 0.2 km (0.1 mi) to another hill that is 320 m (1,040 ft) in elevation; proceeding south-southeasterly along the ridgeline for approx. 0.5 km (0.3 mi) to a hill that is approx. 305 m (1,000 ft) in elevation; proceeding west-northwesterly for approx. 0.2 km (0.1 mi); proceeding generally west along the northern edge of the existing homesites along Navarra Drive, to Sucinto Drive.

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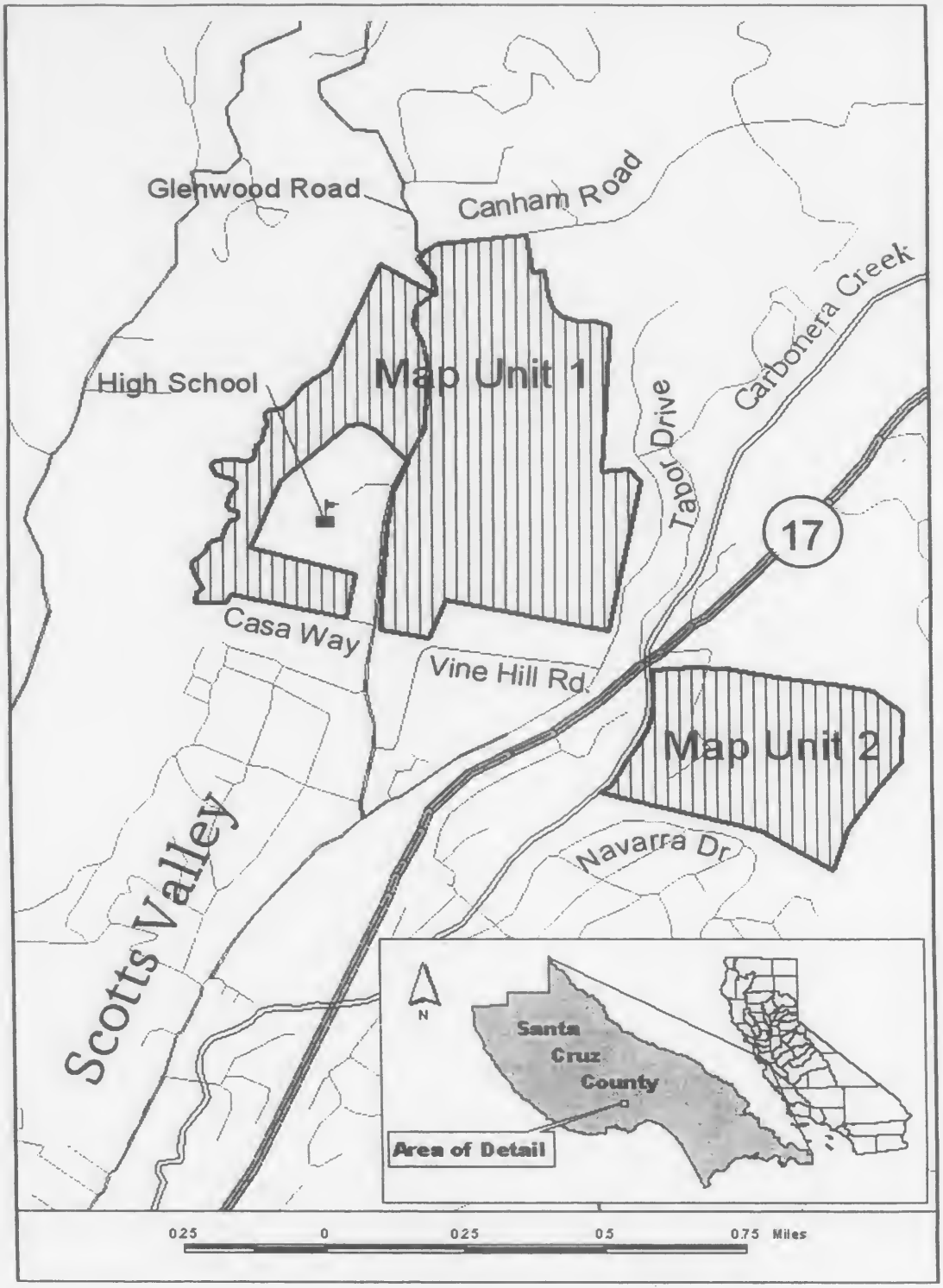

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(ii) *California plants—Constituent elements.*

(A) *Flowering plants.*

Family Polygonaceae: *Polygonum hickmanii* (Scotts Valley polygonum) and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower).

Units 1 and 2, identified in the legal descriptions in paragraph (a)(2)(i)(A) of this section, constitute critical habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii.* Within these areas, the primary constituent elements are the habitat components that provide: (1) Thin soils that have developed over outcrops of Santa Cruz mudstone and Purisima sandstone; (2) "Wildflower field" habitat that has developed on these thin-soiled sites; (3) A grassland plant community that supports the "wildflower field" habitat, which is stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for growth and reproduction of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii;* (4) Sites that allow each population to survive catastrophic events and recolonize adjacent suitable microhabitat sites; (5) Pollinator activity between existing colonies of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii;* (6) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas; (7) Seed dispersal mechanisms between existing colonies and other potentially suitable sites; and (8) Sufficient integrity of the watershed above habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* to maintain edaphic and hydrologic conditions that provide the seasonally wet substrate for growth and reproduction of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii.*

Dated: January 16, 2001.

Kenneth L. Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–1835 Filed 2–14–01; 8:45 am]

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Notices

Federal Register
Vol. 66, No. 32
Thursday, February 15, 2001

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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Program State Agency Options

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The information collection requirements described in this notice are limited to those which are described in § 273.9(d) and § 273.11(b) of the Noncitizen Eligibility and Certification Provisions final rule (published November 21, 2000 at 65 FR 70133) governing administration of the homeless shelter deduction, establishing and reviewing standard utility allowances, and establishing methodologies for offsetting the cost of producing self-employment income.

DATES: Written comments must be received on or before April 16, 2001.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Margaret Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be faxed to the attention of Ms. Batko at (703) 305–2486. The Internet address is: Margaret.Batko@FNS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 800.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ms. Batko at (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program State Agency Options.

OMB Number: 0584–0496.

Form Number: None.

Expiration Date: 1/31/01.

Type of Request: Extension of a currently approved information collection, formerly part of OMB 0584–0064. The information was moved to OMB 0584–0496 since the four collections are not related to household case files, as addressed in OMB 0584–0064.

Abstract: The collections covered under OMB Number 0584–0064 address information that will become part of a household's case file. The information collection and burden estimates associated with the following 4 collections, which were previously part of OMB Number 0584–0064, are assigned to OMB Number 0584–0496 because these collections are not related to household files.

1. *Homeless shelter estimate—7 CFR 273.9(d):* Section 5(e) of the Act, 7 U.S.C. 2014(e)(5), as amended by section 809 of PRWORA, allows State agencies to use a homeless shelter cost estimate as a separate deduction (instead of allowing only the amount that exceeds 50 percent of income under the excess shelter cost deduction). We estimate that 20 State agencies will choose this option and that these States will spend 1 hour updating the estimate for an annual burden of 20 hours. This represents no change from what we anticipated in the previous information collection burden calculations.

2. *Establishing and reviewing standard utility allowances—7 CFR 273.9(d):* State agencies may establish standard utility allowances to be used in lieu of actual utility costs in determining a deduction from household income for shelter expenses. Currently 52 State agencies have a standard that includes heating or cooling costs and 29 have a standard for utility costs other than heating or cooling. In addition, 43 State agencies have a telephone allowance standard. We also estimate that State agencies will continue to review the standards yearly, although they will no longer be required to do so, to determine if increases are needed due to the cost of living. We estimate a minimum of 2.5 hours annually to make this review and adjustment (2.5 hours × 52 State agencies = 130 hours). Total burden for this provision is estimated to be 130 hours per year. This is a decrease in total hours from the previous burden estimate. In the previous information collection burden assessment, we anticipated 10 State agencies would develop one or more additional standards each year. Currently, we believe the States that would incorporate a new standard, such as the telephone allowance, have already done so. Therefore, we do not anticipate additional standards which would result in additional burden hours.

3. *Mandatory utility standards—7 CFR 273.9(d):* Section 809 of PRWORA amended Section 5(e)(7)(c) of the Act (7 U.S.C. 2014(e)(7)(c)) to allow State agencies to mandate use of standard utility allowances when the excess shelter cost deduction is computed instead of allowing households to claim actual utility costs provided the standards will not increase program costs. To date, there are 11 State agencies which have selected to mandate the use of standard utility allowances. We do not anticipate additional burden on the State to calculate the standard utility allowance since each of these eleven State agencies is already calculating the standard utility allowance. Therefore, the total annual burden associated with mandatory utility standards is zero.

4. *Establishing methodology for offsetting cost of producing self-employment income—7 CFR 273.10.* In accordance with Section 5(d)(9) of the Act, 7 U.S.C. 2014(d)(9), the gross amount of self-employment income is reduced by the cost of producing such income. Section 5(m) of the Act, 7 U.S.C. 2014(m), as amended by section 812 of PRWORA, allows State agencies to use a reasonable estimate of self-employment costs rather than actual costs to compute net income from self-employment provided the method will not increase program costs. Requests to use such estimates must be submitted to FNS and must include a description of the proposed method; the number, type and percent of households affected; and documentation indicating that the procedure would not increase Program costs. We estimate that 10 State agencies will submit requests of this type each year for the next three years. It is estimated that these States will incur a one-time burden of at least 10 working hours gathering and analyzing data, developing the methodology, determining the cost implication, and submitting a request to FNS for a total burden of 100 hours annually. State agencies are not required to periodically review their approved methodologies. We do not anticipate that State agencies will voluntarily review their methodologies for change on a regular basis, thus burden is not being assessed for this purpose at this time.

Affected Public: State and local governments.

Estimated Number of Respondents: 53.

Estimated Number of Responses: 93.

Estimated Annual Burden on Respondents: 250.

Dated: February 8, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01–3820 Filed 2–14–01; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 1999–2000 administrative review of the antidumping duty order (A–201–822) on stainless steel sheet and strip in coils from Mexico. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period January 4. 1999 through June 30, 2000.

EFFECTIVE DATE: February 15, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete these reviews within the normal statutory time limit, the Department is extending the time limits for completion of the preliminary results until July 31, 2001 in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended. See Memorandum from Richard O. Weible to Joseph A. Spetrini, on file in Room B–099 of the main Commerce building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A) (2000)).

Dated: February 8, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01–3875 Filed 2–14–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 01–005. *Applicant:* Pennsylvania State University, Physics Department, 104 Davey Laboratory, University Park, PA 16802–6300. *Instrument:* Dilution Refrigerator and Superconducting Magnet System, Models 126–250 TOF and 6T–76–H3. *Manufacturer:* Leiden Cryogenics B.V., The Netherlands. *Intended Use:* The instrument is intended to be used to carry out electrical, magnetic and thermodynamic measurements at the lowest possible temperature and under a magnetic field up to 6 Tesla, of metallic systems infiltrated into ordered porous media. It is possible that these studies will also bring forth new application and further reduce the sizes of electronic devices in the future. Application accepted by Commissioner of Customs: January 30, 2001.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–3876 Filed 2–14–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010501A]

Marine Mammals; File No. 545-1562-00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Olga von Ziegesar, North Gulf Oceanic Society, P.O. Box 15191, Homer, Alaska 99603, has been issued a permit to take humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Alaska Region, NMFS, 709 West 9th Street, 4th

Floor, Juneau, Alaska 99801, (907/586-7221).

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Trevor Spradlin, 301/713-2289.

SUPPLEMENTARY INFORMATION: On February 9, 2000, notice was published in the **Federal Register** (65 FR 6360) that a request for a scientific research permit to take humpback whales had been submitted by the above-named Olga von Ziegesar, North Gulf Oceanic Society. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 9, 2001.

Eugene T. Nitta,

Acting Chief, Permits Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–3868 Filed 2–14–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121300A]

National Plan of Action for the Conservation and Management of Sharks

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

ACTION: Notice of availability of final plan; response to public comments.

SUMMARY: NMFS announces the availability of the final National Plan of Action (NPOA) developed pursuant to the endorsement of the International Plan of Action (IPOA) for the Conservation and Management of Sharks by the United Nations' Food and Agriculture Organization Committee on Fisheries (COFI) Ministerial Meeting in February 1999. NMFS prepared this final plan based on consultation with scientific and technical experts, and certain Federal and state agencies, and comments from members of the public. Response to public comments on the draft NPOA is provided.

ADDRESSES: Written requests for copies of the final NPOA should be sent to Margo Schulze-Haugen, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to 301-713-1917.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz, (301) 713-2347; fax (301) 713-1917.

SUPPLEMENTARY INFORMATION: Noting the increased concern about the expanding catches of sharks and their potential negative impacts on shark populations, the IPOA calls on member nations to voluntarily develop national plans to ensure the conservation and management of sharks for their long-term sustainable use by applying the precautionary approach. Member nations are encouraged to develop and implement an NPOA if their vessels conduct directed fisheries for sharks or if their vessels regularly catch sharks incidentally in fisheries for other species. Specifically, the IPOA calls on member nations to ensure that shark catches from directed and incidental fisheries are sustainable; assess threats to shark populations; protect critical habitats; provide special attention to vulnerable or threatened shark stocks; minimize unutilized incidental catches of sharks; encourage full use of dead sharks; improve species-specific catch and landings data and monitoring of shark catches; and consult with stakeholders in research, management, and educational initiatives within and between member nations. The United States committed to developing this national plan, and reporting on its implementation to COFI, no later than the 25th COFI session in February 2001.

A proposed schedule, outline, background, and rationale were published in the **Federal Register** on September 30, 1999 (64 FR 52772). A revised schedule was published in the **Federal Register** on March 27, 2000 (65 FR 16186). A notice of availability of the draft NPOA was published in the **Federal Register** on August 4, 2000 (65 FR 47968); the comment period ended September 30, 2000.

Comments and Responses

Comment 1: The NPOA is not a plan of action at all; it fails to commit to a strategy for action with clearly articulated short and long-term goals, priorities, time frames, responsible management entities, and funding.

Response: The NPOA was developed by NMFS to fulfill the national responsibility of the United States. NMFS' goal in the NPOA is to establish a process where the various entities in the United States work cooperatively to fulfill the objectives of the IPOA. The authority under which NMFS operates is the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which calls for the conservation and management of living marine resources, including sharks, and establishes requirements and deadlines for rebuilding plans for overfished species. The Magnuson-Stevens Act does not give NMFS the authority to "require" Regional Fishery Management Councils (Councils) to take a specific action for those species of sharks that are not under direct agency management. While it is true that the agency may prepare a new fishery management plan (FMP) or amend an existing FMP if the appropriate Council fails to develop, after a reasonable period of time, necessary management measures, it is preferable that the appropriate Council act first.

Additionally, NMFS has no authority to review or direct Interstate Fisheries Commissions (Commissions) or coastal States to take action(s) regarding shark conservation and management. Thus, NMFS will work cooperatively with Councils, Commissions, and States and encourage them to take action to ensure the conservation and management of sharks and their long-term sustainable use.

Nevertheless, the final NPOA for sharks does provide policy guidance to Councils, Commissions, and States to conduct an initial assessment within 2 years of completion of this NPOA (if such assessment is not already done) to determine if the fisheries under their jurisdiction are sustainable so that NMFS may incorporate that information into the biennial report to COFI in 2003. If shark conservation and management measures are found to be necessary, the final NPOA provides further policy guidance to responsible management entities to develop fishery-specific measures within 2 years, with reporting to NMFS by September 2004 so that that information may be incorporated into the biennial report to COFI in 2005. For any fisheries that are under the authority of the Magnuson-Stevens Act

and that are identified as overfished, the development of rebuilding programs must be consistent with section 304(f) of the Magnuson-Stevens Act. NMFS will work cooperatively with Councils, Commissions, and states in these determinations and development of management measures.

NMFS believes that the final NPOA demonstrates strong U.S. leadership on this important international shark conservation issue. The United States has already several FMPs that regulate directed and incidental catches of sharks as well as bycatch of sharks, and other FMPs under consideration or development. Additionally, the United States is likely to be one of the first COFI members to complete an NPOA for sharks, will urge other members to develop and implement NPOAs, as appropriate, and will pursue shark conservation and management in other international fisheries management fora.

NMFS acknowledges that assessing shark conservation and management needs and effectiveness is costly, and that the final NPOA includes ambitious objectives and goals. Additional funding needs for implementing the final NPOA need to be addressed by the individual management entities. In the past, NMFS did not have the resources to monitor all sharks caught in all U.S. fisheries and effective implementation of the final NPOA may require additional funding. NMFS will use the final NPOA as guidance in its strategic planning and budget processes.

Comment 2: The NPOA fails to include a bycatch reduction strategy with goals and timeframes.

Response: In addition to the NPOA's policy guidance on actions and time frames outlined above, the United States participates in international fishery agreements to reduce or minimize bycatch, including the IPOA and the United Nations Food and Agriculture Organization Code of Conduct for Responsible Fisheries.

NMFS believes that directed, incidental or bycatch shark fisheries constitute unique situations that require development of fishery-specific shark conservation and management measures. It is not necessary to state explicit conservation and management standards for individual fisheries or for the nation as a whole as these are identified in the IPOA, NPOA, and Magnuson-Stevens Act.

Comment 3: The NPOA should call for adoption of the precautionary approach and development of precautionary FMPs for all elasmobranch fisheries, regardless of overfishing.

Response: NMFS agrees that the precautionary approach should be adopted in the conservation and management measures and development of FMPs. NMFS believes that the National Standards Guidelines for the Magnuson-Stevens Act and this NPOA for sharks include this policy guidance. However, NMFS believes that each fishery represents unique situations that should be addressed on a fishery-specific basis and that development of precautionary FMPs should be prepared by the responsible management entity.

Comment 4: NMFS should identify overarching outreach priorities and develop an identification guide for the Atlantic and Pacific regions.

Response: NMFS agrees that public outreach on the identification of sharks, as well as the need for shark conservation and management, are high priorities. Towards that end, NMFS is developing an identification guide for sharks of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea, with anticipated completion in early 2001.

Comment 5: All management entities should be required to produce reports on all shark catches in all fisheries every 2 years.

Response: NMFS agrees that regular assessment and reporting of shark catches in all fisheries is appropriate and would enhance biennial reporting to COFI on implementation of the NPOA. Accordingly, the final NPOA includes policy guidance on time frames for reporting, and NMFS will work cooperatively with Councils, Commissions, and States on generating the relevant reports.

Comment 6: The NPOA should include a comprehensive overview of health and status of all elasmobranch populations, research and data needs, and current management.

Response: NMFS believes that the final NPOA includes a brief, yet complete, review of Atlantic and Pacific shark stock status, fishery descriptions, research and management needs, and current management. NMFS refers interested constituents to the NMFS annual Report to Congress on Status of Fisheries of the United States (see *http://www.nmfs.noaa.gov/sfa/reports.html*) and the relevant FMPs for more comprehensive information on specific species and/or fisheries.

Comment 7: The NPOA should include a specific section on threatened species, including Endangered Species Act candidates and American Fisheries Society stocks at risk.

Response: NMFS agrees and has modified the final NPOA.

Comment 8: The NPOA should elaborate more on progress in international and regional organizations such as the Asian Pacific Economic Cooperation Forum, the Northwest Atlantic Fisheries Organization, and the Convention on the International Trade in Endangered Species of Flora and Fauna.

Response: NMFS agrees and has modified the format of the final NPOA.

Changes From Draft NPOA

NMFS made a number of changes in the final NPOA pursuant to public comments that were submitted on the draft NPOA. The final NPOA provides policy guidance and time frames for NMFS, Council, Commission, and state action to conduct initial assessments of shark catches and fisheries within two years of completion of the NPOA and to develop fishery-specific management measures, as appropriate, within 4 years. The sections describing international science and management initiatives and guidance on adopting the precautionary approach and protecting vulnerable species are expanded.

Electronic Access

The final version of the NPOA is now available on the NMFS website (*http://www.nmfs.noaa.gov*). Hard copies of the document are available upon request (see **ADDRESSES**).

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: February 8, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–3867 Filed 2–14–01; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting; Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: February 27, 2001, 10 a.m.–12:30 p.m.

PLACE: Corporation for National and Community Service, 1201 New York Avenue, NW, 8th Floor, Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board of Directors is scheduled to consider and act upon the Corporation's annual plan. The Committees of the Board of Directors will report on their activities, including financial management. In addition, the Board is scheduled to engage in dialogue with outside officials

concerning: the President's Initiatives; the Office of Faith-Based and Community Initiatives; Strategic Alliances with America's Promise, the Points of Light Foundation, and Communities in Schools; Leadership Training; the recommendations of the Association of State Service Commissions; and senior service.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person.

CONTACT PERSON FOR FURTHER INFORMATION: Rhonda Taylor, Deputy Director of Public Liaison, Corporation for National Service, 8th Floor, Room 8619, 1201 New York Avenue NW, Washington, D.C. 20525. Phone (202) 606–5000 ext. 282. Fax (202) 565–2794. TDD: (202) 565–2799.

Dated: February 12, 2001.

Frank R. Trinity,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 01–3978 Filed 2–13–01; 1:22 pm]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Forms, and OMB Number: Dependency Statements—Parent, Child Born Out of Wedlock, Incapacitated Child Over Age 21, Full Time Student 21–22 Years of Age, and Ward of a Court; DD Forms 137–3, 137–4, 137–5, 137–6, 137–7; OMB Number 0730–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 19,440.

Responses per Respondent: 1.

Annual Responses: 19,440.

Average Burden per Response: 1.25 hours.

Annual Burden Hours: 24,300.

Needs and Uses: The information collection requirement is necessary to certify dependency or obtain information to determine entitlement to basic allowance for housing (BAH) with dependent rate, travel allowance, or Uniformed Services Identification and Privilege Card. Information regarding a parent, a child born out-of-wedlock, an incapacitated child over age 21, a student 21–22, or a ward of a court is provided by the military member or by another individual who may be a member of the public. Pursuant to 37 U.S.C. 401, 403, 406, and 10 U.S.C. 1072 and 1076, the member must provide at least one-half of the claimed child's monthly expenses. DoDFMR 7000.14, Vol. 7A, defines dependency and directs that dependency be proven. Dependency claim examiners use the information from these forms to determine the degree of benefits. The requirement to provide the information decreases the possibility of monetary allowances being approved on behalf of ineligible dependents.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–3790 Filed 2–14–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Forms, and OMB Number: Department of Defense Security Agreement, Appendage, and Certificate Pertaining to Foreign Interests; DD Forms 441, 441–1, and SF 328; OMB Number 0704–0194.

Type of Request: Reinstatement.

Number of Respondents: 3,200.

Responses per Respondent: 2.

Annual Responses: 6,400.

Average Burden per Response: 1.5 hours (average).

Annual Burden Hours: 9,493.

Needs and Uses: Executive Order 12829, "National Industrial Security Program (NISP)," stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring contractors, licensees, and grantees, who require or will require access to or will store classified information; for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The specific requirements necessary to protect classified information released to private industry are set forth in DoD 5200.22M, "National Industrial Security Program Operating Manual (NISPOM)." DD Form 441 is the initial contract between industry and the government. The DD Form 441–1 is used to extend the agreements to branch offices of the contractor. The SF Form 328 must be submitted to provide certification regarding elements of Foreign Ownership, Control or Influence (FOCI).

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 8, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–3834 Filed 2–14–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Panel To Review the V–22 Program

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Panel will conduct two open meetings. On March 9, 2001 the Panel will receive information from the general public regarding the V–22 aircraft. On April 13, 2001 the Panel will conduct deliberations. The meetings will begin at 1 p.m. and end no later than 5 p.m.

DATES: March 9, 2001 and April 13, 2001.

ADDRESSES: Crowne Plaza Hotel, 1489 Jefferson Davis Highway, Arlington Ballroom, Mezzanine Level, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Gary J. Gray, the Executive Secretary, 1235 Jefferson Davis Highway, Suite 940, Arlington, VA 22202–3283, phone (703) 602–1515, fax (703) 602–1532. Requests to present oral comments regarding of the V–22 aircraft must include a brief summary of the material to be presented and be received by letter or email (*V22panel@OSD.mil*) no later than noon Thursday, March 1, 2001. Written comments must be received no later than noon, March 5, 2001 to ensure their availability to panel members prior to the hearing. Request that a copy of written comments be emailed to the Panel or provided on a floppy disk in Microsoft Word format. Copies of the draft meeting agenda can be obtained by contacting Mrs. Carolyn Duke or Mr. Doug Pang by phone (703) 602–1515 or by fax (703) 602–1532.

SUPPLEMENTARY INFORMATION: Seating spaces will be reserved only for scheduled speakers. The remaining seats will be available on a first-come, first-served basis beginning at 12:30 p.m. No teleconference lines will be available. In general, each individual or group making an oral presentation will be limited to a total time of 10 minutes. Written comments will be provided to panel members if they are received in the Office of the Review Panel no later than noon March 5, 2001. Written comments received after that date will be sent to panel members after the adjournment of the March 9th meeting and will also be included in the official records.

Dated: February 9, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–3789 Filed 2–14–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of Dec. 31, 2000)

The Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of Dec 31, 2000, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

COST COMPARISONS

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
ANDERSEN	GUAM	COMMUNICATIONS OPERATIONS AND MAINTENANCE.	24	15–Sep–00	30–May–01
ANDREWS	MD	AIRCRAFT MAINTENANCE AND SUPPLY	815	25–Jul–97	26–May–99
ANDREWS	MD	COMMUNICATION FUNCTIONS	181	04–Oct–99	26–Sep–01
ANDREWS	MD	HEATING SYSTEMS	22	17–Dec–98	18–Feb–00
AVON PARK	FL	RANGE OPERATIONS	38	22–Dec–99	15–Sep–01
BEALE	CA	BASE OPERATING SUPPORT	372	08–Sep–99	07–Mar–01
BOLLING	DC	SUPPLY AND TRANSPORTATION	138	01–Dec–98	12–Sep–00
CARSWELL	TX	BASE OPERATING SUPPORT	69	03–Feb–00	05–Jun–01
DAVIS MONTHAN	AZ	BASE SUPPLY	35	04–Jan–00	29–Jan–01
EDWARDS	CA	BASE OPERATING SUPPORT	553	09–Dec–98	04–May–00
EGLIN	FL	ADMINISTRATIVE SUPPORT	49	22–Sep–99	26–Sep–00
EGLIN	FL	AIRCRAFT MAINTENANCE AND SUPPLY	319	15–Sep–00	01–Jun–01
EIELSON	AK	COMMUNICATIONS OPERATIONS AND MAINTENANCE.	63	29–Oct–99	05–Jan–01
ELMENDORF	AK	BASE SUPPLY	208	26–Mar–99	21–Apr–00
ELMENDORF	AK	COMMUNICATIONS OPERATIONS AND MAINTENANCE.	66	05–Jan–00	08–Nov–00
HANSCOM AFB	MA	CIVIL ENGINEERING	201	09–Dec–98	25–Feb–00
HANSCOM AFB	MA	EDUCATION/TRAINING AND PERSONNEL	17	25–Nov–98	20–Apr–00
HILL AFB	UT	BASE OPERATING SUPPORT	577	30–Sep–98	15–Mar–01
HOLLOMAN AFB	NM	TEST TRACK	125	18–Nov–99	08–Jan–01
HURLBURT COM FL	FL	ADMINISTRATIVE SUPPORT	33	28–Apr–99	09–Mar–01
HURLBURT COM FL	FL	COMMUNICATION FUNCTIONS	50	31–Jul–98	15–Apr–01
HURLBURT COM FL	FL	ENVIRONMENTAL	7	22–Jun–00	15–Mar–01
HURLBURT COM FL	FL	HOUSING MANAGEMENT	12	08–Jun–00	01–May–01
KEESLER	MS	MULTIPLE SUPPORT FUNCTIONS	741	21–Sep–99	19–Dec–00
LACKLAND	TX	MULTIPLE SUPPORT FUNCTIONS	1439	26–Jan–99	09–Aug–99
MAXWELL	AL	EDUCATION SERVICES	35	24–Jul–00	29–Sep–00
MAXWELL	AL	MULTIPLE SUPPORT FUNCTIONS	814	28–Apr–98	22–Mar–99
MCCHORD	WA	GROUNDS MAINTENANCE	10	14–Jun–99	22–Sep–00
MULTIPLE INSTLNS		COMMUNICATIONFUNCTIONS	208	03–Aug–99	01–Nov–00
LANGLEY	VA				
HILL AFB	UT				

COST COMPARISONS—Continued

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	141	11–Mar–99	14–Apr–00
GENERAL MITCHELL	WI				
WESTOVER	MA				
MINN–ST PAUL	MN				
YOUNGSTOWN	OH				
WILLOW GROVE	PA				
GRISSOM	IN				
PITTSBURG	PA				
MARCH	CA				
HOMESTEAD	FL				
CARSWELL	TX				
NEW ORLEANS	LA				
MULTIPLE INSTLNS		EDUCATION SERVICES	73	17–Aug–00	25–Jan–01
ANDERSEN	GUAM				
EIELSON	AK				
ELMENDORF	AK				
HICKAM	HI				
KADENA	JA				
KUNSAN	KR				
MISAWA	JA				
OSAN	KR				
YOKOTA	JA				
MULTIPLE INSTLNS		MULTIPLE SUPPORT FUNCTIONS	65	14–Jul–99	28–Jun–01
CROUGHTON	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		PERSONNEL SERVICES	223	16–Jun–00	15–Mar–01
BARKSDALE	LA				
CANNON	NM				
DAVIS MONTHAN	AZ				
DYESS	TX				
ELLSWORTH	SD				
HOLLOMAN	NM				
KEFLAVIK	ICELD				
LAJES	AZORE				
LANGLEY	VA				
MINOT	ND				
MOODY	GA				
MOUNTAIN HOME	ID				
NELLIS	NV				
SEYMOUR JOHNSON	NC				
SHAW	SC				
WHITEMAN	MO				
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE	15	07–Jul–99	29–May–00
LAKENHEATH	UK				
MILDENHALL	UK				
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE	24	07–Jul–99	13–Feb–01
RAMSTEIN	GERMY				
SPANGDAHLEM	GERMY				
NEW BOSTON	NH	BASE OPERATING SUPPORT	48	03–Dec–97	31–Jan–01
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	45	03–Feb–00	01–Mar–01
OFFUTT	NE	BASE OPERATING SUPPORT	1568	30–Sep–98	16–Feb–01
PATRICK	FL	SUPPLY AND TRANSPORTATION	43	14–May–98	18–Sep–00
PETERSON	CO	PERSONNEL SERVICES	90	05–Jan–00	10–Feb–01
RANDOLPH	TX	MULTIPLE SUPPORT FUNCTIONS	1224	14–Sep–00	10–Oct–01
ROBINS	GA	BASE SUPPLY	131	01–Apr–99	19–Dec–00
ROBINS	GA	EDUCATION SERVICES	67	07–Jan–99	17–Aug–00
ROBINS	GA	ENVIRONMENTAL	49	07–Jun–00	20–Apr–01
SCOTT	IL	PERSONNEL SERVICES	236	25–Jun–99	19–Feb–01
SEMBACH	GERMY	COMMUNICATION FUNCTIONS	48	18–Dec–98	28–Feb–01
SHEPPARD	TX	MULTIPLE SUPPORT FUNCTIONS	549	21–Sep–99	29–Jun–00
TRAVIS	CA	VEHICLE OPERATIONS AND MAINTENANCE	131	15–Jul–98	24–Aug–00
USAF ACADEMY	CO	CIVIL ENGINEERING	496	01–Dec–98	24–Mar–00
USAF ACADEMY	CO	COMMUNICATION FUNCTIONS	114	20–May–99	09–Jan–01
USAF ACADEMY	CO	SUPPLY AND TRANSPORTATION	117	08–May–98	09–May–00
VANDENBERG AFB	CA	MISSILE STORAGE & MAINTENANCE	66	25–Oct–00	27–Apr–01
WHITEMAN	MO	UTILITIES PLANT	11	18–Aug–99	01–Jun–00

DIRECT CONVERSIONS

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
BOLLING	DC	EDUCATION/TRAINING AND PERSONNEL	12	01–May–00	08–Jan–01
COLUMBUS	MS	SURVIVAL EQUIPMENT	29	18–Apr–00	15–Apr–01
F E WARREN	WY	BASE COMMUNICATIONS	105	30–Oct–97	19–Jul–00
GRAND FORKS	ND	MUNITIONS MAINTENANCE	5	17–May–99	08–Dec–00
HICKAM	HI	COMMUNICATIONS OPERATIONS AND MAINTENANCE.	48	07–Nov–00	30–Apr–01
HICKAM	HI	FURNISHINGS MANAGEMENT	11	27–Jun–00	15–Jan–02
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE	66	12–May–97	09–Nov–00
KIRTLAND	NM	GENERAL LIBRARY	6	12–Jan–99	05–Jan–01
KIRTLAND	NM	RECREATIONAL SUPPORT	9	12–Jan–99	05–Jan–01
LANGLEY	VA	AIRCRAFT FLEET SERVICES	11	29–Jun–99	25–Sep–00
LANGLEY	VA	COMMUNICATION FUNCTIONS	8	23–Mar–99	12–Jan–01
LANGLEY	VA	COMMUNICATIONS ADMINISTRATION AND INFORMATION FUNCTION.	13	31–Jan–00	28–Feb–01
LANGLEY	VA	DATA PROCESSING EQUIPMENT OPERATIONS	15	04–Nov–99	09–Feb–01
MALMSTROM	MT	BASE COMMUNICATIONS	85	06–Oct–97	15–Aug–00
MCGUIRE	NJ	FURNISHINGS MANAGEMENT	2	14–May–99	13–Oct–00
MCGUIRE	NJ	HEATING SYSTEMS	6	04–May–99	18–Oct–00
MINOT	ND	GROUNDS MAINTENANCE	9	18–May–99	07–Aug–00
MT HOME	ID	GROUNDS MAINTENANCE	6	20–Jul–99	20–Jul–00
MULTIPLE INSTLNS		ADMINISTRATIVE SUPPORT	67	08–Aug–00	25–Jan–01
ANDERSEN	GUAM				
EIELSON	AK				
ELMENDORF	AK				
HICKAM	HI				
KADENA	JA				
KUNSAN	KR				
MISAWA	JA				
OSAN	KR				
YOKOTA	JA				
MULTIPLE INSTLNS		ENVIRONMENTAL	49	27–Sep–00	TBD
BARKSDALE	LA				
CANNON	NM				
DAVIS–MONTHAN	AZ				
ELLSWORTH	SD				
HOLLOMAN	NM				
LANGLEY	VA				
MINOT	ND				
MOODY	GA				
MOUNTAIN HOME	ID				
NELLIS	NV				
SEYMOUR JOHNSON	NC				
WHITEMAN	MO				
OFFUTT	NE	COMMUNICATION FUNCTIONS	13	17–Nov–00	28–Feb–01
OFFUTT	NE	COMPUTER OPERATIONS	76	17–Feb–99	21–Jul–00
RANDOLPH	TX	COURSEWARE DEVELOPMENT	38	30–Sep–99	30–Jun–00
ROBINS	GA	AIRFIELD MANAGEMENT	10	06–Jun–00	24–May–01
ROBINS	GA	GENERAL LIBRARY	6	23–Nov–99	30–Apr–01
ROBINS	GA	PROTECTIVE COATING	8	18–Jan–00	15–May–01
SCHRIEVER	CO	FOOD SERVICES	18	02–99	15–Feb–01
SCOTT	IL	ADMINISTRATIVE SWITCHBOARD	85	05–Aug–99	05–Feb–01
SCOTT	IL	FURNISHINGS MANAGEMENT	3	18–Sep–00	TBD
SHAW	SC	COMMUNICATION FUNCTIONS	3	18–May–99	02–Apr–01
SHAW	SC	ENVIRONMENTAL	2	22–Mar–00	10–Aug–00
SHAW	SC	RAILROAD TRANSPORTATION SERVICES	2	02–Oct–00	22–Jan–01
TINKER	OK	SOFTWARE PROGRAMMING	67	08–May–00	01–Jun–01

Janet A. Long,
Air Force Federal Register Liaison Officer.
[FR Doc.01–3860 Filed 2–14–01; 8:45am]
BILLING CODE 5001–05–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–81–000]

Chandeleur Gas Pipe Line Company; Notice of Application

February 9, 2001.

Take notice that on February 5, 2001, Chandeleur Pipe Line Company (Chandeleur), P.O. Box 4879, Houston, Texas 77210–4879, filed in Docket No. CP01–81–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in total system capacity, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Chandeleur proposes to increase the maximum capacity of its system from 280,000 Mcf of natural gas per day to 321,000 Mcf per day. It is stated that the proposed increase is needed to more closely match current production profiles with delivery point capacities and to reflect a planned interconnection with Destin Pipeline Company, L.L.C. (Destin). It is asserted that the interconnection is being installed on the refinery grounds of Chandeleur's affiliate, Chevron Products Company, a division of Chevron USA Inc., in Pascagoula, Mississippi, by Chandeleur and Destin under their respective blanket certificates. It is further asserted that the increase in capacity can be accomplished without an increase in operating pressure. It is explained that Chandeleur has conducted an open season for the new capacity and is in the process of completing precedent agreements with shippers for the new capacity.

Any questions regarding the application should be directed to Ruth A. Bosek, Bosek Law Firm, at (202) 326–5256, 1090 Vermont Ave., NW., Suite 800, Washington, DC 20005.

Any person desiring to be heard or to make protest with reference to said application should on or before February 20, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 175.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://ferc.fed.us/efi/doorbell.htm.*

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Chandeleur to appear or be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 01–3808 Filed 2–14–01; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–80–000]

East Tennessee Natural Gas Company; Notice of Application

February 9, 2001.

Take notice that on February 2, 2001, East Tennessee Natural Gas Company (East Tennessee), Post Office Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP01–80–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct, own, and operate additional pipeline and compression facilities in Tennessee and Georgia and to extend its Line 3500 in Tennessee and Georgia to provide transportation to new customers in Georgia, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/htm* (call 202–208–2222 for assistance).

East Tennessee proposes to construct and operate approximately 27 miles of 20-inch pipeline as an extension of its Line 3500 in Hamilton County, TN, and Catoosa, Whitfield, and Murray Counties, GA (the Murray Lateral); to construct four 20-inch pipeline loops adjacent to the existing East Tennessee system in Bedford, Moore, Franklin, Marion, and Hamilton Counties, TN; and to hydrostatically test four pipeline sections of approximately 30 miles of 12-inch pipeline and to increase the maximum allowable operating pressures (MAOP) of six pipeline sections on the East Tennessee system in Marshall, Bedford, Moore, Franklin, Marion, Sequatchie, McMinn, and Grundy Counties, TN. East Tennessee also proposes to install an additional 10,950 horsepower (hp) at two existing compressor stations by increasing horsepower at Stations 3210 and 3214 and to install a 1590 hp compressor unit at the new Station 3216 in McMinn County, TN, by moving the existing compressor unit from Station 3210. In addition, East Tennessee would construct two gas meter stations and regulators: one in Whitfield County and one in Murray County, GA.

East Tennessee states that the proposed construction would allow it to provide 5,000 dekatherms per day (Dth/d) for Dalton Utilities (Dalton), and the City of Cartersville (Cartersville), GA, and it would provide increasing volumes up to 165,000 Dth/d of firm transportation service to Duke Energy Murray, LLC (DENA Murray), jointly referred to as the Murray customers. This transportation service will allow Dalton and Cartersville to meet the anticipated growth in their existing markets in the Georgia area. In addition, this firm transportation will deliver gas supply to the Murray electric generating plant (Murray Energy facility), a 1240-megawatt (MW) gas-fired power plant being developed by and to be owned by DENA Murray in Murray County, GA. East Tenn estimates the cost of the proposed facilities to be $69,390,000.

East Tenn proposes to provide service pursuant to firm transportation service agreements entered into pursuant to its Rate Schedule FT–A. However, service to its Murray customers would be provided at an incremental rate.

East Tenn states that the Murray Energy Facility has commenced construction and has made significant capacity commitments for long lead-time items, including a contractual commitment with General Electric for four electric turbines. Therefore, East Tenn requests that a certificate be issued by August 15, 2001.

Any questions regarding the application should be directed to Steven E. Tillman, Director, Regulatory Affairs, East Tennessee Natural Gas Company, P.O. Box 1642, Houston, Texas, 77251, (713) 627–5044.

Any person desiring to be heard or to make any protest with reference to said application should on or before February March 2, 2001, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://ferc.fed.us/efl/doorbell.htm*.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by ever one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for East Tennessee to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–3807 Filed 2–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–30–001]

OkTex Pipeline Company; Notice of Compliance Filing

February 9, 2001.

Take notice that on January 15, 2001, OkTex Pipeline Company (OkTex) filed tariff sheets to comply with the Commission's Order Approving Abandonments and Issuing Certificate issued on December 1, 2000 in Docket NO. CP01–30–000.

OkTex states that the tariff sheets reflect the adoption of the rates related to the facilities abandoned by ONEOK Midstream Pipeline, Inc. (Midstream) to service over the facilities by OkTex as authorized in Docket No. CP01–30–000. Pursuant to the above-mentioned order, OkTex will assure that there is no rate impact on the existing interruptible customers by including all discount arrangements previously negotiated by Midstream and its shippers.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–3806 Filed 2–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT01–10–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

February 9, 2001.

Take notice that on February 5, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing a Refund Report for interruptible transportation revenue credits on its Coyote Springs Extension.

GTN states that it refunded $844.19 to Portland General Electric Company, the sole eligible firm shipper on the Coyote Springs Extension, by credit billing adjustment on January 5, 2001.

GTN further states that a copy of this filing has been served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 15, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–3809 Filed 2–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT01–11–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

February 9, 2001.

Take notice that on February 5, 2000, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing a Refund Report.

GTN states that this filing reports GTN's refund of revenues collected under its Competitive Equalization Surcharge mechanism, in compliance with Section 35 of GTN's FERC Gas Tariff.

GTN further states that a copy of this filing has been served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 15, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.20001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson,

Acting Secretary.

[FR Doc. 01–3810 Filed 2–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–109–000, *et al.*]

Midwest Electric Power, Inc., *et al.*; Electric Rate and Corporate Regulation Filings

February 8, 2001.

Take notice that the following filings have been made with the Commission:

1. Midwest Electric Power, Inc.

[Docket No. EG01–109–000]

Take notice that on February 2, 2001, Midwest Electric Power, Inc. (MEP), 2100 Portland Road, P.O. Box 355, Joppa, IL 62953 filed with the Federal Energy Regulatory Commission an application for determination of continued exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

MEP is a wholly-owned subsidiary of Electric Energy, Inc. (EEInc.), which owns and operates a coal-fired generating plant in Joppa, IL. MEP owns and/or operates combustion turbines with a total generating capacity of approximately 260 MW at the site of the existing EEInc. generating facilities. All of the capacity and energy available from those units is being sold at wholesale.

Comment date: March 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Freestone Power Generation, L.P.

[Docket No. EG01–110–000]

Take notice that on February 2, 2001, Freestone Power Generation, L.P. (Freestone) filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Freestone, a Texas limited partnership, proposed to own and operate an electric generating facility and sell the output at wholesale to electric utilities, an affiliated power marketer and other purchasers. The facility is a natural gas-fired, combined cycle generating facility, which is under construction near Fairfield, Texas.

Comment date: March 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. AES Wolf Hollow, L.P.

[Docket No. EG01–111–000]

Take notice that on February 2, 2001, AES Wolf Hollow, L.P. (Applicant), 1301 Capital of Texas Highway South, Suite A–302, Austin, Texas 78746, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant will own an approximately 730 MW electric generating facility located in Hood County, Texas. The Facility's electricity will be sold exclusively at wholesale.

Comment date: March 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Dominion Nuclear Connecticut, Inc.

[Docket No. EG01–112–000]

Take notice that on February 2, 2001, Dominion Nuclear Connecticut, Inc. (DNC) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. DNC is an indirect wholly-owned subsidiary of Dominion Energy, Inc., which is, in turn, a wholly-owned subsidiary of Dominion Resources, Inc. (Dominion), a Virginia corporation. Dominion is a registered holding company under the Public Utility Holding Company Act of 1935 (1935 Act).

DNC will acquire, own and operate the Millstone Nuclear Power Station

located in Waterford, Connecticut (the Facility). The Facility consists of Millstone Unit 1, a 660-MW reactor that was retired from service in July 1998 and is being decommissioned; Millstone Unit 2, an operating 875-MW reactor; and 93.47% of the ownership interests in Millstone Unit 3, an operating 1,154-MW reactor.

Comment date: March 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Dominion Nuclear Holdings, Inc.

[Docket No. EG01–113–000]

Take notice that on February 2, 2001, Dominion Nuclear Holdings, Inc. (DNH) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. DNH is an indirect wholly-owned subsidiary of Dominion Energy, Inc., which is, in turn, a wholly-owned subsidiary of Dominion Resources, Inc. (Dominion), a Virginia corporation. Dominion is a registered holding company under the Public Utility Holding Company Act of 1935 (1935 Act).

DNH owns 5% of the voting securities of Dominion Nuclear Marketing III, L.L.C. (DMN III). An affiliate of DNM III, Dominion Nuclear Connecticut, Inc. (DNC), will acquire, own and operate the Millstone Nuclear Power Station located in Waterford, Connecticut (the Facility). The Facility consists of Millstone Unit 1, a 660-MW reactor that was retired from service in July 1998 and is being decommissioned; Millstone Unit 2, an operating 875-MW reactor; and 93.47% of the ownership interests in Millstone Unit 3, an operating 1,154-MW reactor. DNM III will purchase from DNC, and resell at wholesale, a portion of the power generated by the Facility.

Comment date: March 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Dominion Nuclear, Inc.

[Docket No. EG01–114–000]

Take notice that on February 2, 2001, Dominion Nuclear, Inc. (DNI) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

DNI is a wholly-owned subsidiary of Dominion Energy, Inc., which is, in turn, a wholly-owned subsidiary of Dominion Resources, Inc. (Dominion), a Virginia corporation. Dominion is a registered holding company under the Public Utility Holding Company Act of 1935 (1935 Act).

Through its ownership of Dominion Nuclear Marketing I, Inc. (DNM I), Dominion Nuclear Marketing II, Inc. (DNM II), Dominion Marketing III, L.L.C. (DNM III) and Dominion Nuclear Holdings, Inc. (DNH), DNI indirectly owns Dominion Nuclear Connecticut, Inc. (DNC). DNC will acquire, own and operate the Millstone Nuclear Power Station located in Waterford, Connecticut (the Facility). The Facility consists of Millstone Unit 1, a 660-MW reactor that was retired from service in July 1998 and is being decommissioned; Millstone Unit 2, an operating 875-MW reactor; and 93.47% of the ownership interests in Millstone Unit 3, an operating 1,154-MW reactor. Each of DNM I, DNM II and DNM III will purchase from DNC, and resell at wholesale, a portion of the power generated from the Facility.

Comment date: March 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Dominion Nuclear Marketing I, Inc.

[Docket No. EG01–115–000]

Take notice that on February 2, 2001, Dominion Nuclear Marketing I, Inc. (DNM I) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

DNM I is an indirect wholly-owned subsidiary of Dominion Energy, Inc., which is, in turn, a wholly-owned subsidiary of Dominion Resources, Inc. (Dominion), a Virginia corporation. Dominion is a registered holding company under the Public Utility Holding Company Act of 1935 (1935 Act).

DNM I owns 25% of its affiliate, Dominion Nuclear Connecticut, Inc. (DNC), which will acquire, own and operate the Millstone Nuclear Power Station located in Waterford, Connecticut (the Facility). The Facility consists of Millstone Unit 1, a 660-MW reactor that was retired from service in July 1998 and is being decommissioned; Millstone Unit 2, an operating 875-MW reactor; and 93.47% of the ownership interests in Millstone Unit 3, an operating 1,154-MW reactor. DNM I will purchase from DNC, and resell at wholesale, a portion of the power generated by the Facility.

Comment date: March 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Dominion Nuclear Marketing II, Inc.

[Docket No. EG01–116–000]

Take notice that on February 2, 2001, Dominion Nuclear Marketing II, Inc. (DNM II) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

DNM II is an indirect wholly-owned subsidiary of Dominion Energy, Inc., which is, in turn, a wholly-owned subsidiary of Dominion Resources, Inc. (Dominion), a Virginia corporation. Dominion is a registered holding company under the Public Utility Holding Company Act of 1935 (1935 Act).

DNM II owns 70% of its affiliate, Dominion Nuclear Connecticut, Inc. (DNC), which will acquire, own and operate the Millstone Nuclear Power Station located in Waterford, Connecticut (the Facility). The Facility consists of Millstone Unit 1, a 660–MW reactor that was retired from service in July 1998 and is being decommissioned; Millstone Unit 2, an operating 875–MW reactor; and 93.47% of the ownership interests in Millstone Unit 3, an operating 1,154–MW reactor. DNM II will purchase from DNC, and resell at wholesale, a portion of the power generated by the Facility.

Comment date: March 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Dominion Nuclear Marketing III, L.L.C.

[Docket No. EG01–117–000]

Take notice that on February 2, 2001, Dominion Nuclear Marketing III, L.L.C. (DNM III) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

DNM III is an indirect wholly-owned subsidiary of Dominion Energy, Inc., which is, in turn, a wholly-owned subsidiary of Dominion Resources, Inc. (Dominion), a Virginia corporation. Dominion is a registered holding company under the Public Utility Holding Company Act of 1935 (1935 Act).

DNM III owns 5% of the voting securities of its affiliate, Dominion

Nuclear Connecticut, Inc. (DNC), which will acquire, own and operate the Millstone Nuclear Power Station located in Waterford, Connecticut (the Facility). The Facility consists of Millstone Unit 1, a 660-MW reactor that was retired from service in July 1998 and is being decommissioned; Millstone Unit 2, an operating 875-MW reactor; and 93.47% of the ownership interests in Millstone Unit 3, an operating 1,154-MW reactor. DNM III will purchase from DNC, and resell at wholesale, a portion of the power generated by the Facility.

Comment date: March 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. Rumford Power Associates L.P., Tiverton Power Associates L.P.

[Docket No. EL01–31–000]

Take notice that on January 29, 2001, Rumford Power Associates L.P. and Tiverton Power Associates L.P. (Applicants) filed with the Federal Energy Regulatory Commission a petition for declaratory order disclaiming jurisdiction.

The Applicants are seeking a disclaimer of jurisdiction in connection with a sale leaseback financing involving the Rumford and Tiverton Facilities, two 265-MW natural gas-fired electric generation facilities located in Rumford, Maine, and Tiverton, Rhode Island, respectively.

Comment date: February 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER01–173–000]

Take notice that on February 5, 2001, Arizona Public Service Company tendered for filing a letter in compliance with the Commission's November 30, 2000, Order.

A copy of this filing has been served on the all parties of the official service list.

Comment date: February 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Audrain, LLC

[Docket No. ER01–884–000]

Take notice that on February 5, 2001, Duke Energy Audrain, LLC (Duke Audrain), tendered for filing request for withdrawal of its January 3, 2001 application for an order accepting rates for filing, determining rates to be just and reasonable and granting certain waivers and pre-approvals.

Comment date: February 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. American Transmission Systems, Inc.

[Docket No. ER01–1170–000]

Take notice that on February 5, 2001, American Transmission Systems, Inc. (ATSI), tendered for filing a Generator Interconnection and Operating Agreement to provide a connection of electric generating facilities owned and operated by Troy Energy, L.L.C., to the ATSI Transmission System and for coordination of the operation and maintenance of those facilities with ATSI.

The proposed effective date for the Generator Interconnection and Operating Agreement is January 6, 2001.

Copies of this filing have been served on the Ohio and Pennsylvania utility commissions and the generator.

Comment date: February 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER01–1171–000]

Take notice that on February 5, 2001, Cinergy Services, Inc. (Cinergy), tendered for filing a Notice of Assignment from Public Service Electric and Gas Company to PSEG Energy Resources & Trade LLC.

Cinergy respectfully requests waiver of notice to permit the Notice of Assignment to be made effective as of the date of the Notice of Assignment.

A copy of the filing was served upon PSEG Energy Resources & Trade LLC.

Comment date: February 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Cabrillo Power I LLC, Cabrillo Power II LLC

[Docket No. ER01–1173–000]

Take notice that on February 5, 2001, Cabrillo Power I LLC and Cabrillo Power II LLC (Cabrillo I & II), tendered for filing their annual update filing governing Reliability Must Run (RMR) services provided by their power plants to the California Independent System Operator Corporation (ISO). Cabrillo I & II's filing includes an agreed upon one-year extension of the RMR Agreements, and provides updates to various Schedules appended to the RMR Agreements related to Contract Service Limits, Fixed Option Payment Factors, Target Available Hours, and pre-paid Start-up Charges under the RMR Service Agreements.

Cabrillo I & II request an effective date of January 1, 2001.

Copies of this filing have been served upon the ISO, the California Electricity Oversight Board, the California Public Utilities Commission and the San Diego Gas & Electric Company.

Comment date: February 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Hunlock Creek Energy Ventures G.P.

[Docket No. ER01–1174–000]

Take notice that on February 5, 2001, Hunlock Creek Energy Ventures G.P. (Energy Ventures), tendered for filing Service Agreements for wholesale power sales transactions under Energy Ventures' FERC Electric Tariff Original Volume No.1, between Energy Ventures and UGI Development Company and Allegheny Energy Supply Company, LLC.

Energy Ventures requests an effective date of April 6, 2001, for the Service Agreements.

Comment date: February 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. UGI Utilities, Inc.

[Docket No. ER01–1175–000]

Take notice that on February 5, 2001, UGI Utilities, Inc., tendered for filing an Interconnection Agreement with Hunlock Creek Energy Ventures G.P., designated as Service Agreement No. 557 under PJM Interconnection L.L.C."s FERC Electric Tariff Third Revised Volume No. 1.

UGI Utilities, Inc., requests an effective date of December 9, 2000.

Comment date: February 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Potomac Electric Power Company

[Docket No. ER01–1189–000]

Take notice that on February 1, 2001, Potomac Electric Power Company (Pepco), tendered for filing notice of termination of the Agreement for Sale and Purchase of Electric Power and Energy with Southern Maryland Electric Cooperative, Inc.

Comment date: February 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Mirant Delta, LLC, Mirant Potrero, LLC, Complainants, v. California Independent System Operator Corporation, Respondent

[Docket No. EL01–35–000]

Take notice that on February 6, 2001, Mirant Delta, LLC and Mirant Potrero, LLC (collectively, Mirant), tendered for filing a complaint alleging that the California Independent System Operator

violated the Federal Power Act and prior Commission orders through seating a non-independent governance board and failure to adequately pursue payments from market participants. Mirant requested fast track processing for this complaint.

Copies of the filing were served upon the ISO, its counsel, the California Public Utilities Commission, and other interested parties.

Comment date: February 26, 2001, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall also be filed on or before February 26, 2001.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–3805 Filed 2–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2689–021]

N.E.W. Hydro, Inc.; Notice of Availability of Draft Environmental Assessment and Soliciting Comments

February 9, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Energy Projects has reviewed an application to modify Article 401 of the license for the Oconto Falls Project, FERC No. 2689–021. Article 401 requires the licensee to operate the project in a run-of-river mode (ROR) with a reservoir operating range of 701.92 ± 0.3 feet NGVD. The licensee requests that Article 401 be amended to only require the minimum reservoir operating elevation of 701.62 NGVD, currently allowed by Article 401, with no maximum operating limit. The Oconto Falls Project is located in Oconto Falls, on the Oconto River, Oconto County, Wisconsin. A Draft Environmental Assessment (DEA) was prepared for the amendment request. The DEA finds the licensee's request to amend Article 401 by eliminating the maximum operating elevation, with staff's recommendations, would not constitute a major federal action significantly affecting the quality of the human environment.

The DEA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. Copies of the DEA can be viewed in the Public Reference Room, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The DEA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

Comments on the DEA must be filed with the Commission within 40 days from the date of this notice. Comments should be addressed to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference the number, P–2689–021, on any comments filed. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–3811 Filed 2–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

February 9, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 3516–008.

c. *Date Filed:* October 3, 2000.

d. *Applicant:* City of Hart, Michigan.

e. *Name of Project:* Hart Hydroelectric Project.

f. *Location:* On the South Branch of the Pentwater River, in Oceana County, near Hart, Michigan. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Huebler, City Manager, City of Hart, 407 State Street, Hart, Michigan 49420, (231) 873–2488.

i. *FERC Contact:* Steve Kartalia, (202) 219–2942 or *stephen.kartalia@FERC.fed.us.*

j. *Deadline for filing motions to intervene or protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person 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.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Hart Hydroelectric Project consists of: (1) A 580-foot-long earthen dam; (2) a 40-foot-long concrete-lined spillway; (3) a 240-acre reservoir; (4) a powerhouse containing 2 S. Morgan Smith vertical shaft turbines and 2 generators, with a total hydraulic capacity of 135 cubic feet per second and an installed generating capacity of 320 kilowatts; (5) a 1-mile-long transmission line that connects the project with the Hart Diesel Plant; and (5) appurtenant facilities. The applicant estimates that the total average annual generation is between 350,000 and 400,000 kilowatthours. The project operates in a run-of-river mode and all generated power is distributed to customers of the City of Hart Electric Department via the City's transmission and distribution system.

m. 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 2–A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–3812 Filed 2–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

February 9, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)91)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. Project No. 1962; 2–7–01; Nicholas Jayjack and Chuck Hall
2. CP01–31–000; 2–7–01; David Swearingen, FERC
3. Project No. 137; 2–5–01; Glen Caruso
5. Project No. 137; 2–7–01; Glen Caruso
6. Project No. 137; 2–5–01; Glen Caruso
7. Project No. 137; 2–5–01; Chuck Whatford
8. Project No. 137; 2–5–01; Chuck Whatford
9. Project No. 137; 2–5–01; Frank Winchell, FERC
10. Project No. 137; 2–5–01; Frank Winchell, FERC
11. Project No. 137; 2–5–01; Shelly Davis-King
12. Project No. 137; 2–5–01; Shelly Davis-King
13. Project Nos. 2777, 2061, 1975; 2–5–01; Mark Druss
14. Project Nos. 2777, 2061, 1975; 2–5–01; Susan Pengilly Neitzel
15. Project Nos. 2777, 2061, 1975; 2–5–01; Mark Druss
16. Project Nos. 2777, 2061, 1975; 2–5–01; Lorraine S. Gross
17. Project Nos. 2777, 2061, 1975; 2–5–01; Mark Druss
18. Project Nos. 2777, 2061, 1975; 2–5–01; Mark Druss
19. Project Nos. 2777, 2061, 1975; 2–5–01; Mark Druss
20. Project Nos. 2777, 2061, 1975; 2–5–01; Carol Gleichman
21. CP01–12–000; 2–2–01; Juan Polit, FERC

Prohibited

1. RP00–332–000; 2–5–01; Mark Lewis

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–3813 Filed 2–14–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6945–1]

Science Advisory Board; Notification of Three Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of three meetings of the Joint Subcommittee on Industrial Ecology and Environmental Systems Management of the US EPA Science Advisory Board's (SAB) Environmental Engineering Committee (EEC). First, the Subcommittee will meet by conference call from 1–2 p.m on Thursday March 1, 2001. From March 21 to 23, the Subcommittee will meet face-to-face in conference room 130/138 of the National Risk Management Research Laboratory at the Environmental Protection Agency's Andrew W. Breidenback Environmental Research Facility, 26 West Martin Luther King Boulevard, Cincinnati, Ohio. The Subcommittee will convene at 8:30 a.m. on Wednesday March 21 and adjourn no later than 3 p.m. Friday March 23. The Subcommittee may begin earlier and end later otherwise as needed for the work. Finally, on Wednesday April 18 the Subcommittee will meet by conference call from 1–3 p.m.

Both conference call meetings will be coordinated through a conference call connection in room 6450C Ariel Rios North (6th Floor), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue N.W., Washington, DC. The

public is strongly encouraged to attend the meeting through a telephonic link, but may attend physically if arrangements are made in advance with the SAB staff. In both cases, arrangements should be made with the SAB staff by noon the Wednesday *before* the meeting. Staff may not be able to accommodate the presence of people who appear in person without advance notice. Additional instructions about how to participate in the conference calls can be obtained by calling Ms. Mary Winston, Management Assistant, at (202) 564–4538, and via e-mail at: *winston.mary@epa.gov*.

All times noted are Eastern Standard Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB activities are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the Meetings

1. The purpose of the March 1, 2001 conference call meeting is to allow the Subcommittee and the Agency to complete preparations for the face-to face meeting on March 21–23, 2001.

2. At the March 21–23, 2001 meeting, the Committee will conduct a consultation on environmental systems management research at EPA and prepare a commentary on industrial ecology.

A "consultation" is a means of conferring, as a group of knowledgeable individuals, in public session with the Agency on a technical matter, before the Agency has begun substantive work on that issue. The goal is to leaven EPA's thinking by brainstorming a variety of approaches to the problem very early in the development process. There is no attempt or intent to express an SAB consensus or to generate a formal SAB position. The Board, via a brief letter, simply notifies the Administrator that a Consultation has taken place.

The Subcommittee will prepare by individually selecting and reading documents that provide background information on the direction and focus of EPA's programs and those being conducted by or under the sponsorship of other government agencies, corporations, and Non governmental organizations (NGOs). The purpose of this preparation is to understand the context for the Environmental Systems Management research program.

Also, the Subcommittee will review a *short* document prepared by the Agency which describes the direction, scope, and focus of EPA's current and planned research and expertise in the areas that comprise Environmental Systems Management. Information in the document may be supplemented by briefings, Q&A and discussion with the Subcommittee and relevant ORD staff.

This is the tentative charge for this consultation. The Subcommittee will not attempt to develop a consensus. Individual members will comment on:

(a) the *completeness* of EPA's existing and planned research programs in Environmental Systems Management;

(b) whether scope, direction, and focus draw on EPA strengths and support EPA's mission;

(c) whether the Agency's assembled expertise is sufficient to address the multi-disciplinary nature of this type of research;

(d) the *appropriateness* of the EPA program given its strengths and weaknesses;

(e) whether there is a sound scientific basis for the program;

(f) overlaps with programs of other agencies, corporations, and NGOs

(g) the advisability of better coordination among different groups;

(h) the forms such coordination might take; and

(i) the adequacy of the planned budget.

While no written report will be prepared of the Subcommittee's thoughts, individual members will be encouraged to provide their comments in writing to the DFO who will include these with the minutes of the meeting.

A "commentary" is a short communication that provides unsolicited SAB advice about a technical issue the Board feels should be drawn to the Administrator's attention. The tentative charge for this commentary is:

(a) The Commentary will provide an overview of Industrial Ecology, including, for reference, a brief summary of activities at EPA.

(b) The Commentary will address how Industrial Ecology is consistent with, and complementary to, the single-pollutant, risk-based approach to environmental management.

(c) The Commentary will address the implications of industrial ecology for environmental policy, including identification of potential applications at EPA.

(d) The Commentary will address the kinds of research that would strengthen the scientific foundation of Industrial Ecology and provide a robust framework for application to environmental policy.

3. The Subcommittee will meet by conference call on April 18, 2001 from 1–3 p.m. to complete any remaining business from the March 21–23, 2001 meeting.

Availability of Materials—Copies of the brief descriptive material prepared by the Agency for the Environmental Systems Management Research consultation can be obtained after February 20, 2001 from Ms. Amy Fox, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, MS–498, Cincinnati, OH 45268. Ms. Fox may be reached by telephone at (513) 569–7079; fax (513) 487–2511, and by email at *fox.amy@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Ms. Kathleen White, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; fax (202) 501–0582; or via e-mail at *conway.kathleen@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Kathleen White no later than noon Eastern Standard Time on the Wednesday before the scheduled meeting.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration.

Comments should be supplied to Ms. White at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. White at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 7, 2001.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 01–3869 Filed 2–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6945–2]

Announcement of a Stakeholder Meeting on Draft Information Strategy for the Office of Ground Water and Drinking Water

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of a stakeholder meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a two-day public meeting to obtain stakeholder input on issues, options and directions affecting the future of the national drinking water and source water information systems and related activities supporting the protection of public health.

DATES: The stakeholder meeting on the draft Information Strategy will be held on March 8–9, 2001, from 9 a.m. to 5:30 p.m. EST.

ADDRESSES: Resolve, Inc. (an EPA contractor) will provide logistical support for the stakeholders meeting. The meeting will be held at Resolve, Inc., 1255 23rd Street, NW, Suite 275, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: For general information about the meeting, please contact Mr. Jeff Citrin at Resolve, Inc., 1255 23rd Street, NW, Suite 275, Washington, D.C. 20037; phone: (202) 965–6388; fax: (202)338–1264, or e-mail at jcitrin@resolv.org. For other information on the Information Strategy, please contact Jeffrey Bryan, at the U.S. Environmental Protection Agency, Phone: (202) 260–4934, Fax: (202) 401–3041, E-mail: bryan.jeffrey@epa.gov. Members of the public wishing to attend the meeting may register by phone by contacting Mr. Jeff Citrin by Feb. 20. Those registered by Feb. 20 will receive background materials prior to the meeting. There will be a limited number of teleconference lines available for those who are unable to attend in person. Information about how to access these lines will accompany the pre-meeting materials that will be mailed out to those who register.

SUPPLEMENTARY INFORMATION:

Background on the Draft Information Strategy and Request for Input

Information is critical to the management of national programs and shapes responses to rapidly changing events in the public health arena. Sound science and the best available data are the foundation of decisions that the EPA's Office of Ground Water and Drinking Water (OGWDW) make to protect public health and the environment. Information technology has improved, and the process for developing drinking water standards has changed significantly since OGWDW developed its most recent Information Strategic Plan in 1992. EPA must implement a strategy that responds to new technology and regulatory needs, maximizes efficiency and minimizes cost of data transactions, meets national water program needs, and links efficiently to relevant data sources. The strategy must be business-driven, incorporating the needs of stakeholders both inside and outside of EPA.

EPA encourages public input into questions that will allow OGWDW to make more informed decisions regarding its information systems and processes. Once implemented, the strategy will help OGWDW to better focus on essential business data, minimize reporting burden, obtain early involvement in information requirements for regulators, streamline the federal Safe Drinking Water Information System (SDWIS–FED) to reduce reporting errors, continue to support the state Safe Drinking Water Information System (SDWIS–STATE), and provide an information framework for source water protection. Questions for discussion include:

1. How will OGWDW ensure that it has the data it needs to implement its programs, address gaps (e.g., source water protection and underground injection control), and coordinate with other EPA programs?
2. What essential data does the primary enforcement authority need to track?
3. How should EPA obtain parametric (sampling) drinking water data to address future information requirements?
4. What changes should EPA make to minimize reporting burden for existing and upcoming rules?
5. What improvements to SDWIS should EPA make to allow for easier data entry by states?
6. How can OGWDW improve the performance of its information systems, given that any improvements would require states to make near-term adjustments to achieve long-term reporting benefits?
7. What steps should EPA take to improve data quality?
8. EPA primarily uses data for program tracking, policy development, rulemaking and enforcement, and public access. Are there other priority uses EPA should consider?
9. How will public access to drinking water data be improved?
10. What steps should be taken to make OGWDW information systems more economically efficient?

The public is invited to provide comments on the issues listed above or other issues related to the draft Information Strategy during the March 8–9, 2001 meeting.

Dated: February 9, 2001.

Cynthia Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 01–3870 Filed 2–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6944–9]

Meeting of the Small Community Advisory Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Small Community Advisory Subcommittee (SCAS) will meet on March 1–2, 2001 in Seattle, WA. At this meeting members of the SCAS's Resolution Session Team will

present to the full Subcommittee the agreements reached at the Resolution Session on December 8, 2000, for the consideration and acceptance by the full Subcommittee. The Resolution Session was a meeting between a SCAS team and a Local Government Advisory Committee (LGAC) team to address issues regarding how the two groups work together—intra-committee management issues. The Work Groups of the SCAS will update the full Subcommittee on their progress since the previous meeting and will reconvene to work on their Small Community Funding Inventory, Total Maximum Daily Load Survey, Small Town Advocate Proposal, Small Town Enforcement Recommendations, Sustainability Recommendations and Small Business Regulatory Enforcement Fairness Act and Federalism Executive Order 13132 implementation.

The Committee will hear comments from the public between 2 p.m. and 2:15 p.m. on March 2. Each individual or organization wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating and call-in numbers will be allocated on a first come, first serve basis.

DATES: The meeting will begin at 9 a.m. on Thursday, March 1 and conclude no later than 5 p.m. on March 2, 2001.

ADDRESSES: The meetings will be held at the EPA's Region 10 Office located 1200 Sixth Avenue, Seattle, Washington in the Nisqually Conference Room.

Requests for Minutes and other information can be obtained by writing the DFO at 1200 Pennsylvania Ave., NW. (1306A), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Subcommittee is Anne Randolph. She is the point of contact for information concerning any Subcommittee matters and can be reached by calling (202) 564–3679.

Dated: February 6, 2001.

Anne Randolph,

Designated Federal Officer, Small Community Advisory Subcommittee.

[FR Doc. 01–3871 Filed 2–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51963; FRL–6769–5]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 20, 2000 to January 09, 2001, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51963 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51963. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, any test data submitted by the manufacturer/importer and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is

imperative that you identify docket control number OPPTS–51963 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51963 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 20, 2000 to January 09, 2001, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

TABLE I.—60 PREMANUFACTURE NOTICES RECEIVED FROM: 12/20/00 TO 01/09/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0185	12/20/00	03/20/01	Westvaco Corporation - Chemical Division	(S) Asphalt emulsifier	(G) Fatty acids, tall-oil, reaction Products with castor oil and substituted amines
P–01–0186	12/20/00	03/20/01	Westvaco Corporation - Chemical Division	(S) Asphalt emulsifier salt	(G) Fatty acids, tall-oil, reaction Products with castor oil and substituted amines, hydrochlorides
P–01–0187	12/20/00	03/20/01	Westvaco Corporation - Chemical Division	(S) Asphalt emulsifier salt	(G) Fatty acids, tall-oil, reaction Products with castor oil and substituted amines, acetates
P–01–0188	12/20/00	03/20/01	Westvaco Corporation - Chemical Division	(S) Asphalt emulsifier salt	(G) Fatty acids, tall-oil, reaction Products with castor oil and substituted amines, phosphates
P–01–0189	12/20/00	03/20/01	CBI	(G) Polymerization initiator	(G) Peroxy ester

TABLE I.—60 PREMANUFACTURE NOTICES RECEIVED FROM: 12/20/00 TO 01/09/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0190	12/21/00	03/21/01	CBI	(S) Energy (ultraviolet or electron beam) curing resins for coatings applied onto metal, wood, paper and plastics	(G) Polyester acrylate
P–01–0191	12/21/00	03/21/01	CBI	(G) Adhesive	(G) Modified polyolefin
P–01–0192	12/20/00	03/20/01	Reichhold, Inc	(S) Primer coatings and flooring	(G) Reaction product of aliphatic amines with fatty acids, phthalic anhydride and epoxide oligomers
P–01–0193	12/20/00	03/20/01	CBI	(G) Polymeric binder	(G) Styrene-methacrylate copolymer
P–01–0194	12/20/00	03/20/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0195	12/20/00	03/20/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0196	12/20/00	03/20/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0197	12/20/00	03/20/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0198	12/20/00	03/20/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0199	12/20/00	03/20/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0200	12/21/00	03/21/01	Dystar L.P.	(S) Dyestuff for the coloration of polyamide fibers	(G) 1,7-naphthalenedisulfonic acid, 4-(substituted)-5-hydroxy-6-(substituted)-, disodium salt
P–01–0201	12/22/00	03/22/01	CBI	(G) Lubricant for metalworking, cutting and drilling applications	(G) Mixed esters of thoxytriethanolamine, polyol, and fatty acids
P–01–0202	12/22/00	03/22/01	Air Products and Chemicals Inc	(S) Curing agent for epoxy coating systems	(G) Polyamine adduct
P–01–0203	12/26/00	03/26/01	CBI	(G) Additive	(G) Alkanedioic acid diester
P–01–0204	12/26/00	03/26/01	Dow Corning Corporation	(S) Component of silicone release emulsion	(S) Siloxanes and Silicones, lauryl me
P–01–0205	12/26/00	03/26/01	Mitsubishi Gas Chemical america, Inc	(S) Extender for epoxy resin paint	(S) Formaldehyde. polymer with 1,3,5-trimethylbenzene*
P–01–0206	12/27/00	03/27/01	Estron Chemical, Inc	(S) Flow control additive for industrial coatings	(G) Acrylic polymer
P–01–0207	12/27/00	03/27/01	Reichhold, Inc	(S) Binder for glass	(G) Unsaturated polyester resin
P–01–0208	12/27/00	03/27/01	CBI	(S) Reactive diluent	(G) Polyester polycarbamate
P–01–0209	12/27/00	03/27/01	CBI	(S) Reactive diluent	(G) Polyester polycarbamate
P–01–0210	12/27/00	03/27/01	CBI	(S) Reactive diluent	(G) Polyester polycarbamate
P–01–0211	12/27/00	03/27/01	CBI	(S) Reactive diluent	(G) Polyester polycarbamate
P–01–0212	12/27/00	03/27/01	CBI	(S) Reactive diluent	(G) Polyester polycarbamate
P–01–0213	12/27/00	03/27/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0214	12/27/00	03/27/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0215	12/27/00	03/27/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0216	12/27/00	03/27/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0217	12/27/00	03/27/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0218	12/27/00	03/27/01	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–01–0219	12/27/00	03/27/01	Shin ETSU Microsi, Inc	(S) Ingredient for electric/electronic components seal	(S) Oxirane, 2,2'-[1,6-naphthalenediylbis (oxymethylene)]bis-
P–01–0220	12/28/00	03/28/01	3M company	(G) Binder	(G) Acrylate polymer
P–01–0221	12/28/00	03/28/01	CBI	(S) Organic synthesis intermediate	(G) Xanthylium, 3,6-diamino-9-(2-sulfophenyl)-, N,N'-bis(mixed 2-substituted phenyl) derivs., inner salts
P–01–0222	12/28/00	03/28/01	Dainippon Ink and Chemicals, Inc	(S) UV curable resin for glass fiber coatings	(G) Urethane acrylate
P–01–0223	12/28/00	03/28/01	CBI	(G) Component of manufactured consumer article - contained use	(G) Xanthylium, 3,6-bis(methylamino)-9-(2-sulfophenyl)-, N,N'-bis(mixed 2-substituted phenyl) derivs., inner salts
P–01–0224	12/27/00	03/27/01	CBI	(G) Filler treatment	(G) Organosilane ester
P–01–0225	12/27/00	03/27/01	CBI	(G) Filler treatment	(G) Organosilane ester
P–01–0226	12/27/00	03/27/01	CBI	(G) Filler treatment	(G) Organosilane ester
P–01–0227	12/28/00	03/28/01	CBI	(G) Component of manufactured consumer article - contained use	(G) Decyl 4-nitrobenzene derivative
P–01–0228	12/28/00	03/28/01	3M company	(G) Film coating additive	(G) Acrylate polymer
P–01–0229	12/28/00	03/28/01	CBI	(G) Component of manufactured consumer article - contained use	(G) 1,4-butanediyl, diethyl derivative
P–01–0230	12/29/00	03/29/01	Ashland Inc	(G) Resin additive	(G) Hydrolyzed silane
P–01–0231	12/29/00	03/29/01	CBI	(G) An open,non-dispersive use	(G) Hydrogenated rosin ester
P–01–0232	01/02/01	04/02/01	3M company	(S) Fire extinguishing agent	(G) Perfluoroalkyl derivative
P–01–0233	12/29/00	03/29/01	CBI	(G) Resin for coating	(G) Modified acrylic resin
P–01–0234	12/29/00	03/29/01	CBI	(G) Resin for coating	(G) Modified acrylic resin

TABLE I.—60 PREMANUFACTURE NOTICES RECEIVED FROM: 12/20/00 TO 01/09/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0235	01/03/01	04/03/01	CBI	(S) Intermediate	(G) Substituted cyclohexanediamine
P–01–0236	01/03/01	04/03/01	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer salt
P–01–0237	01/03/01	04/03/01	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer salt
P–01–0238	01/08/01	04/08/01	Wacker Silicones Corporation	(S) New pigment for use in automotive finishes	(G) Modified polyacrylate
P–01–0239	01/08/01	04/08/01	CBI	(G) Epoxy hardener - open, non-dispersive use	(G) Part acrylated epoxy cresol novolac acrylate
P–01–0240	01/08/01	04/08/01	CBI	(G) UV sensitive resin - open, non-dispersive use	(G) Carboxylated epoxy cresol novolac acrylate
P–01–0241	01/09/01	04/09/01	Image Polymers company	(S) Toner binder	(G) Polyether polyol
P–01–0242	01/08/01	04/08/01	Dow Corning Corporation	(S) Cure catalyst	(S) Iodonium, (3-methylphenyl)phenyl-, ar'-c12-13-branched alkyl derivs., (oc-6-11)-hexafluoroantimonates(1-)
P–01–0243	01/09/01	04/09/01	CBI	(G) Ion exchange resin for water treatment	(G) Crosslinked copolymer of substituted polystyrene
P–01–0244	01/09/01	04/09/01	CBI	(G) Syntan	(G) Co-polymer of acrylic esters

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE II.—27 NOTICES OF COMMENCEMENT FROM: 12/20/00 TO 01/09/01

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0189	12/27/00	12/04/00	(G) Modified polyurethane
P–00–0756	12/22/00	12/19/00	(G) Isocyanate-terminated polyester polyurethane polymer
P–00–0773	12/21/00	12/13/00	(S) 1-dodecanesulfonyl chloride
P–00–0873	01/09/01	12/12/00	(G) Urethane acrylate
P–00–0874	01/09/01	12/12/00	(G) Urethane acrylate
P–00–0911	12/27/00	12/07/00	(G) Perfluorinated organic peroxide
P–00–0997	12/22/00	11/28/00	(G) 2-naphthalenesulfonic acid, 6-(substituted)-4-substituted-3-[[4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]-, salt
P–00–1029	12/26/00	12/07/00	(G) Substituted pyridine
P–00–1052	12/27/00	12/06/00	(G) Epoxy modified silicone
P–00–1099	12/21/00	12/07/00	(G) A functionalized polymethine infra red absorber
P–00–1136	12/22/00	12/11/00	(G) Substituted alkenyl succinic anhydride reaction product with polyalkylenepolyamine, alkylphenol, hydroxyalkylcarboxylic acid and an aldehyde
P–00–1198	01/08/01	12/29/00	(G) Alkohol alkoxylate
P–96–1572	01/04/01	12/18/00	(G) Hydrophobically modified polyethylene glycol - aminoplast copolymer
P–98–0287	12/22/00	12/07/00	(S) Ferrate(4-), hexakis(cyano-.kappa.c)-, cobalt(2+) potassium (1:1:2), (0c-6-11)-
P–99–1052	01/05/01	12/17/00	(S) Cellulose, acetate butanoate, carboxymethyl ether
P–99–1408	12/20/00	11/21/00	(G) Modified polyether (generic Chemical name for all substances)
P–99–1409	12/20/00	11/21/00	(G) Modified polyether (generic Chemical name for all substances)
P–99–1410	12/20/00	11/21/00	(G) Modified polyether (generic chemical name for all substances)
P–99–1411	12/20/00	11/21/00	(G) Modified polyether (generic chemical name for all substances)
P–99–1412	12/20/00	11/21/00	(G) Modified polyether (generic chemical name for all substances)
P–99–1413	12/20/00	11/21/00	(G) Modified polyether (generic chemical name for all substances)
P–99–1414	12/20/00	11/21/00	(G) Modified polyether (generic chemical name for all substances)
P–99–1415	12/20/00	11/21/00	(G) Modified polyether (generic chemical name for all substances)
P–99–1416	12/20/00	11/21/00	(G) Modified polyether (generic chemical name for all substances)
P–99–1417	12/20/00	11/21/00	(G) Modified polyether (generic chemical name for all substances)
P–99–1418	12/20/00	11/21/00	(G) Modified polyether (generic chemical name for all substances)
P–91–0202	01/08/01	11/22/00	(S) 1,4-benzenedicarboxylic acid; 1,2-ehtanediol; 1,4-cyclohexanedimethanol; ethanol, 2,2'-oxybis; [isopropanol, ti(4+)salt

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: January 31, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 01–3873 Filed 2–14–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[MM 99–339; DA 01–325]

Implementation of Video Description of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission seeks comment on The Weather Channel's request for clarification regarding the aural tone requirements of the Commission's video description rules. These rules require that, if a broadcast station or multichannel video programming distributor provides emergency information through a crawl or a scroll, it must accompany that information with an aural tone. The Weather Channel seeks clarification that it is in compliance with the rules when it provides an aural tone prior to the first time it provides a particular crawl or scroll; in other words, The Weather Channel seeks clarification that it need not accompany each otherwise identical crawl or scroll with an aural tone. In the alternative, it seeks an exemption from the rules.

DATES: Comments must be filed on or before February 27, 2001; reply comments must be filed on or before March 9, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington DC, 20554.

FOR FURTHER INFORMATION CONTACT: Eric Bash, Policy and Rules Division, Mass Media Bureau, at (202) 418–2130.

SUPPLEMENTARY INFORMATION: This information is part of the record in MM Docket No. 99–339. Copies of the filing and other pleadings are also available for purchase from: ITS Inc. 1231 20th Street, NW., Washington, DC, 20036, *www.itsdocs.com*, (202) 837–3800, (202) 837–3805 (fax), (202) 484–8831 (TTY). This document is available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print, and audiocassette) by contacting Brian Millin at (202) 418–7426 (Voice), (202) 418–7365 (TTY), or by sending an email to *access@fcc.gov*. This document is available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print, and audiocassette) by contacting Brian Millin at (202) 418–7426 (Voice), (202) 418–7365 (TTY), or by sending an email to *access@fcc.gov*.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 01–3835 Filed 2–14–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board; Sunshine Act Notice

TIME AND DATE: 2 p.m., Wednesday, February 28, 2001.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Interim Final Rule: Amendments to Bank Meeting Regulation
- Updated and Revised: Federal Housing Finance Board's Strategic Plan 2000–2005
- Notice of Proposed Rulemaking—Technical Amendments: Affordable Housing Program
- Advance Notice of Proposed Rulemaking on Capital
- Advance Notice of Proposed Rulemaking: Multi-District Member Operations

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 01–3995 Filed 2–13–01; 1:22 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks 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 offices 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 March 2, 2001.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. David Allan King, Ernestine Ritter King, David Anderson King, Susan Morrison King, all of Philadelphia, Mississippi, *Herbert Allan King* and *Nancy Higdon King,* both of Starkville, Mississippi, and *James Howard Briscoe* and *Carolyn King Briscoe,* both of Jackson, Mississippi, to collectively retain 16.78 percent of the voting shares of Citizens Holding Company and its subsidiary bank, The Citizens Bank of Philadelphia, both of Philadelphia, Mississippi.

2. Donald Howard Kay, Jr., Martha Andrews Kay, Kyle Andrews Kay, and *Rance Howard Kay,* all of Ocala, Florida, to collectively retain 79.47 percent of the voting shares of ONB Financial Services, Inc., and its subsidiary bank, Ocala National Bank, both of Ocala, Florida.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Harry Pike Schaller, Storm Lake, Iowa, to acquire 19.0 percent, totaling 39.8 percent, of the voting shares of FNC, Inc., Storm Lake, Iowa, and thereby indirectly acquire The First National Company, Citizens First National Bank, and The First Leasing Company, all of Storm Lake, Iowa, and FNT, San Antonio, Texas.

Board of Governors of the Federal Reserve System, February 9, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–3792 Filed 2–14–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)

(BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. First National Bank of Moose Lake Profit Sharing and ESOP, Moose Lake, Minnesota; to become a bank holding company by acquiring up to 42.6 percent of the voting shares of First Financial Services of Moose Lake, Inc., Moose Lake, Minnesota, and thereby indirectly acquire The First National Bank of Moose Lake, Moose Lake, Minnesota.

In connection with this application, Applicant also has applied to acquire The First National Agency of Moose Lake, Moose Lake, Minnesota, and thereby engage in insurance in small towns pursuant to § 225.28(b)(11)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 9, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–3791 Filed 2–14–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 2001.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Persons Banking Company, Inc., Lithonia, Georgia; to acquire 100 percent of the voting shares of The Farmers Bank, Forsyth, Georgia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Ida Grove Bancshares, Inc., Ida Grove, Iowa; to acquire at least 80.1 percent of the voting shares of Alliance Bancshares, Inc., Rockwell City, Iowa, and thereby indirectly acquire Alliance Bank, Rockwell City, Iowa.

Board of Governors of the Federal Reserve System, February 9, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–3794 Filed 2–14–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 2001.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Mizuho Holdings, Inc., Tokyo, Japan, and Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan; to engage *de novo* through its subsidiary, JCB Finance LLC, Pooler, Georgia, in making, acquiring, brokering or servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; in extending credit, including collection agency services and asset management and servicing, pursuant to § 225.25(b)(2) of the Board's Regulation Y; and leasing personal or real property or acting as agency, broker or adviser in leasing such property, pursuant to

§ 225.28(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 9, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–3793 Filed 2–14–01; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

White House Commission on Complementary and Alternative Medicine Policy; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the White House Commission on Complementary and Alternative Medicine Policy.

The purpose of the meeting is to convene the Commission for a public hearing to receive public testimony for individuals and organizations interested in the subject of Federal policy regarding complementary and alternative medicine. The major focus of the meeting is on the education, training, and licensing and credentialing of all health care practitioners engaged in the delivery of complementary and alternative medicine (CAM) practices and products. Comments received at the meeting may be used by the Commission to prepare the Report to the President as required by the Executive Order.

Comments should focus on the education and training of health care practitioners in complementary and alternative medicine. Invited speaker discussions include the following: Establishing CAM educational and training programs; Continuing CAM education and training; Assuring quality and accountability in CAM practice; and Credentialing and licensing of CAM practice. The discussion also may focus on the following questions:

(1) Can uniform standards of education, training, licensing, and certification be applied to all practitioners?

(2) What training and education should be required of all practitioners to assure access to safe and effective CAM practices and products?

(3) What sources of funds exist for the education and training of all practitioners delivery of CAM practices and products?

(4) Are performance standards or practice guidelines needed to assure the public will have access to the full range of safe and effective CAM practices and products?

Some Commission members may participate by telephone conference. Opportunities for oral statements by the public will be provided on February 23, from about 4 p.m.–5:30 p.m. (Time approximate).

Name of Committee: The White House Commission on Complementary and Alternative Medicine Policy.

Date: February 22—23, 2001.

Time: February 22—8:15 a.m.–5:45 p.m. February 23—8:15 a.m.–5:30 p.m.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201.

Contact Persons: Michele M. Chang, CMT, MPH, Executive Secretary, or, Stephen C. Groft, Pharm.D., Executive Director, 6701 Rockledge Drive, Room 1010, MSC 7707, Bethesda, MD 20817–7707, Phone: (301) 435–7592, Fax: (301) 480–1691, E-mail: WHCCAMP@mail.nih.gov.

Because of the need to obtain the views of the public on these issues as soon as possible and because of the early deadline for the report required of the Commission, this notice is being provided at the earliest possible time.

SUPPLEMENTARY INFORMATION: The President established the White House Commission on Complementary and Alternative Medicine Policy on March 7, 2000, by Executive Order 13147. The mission of the White House Commission on Complementary and Alternative Medicine Policy is to provide a report, through the Secretary of the Department of Health and Human Services, on legislative and administrative recommendations for assuring that public policy maximizes the benefits of complementary and alternative medicine to Americans.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come first serve basis. Members of the public who wish to present oral comment may register no later than February 19, 2001, by completing the on-line registration form at the Commission's website or faxing a request to 301–480–1691. Additional information, including agenda item topics, for the meeting can be found on the website of the Commission at http://whccamp.hhs.gov.

Oral comments will be limited to three minutes. Individuals who register to speak will be assigned in the order in which they registered. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotted may also be limited by the number of registrants. All requests to register should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the area of interest or question (as described above) to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits, and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by mail, fax, or electronically to the staff office of the Commission for inclusion in the public record.

When mailing or faxing written comments provide, if possible, an electronic version on diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the Commission staff at the address or telephone number listed no later than February 16, 2001.

Dated: February 8, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3815 Filed 2–14–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN FOCUS

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: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: April 3, 2001.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Room 5As.25, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3816 Filed 2–14–01; 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, a 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: March 16, 2001.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, Room 5As37B, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program No. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3817 Filed 2–14–01; 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: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: April 16, 2001.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institutes of Health/NIAMS, Natcher Bldg., Room 5AS25H, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3818 Filed 2–14–01; 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: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: March 5, 2001.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, Room 5As37B, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3819 Filed 2–14–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare Comprehensive Conservation Plans and an Associated Environmental Impact Statement

ACTION: Notice of intent to prepare comprehensive conservation plans and an associated environmental impact statement for island units of the eastern Massachusetts national wildlife refuge complex.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service

(Service) intends to gather information necessary to prepare Comprehensive Conservation Plans (CCP) and an associated Environmental Impact Statement (EIS) pursuant to section 102(2)C of the National Environmental Policy Act and its implementing regulations, for three units of the eight-unit Eastern Massachusetts National Wildlife Refuge Complex , located in the Commonwealth of Massachusetts. These three refuges are Monomoy National Wildlife Refuge (NWR), Nantucket NWR, and Nomans Land Island NWR. The Refuges are in Barnstable, Nantucket, and Dukes Counties, Massachusetts. Concurrent with the CCP process, the Service will conduct a wilderness review and incorporate a summary of the review into the appropriate CCP and EIS. The CCPs of the remaining five refuges of the Complex (Assabet River NWR, Great Meadows NWR, Mashpee NWR, Massasoit NWR, and Oxbow NWR) will be evaluated in a separate Environmental Assessment (EA).

This notice amends a previous notice, published on February 24, 1999, that stated an EIS would be developed for all eight units of the Complex (then called Great Meadows National Wildlife Refuge Complex). Comments already received for these refuges under the previous notice will be considered. The Service invites agencies, groups and the public to submit any additional comments concerning the scope of issues to be addressed, as well as possible alternatives and environmental impacts to consider in the EIS.

The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*):

(1) To advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Inquire at the following address for dates of planning activity and due dates for comments.

ADDRESSES: Address comments and requests for more information to the following: Refuge Manager, Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776, (978) 443–4661.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public use, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service has already solicited information from the public via open houses, meetings, and written comments. Special mailings, newspaper articles, and announcements will continue to inform people in the general area near each refuge of the time and place of opportunities for further public input to the CCP.

The Eastern Massachusetts NWR Complex is a diverse group of coastal and inland refuges. Habitats include forest, field, riparian, barrier island beach, freshwater marsh, and pond. Monomoy NWR contains 2,700 acres, a portion of which is Federal Wilderness Area; Nantucket 40 acres; and Nomans Land Island 628 acres.

Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations. Concurrent with the CCP process we will conduct a wilderness review and incorporate a summary of the review into the CCP. Wilderness review is the process we use to determine if we should recommend Refuge System lands and waters to Congress for wilderness designation.

We estimate that the draft environmental documents will be available in fall 2001 for public review and comment.

Dated: January 19, 2001.

Mamie Parker,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 01–3822 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Standard Grant Application Instructions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Instructions for applying for standard grants (see **SUPPLEMENTARY INFORMATION**) under the U.S. North American Wetlands Conservation Act.

DATES: Proposals may be submitted at any time. To ensure adequate review time prior to upcoming North American Wetlands Conservation Council (Council) meetings, the Council Coordinator must *receive* proposals by March 23, 2001 and July, 6, 2001. If a March proposal needs to be resubmitted, the due date is July 16.

ADDRESSES: For detailed application instructions, sample proposal information, frequently asked questions, and summaries of recently approved proposals, visit the North American Wetlands Conservation Act (NAWCA) web site at *http://northamerican.fws.gov/nawcahp.html*. If you cannot access the web site, request computer disk or paper copies of the web site material from the Council Coordinator at Council Coordinator, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 110, Arlington, VA 22203. Send proposals to the Council Coordinator at the above address. If you choose to submit the Proposal Summary by electronic mail (versus computer disk), send to *bettina_sparrowe@fws.gov*. Mail one original and two copies of the proposal to the Council Coordinator. Also, mail an electronic copy of the Proposal Summary on computer disk with the rest of the proposal or send an electronic copy by electronic mail to *bettina_sparrowe@fws.gov*. Send a copy of the proposal to your U.S. North American Waterfowl Management Plan (NAWMP) Coordinator (see next section) and all partners in the proposal.

FOR FURTHER INFORMATION CONTACT: North American Wetlands Conservation Council Coordinator at (703) 358–1784, *r9arw_nawwo@fws.gov* or *bettina_sparrowe@fws.gov* or a NAWMP Joint Venture Coordinator (Coordinator) at the numbers given below. Coordinators can give you advice about developing a proposal and about proposal ranking and can provide compliance requirements for the National Environmental Policy Act, National Historic Preservation Act, and contaminant surveys. Even though all areas of all States are not in a Joint Venture, each Coordinator is available to provide information to NAWCA applicants. To determine which Coordinator to call, consult the following Joint Venture list, but note that some States are in more than one Joint Venture and may be listed more

than once. To determine exactly which Joint Venture you are in, consult the NAWMP Joint Venture map at *http://northamerican.fws.gov/NAWCA/images/namap.gif*

Atlantic Coast (AL, CT, DC, DE, FL, GA, MA, MD, ME, NC, NH, NJ, NY, PA, Puerto Rico, RI, SC, VA, Virgin Islands, VT, WV) 413–253–8269

Central Valley (Central Valley of CA) 916–414–6459

Gulf Coast (AL, LA, MS, TX) 505–248–6876

Intermountain West (AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY) 801–524–5110

Lower Mississippi Valley (AL, AR, KY, LA, MS, OK, TN, TX) 601–629–6600

Pacific Coast (AK, Am. Samoa, CA, Com. of N. Mariana Islands, Guam, HI, OR, WA) 360–696–7630

Playa Lakes (CO, KS, NM, OK, TX) 505–248–6877

Prairie Pothole (IA, MN, MT, ND, SD) 303–236–8145 extension 605

Rainwater Basin (KS, NE) 308–382–8112

San Francisco Bay (San Francisco Bay in CA) 510–286–6767

Upper Mississippi River-Great Lakes (IA, IL, IN, KS, MI, MN, MO, NE, OH, WI) 612–713–5433

SUPPLEMENTARY INFORMATION: The Council has two U.S. conservation grants programs for acquisition, restoration, and enhancement of wetlands. Any individual or organization who has a long-term, partner-based project with matching funds can apply. The focus of this notice is standard grant proposals for requests from $51,000 to $1,000,000 per proposal. A separate notice will be issued later this year for small grant proposals for requests up to $50,000 per proposal.

This notice provides general instructions to develop and submit a NAWCA standard grant proposal. In order to complete a proposal correctly, consult the web site at *http://northamerican.fws.gov/nawcahp.html* for detailed instructions. If you cannot access the web site or want a printed version of the complete instructions or a personal computer disk that contains proposal forms, contact the Council Coordinator.

We prepare the instructions to assist partners in developing proposals that comply with NAWCA. The NAWCA established the Council, a Federal-State-private body that recommends projects to the Migratory Bird Conservation Commission (MBCC) for final approval and requires that proposals contain a minimum 1:1 ratio of non-Federal matching funds to grant funds. "Match" (as referred to throughout this document) can be cash, in-kind services, or land acquired/title donated for wetlands conservation purposes.

Paperwork Reduction Act: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501), the Office of Management and Budget has assigned clearance number 1018–0100 to this information collection authorized by the North American Wetlands Conservation Act of 1989, as amended (16 U.S.C. 4401 *et seq.*). The information collection solicited is necessary to gain a benefit in the form of a grant, as determined by the Council and MBCC, is necessary to determine the eligibility and relative value of wetland projects, results in an approximate paperwork burden of 400 hours per application, and does not carry a premise of confidentiality. Your response is voluntary. 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 public is invited to submit comments on the accuracy of the estimated average burden hours for application preparation and to suggest ways in which the burden may be reduced. Comments may be submitted to: Information Collection Clearance Officer, Mail Stop 224 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240 and/or Desk Officer for Interior Department (1018–0100), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Standard Grant Instructions

Detailed instructions are available at the NAWCA web site at *http://northamerican.fws.gov/nawcahp.html*.

Proposal Definition. A standard grant proposal is a 4-year plan of action supported by a NAWCA grant and matching partner funds to conserve wetlands and wetlands-dependent fish and wildlife through acquisition (including easements and land title donations), restoration, and/or enhancement (including creation). Match must be non-Federal and at least equal the grant request (referred to as a 1:1 match). Match is eligible up to 2 years prior to the year the proposal is submitted, and grant and match funds are eligible during the 2-year future Grant Agreement period.

Proposal Format. The Summary has a specific format. With the exception of the one-page Cover Page, Matching Contributions Plan, SF 424, SF 424B and SF424D, and 2-page Summary, there are no page number limitations. The ultimate size of the proposal will depend on its complexity, but we request that you attempt to minimize the size of the proposal. Each page should be no larger than 8.5 by 11 inches. It is suggested, but not required, that maps be in color. Neither the original proposal, nor required copies, should be permanently bound. A proposal contains the following sections: Project Officer's Page and Checklist; Summary; Purpose, Scope, and Milestones; Budget, Matching Contributions Plan (optional), and Tract Information; Technical Assessment Questions; Funding Commitment Letters; Location Information; Standard Form 424 and Attachments.

Proposal Project Officer's Page and Checklist. This part contains the following sections: Proposal Title and State(s); Date Submitted; Future Proposals; Project Officer Information; Project Officer's Checklist; and Comments on the NAWCA Program. The Project Officer administers the Grant Agreement and is ultimately responsible for complying with Federal regulations. Correspondence is sent only to the Project Officer. Each proposal can have only one Project Officer, who must belong to the grant recipient's organization. The U.S. standard grant agreement provisions should be reviewed before a proposal is submitted, so the grant agreement is available via the NAWCA web site at *http://northamerican.fws.gov/NAWCA/grant.html*

Proposal Summary. The Summary is a digest of information that is detailed in the rest of the proposal. The Summary is the only narrative material provided to the Council and MBCC, so it must be descriptive and succinct. The Summary contains the following sections: Proposal Title and States; Counties and Congressional Districts; Costs and Acres Summary; and Narrative.

Proposal Purpose, Scope, and Milestones. Use this section to describe how all the pieces of the proposal fit together to form a solid wetlands and migratory bird conservation proposal that should be funded under the North American Wetlands Conservation Act (NAWCA).

Proposal Budget, Matching Contributions Plan, and Tract Information. The Budget Table displays activities and costs broken out by grant funding and partner funding according to cost categories (personnel and travel, appraisals, fee title acquired, fee title donated, easements and leases acquired and donated, materials and equipment, contracts, management agreements

acquired and donated). The Budget Narrative contains the justification for a grant request over $1,000,000, eligibility information about partner matching funds/work, and detailed cost information (by the same cost categories listed above) for grant and partner funds for each tract in the proposal. A sample Budget Table and Budget Narrative are available on the web site. If you have contributions made in the early phases of a multi-phase project and sufficient NAWCA proposals cannot be submitted before the match is more than 2 years old, you may request approval to use the match in the future by submitting a one-page Matching Contributions Plan (Match Plan) with a proposal. A Match Plan is optional, but if submitted must include match that is eligible at the time the proposal is submitted, be submitted with a proposal, may be approved only (in writing) if the proposal with which it is submitted is funded, and should show use of the match over a period no greater than 5 years.

Technical Assessment Questions. The Council uses seven Technical Assessment Questions to evaluate and select proposals. Additional selection factors, include site visit results and available funding. The questions, subparts, and point values follow. Questions 1 and 2 include priority lists of species, so you need to refer to the web site or the Council Coordinator's office to complete a proposal. Answer the questions for the completed proposal and all tracts in the proposal (grant and match).

1. How does the proposal contribute to the conservation of waterfowl habitat (high-priority species, other priority species, other waterfowl)? 15 points

2. How does the proposal contribute to the conservation of other wetland-dependent or wetland-associated migratory birds (NAWCA priority species, other wetland-dependent birds)? 15 points

3. How does the proposal benefit the North American Waterfowl Management Plan and contribute to sites that have been recognized for wetland values (Joint Ventures, Waterfowl Habitat Areas of Concern, specially recognized areas)? 15 points

4. How does the proposal relate to the National status and trends of wetlands types (acres of decreasing, stable, and increasing wetlands types; acres of uplands)? 10 points

5. How does the proposal contribute to long-term conservation of wetlands and associated habitats (acres accruing benefits in perpetuity, for 26–99 years, for 10–25 years, and for less than 10 years)? 15 points

6. How does the proposal contribute to the conservation of habitat for Federally listed, proposed and candidate endangered species, State-listed species, and other wetland-dependent fish and wildlife (Federal species, State species, other wetland-dependent fish and wildlife)? 10 points

7. How does the proposal satisfy the partnership purpose of the North American Wetlands Conservation Act (ratio of the non-Federal match to the grant request, non-Federal partners who contribute 10 percent of the grant request, partner categories, important partnership aspects)? 20 points

Funding Commitment Letters. Send signed commitment letters from all match partners, including the grant recipient and private landowners (if providing funds or land as match), with the proposal. No letters will be accepted before the proposal is received, and the only letters that will be accepted after the proposal is received are originals of signed copies that were sent with the proposal. The proposal will be returned if the 1:1 match is not documented by partner letters. Letters must document the exact contribution level identified in the proposal and whether the contribution is in cash, goods, services, or land; the partner's responsibility in the proposal's implementation, including land donations; how the partner was involved in proposal planning; and that the partner is fully aware of how the contribution will be spent.

Location Information. State a central point location for the proposal in terms of latitude and longitude and provide 8.5 by 11-inch color (preferred) maps that give the following information: (1) Location of the tracts within State(s) and counties where grant and match funds will be spent and location of land matches; (2) Location of acquisition priority areas if specific tracts cannot be given; (3) Location of major water control structures and other restoration/enhancement features; (4) Location of natural features, such as rivers or lakes, to show how the proposal fits into the natural landscape; and if applicable, (5) Show where the proposal is in relation to a larger wetlands conservation project. The proposal title should be on each map.

Standard Form 424 "Application for Federal Assistance" and Assurances Forms B "Non-construction" and D "Construction." All applicants, except the U.S. Fish and Wildlife Service, must send an SF 424 and the B, D, or both Assurances forms with the proposal. All applicants must comply with the laws listed on the Assurances forms. The forms are available via the Internet at *http://www.gsa.gov/forms/* or from the Council Coordinator.

Exhibits and Examples. Examples of various sections of a proposal, lists of eligible and ineligible activities and costs, general process information about the NAWCA program, and people and organizations who may be contacted for assistance are available via the web site or from the Council Coordinator and should be consulted at some time in the proposal development process.

Blank Proposal Forms. The following forms are available from the web site for you to download and use to develop a proposal: A blank proposal form developed using Microsoft Word, a blank proposal form using Word Perfect, and a blank Budget Table using Microsoft Excel.

Dated: February 5, 2001.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 01–3880 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Tour notice.

SUMMARY: This notice announces a tour of the Arizona Resource Advisory Council (RAC). A pre-tour briefing will be conducted on March 16, 2001 from 8–9 a.m. at the BLM Safford Field Office located at 711 14th Avenue, Safford, Arizona. BLM staff will provide a review of the Standards for Rangeland Health and Guidelines for Grazing Administration (S&Gs) and the implementation process. After the one-hour briefing, BLM staff and RAC will tour a BLM grazing allotment called Johnny Creek near Safford. The tour objectives are to provide the RAC with field training on resource evaluation and on-the-ground S&G application. In addition, the RAC will travel to the San Simon Valley to learn about the planning effort set to begin on the San Simon Watershed. The tour will conclude between 3–4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222

North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Joanie Losacco,

(Acting) Arizona State Director.

[FR Doc. 01–3797 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–01–1430–EU; HAG–01–0082]

Realty Action; Direct Sale of Public Lands in Klamath County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of direct sale of public lands in Klamath County, Oregon (OR 53187).

SUMMARY: The following land has been found suitable and is classified for direct sale under Section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 43 U.S.C. 1719, and Section 7 of the Taylor Grazing (43 U.S.C. 315f). The land will be sold at no less than the fair market value of $10,000.00. The land will not be offered for sale until at least 60 days after this notice.

Willamette Meridian

T. 40 S., R. 11 E.
Section 26 SW¼SW¼
Section 35 NW¼NW¼.
Containing approximately 80 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, which ever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The lands are being offered to Don Rajnus using the direct sale procedures authorized under 43 CFR 2743.3–3. Direct sale is appropriate because there is no public access to the public lands and the public lands are surrounded by lands owned by Don Rajnus.

The terms, conditions, and reservations applicable to this sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States in under 43 U.S.C. 945.

2. All oil and gas and geothermal resources in the land will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.

3. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate, with the exception of the oil and gas and geothermal interests which will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.

4. Patents will be issued subject to all valid existing rights and reservations of record.

If land identified in this notice is not sold it will be offered competitively on a continuing basis until sold.

Detailed information concerning the sale, including the reservations, sale procedures, and planning and environmental documents, is available at the Klamath Falls Field Office, 2795 Anderson Ave, Building 25, Klamath Falls, OR 97603.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Klamath Falls Resource Area Office at the above address. Objections will be reviewed by the District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final action of the Department of the Interior. Questions should be directed to Tom Cottingham at the above address or by phone at 541/885–4141.

Dated: February 2, 2001.

Steven A. Ellis,

District Manager, Lakeview District.

[FR Doc. 01–3795 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–01–1430–EU; HAG–01–0083]

Notice of Direct Sale of Public Lands In Klamath County, OR (OR 56319)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of direct sale of public lands in Klamath County, Oregon (OR 56319).

SUMMARY: The following land has been found suitable and is classified for direct sale under Section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 43 U.S.C. 1719, and Section 7 of the Taylor Grazing (43 U.S.C. 315f). The land will be sold at no less than the fair market value of $5,600.00. The land will not be offered for sale until at least 60 days after this notice.

Willamette Meridian, T. 40 S., R. 11 E.

Section 23 SW¼SE¼
Section 26 NW¼NE¼.
Containing approximately 80 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, which ever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The lands are being offered to Carl Rajnus using the direct sale procedures authorized under 43 CFR 2743.3–3. Direct sale is appropriate because there is no public access to the public lands and the public lands are surrounded by lands owned by Carl Rajnus.

The terms, conditions, and reservations applicable to this sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States in under 43 U.S.C. 945.

2. All oil and gas and geothermal resources in the land will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.

3. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate, with the exception of the oil and gas and geothermal interests which will be

reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.

4. Patents will be issued subject to all valid existing rights and reservations of record.

If land identified in this notice is not sold it will be offered competitively on a continuing basis until sold.

Detailed information concerning the sale, including the reservations, sale procedures, and planning and environmental documents, is available at the Klamath Falls Field Office 2795 Anderson Ave. Building 25 Klamath Falls, OR 97603.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Klamath Falls Resource Area Office at the above address. Objections will be reviewed by the District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final action of the Department of the Interior. Questions should be directed to Tom Cottingham at the above address or by phone at 541/885–4141.

Dated: February 2, 2001.

Steven A. Ellis,

District Manager, Lakeview District.

[FR Doc. 01–3796 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–09–1420–00]

Arizona State Office; Notice of Filing of Plats of Survey

1. The plats of survey of the following described land were officially filed in the Arizona State Office, Phoenix, Arizona on the dates indicated:

A plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines and the subdivision of sections 14 and 24, Township 26 North, Range 9 East, of the Gila and Salt River Meridian, Arizona, accepted November 21, 2000 and officially filed on December 7, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat representing the dependent resurvey of the Fourth Guide Meridian East, through Township 28 North, (west boundary), the south and east boundaries and a portion of the subdivisional lines, and the survey of a portion of the subdivisional lines, Township 28 North, Range 17 East, of the Gila and Salt River Meridian, Arizona, accepted October 23, 2000 and officially filed November 3, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat representing the survey of the Sixth Guide Meridian East, (west boundary), the east and north boundaries, and the subdivisional lines, Township 34 North, Range 25 East, of the Gila and Salt River Meridian, Arizona, accepted November 28, 2000 and officially filed December 14, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing the survey of the Ninth Standard Parallel North, (south boundary), Township 37 North, Range 25 East, of the Gila and Salt River Meridian, Arizona, accepted November 28, 2000 and officially filed December 14, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing the survey of the east and north boundaries, and the subdivisional lines, Township 34 North, Range 26 East, of the Gila and Salt River Meridian, Arizona, accepted November 28, 2000 and officially filed December 14, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing the survey of the Ninth Standard Parallel North, (south boundary), Township 37 North, Range 26 East, of the Gila and Salt River Meridian, Arizona, accepted November 28, 2000 and officially filed December 14, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing the survey of the Ninth Standard Parallel North, (south boundary), Township 37 North, Range 27 East, of the Gila and Salt River Meridian, Arizona, accepted November 28, 2000 and officially filed December 14, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat, in seven sheets, representing the legal survey of the descriptive boundary of the Mount Trumbull Wilderness Area in Townships 35 North, Ranges 7 and 8 West and Township 34 North, Range 8 West, of the Gila and Salt River Meridian, Arizona, accepted October 23, 2000 and officially filed November 3, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona Strip Office.

A plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 29, Township 4 North, Range 19 West, of the Gila and Salt River Meridian, Arizona accepted November 21, 2000 and officially filed November 30, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

2. All inquires relation to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 01–3874 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–200–1050–ET; AZA–31024]

Cancellation of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal of 112,790 acres of lands requested by the Bureau of Land Management at Perry Mesa. Presidential Proclamation No. 7263 established the Agua Fria National Monument so the withdrawal is not needed. This notice opens the lands that are not located within the Agua Fria National Monument to surface entry and mining.

EFFECTIVE DATE: March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Jim Andersen, BLM Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, 623–580–5500.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, FR 99–20274, August 6, 1999, which temporarily segregated the lands described therein from location and entry under the general land laws, including the mining laws, subject to valid existing rights. The new Agua Fria National Monument

includes most of the lands proposed for withdrawal, so the Bureau of Land Management has determined that the proposed withdrawal is not needed and has cancelled its application.

At 9 a.m. on March 19, 2001, the lands that were described in the Notice of Proposed Withdrawal in the **Federal Register**, FR 99–20274, August 6, 1999, that are not located within the Agua Fria National Monument, will be opened to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 19, 2001, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9 a.m. on March 19, 2001, the lands that were described in the Notice of Proposed Withdrawal in the **Federal Register**, FR 99–20274, August 6, 1999, that are not located within the Agua Fria National Monument will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the lands referenced in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 5, 2001.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 01–3821 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING MEETING: United States International Trade Commission.

TIME AND DATE: February 22, 2001 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731-TA–919–920 (Preliminary) (Certain Welded Large Diameter Line Pipe from Japan and Mexico)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on February 26, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on March 5, 2001.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 13, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–4014 Filed 2–13–01; 8:45 am]

BILLING CODE 1020–02–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 85–68

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 85–68. A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before April 16, 2001.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 408 of ERISA, the Department has authority to grant an exemption from the prohibitions of sections 406 and 407(a) if it can determine that the exemption is administratively feasible, in the interest of participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan. Prohibited Transaction Class Exemption 85–68 describes the conditions under which a plan is permitted to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. The exemption covers sales as well as contributions of customer notes by an employer to its plan. Specifically, the exemption requires that the employer provide a written guarantee to repurchase a note which becomes more than 60 days delinquent, that such notes be secured by a perfected security interest in the property financed by the note, and that the collateral be insured. This ICR requires that records pertaining to the transaction be maintained for a period of six years for the purpose of ensuring that the transactions are protective of the rights of participants and beneficiaries.

I. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

This notice requests comments on the extension of the ICR included in PTE–85–68. The ICR included in this exemption is intended to ensure that the conditions of ERISA section 408 have been satisfied with respect to transactions involving customer notes. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 85–68.

OMB Number: 1210–0094.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 120.

Frequency of Response: On occasion.

Responses: 960.

Estimated Total Burden Hours: 960.

Total Burden Cost (Operating and Maintenance): $0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: February 6, 2001.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 01–3832 Filed 2–14–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request; Comment Request; 29 CFR 2550.408b–1

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the information collection provisions of the regulation relating to loans to plan participants and beneficiaries who are parties in interest with respect to the plan (29 CFR 2550.408b–1). A copy of the proposed information collection request (ICR) can be obtained by contacting the person listed below in the **ADDRESSES** section.

DATES: Written comments must be submitted on or before April 16, 2001.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–4782 (this is not a toll-free number), FAX (202) 219–4745.

SUPPLEMENTARY INFORMATION:

I. Background

The Employee Retirement Income Security Act of 1974 (ERISA) prohibits a fiduciary with respect to a plan from causing the plan to engage in the direct or indirect lending of money or other extension of credit between the plan a party in interest. ERISA section 408(b)(1) exempts loans made by a plan to parties in interest who are participants and beneficiaries of the plan from this prohibition provided that certain requirements are satisfied. One such requirement is that loans to participants must be made in accordance with specific provisions regarding such loans set forth in the plan. In final regulations published in the **Federal Register** on July 20, 1989 (54 FR 30520), the Department of Labor provided additional guidance on section 408(b)(1)(C), which requires that loans must be made in accordance with specific provisions set forth in the plan. This ICR relates to the specific provisions which must be included in plan documents for those plans which permit loans to participants.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

This notice requests comments on the extension of the ICR included in 29 CFR 2550.408b–1. The ICR ensures that participants and beneficiaries are provided with adequate information with respect to matters affecting their benefits. The Department is not proposing or implementing changes to the existing ICR at this time. This existing collection of information should be continued because it ensures that participants and beneficiaries are provided with adequate information with respect to matters affecting their benefits. This ICR also provides additional guidance concerning the statutory requirement that loans to participants be made in accordance with specific written plan provisions.

Type of Review: Extension.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Regulation Relating to Loans to Plan Participants and Beneficiaries who are Parties in Interest with Respect to the Plan.

OMB Number: 1210–0076.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Total Respondents: 1,300.

Frequency: On occasion.

Total Responses: 1,300.

Average Time Per Response: 3 hours.

Estimated Total Burden Hours: 0.

Total Burden Cost (operating/maintenance): $281,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 6, 2001.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 01–3833 Filed 2–14–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10584, et al.]

Proposed Exemptions; New York Life Insurance Company (NYLIC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

New York Life Insurance Company (NYLIC), Located In New York, NY

[Application No. D–10584]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

I. Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the following transactions, if the conditions set forth in Section II and Section III, below, are satisfied:

(a) The receipt, directly or indirectly, by a sales agent (Sales Agent or Sales Agents), as defined in Section IV(l) below, of a sales commission from NYLIC in connection with the purchase, with plan assets, of an insurance contract (the Insurance Contract or Insurance Contracts), as defined in Section IV(h) below;

(b) The receipt of a sales commission by NYLIC, as principal underwriter for a mutual fund registered under the Investment Company Act of 1940, in connection with the purchase, with plan assets, of securities issued by such mutual fund (the NYLife Fund or NYLife Funds), as defined in Section IV(c) below;

(c) The effecting by NYLIC, as principal underwriter, of a transaction for the purchase, with plan assets, of securities issued by a NYLife Fund, and the effecting by a Sales Agent of a transaction for the purchase, with plan assets, of an Insurance Contract; and

(d) The purchase, with plan assets, of an Insurance Contract from NYLIC.

II. General Conditions

(a) The transactions are effected by NYLIC in the ordinary course of NYLIC's business as an insurance company, or as a principal underwriter to a NYLife Fund, or in the case of a Sales Agent, in the ordinary course of the Sales Agent's business as a Sales Agent.

(b) The transactions are on terms at least as favorable to the plan as an arm's length transaction with an unrelated party would be.

(c) The combined total of all fees, sales commissions, and other consideration received by NYLIC or a Sales Agent: (1) For the provision of services to the plan, and (2) in connection with a purchase of an Insurance Contract or securities issued by a NYLife Fund, is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code. If such total is in excess of "reasonable compensation" the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and excise taxes imposed by section 4975(a) and (b) of the Code is the amount of compensation in excess of "reasonable compensation."

III. Specific Conditions

(a) NYLIC or the Sales Agent is not—

(1) A trustee of the plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan or a trustee to a pooled trust (the Pooled Trust), as defined in Section IV(g)

[1] For purposes of this exemption, references to specific provisions of Title I of the Act unless otherwise specified, refer to the corresponding provisions of the Code.

below, which will not purchase Insurance Contracts or securities issued by a NYLife Fund pursuant to this exemption);

(2) A plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code;

(3) A fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, those assets of the plan that are or could be invested in Insurance Contracts, securities issued by a NYLife Fund, or units of a Pooled Trust; or

(4) An employer any of whose employees are covered by the plan.

(b) (1) Prior to the execution of a transaction involving the receipt of sales commissions by a Sales Agent in connection with the plan's purchase of an Insurance Contract, NYLIC or the Sales Agent provides to an independent plan fiduciary (the Independent Plan Fiduciary), as defined in Section IV(f) below, disclosures of the following information concerning the Insurance Contract in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) An explanation of: (i) The nature of the affiliation or relationship between NYLIC and the Sales Agent recommending the Insurance Contract; and, (ii) the nature of any limitations that such affiliation or relationship, or any agreement between the Sales Agent and NYLIC places on the Sales Agent's ability to recommend Insurance Contracts;

(B) The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by NYLIC to the Sales Agent in connection with the purchase of the recommended Insurance Contract, together with a description of any factors that may affect the commission; and

(C) A full and detailed description of any charges, fees, discounts, penalties, or adjustments which may be paid by the plan under the recommended Insurance Contract in connection with the plan's purchase, holding, exchange, termination, or sale of the Insurance Contract, including a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(b)(1) above, and before execution of the transaction, the Independent Plan Fiduciary acknowledges in writing receipt of such information, and approves the transaction on behalf of the plan. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be a Sales Agent involved in the transaction. The Independent Plan Fiduciary may not receive, directly or indirectly (*e.g.* through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Insurance Contracts, the written disclosure required under Section III(b)(1) need not be repeated, unless—

(A) More than three years have passed since such disclosure was made with respect to the same kind of Insurance Contract, or

(B) The Insurance Contract being recommended for purchase or the commission with respect thereto is materially different from that for which the approval described under Section III(b)(2) was obtained.

(c)(1) With respect to purchases with plan assets of securities issued by a NYLife Fund, or receipt of sales commissions by NYLIC in connection with such purchases, NYLIC provides to an Independent Plan Fiduciary, prior to the execution of the transaction, the following information concerning the recommended NYLife Fund in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) A description of: (i) The investment objectives and policies of the NYLife Fund, (ii) the principal investment strategies that the NYLife Fund may use to obtain its investment objectives, (iii) the principal risk factors associated with investing in the NYLife Fund, (iv) historical investment return information for the NYLife Fund, (v) fees and expenses of the NYLife Fund, including annual operating expenses (*e.g.*, management fees, distribution fees, service fees, and other expenses) and fees paid by shareholders (*e.g.*, sales charges and redemption fees), (vi) the identity of the NYLife Fund adviser, and (vii) the procedures for purchases of securities issued by the NYLife Fund (including any applicable minimum investment requirements and sales charges);

(B) A description of: (i) The expenses of the recommended NYLife Fund, including investment management, investment advisory, or similar services, any fees for secondary services (*e.g.*, for services other than investment management, investment advisory, or similar services, including but not limited to custodial, administrative, or other services), and (ii) any charges, fees, discounts, penalties, or adjustments that may be paid by the plan in connection with the purchase, holding, exchange, termination, or sale of shares of the recommended NYLife Fund securities, together with a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan or the NYLife Fund;

(C) An explanation of (i) The nature of the affiliation or relationship between NYLIC, the NYLife Fund, and (ii) the limitation, if any, that such affiliation, relationship, or any agreement between NYLIC and the NYLife Fund places on NYLIC's ability to recommend securities issued by other investment companies;

(D) The sales commission, if any, that NYLIC will receive in connection with the purchase of securities of the recommended NYLife Fund, expressed either as: (i) A percentage of the dollar amount of the plan's gross payments and the amount actually invested, (ii) an annual percentage of average daily net asset value of securities issued by the NYLife Fund, or (iii) both if applicable, with a description of any factors that may affect the commission; and

(E) A description of the procedure or procedures for redeeming the NYLife Fund securities.

The disclosures required under section III(c)(1) above shall be deemed to be completed only if, with respect to fees and expenses of NYLife Fund, the type of each fee or expense (*e.g.*, management fees, administrative fees, fund operating expenses, and other fees, including but not limited to fees payable for marketing and distribution services pursuant to Rule 12b–1 under the Investment Company Act of 1940 (the 12b–1 Fees)) and the rate or amount charged for a specified period (*e.g.*, annually) is provided in a written document separate from the prospectus of such NYLife Fund.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(c)(1) above, and before execution of the transaction, the Independent Plan Fiduciary approves the specific transaction on behalf of the plan. Unless facts and circumstances would indicate the contrary, such approval may be presumed if the Independent Plan Fiduciary directs the transaction to proceed after NYLIC has delivered the written disclosures to the Independent Plan Fiduciary. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be NYLIC. The Independent Plan Fiduciary may not

receive, directly or indirectly (*e.g.* through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of NYLife Fund securities, NYLIC:

(A) Provides reasonable advance notice of any material change with respect to the NYLife Fund securities being purchased or the commission with respect thereto, and

(B) Repeats the written disclosure required under Section III(c)(1)(A), (C), (D), and (E) once every three years.

(d)(1) NYLIC shall retain or cause to be retained for a period of six (6) years from the date of any transaction covered by this exemption the following:

(A) The information disclosed with respect to such transaction pursuant to Section III(b), and (c) above; and

(B) Any additional information or documents provided to the Independent Plan Fiduciary with respect to the transaction; and

(C) The written acknowledgments described in Section III(b)(2) above.

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of NYLIC, such records are lost or destroyed before the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, such records shall be unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by the plan.

(e) Neither NYLIC nor a Sales Agent renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the assets involved in the transaction in connection with a formal advice program under which specific/individualized asset allocation recommendations are made available to participants based on their responses to questionnaires.

IV. Definitions

For purposes of this exemption—

(a) "NYLTC" means the New York Life Trust Company, or any other financial institution supervised under state or federal laws and affiliated with NYLIC;

(b) "NYLIC" means the New York Life Insurance Company and any of its affiliates, including but not limited to NYLTC, as defined in Section IV(a) above;

(c) "NYLife Fund or NYLife Funds" mean any investment company registered under the Investment Company Act of 1940 for which NYLIC serves as investment advisor and as principal underwriter (as that term is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(29));

(d) An "affiliate" of a person means: (1) Any person directly or indirectly controlling, controlled by, or under common control with such person, (2) any officer, director, employee, or relative of any such person, or any partner in such person, and (3) any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner. For purposes of this definition, an "employee" includes: (A) any registered representative of NYLIC, where NYLIC or an affiliate is principal underwriter, and (B) any insurance agent or broker or pension consultant acting under a written agreement as NYLIC's agent in connection with the sale of an Insurance Contract, whether or not such registered representative or insurance agent or broker or pension consultant is a common law employee of NYLIC;

(e) The term, "control," means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(f) "Independent Plan Fiduciary" means a fiduciary with respect to a plan, which fiduciary has no relationship to or interest in NYLIC that might affect the exercise of such fiduciary's best judgment as a fiduciary;

(g) "Pooled Trust" means any collective investment fund or group trust maintained by NYLTC, provided that, NYLTC its successor or affiliate does not have discretionary authority or responsibility with respect to the management and administration of or provide investment advice with respect to, any assets of the plan that are or could be invested in Insurance Contracts, securities issued by a NYLife Fund, or units of a Pooled Trust;

(h) "Insurance Contract or Insurance Contacts" mean an insurance or annuity contract issued by NYLIC; [2]

(i) A "nondiscretionary trustee" of a plan is a trustee whose powers and duties with respect to any assets of the plan are limited to: (1) The provision of nondiscretionary trust services, as defined in Section IV(j) below, to such plan, and (2) the duties imposed on the trustee by any provision or provisions of the Act or the Code;

(j) "Nondiscretionary trust services" mean custodial services and services ancillary to custodial services, none of which services are discretionary;

(k) A "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in Code section 4975(e)(6), or a brother, a sister, or a spouse of a brother or a sister;

(l) "Sales Agent or Sales Agents" mean any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with NYLIC; and

(m) "Principal underwriter" is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 8a–2(a)(29)).

EFFECTIVE DATE: If granted, this proposed exemption will be effective, as of February 12, 1998, the date of the filing of the application for exemption.

Summary of Facts and Representations

1. The plans which are expected to participate in the proposed transactions are employee benefit plans, which are subject to the provisions of the Act and are tax-qualified under section 401(a) of the Code.[3] Due to the nature of the requested exemption, the applicants maintain that they are unable to provide any of the following specific identifying information about the plans that may engage in the proposed transactions: (1) The number of participants; (2) an estimate of the percentage of assets of each plan affected by the requested exemption or transactions; or (3) the approximate aggregate fair market value of the total assets of each affected plan.

It is represented that there is no minimum investment or minimum plan size required in order for a plan to participate in the proposed transactions. However, it is anticipated that such plans will primarily be participant-directed defined contribution pensions

[2] The Department expresses no opinion as to whether any so-called "synthetic guaranteed insurance contracts" offered by NYLIC constitute an Insurance Contract within the meaning of this exemption. The Department further notes that this exemption provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of Insurance Contracts to plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this exemption for any act of self-dealing that may arise in connection with the ongoing operation or administration of an Insurance Contract.

[3] The applicants have not requested an exemption, and no relief is provided, herein, for any plan covering employees of NYLIC or its affiliates.

plans, and that, in particular, such plans will be too small to participate in single customer guaranteed interest contracts (GICs or GIC) or a synthetic GIC product. In this regard, plans covered by the exemption may include plans intended to satisfy the requirements of section 404(c) of the Act and the regulations thereunder (a Section 404(c) Plan).[4]

Because section 404(c) of the Act applies only to the provisions of Part 4 of Title I, there is no provision in the Code corresponding to section 404(c). Thus, there is no statutory exemption from the excise taxes imposed under section 4975 of the Code with respect to prohibited transactions involving a Section 404(c) Plan. In this regard, the Department notes that the authority to grant administrative exemptions for such prohibited transactions remains with the Treasury Department pursuant to the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978). Accordingly, the Department has no authority to provide relief from section 4975 of the Code with respect to a transaction that results from a participant's or a beneficiary's exercise of control within the meaning of section 404(c) and applicable regulations. The applicants have represented that they are aware of the limitation on the jurisdiction of the Department under the Reorganization Plan. However, the applicants maintain that the transactions for which relief is requested, herein, should not be viewed as "participant-directed," because the fiduciaries of plans (not the participants of such plans) will be responsible for selecting and purchasing an Insurance Contract for a plan and selecting the NYLife Funds offered under a plan. Accordingly, the applicants have requested relief from the provisions of both the Act and the Code.

2. The application was filed on behalf of NYLIC and its direct or indirect wholly-owned subsidiaries, New York Life Trust Company (NYLTC), New York Life Benefit Services (NYLBS), NYLIFE Distributors Inc. (NYLIFE Distributors), MacKay-Shields Financial Corporation (MacKay-Shields), Monitor Capital Advisors, Inc. (Monitor Capital), and NYLIFE Securities Inc. (NYLIFE Securities).

3. NYLIC is an insurance company organized and operated under the laws of the State of New York. As of December 31, 1996, NYLIC had total consolidated assets of approximately $78.8 billion and net policy reserves of $74.8 billion. It is represented that NYLIC offers to employee benefit plans covered by Title I of the Act a variety of insurance products, including *e.g.*, group fixed and variable annuities and GICs. Group annuities serve primarily as funding vehicles for retirement plan benefits. It is represented that all insurance products offered by NYLIC are reviewed and approved by the New York Insurance Department under New York insurance laws and under the applicable insurance laws of any other state where such products are marketed and sold. It is represented that all such insurance contracts are sold by sales agents, which include licensed sales employees, agents, and brokers of NYLIC. In connection with sales of insurance contracts, such sales agents may receive commissions or other compensation.

4. NYLTC, an affiliate of NYLIC and a trust company chartered and operating under the banking laws of the State of New York, provides a variety of fiduciary services for individuals, institutions, and plan accounts covered by the Act. In this regard, it is represented that NYLTC already serves as a nondiscretionary trustee to employee benefit plans. Certain plans may also obtain directed trustee services provided by NYLTC.

5. NYLBS, another affiliate of NYLIC, provides administrative services to NYLIC, to NYLTC, and to plans covered by the Act. Such services include actuarial consulting, daily-valued record-keeping, and other plan administrative services. In this regard, it is represented that NYLBS offers "401 (k) Complete," a bundled services program to participant-directed defined contribution plans which combines plan administration, record-keeping services, and a selection of investment options, including insurance contracts and mutual funds, such as the NYLife Funds. Further, these services include providing participants with required plan information (*e.g.*, summary plan descriptions) and investment education, including asset allocation "tools." It is represented that investment education materials provided by NYLBS, including asset allocation tools, comply with the safe harbor for investment information and education, as described in Interpretive Bulletin 96–1. NYLBS does not charge a separate fee for the asset allocation tools and does not provide any specific/individualized asset allocation recommendations to participants. In addition to materials provided by NYLBS to participants, it is represented that NYLBS may in the future enter an arrangement under which one or more third party assets allocation service providers would provide a formal asset allocation program to participants of plans receiving services from NYLBS. If such a program were made available to plans, the asset allocation services would be provided solely by a third party service provider that is a registered investment adviser and wholly independent of NYLIC and its affiliates. The asset allocation program would be available only if a plan fiduciary (independent of NYLIC) elects to offer the program to participants; and no employee or other person representing NYLIC or any of its affiliates (including NYLBS) would have any role in reviewing, approving, or providing asset allocations to participants in connection with the program.[5]

6. The NYLife Funds are open-end investment companies registered with the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940. The NYLife Funds are offered to plans directly and through variable life and annuity contracts issued by NYLIC. Currently, the NYLife Funds include the MainStay Funds, which are available to retail and institutional investors (including defined contribution plans) and the MainStay Institutional Funds Inc., which are only available to institutional investors and to group individual retirement account customers. The MainStay Funds, organized as a Massachusetts business trust, currently include fourteen (14) separate funds, each of which has its own investment objectives and policies. MainStay Institutional Funds Inc. currently include eleven (11) separate funds.

NYLIC provides a broad range of services to NYLife Funds. Specifically, the NYLife Funds are managed by MacKay-Shields or Monitor Capital, both of which are registered investment advisers and indirect wholly-owned subsidiaries of NYLIC. NYLIC is the administrator to each of the NYLife Funds and provides various services,

[4] In relevant part, section 404(c) of the Act and the regulations promulgated thereunder at 57 FR 46906 (October 13, 1992) provide that where a participant or beneficiary of a section 404(c) plan exercises control over the assets in his or her account, then: (i) the participant or beneficiary shall not be deemed to be a fiduciary by reason of his exercise of control; and (ii) no person who is otherwise a fiduciary shall be liable under the fiduciary responsibility provisions of the Act for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

[5] The applicants do not believe that the limited investment education and assets allocation tools that NYLIC may provide give rise to any transaction that would require exemptive relief, and NYLIC is not seeking any relief for these activities. The Department is offering no relief, herein, for transactions other than those proposed, nor is the Department expressing an opinion, herein, as to the applicability of Interpretive Bulletin 96–1 to the facts of this case.

including administration, accounting, and other similar services and shareholder administration and sub-accounting for which NYLIC and/or its affiliates may receive management fees, administrative fees, and/or shareholder services fees.

7. NYLIFE Distributors, the principal underwriter and distributor of the NYLife Funds, is responsible for distributing shares of NYLife Funds, as agent or as principal. NYLIFE Distributors receives sales commissions, including 12b–1 Fees for sales of some classes of shares issued by NYLife Funds paid under a plan of distribution, pursuant to Rule 12b–1 under the Investment Company Act of 1940.[6]

8. The NYLife Funds are sold to plans by NYLIFE Securities, an affiliate of NYLIC and a registered broker-dealer and a member of the National Association of Securities Dealers. Subject to applicable SEC regulations, NYLIFE Securities may act as broker for the NYLife Funds for which it receives fees for brokerage services. It is further represented that in connection with the sales of NYLife Funds to plans, certain sales agents that are registered representatives of NYLIFE Securities may receive sales commission. It is represented that these payments may be made by NYLIFE Distributors from amounts it receives as sales commissions, or by NYLIC from its general assets. It is represented that the prospectus materials for each of the NYLife Funds fully disclose the fees and expenses charged against the assets of each of the NYLife Funds, including fees paid to NYLIC.

9. The applicants have requested an exemption which would permit under certain conditions NYLIC and Sales Agents to receive sales commissions in connection with purchases by plans of Insurance Contracts issued by NYLIC and shares of NYLife Funds underwritten by NYLIC, in situations where such plans also participate in a collective or group trust maintained by NYLTC. In this regard, NYLIC intends to establish such a collective trust (the Collective Trust) to serve as an investment vehicle for contract holders under benefit responsive synthetic or traditional GICs.

The assets of the Collective Trust will be selected and actively managed by NYLTC. In this regard, it is represented that NYLIC will advise NYLTC in connection with the management of the Collective Trust, although NYLTC will have final decision making authority. Subject to certain investment guidelines, the assets of the Collective Trust will consist of a portfolio of fixed income securities. It is represented that generally the value of the assets held in the Collective Trust will be based upon readily attainable market valuations published by independent sources. If no market value of an asset is readily available, NYLIC represents that it will obtain a fair value in accordance with commercially acceptable practices and applicable laws and regulations.

The investment guidelines of the Collective Trust also incorporate procedures for identifying and liquidating impaired securities and procedures for establishing priorities for the liquidation of portfolio securities. It is further represented that the guidelines of the Collective Trust prohibit the transfer, purchase, or sale of Collective Trust portfolio assets from or to NYLIC or any affiliate or to any account for which NYLIC or any affiliate has discretionary management authority.

All of the assets of the Collective Trust will be held in a custodial account (the Custodial Account) by a financial institution unrelated to NYLIC. The Custodial Account will be owned by NYLTC, as trustee for the participants in the Collective Trust. It is represented that the participants in the Collective Trust, not NYLIC, will be the beneficial owners of a *pro rata* share of the assets in the Custodial Account.

It is anticipated that initially there will only be two (2) investors in the Collective Trust.[7] In this regard, the Collective Trust will serve as a funding vehicle: (1) For contributions made under the Anchor Retirement Trust Synthetic GIC Participating Group Annuity Contract (the Anchor Synthetic GIC), a group annuity contract approved by the New York State Insurance Department; [8] and (2) For contributions made under certain other guaranteed investment contracts (the SA 25 GICs) which have also been approved by the New York State Insurance Department.

10. It is represented that the SA 25 GICs have already been issued by NYLIC to various employee benefit plans (the SA 25 Plans) which participate in a pooled separate account (Separate Account 25) and may in the future be offered to other plans.[9] Separate Account 25 is a book value separate account established under Section 4240(a)(5)(ii) of the New York Insurance Law and valued on an amortized cost basis in accordance with Section 4240(a)(10) of the New York Insurance Law. NYLTC, as trustee for participating plans, is the group contract holder for the pooled group annuity contract issued in connection with Separate Account 25. In this regard, it is represented that NYLTC does not have any discretionary responsibility or authority with respect to the administration or management of the assets invested under such group contract.

NYLIC is the investment manager of Separate Account 25. As such, NYLIC decided to invest the Separate Account 25 assets in the Collective Trust, because Separate Account 25 had the same investment objectives as the Collective Trust and because NYLIC believes that increasing the size of the asset portfolio would provide a more stable, less volatile, daily interest rate on amounts contributed under the SA 25 GICs. In addition, no SA 25 Plan paid or will pay any additional management fees in connection with the investment of assets of Separate Account 25 into the Collective Trust.[10]

11. As mentioned above, the Collective Trust will also serve as a funding vehicle for contributions made under the Anchor Synthetic GIC. In this regard, NYLIC represents that it may offer the Anchor Synthetic GIC to any employee benefit plan subject to Title I of the Act (the Anchor Plans).[11] Specifically, NYLIC intends to market the Anchor Synthetic GIC primarily to participant-directed defined contribution plans that participate in the bundled services program offered by NYLBS.[12] It is represented that an

[6] The Department notes that the relief provided by this exemption does not preclude the receipt of 12b–1 Fees by NYLIC or its affiliates to the extent that the payment of such 12b–1 Fees cannot be functionally distinguished from the payment of a sales commission in connection with the purchase, with plan assets, of securities issued by a NYLife Fund.

[7] NYLIC represents that it is possible certain tax-qualified plans or a trust or other entity holding qualified plan assets could participate in the Collective Trust sometime in the future.

[8] See footnote 2.

[9] The applicants believe that the initial purchase of a SA 25 GIC by an SA 25 Plan before Separate Account 25 begins participating in the Collective Trust should be exempted by Section III(d) of Class Exemption 84–24 (PTCE 84–24), because NYLTC will not at the time of the initial purchase be a trustee (other than a nondiscretionary trustee) with respect to the purchasing plans. The Department, herein, is offering no view as to the applicability of PTCE 84–24 under the circumstances described above.

[10] The Department, herein, is offering no view as to whether any of the relevant provisions of Part 4, subpart B, of Title I have been violated, regarding the investment of the assets of the Separate Account 25 in the Collective Trust.

[11] It is represented that plans sponsored by NYLIC or any of its affiliates will not invest in the Anchor Synthetic GIC.

[12] The applicants have not requested administrative exemptive relief for the initial purchase by plans of the Anchor Synthetic GIC in reliance on PTCE 84–24, because at the time of the initial purchase of such contract, NYLTC will not

Independent Plan Fiduciary will determine whether or not a plan will invest in the Anchor Synthetic GIC, including whether the Anchor Synthetic GIC is appropriate as an investment option under the plan.

The applicants maintain that the Anchor Synthetic GIC has features that will be advantageous to a plan and its participants. Such features include: (a) A fully benefit-responsive book value guarantee protecting participants against loss of the principal amount of contributions and accumulated interest, and (b) an opportunity to fully participate in the return on a portfolio of fixed income securities.

The Anchor Synthetic GIC does not prospectively guarantee the rate at which interest will be credited on balances held under the contract. In this regard, the credited interest rate is objectively determined under a formula that takes investment performance into account and is disclosed to plans. Under the terms of the Anchor Synthetic GIC, the interest rate will reflect the investment experience of the Anchor Trust and will be at variable rates, calculated daily by NYLIC as the weighted average of book yields [13] on the portfolio of assets held in the Collective Trust, adjusted for realized capital gains and losses, but not less than zero.

Under the contract terms, amounts credited as interest are subject to the guarantee as soon as the interest is actually credited on the contract balance. The daily crediting interest rate will be available to plan fiduciaries and participants through participant communication services provided by NYLBS. Plan participants will receive benefit distributions or may transfer amounts allocated to the Anchor Synthetic GIC investment option to another investment option at "book value" on any day (subject to certain limits on transfers to competing options and employer-initiated events). Plans will be able to withdraw their investment in the Anchor Synthetic GIC at "book value" on twelve (12) months" notice without any penalty, or on any business day without notice at the lesser of "book value" or market value. The investment guidelines for the Anchor Synthetic GIC specify: (a) The type and minimum standards for portfolio securities, (b) objective procedures for liquidating securities to fund withdrawals or in the case of impaired securities, and (c) procedures for valuing assets based on independent sources.

It is represented that contributions under the Anchor Synthetic GIC will be maintained separately from the assets of NYLIC through a two-layer structure. Specifically, contributions will be credited first to the Anchor Retirement Trust (the Anchor Trust), a bank collective trust that qualifies as a group trust under Revenue Ruling 81–100, maintained exclusively for the Anchor Plans by NYLTC. Thereafter, all of the assets of the Anchor Trust will be invested and held in the Collective Trust, in accordance with the provisions of the Anchor Synthetic GIC.[14] It is represented that all investments from Anchor Trust into the Collective Trust will be in cash.

NYLTC will be trustee with investment management responsibility for both the Anchor Trust and the Collective Trust. It is represented that an Independent Plan Fiduciary to each Anchor Plan will approve the investment of plan assets in the Anchor Trust and the Collective Trust by virtue of accepting the terms of the Anchor Synthetic GIC. The terms of the Anchor Synthetic GIC will specifically describe the Anchor Trust and the Collective Trust and all fees and other charges that would be paid from plan assets (including amounts payable to NYLIC and NYLTC) in connection with the two trusts.

12. NYLTC would be a party in interest and fiduciary with respect to the Anchor Plans and the SA 25 Plans by virtue of being a discretionary trustee to the Collective Trust and the Anchor Trust in which the Anchor Plans invest. Similarly, NYLIC would be a fiduciary and a party in interest to the Anchor Plans and SA 25 Plans by virtue of providing investment advisory services to the Collective Trust. Further, NYLIC would be a fiduciary and a party in interest with respect to SA 25 Plans, as investment manager of Separate Account 25. Finally, in connection with one or more of the other products and services that NYLIC and its affiliates offer to employee benefit plans in the ordinary course of business, NYLIC or one of its affiliates, as a service provider to plans, may already be a fiduciary and/or party in interest to plans that may participate in the proposed transactions.

13. It is represented that where NYLIC and/or its affiliates are parties in interest with respect to a plan, the applicants generally rely on the class exemption provided under PTCE 84–24 in effecting such plan's purchases of insurance contracts and shares of NYLife Funds and for the receipt of commissions and other fees by NYLIC and its sales employees and agents in connection with such transactions. In this regard, PTCE 84–24, subject to certain conditions, provides relief from the prohibitions of sections 406(a)(1)(A) through (D) and 406(b) of the Act, and from the taxes imposed by section 4975 of the Code for certain classes of transactions involving purchases by plans of insurance or annuity contracts and purchases by plans of securities issued by registered investment companies, and the receipt of sales commissions in connection therewith by an insurance agent, broker, pension consultant, or investment company principal underwriter. However, PTCE 84–24 is not available, if an insurance agent, broker, pension consultant, or an investment company principal underwriter or its affiliate is a plan trustee, other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan.

According to the applicant, no exemptive relief is needed or requested for a plan's initial purchases of the Anchor Synthetic GIC or the SA 25 GICs, because at the time of such purchases, NYLTC is not yet a trustee (other than a non-discretionary trustee) with respect to the purchasing plans. In this regard, NYLIC represents that it has complied with the applicable disclosures and other conditions of

yet be a trustee (other than a nondiscretionary trustee) with respect to the purchasing plans. The Department, herein, is offering no view as to the applicability of PTCE 84–24 under the circumstances described above.

[13] It is represented that the "weighted average of book yields" would be determined as the ratio of: (a) the aggregate interest income ("book value" times "book yield") for all securities in the Collective Trust; to (b) the aggregate "book value" for all such securities. For this purpose, "book yield" is the yield that equates the present value of future cash flows to the cost of the security, assuming that the security is held to maturity. "Book value" is the cost of a security plus interest accruals, plus or minus amortization of a discount or premium, minus repayment of principal and interest payments.

[14] The applicants believe that investments by the Anchor Plans in the Anchor Trust and in the Collective Trust do not appear to involve any non-exempt prohibited transactions, and accordingly have not requested individual administrative exemptive relief. In this regard, the applicants believe that the Anchor Trust should not be deemed to be a party in interest with respect to plans that purchase the Anchor Synthetic GIC. However, if the investments by Anchor Plans in the Anchor Trust are deemed to involve a prohibited transactions, the applicants believe that a statutory exemption would be available under section 408(b)(8) of the Act. The Department, herein, is offering no view as to whether any of the relevant provisions of Part 4, subpart B, of Title I have been violated regarding the investment by the Anchor Plan in the Anchor Trust and in the Collective Trust, nor is the Department expressing an opinion as to the applicability of statutory exemptive relief under section 408(b)(8) of the Act.

PTCE 84–24.[15] However, the applicants are uncertain as to whether PTCE 84–24 would be available for subsequent purchases by the Anchor Plans and/or the SA 25 Plans of Insurance Contracts or shares of NYLife Funds, where NYLTC is a discretionary trustee for plan assets in the Collective Trust, even though NYLTC would not provide investment advice (as described by section 3(21) of the Act), or exercise or have any discretionary authority or control over plans' purchases of such insurance products or shares of a NYLife Fund. Accordingly, the applicants have requested individual relief from section 406(a) and (b) of the Act for the proposed transactions under conditions similar to those provided by PTCE 84–24.

14. As of the filing of the application, NYLIC had not yet established the Collective Trust nor offered the Anchor Synthetic GIC to the Anchor Plans. However, it is represented that on or after the date of the filing of the application, NYLIC and NYLTC intend to establish the Collective Trust, to invest Separate Account 25 assets in the Collective Trust, and to offer the Anchor Synthetic GIC to plans. Accordingly, the applicants have requested retroactive relief, effective as of February 12, 1998, the date of the filing of the application for exemption.

15. In support of their request for individual exemption, the applicants represent that the transactions are on terms which are at least as favorable to each plan that participates, as those negotiated at arm's length with an unrelated party. It is further represented that such transactions are effected by NYLIC or a Sales Agent in the ordinary course of business. With respect to the receipt of sales commissions by NYLIC or a Sales Agent for the provision of services to a plan, and in connection with a purchase of an Insurance Contract or securities issued by an NYLife Fund, the combined total of all fees, sales commissions, and other consideration received by NYLIC or a Sales Agent will not be in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code.

16. The requested exemption is administratively feasible, because compliance with the terms of the exemption will be monitored by an Independent Plan Fiduciary of each plan that participates in the proposed transactions, so that the level of oversight required by the Department is minimal. Further, NYLIC will maintain records necessary to verify compliance with the conditions of this exemption.

17. The applicants believe that the requested exemption provides adequate safeguards for the protection of plan participants in that the proposed transactions do not appear to involve the types of abuse that the Department intended to address by limiting the availability of PTCE 84–24 where a party in interest or its affiliate is a trustee to a plan. With regard to the terms of the proposed exemption, the influence of NYLTC will be limited by conditions comparable to those set forth in PTCE 84–24, such that NYLTC would not have an opportunity to use its position as trustee to the Anchor Trust or the Collective Trust to improperly influence or control a plan's purchase of Insurance Contracts or shares of NYLife Funds. Moreover, it is represented that NYLTC will not provide any investment advice or have or exercise any discretionary authority or control with respect to plan assets involved in the purchase of Insurance Contracts or NYLife Funds. In this regard, an Independent Plan Fiduciary of each Plan that purchases an Anchor Synthetic GIC or holds or participated in a SA 25 GIC will receive written disclosures before the plan purchases an Insurance Contract or purchases shares of the NYLife Funds. Further, prior to entering a transaction, the Independent Plan Fiduciary will review and approve such transactions on behalf of the plan.

18. The applicants maintain that the proposed exemption is in the interest of the plans which participate in the subject transactions, because such plans will be able to take advantage of the full range of insurance and investment products offered by NYLIC. Moreover, NYLIC anticipates that the investment of assets in the Collective Trust will benefit the plans participating in Separate Account 25, as well as those plans that participate under the Anchor Synthetic GIC, by obtaining economies and efficiencies of scale and, more importantly, by increasing the size of the asset portfolio. In this regard, a larger portfolio size should result in a more stable, less volatile, daily interest rate on amounts contributed under the SA 25 GICs and the Anchor Synthetic GIC, because of the lesser impact of a withdrawals on a larger pool of assets.

Further, the proposed investment structure will not involve any doubling of fees. In this regard, no additional management fees will be charged by NYLTC or NYLIC for managing the Collective Trust assets. Instead, the plans will only pay the management and other fees specified by the Anchor Synthetic GIC and the SA 25 GICs, respectively. Management fees under all of the contracts will be determined based on the stable value account, not the market value of Collective Trust assets held in connection with the contracts.

19. In summary, the applicants represent that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act and 4975(c)(2) of the Code because:

(a) Plans can take advantage of the full range of insurance and investment products offered by NYLIC and its affiliates;

(b) The transactions are effected by NYLIC or by a Sales Agent in the ordinary course of business;

(c) The transactions are on terms at least as favorable to a plan as an arm's length transaction with an unrelated party;

(d) The combined total of all fees, sales commissions, and other consideration received by NYLIC or a Sales Agent for the provision of services to a plan, and in connection with the proposed transactions is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code;

(e) Neither NYLIC nor the Sales Agent is a trustee of a plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan or a trustee to a Pooled Trust);

(f) With respect to the proposed transactions, NYLIC provides each Independent Plan Fiduciary with certain disclosures in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters; and provides disclosure in a written document separate from the prospectus of information regarding specific types of fees or expenses paid from the assets of a NYLife Fund and the rate or amount of each fee or expense charged for a specified period;

(g) Following receipt of the required disclosures and prior to entering the transaction, an Independent Plan Fiduciary approves the transaction on behalf of a plan; and

(h) NYLIC shall retain or cause to be retained certain records for a period of six (6) years from the date of any transaction covered by this exemption.

Notice to Interested Persons

Because of the large number of potentially interested persons, the applicants maintain that it is not

[15] The Department, herein, is offering no view as to: (a) The applicability of PTCE 84–24 under the circumstances described above, or (b) whether NYLIC has satisfied or will satisfy all of the terms and conditions, as set forth in PTCE 84–24.

possible to provide a separate copy of the Notice of Proposed Exemption (the Proposed Exemption) to each plan eligible to engage in the transactions covered by the requested exemption. In this regard however, NYLIC intends to provide notice in writing (by first-class mail or another method reasonably calculated to ensure that the notice is received) to an Independent Plan Fiduciary of each plan that participates in the Anchor Synthetic GIC or any of the SA 25 GICs within fifteen (15) days of the date of publication of the Notice in the **Federal Register**, a copy of the Proposed Exemption, as published in the **Federal Register**, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). The notification will inform such interested persons of their right to comment and/or request a hearing within thirty (30) days of receipt of a copy of the Proposed Exemption.

Apart from the notification described in the paragraph above, the applicants represent that the only practical form of providing notice to interested persons is by means of publication of the Proposed Exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Salomon Smith Barney Inc. (SSB), Citigroup Inc. (Citigroup) and Their Affiliates, (Collectively, the Applicants) Located in New York, New York

[Application Number D–10760]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975 (c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[16]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The proposed purchase or sale by employee benefit plans (the Plans), other than Plans sponsored and maintained by the Applicants, of publicly-traded debt securities (the Debt Securities) issued by the Applicants; and (2) the extension of credit by the Plans to the Applicants in connection with the holding of the Debt Securities.

This proposed exemption is subject to the general conditions that are set forth below in Section II.

Section II. General Conditions

(a) The Debt Securities are made available by the Applicants in the ordinary course of their business to Plans as well as to customers which are not Plans.

(b) The decision to invest in the Debt Securities is made by a Plan fiduciary (the Independent Plan Fiduciary) or a participant in a Plan that provides for participant-directed investments (the Plan Participant), which is independent of the Applicants.

(c) The Applicants do not have any discretionary authority or control or provide any investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to the Plan assets involved in the transactions.

(d) The Plans pay no fees or commissions to the Applicants in connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under Part II of Prohibited Transaction Class Exemption (PTCE) 75–1 (40 FR 50845, October 31, 1975).[17]

(e) Citigroup agrees to notify Plan investors in the prospectus (the Prospectus) for the Debt Securities that, at the time of acquisition, no more than 15 percent of a Plan's assets should be invested in any of the Debt Securities.

(f) The Debt Securities do not have a duration which exceeds 9 years from the date of issuance.

(g) Prior to a Plan's acquisition of any of the Debt Securities, the Applicants fully disclose, in the Prospectus, to the Independent Plan Fiduciary or Plan Participant, all of the terms and conditions of such Debt Securities, including, but not limited to, the following:

(1) A statement to the effect that the return calculated for the Debt Securities will be denominated in U.S. dollars;

(2) The specified index (the Index) or Indexes on which the rate of return on the Debt Securities is based;

(3) A numerical example, designed to be understood by the average investor, which explains the calculation of the return on the Debt Securities at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;

(4) The date on which the Debt Securities are issued;

(5) The date on which the Debt Securities will mature and the conditions of such maturity;

(6) The initial date on which the value of the Index is calculated;

(7) Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;

(8) The ending date on which interest is determined, calculated and paid;

(9) Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the Debt Securities is entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);

(10) All details regarding the methodology for measuring performance;

(11) The terms under which the Debt Securities may be redeemed;

(12) The exchange or market where the Debt Securities are traded or maintained; and

(13) Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

(h) The terms of a Plan's investment in the Debt Securities are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction at the time of such acquisition.

(i) In the event the Debt Securities are delisted from any nationally-recognized securities exchange, Citigroup will apply for trading through the National Association of Securities Dealers Automated Quotations System (NASDAQ), which requires that there be independent market-makers establishing a market for such securities in addition to Citigroup. If there are no independent market-makers, the exemption will no longer be considered effective.

(j) The Debt Securities are rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of their acquisition.

(k) The rate of return for the Debt Securities is objectively determined and, following issuance, the Applicants retain no authority to affect the determination of the return for such security, other than in connection with a "market disruption event" (the Market

[16] For purposes of this proposed exemption, references to Title I of the Act, unless otherwise noted herein, refer also to corresponding provisions of the Code.

[17] The Department is providing no opinion herein as to whether any principal transactions involving debt securities would be covered by PTCE 75–1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75–1.

Disruption Event) that is described in the Prospectus for the Debt Securities.

(l) The Debt Securities are based on an Index that is—

(1) Created and maintained [18] by an entity that is unrelated to the Applicants and is a standardized and generally-accepted Index of securities; or

(2) Created by the Applicants, but maintained by an entity that is unrelated to the Applicants,

(i) Consists either of standardized and generally-accepted Indexes or an Index comprised of publicly-traded securities that are not issued by the Applicants, are designated in advance and listed in the Prospectus for the Debt Securities (Under either circumstance, the Applicants may not unilaterally modify the composition of the Index, including the methodology comprising the rate of return.),

(ii) Meets the requirements for an Index in Rule 19b–4 (Rule 19b–4) under the Securities Exchange Act of 1934 (the 1934 Securities Act), and

(iii) The index value (the Index Value) for the Index is publicly-disseminated through an independent pricing service, such as Reuters Group, PLC (Reuters) or Bloomberg L.P. (Bloomberg), or through a national securities exchange.

(m) The Applicants do not trade in any way intended to affect the value of the Debt Securities through holding or trading in the securities which comprise an Index.

(n) The Applicants maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this section to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Applicants, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Applicants shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any Plan Participant or beneficiary of any participating Plan, or any duly authorized representative of such Plan Participant or beneficiary.

(o)(2) None of the persons described above in subparagraphs (B)–(D) of paragraph (o)(1) are authorized to examine the trade secrets of the Applicants or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

1. Citigroup is a diversified holding company whose businesses provide a broad range of financial services to consumer and corporate customers around the world. Citigroup's activities are conducted through Global Consumer, Global Corporate and Investment Bank, Global Investment Management and Private Banking, and Investment Activities. As of December 31, 1999, Citigroup and its subsidiaries had total consolidated assets of approximately $717 billion.

2. Citigroup's Global Consumer segment includes a global, full-service consumer franchise encompassing, among other things, branch and electronic banking, consumer lending services, investment services, credit and charge card services, and life, auto and homeowner insurance. The businesses included in Citigroup's Global Corporate and Investment Bank segment serve corporations, financial institutions, governments, and other participants in developed and emerging markets throughout the world. These businesses provide, among other things, investment banking retail brokerage, corporate banking, cash management products and services, and commercial insurance. Global Investment Management and Private Banking includes asset management services provided to mutual funds, institutional and individual investors, and personalized wealth management services for high net worth clients. The Investment Activities segment includes Citigroup's venture capital activities, the realized investment gains and losses related to certain corporate- and insurance-related investments and the results of certain investments in countries that refinanced debt under the 1989 Brady Plan or plans of a similar nature.

3. Salomon Smith Barney Holdings Inc. (Holdings) operates through its subsidiaries in two business segments, Investment Services and Asset Management. It provides investment banking, securities and commodities trading, capital raising, asset management, advisory, research and brokerage services to its customers, and executes proprietary trading strategies on its own behalf. Holdings is a global, full-service investment banking and securities brokerage firm with more than 11,300 Financial Consultants in 476 offices across the United States. Holdings provides a full range of financial advisory, research and capital raising services to corporations, governments and individuals. Its Financial Consultants in the United States service approximately 6.6 million client accounts, representing approximately $965 billion in assets. The primary broker-dealer subsidiaries of Holdings include SSB and The Robinson-Humphrey Company, LLC.

4. The Plans will consist of employee benefit plans that are covered under the provisions of Title I of the Act, as amended, and subject to section 4975 of the Code. For purposes of this proposed exemption, the Plans will not consist of plans that are sponsored and maintained by the Applicants for their own employees. In the case of the Applicants' in-house plans, Citigroup represents that the acquisition and holding of the Debt Securities by such plans would be covered under the statutory exemption that is provided under section 408(e) of the Act.[19]

5. The Applicants represent that broker-dealers routinely need additional capital in order to maintain inventories of securities for their market-making and other business activities. As a result, the Applicants maintain a continuous need to borrow funds from various institutional and individual investors for use in their business operations. In response to this need, certain of the Applicants may from time to time issue (the Issuers) various high-quality, publicly-offered debt securities

[18] For purposes of this exemption, the term "maintain" means that all calculations relating to the securities in the Index, as well as the rate of return of the Index, are made by an entity that is unrelated to the Applicants.

[19] The Department expresses no opinion herein on whether the acquisition and holding of the Debt Securities by the Applicants' in-house plans are covered under the provisions of section 408(e) of the Act. In this regard, interested persons should refer to the conditions contained in section 408(e), as well as the definitions of the terms "qualifying employer security" (see section 407(d)(5) of the Act) and "marketable obligations" (see section 407(e) of the Act).

(i.e., the Debt Securities), rated in one of the three highest generic rating categories by nationally recognized rating firms, offering varying levels of risk and potential return. Among the debt securities offered by the Applicants are publicly-offered, unsecured, SEC-registered Debt Securities, with terms that are no longer in duration than nine (9) years. The Debt Securities will be U.S. dollar-denominated so that no foreign currency conversions will be required in the calculation of the rate of return. Further, the Debt Securities will offer varying levels of risk and rates of return. The Debt Securities would be listed on at least one major stock exchange, and they would be issued in denominations of $10 per principal unit, with the minimum purchase being one unit.

The Debt Securities may be offered on a variety of terms and formulas under which rates of return are objectively determined in accordance with certain Indexes by the calculation agent. A registered broker-dealer Applicant would act as calculation agent. The Applicants represent that since small Plans will likely invest in the Debt Securities, the formulas used to calculate the rates of return will be designed to be understood by the average investor and clearly described in the "plain English" summary of the Debt Securities in the Applicants" prospectus.

6. The Applicants represent that their activities are subject to various levels of oversight and regulation. In this regard, SSB represents that, as a registered broker-dealer and investment adviser, its activities are subject to the oversight and regulation of the Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission (CFTC), and other federal and state regulatory agencies. The Applicants represent that their activities are also subject to the oversight of self-regulatory organizations (SROs) such as the New York Stock Exchange (NYSE), other principal United States securities exchanges, and the National Association of Securities Dealers, Inc. The Applicants represent that SSB, as a registered broker-dealer and member of the NYSE, is additionally subject to both the Net Capital Rule 15c3–1 of the 1934 Securities Act (which specifies the minimum net capital requirements of a broker-dealer), and the net capital requirements of the CFTC and other commodity exchanges.

7. Due to the affiliation between an Issuer and SSB or its Affiliates, as a service provider to the Plans, the Applicants represent that they are likely to be parties in interest, as defined in section 3(14)(B) or (H) of the Act, with respect to a high percentage of Plans that purchase, sell, or hold these Debt Securities regardless of whether the Debt Securities are purchased directly from the Applicants.[20] Thus, the Applicants represent that an Issuer may be a party in interest to a Plan solely because of its affiliation with a service provider to the Plan, and as the counterparty to the Plan in a transaction where the Plan holds a Debt Security issued by an Affiliate. Further, other Affiliates may be service providers to Plans on account of their roles as trustees, custodians, investment advisors, or broker-dealers for such Plans. These relationships would make an Issuer a party in interest to those Plans and would create potential prohibited transactions in the event such Plans acquire and hold the Debt Securities.[21]

The Applicants are requesting an administrative exemption to enable Plans to invest in the Debt Securities, under the terms and conditions described herein, and to avoid liability for prohibited transactions resulting from investment by Plans in the Debt Securities.

8. The Applicants believe that while Part II of PTCE 75–1 provides relief for principal transactions between a broker-dealer and a Plan, and would cover a purchase of the broker-dealer affiliates' securities by such Plans (if the conditions required therein were met), it is questionable whether that class exemption would cover the continuing extension of credit related to the holding of any Debt Securities by a Plan.[22]

The Applicants note that some independent Plan fiduciaries have expressed concern regarding the application of PTCE 75–1 to broker-dealer sales of broker-affiliated debt to Plans either as a part of an original issue of the securities or in the secondary market. Moreover, the Applicants represent that PTCE 96–23 (61 FR 15975, April 10, 1996)[23] is unavailable to participant-directed, defined contribution Plans and other small Plans because these Plans, due to their size, are unlikely to have INHAMs responsible for making investment decisions relating to the acquisition, holding and disposition of securities in which the Plans invest.

Similarly, the Applicants note that while PTCE 84–14[24] minimizes the risk of inadvertent prohibited transactions for Plans whose assets are managed by a QPAM, they believe it is unlikely that participant-directed, defined contribution Plans or small Plans would incur the expense of a QPAM for the purchase and continued holding of the Debt Securities. The Applicants also believe that the additional cost of a QPAM for a small Plan with a small investment would not be cost-effective.

[20] In this regard, the Applicants represent that PTCE 75–1 does not directly address transactions where, as here, there is a continuing extension of credit as a result of a sale to a plan by a broker-dealer of debt securities issued by the broker-dealer's affiliates.

[21] In ERISA Advisory Opinion 88–09A (April 15, 1988), a bank that sponsored self-directed master and prototype IRAs requested an opinion from the Department as to whether purchases of stock issued by the parent corporation of the bank directly from such parent by the self-directed IRAs would violate section 4975 of the Code.

Section 4975 of the Code prohibits, in part, the sale or exchange of property between a plan and a party in interest (4975(c)(1)(A)) and the use by or for the benefit of a disqualified person of the income or assets of a plan (4975(c)(1)(D)). Section 4975(e)(2) of the Code defines the term "disqualified person" to include a plan fiduciary and a person providing services to a plan.

ERISA Advisory Opinion 88–09A concluded that, although the bank is a disqualified person with respect to the IRAs by reason of the provision of services, the corporate parent of the bank is not a disqualified person with respect to the IRAs solely by reason of its ownership of the bank. In this regard, interested persons should contrast section 3(14)(H) of the Act with section 4975(e)(2)(H) of the Code. The question of whether the corporate parent is a disqualified person under any other provision of section 4975(e)(2) of the Code would require an examination of the particular facts and circumstances. The Advisory Opinion further concluded that, to the extent that the corporate parent is not a disqualified person with respect to the IRAs, purchases of stock from the parent by the bank on behalf of the IRAs, at the direction of the IRA participant, would not involve transactions described in section 4975(c)(1)(A) of the Code. However, while the corporate parent of such bank may not be a disqualified person with respect to the IRAs, purchases of parent stock by the IRAs would raise issues under section 4975(c)(1)(D) of the Code if a transaction was part of a broader overall agreement, arrangement or understanding designed to benefit disqualified persons.

[22] The Department is providing no opinion herein as to whether any principal transaction involving Debt Securities would be covered by PTCE 75–1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75–1.

[23] PTCE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an in-house asset manager (the INHAM). An INHAM is an entity which is generally a subsidiary of an employer sponsoring the plan. It is also a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

[24] PTCE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a qualified professional asset manager (the QPAM), provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under the Act.

The Applicants further explain that this cost would be uneconomical here because the QPAM would be required to continue its services for the entire period during which the Debt Securities are held by the Plan since the potential prohibited transaction is not just a sale or exchange under section 406(a)(1)(A) of the Act, but is also an extension of credit under section 406(b) of the Act. Accordingly, the Applicants state that the absence of a QPAM would preclude small Plans from being able to purchase the Debt Securities without creating the risk of a prohibited transaction.

9. The Applicants propose to offer the Debt Securities to non-Plan investors and maintain that these investors will continue to constitute a substantial market for such securities. However, for each Plan investor, the Applicants represent that the terms of the Plan's investment in the Debt Securities will be at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction at the time the Debt Securities are acquired by the Plan. Additionally, the Applicants represent that no Plan will pay the Applicants any fees or commissions in connection with transactions involving the Debt Securities, except for the mark-up for a principal transaction permitted under PTCE 75–1.

In addition to the aforementioned requirements, the Applicants represent that a Plan's investment in the Debt Securities will be restricted to those Plans for which the Applicants have no discretionary authority and do not provide investment advice with respect to the investment in the Debt Securities. In this regard, the decision to invest in the Debt Securities will be made by an Independent Plan Fiduciary or a Plan Participant, which is independent of the Applicants. Moreover, the Applicants represent that the Prospectus for each of the Debt Securities that are offered to the Plans will contain a recommendation that no more than 15 percent of a Plan's assets should be invested in the Debt Securities at the time such security is acquired by a Plan.[25]

[25] In this regard, the Applicants propose to include substantially the following statement in the Prospectus for each of the Debt Securities, under a heading entitled "Employer-Sponsored Plan Considerations": "These [Debt Securities] Securities are being sold to Plans pursuant to an exemption issued by the Department of Labor. In accordance with the terms of that exemption, the Issuer is required to inform such Plans that no more than 15 percent of plan (or individual participant) assets, at the time of acquisition, should be invested in the Debt Securities. Please note, however, that it is the responsibility of the person making the investment decision to determine whether the purchase is a prudent investment for the plan (or participant-directed account)."

10. The Debt Securities will be rated in one of the three highest generic rating categories by a nationally-recognized rating firm at the time of acquisition by a Plan. There will be no triggering events or early amortization events if the Applicants' credit rating drops below a certain level established by a rating agency. Throughout the term of any of the Debt Securities, the Plans will be able to access the latest bid and asked price quotations for all of the Applicants' Debt Securities by calling a broker or any electronic service with a recognized price quotation delivery system. If a Plan wishes to terminate any Debt Securities investment prior to maturity, such investor may do so by selling the Debt Security on the open market at the prevailing market price. However, the Issuer may not unilaterally terminate the Debt Securities prior to maturity unless the Debt Securities are callable at a specific price which will be disclosed in the Prospectus. Assuming the Debt Securities are callable, the Applicants represent that there will be no loss of principal.

11. The rate of return for the Debt Securities may be fixed or variable. The prospectus or prospectus supplement covering the Debt Securities would set forth the annual interest rate for fixed rate Securities, and, for variable rate Securities, the formula to be applied to determine the interest payable at maturity. The formula will include identification of the specified Index for the Debt Securities. Such Index may be either (a) created and maintained by an entity that is unrelated to the Applicants or (b) created by the Applicants, but maintained by an unrelated entity.

(a) *Index created and maintained by an entity unrelated to the applicants.* This Index, which will be created by an entity that is unrelated to the Applicants, will consist of a standardized and generally-accepted index of securities, such as the Nikkei 225 Index Tokyo Stock Exchange or the Standard & Poor's 500 Index. In addition, this Index will be maintained by such unrelated entity. In other words, all calculations relating to the securities in the Index, as well as the rate of return of the Index, will be made by an entity other than the Applicants.

(b) *Index created by the applicants, but maintained by an unrelated entity.* This Index will be created by the Applicants. However, it must be maintained by an entity that is unrelated to the Applicants, such as the stock exchange on which the Debt Security is listed. In addition, the Index will consist either of standardized and generally-accepted Indexes or it will be an Index comprised of publicly-traded securities that are not issued by the Applicants, are designated in advance and listed in the Prospectus for the Debt Securities. Under either circumstance, the Applicants will not be permitted to make any modifications to the composition of the Index, including the methodology comprising the rate of return, unilaterally.

Further, the Index will meet the requirements for an Index in accordance with Rule 19b–4 of the 1934 Securities Act, which imposes regulatory standards on the entity maintaining the Index. Under Rule 19b–4, a self-regulatory organization, such as a securities exchange, is required to adopt trading rules, procedures and listing standards for the product classes relating to any security that the exchange proposes to list. In addition, the self-regulatory organization must maintain a surveillance program for a class of securities. If the SEC has not approved the self-regulatory organization's rules, procedures and standards, the self-regulatory organization must make a filing with the SEC prior to listing the security. According to the Applicants, this procedure provides adequate safeguards so that any Debt Securities that are created by the Applicants will meet the listing and trading standards approved by the self-regulatory organization.

Finally, the Index Value of the Index will be publicly-disseminated through an independent pricing service, such as Reuters or Bloomberg, or through a national securities exchange.

12. Price quotations with respect to the Debt Securities will be available on a daily basis from market reporting services, such as Bloomberg or Reuters, and the daily financial press, such as The Wall Street Journal. In the event the Debt Securities are delisted, the Issuer(s) will apply for trading through the NASDAQ, which requires that there be independent market-makers establishing a market for the securities in addition to the Issuer(s). In the event there are no independent market-makers, the Applicants represent that the exemption will no longer be considered effective.

13. The terms of each of the Debt Securities will be set forth with specificity. Therefore, in addition to the description of the formula for computing the rate of return, the Prospectus will include, but will not be limited to, the following information:

- A statement to the effect that the return calculated for the Debt Securities will be denominated in U.S. dollars;

- The specified Index or Indexes on which the rate of return on the Debt Securities is based;
- A numerical example, designed to be understood by the average investor, which explains the calculation of the return on the Debt Securities at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;
- The date on which the Debt Securities will be issued;
- The date on which the Debt Securities will mature and the conditions of such maturity;
- The initial date on which the value of the Index is calculated;
- Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;
- The ending date on which interest will be determined, calculated and paid;
- Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the Debt Securities will be entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);
- All details regarding the methodology for measuring performance;
- The terms under which the Debt Securities may be redeemed;
- The exchange or market where the Debt Securities are traded or maintained; and
- Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

Aside from the Prospectus, the Applicants do not contemplate making any ongoing communications to the investors in the Debt Securities except to the extent required under applicable securities laws.

14. With respect to variable rate Debt Securities, the Applicants represent that the interest rate will be objectively determined. Where SSB or an Affiliate acts as "Calculation Agent" for determining applicable rates of return, such calculation will be made using a formula fully disclosed in the prospectus or prospectus supplement relating to the Debt Security. Following the issuance of such Debt Security, SSB will retain no authority to affect the determination of such interest rate absent a Market Disruption Event. The determination that a Market Disruption Event may have occurred can have the effect of eliminating the affected trading day from calculation of the value of the underlying Index. The Calculation Agent is responsible for determining whether such Event has, in fact, occurred. Where the variable rate of a Debt Security is tied to a basket of equity securities, for example, a "Market Disruption Event" is typically defined as any of the following events, with certain exceptions:[26]

(a) the suspension or material limitation of trading in 20% or more of the underlying stocks which then comprise the Index, in each case, for more than two hours of trading or during the one-half hour period preceding the close of trading on the NYSE or any other applicable organized U.S. exchange. For purposes of this definition, limitations on trading during significant market fluctuations imposed pursuant to NYSE Rule 80B (or any applicable successor or similar rule or regulation promulgated by any self-regulatory organization or the SEC) shall be considered "material."

(b) the suspension or material limitation, in each case, for more than two hours of trading or during the one-half hour period preceding the close of trading (whether by reason of movements in price otherwise exceeding levels permitted by the relevant exchange or otherwise) in (A) futures contracts related to the Index which are traded on the Chicago Mercantile Exchange or any other major U.S. exchange, or (B) options contracts related to the Index which are traded on any major U.S. exchange.

(c) the unavailability, through a recognized system of public dissemination of transaction information, for more than two hours of trading or during the one-half hour period preceding the close of trading, of accurate price, volume or related information in respect of 20% or more of the underlying stocks which then comprise the Index or in respect of futures contracts related to the Index, options on such futures contracts or options contracts related to the Index, in each case traded on any major U.S. exchange.

15. The Applicants represent that the principal amount of the Debt Securities that are the subject of this exemption, if granted, will be protected regardless of the performance of the applicable Index. Although the return on a Debt Security may go up or down in the same direction as the performance of the applicable Index, the interest rate floor is set at zero. Thus, even where the value of the applicable Index decreases, there will be no invasion of principal if the Debt Securities are held until maturity.[27] However, if a Plan must sell the Debt Securities on the open market prior to their maturity, the market price will reflect the market's perception of the potential yield on such securities based on the current yield and interest rates for other debt securities of the same duration. This market price may result in a loss of principal value of the investment in the Debt Securities in the same fashion as would occur for other debt securities.

16. The Applicants represent that they will exercise no discretion with respect to the Indexes. Further, the Applicants represent that they will not trade in any way intended to affect the value of the Debt Securities through holding or trading in the securities which comprise these Indexes. The securities of the Applicants may comprise part of the Index (e.g., Citigroup's common stock is included in the S&P 500 Index, which is one of the Indexes that may be used in the Applicants' variable rate Debt Securities). In addition, the Applicants may reserve the right to purchase or sell positions in the Index, or in all or certain of the assets by reference to which the Index is calculated (Underlying Assets), or derivatives relating to the Index. The Applicants do not believe, however, that their hedging activity will have a material impact on the value of the Index, the Underlying Assets, or any derivative or synthetic

[26] For purposes of determining whether a Market Disruption Event has occurred, a limitation on the hours in a trading day and/or number of days of trading will not constitute a Market Disruption Event if it results from an announced change in the regular business hours of the relevant exchange.

[27] The Applicants have provided the following example to illustrate this principle by describing the return at maturity on each $10 principal investment in the Debt Securities that are the subject of this proposed exemption:

- Where the value of the applicable Index increases by 50 percent, the Plan is entitled to receive $15 at maturity ($10 principal plus $5 interest) because the rate of return moves in the same direction as the growth in the applicable Index;
- Where the value of the applicable Index remains unchanged during the applicable period, the Plan is entitled to receive $10 at maturity ($10 principal plus $0 interest) because the rate of return moves in the same direction as the growth in the applicable Index; and
- Where the value of the applicable Index decreases by 50 percent, the Plan is entitled to receive $10 at maturity ($10 principal and $0 interest) because the rate of return moves in the same direction as the growth in the applicable Index but in no event drops below zero.

While the foregoing examples are simplistic, it should be noted that for some of the Debt Securities, such as those tied to the Standard & Poor's 500 Index, the interest payments shown above may be reduced on a daily basis by an adjustment factor (the Adjustment Factor), equal to a stated percent per year. On the maturity date of the Debt Securities, the annual application of the Adjustment Factor will reduce the Plan investor's overall interest payments. This information will be disclosed prominently in the Prospectus.

instrument relating to the Index. The Applicants will maintain written records of all of the Debt Securities transactions for a period of six years.

17. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The Debt Securities will be made available by the Applicants in the ordinary course of their business to customers which are not Plans.

(b) The Applicants will not have any discretionary authority or control, or provide any "investment advice," within the meaning of 29 CFR 2510.3–21(c), with respect to the assets of Plans which are invested in the Debt Securities.

(c) The Plans will pay no fees or commissions to the Applicants in connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under PTCE 75–1.

(d) The decision to invest in the Debt Securities will be made by an Independent Plan Fiduciary or a Plan Participant, which is independent of the Applicants.

(e) In connection with a Plan's acquisition of any of the Debt Securities, the Applicants will disclose to the Independent Plan Fiduciary, or, if applicable, the Plan Participant, in the Prospectus, all of the material terms and conditions concerning the Debt Securities.

(f) A Plan will acquire the Debt Securities on terms that are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction.

(g) The Debt Securities will be rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of such security's acquisition by the Plan.

(h) The rate of return for the Debt Securities will be objectively determined and the Applicants will retain no authority to affect the determination of such return, other than in connection with a Market Disruption Event that is described in the Prospectus for the Debt Securities.

(i) The Index will be: (1) Created and maintained by an entity that is unrelated to the Applicants and consist of a standardized and generally-accepted Index; or (2) created by the Applicants, but maintained by an entity that is unrelated to the Applicants, and (i) will consist either of standardized and generally-accepted Indexes or will be an Index comprised of publicly-traded securities that are not issued by the Applicants, are designated in advance, and listed in the Prospectus for the Debt Securities, (ii) will meet the requirements for an Index as set forth in SEC Rule 19b–4, and (iii) the Index Value for such Index will be publicly-disseminated through an independent pricing service or a national securities exchange.

Notice to Interested Persons

The Applicants represent that because those potentially interested Plans proposing to engage in the covered transactions cannot all be identified, the only practical means of notifying Independent Plan Fiduciaries or Plan Participants of such affected Plans is by publication of the proposed exemption in the **Federal Register**. Therefore, any comments from interested persons must be received by the Department no later than 30 days from the publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Joliet Medical Group, Ltd. Employees Retirement Plan & Trust (the Plan), Located in Joliet, Illinois

[Application D–10888]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, will not apply effective November 1, 1999 to the past and continued leasing of a medical clinic (the Property) located at 2100 Glenwood Ave., Joliet, Illinois, from the Plan to Joliet Medical Group Investment Partnership (the Employer), provided that the following conditions have been and will be met:

(a) The independent fiduciary has determined that the transaction is feasible, in the interest of, and protective of the Plan;

(b) The fair market value of the Property has not exceeded and will not exceed twenty-five percent (25%) of the value of the total assets of the Plan;

(c) The independent fiduciary has negotiated, reviewed, and approved the terms of the lease of the Property with the Employer;

(d) The terms and conditions of the lease of the Property with the Employer have been and will continue to be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(e) An independent qualified appraiser has determined the fair market rental value of the Property;

(f) The independent fiduciary has monitored and will continue to monitor compliance with the terms of the lease of the Property to the Employer throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the lease on the Property; and

(g) The Plan has not incurred and will not incur any fees, costs, commissions, or other charges or expenses as a result of its participation in the proposed transaction, other than the fee payable to the independent fiduciary.

EFFECTIVE DATE: This exemption is effective as of November 1, 1999.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which was created effective January 1, 1975. As of August 29, 2000, the Plan had net assets valued at approximately $20,075,282 and 165 participants.

2. The Employer is a general partnership organized and operating under the laws of the State of Illinois, whose principal place of business is Joliet, Illinois. The Employer's principal place of business is the Property. The Employer is engaged in the general practice of medicine.

3. The Property consists of a two story medical building located at 2100 Glenwood Avenue, Joliet Illinois. The Property contains approximately 10,583 square feet on each floor for a total square footage (above ground) of approximately 21,166 square feet. In addition, there is a full basement which is finished and contains an additional approximately 10,583 square feet. The fair market value of the Property represents 15.94% of the total assets in the Plan.

The Plan initially leased the Property to the Employer for an initial term of 18 years, which ended November 1, 1999. In response to an exemption application filed by the Employer, the Department granted an exemption covering the initial lease (the Initial Lease): Prohibited Transaction Exemption 81–96 (PTE 81–96), 46 FR 53816 (October 30, 1981). It is represented that since the inception of the Initial Lease, the

Employer has always paid its rent on time and otherwise complied with all of the terms and conditions of the Initial Lease and PTE 81–96. Furthermore, the independent fiduciary has continued to monitor and oversee compliance with the conditions of the exemption after the expiration of the lease because the parties determined to continue the arrangement after November 1, 1999.

An independent party, the First Midwest Trust Company (the Bank) has served and continues to serve as the independent fiduciary. The Bank represents that since the inception of the Initial Lease, the Employer has complied with all of the terms and conditions of the Initial Lease and PTE 81–96. The Bank certifies that the transaction is appropriate and in the best interests of the Plan and that the terms and conditions of the proposed transactions are at least equal to what the Plan would receive from an unrelated party in similar transaction. In addition, the Bank will monitor the transaction and will have the responsibility for exercising the Plan's rights in the proposed transaction.

4. Joseph E. Batis, (Mr. Batis), an accredited appraiser with Edward J. Batis & Associates, Inc., located in Joliet, Illinois, appraised the Property on October 24, 2000. Mr. Batis states that he is a full time qualified, independent appraiser, as demonstrated by his status as a State Certified General Real Estate Appraiser licensed by the State of Illinois. In addition, Mr. Batis represents that both he and his firm are independent of the Employer.

In his appraisal, Mr. Batis relied primarily on the "Appraisal Process". Included within the steps of this process are three approaches to a value estimate: the Cost Approach, the Direct Sales Comparison Approach and the Income Approach. According to Mr. Batis, these methods best represent the actions of buyers and sellers in the market place. After Mr. Batis independently applies each approach to value, the three resultant value estimates are reconciled into an overall estimate of value. In the reconciliation process, the appraiser analyzes each approach with respect to its applicability to the property being appraised. Also considered in the reconciliation process is the strength and weakness of each approach with regards to supporting market data. After inspecting the Property and analyzing all relevant data, Mr. Batis determined that a fee simple interest in the Property had a fair market value of approximately $3,200,000.

The Employer will enter into a five year, "triple net" lease with the Plan leasing the Property to the Employer for a "floating" monthly rental of 1.5% of the current appraised value of the subject realty ($3,200,000 × 1.5%= $480,000). A new appraisal by an independent, qualified appraiser would be performed every other year to update the rent. The minimum guaranteed rent (regardless of any possible decrease in the appraisal) is $480,000. The terms of the lease provide for a primary term of five years with an option to renew and extend for two additional successive terms of five years each subject to the approval of the independent fiduciary. In the event of a default, the Employer is required to reimburse the Plan on demand for all costs reasonably incurred by the Plan in connection therewith, including attorney's fees, court costs and related costs plus a reasonable rate of return on the amount of accrued but unpaid rent due the Plan, as determined by an appropriate third party source.

Since the Initial Lease, the Employer has continued to pay rent to the Plan in a timely manner without default or rental delinquencies. However, the Employer is aware of the fact that a prohibited transaction occurred in violation of the Act subsequent to the expiration of the lease under PTE 81–96 (November 1, 1999). Therefore, the Employer has requested exemptive relief with respect to the past and continued leasing of the Property by the Plan to the Employer. If granted, the proposed exemption will be retroactive to November 1, 1999.

In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The independent fiduciary has determined that the transaction is feasible, in the interest of, and protective of the Plan;

(b) The fair market value of the Property has not exceeded and will not exceed twenty-five percent (25%) of the value of the total assets of the Plan;

(c) The independent fiduciary has negotiated, reviewed, and approved the terms of the lease with the Employer on the Property;

(d) The terms and conditions of the lease with the Employer on the Property have been and will continue to be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(e) An independent qualified appraiser has determined the fair market rental value of the Property;

(f) The independent fiduciary has monitored and will continue to monitor compliance with the terms of the lease of the Property to the Employer throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the lease; and

(g) The Plan has not incurred and will not incur any fees, costs, commissions, or other charges or expenses as a result of its participation in the proposed transactions, other than the fee payable to the independent fiduciary.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 219–8883 (this is not a toll-free number).

Texas Instruments Employees Pension Plan (the Plan), Located in Dallas, Texas

[Application No. D–10918]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan to Texas Instruments, Inc. (the Employer) of a parcel of improved real property (the Property) located in Dallas, Texas. This exemption is conditioned upon adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The Sales price is the greater of $9,400,000 or the fair market value of the Property as of the date of the Sale;

(c) The fair market value of the Property has been determined by an independent, qualified appraiser;

(d) The Sale is a one-time transaction for cash; and

(e) The Plan does not pay any commissions, costs or other expenses in connection with the Sale.

Summary of Facts and Representations

1. The Employer, the sponsor of the Plan, is a Delaware corporation with offices at 13500 North Central Expressway, Dallas, Texas. The Employer is engaged in the manufacture and sale of a variety of products in the electrical and electronic industry for industrial, consumer, and government markets. It is represented that the Employer employs over 19,000 individuals and sponsors several employee benefit plans.

2. The Plan is a defined benefit pension plan which, as of January 1, 1999, had participants and beneficiaries totaling approximately 19,377. The administrator of the Plan is a retirement committee composed of three members who are officers of the Employer. As of July 21, 2000, the Plan's assets had an aggregate fair market value of $637,999,647.

All the assets of the Plan are held in a single trust (the Trust) for which the Northern Trust Company, an Illinois corporation, serves as trustee (the Trustee). The assets of the Plan held in the Trust consist of various securities and real property. Pursuant to a Subtrust Agreement, dated November 1, 1990, Bank of America, N.A., was appointed as subtrustee (the Subtrustee) to manage the Property and certain other real property held by the Plan. The Subtrustee, who is the applicant for the proposed transaction, has complete and full investment discretion and authority with respect to the Sale of the Property in the subtrust. Hence, the Trustee makes no representations in connection with this proposed exemption transaction.

3. The Plan's real property holdings in the Trust include the Property. The Property has an estimated value of $9,400,000 and constitutes approximately 1.5% of the total value of the Plan's assets.

The lease of the Property was executed pursuant to an exemption ((Prohibited Transaction Exemption (PTE) 93–83 (58 FR 68964, December 29, 1993)) which granted relief for the lease of two parcels (the Dallas Parcels) of improved real property to the Employer by the Plan and the lease to the Employer by the Plan of another parcel located in a suburb of Detroit, Michigan (the Michigan Parcel). The Michigan Parcel, comprising a 16.5 acres of commercial property located in Farmington Hills, a suburb of Detroit, contained a single building used as an office facility. The Michigan parcel was sold on March 1, 1994 to Wayne State University, a unrelated third party.

The Dallas Parcels consist of the Property and another parcel (the Second Parcel). The Second Parcel is located on Lemmon Avenue in Dallas, Texas, and consists of two adjacent tracts aggregating approximately 14.4 acres with an office and industrial building. The Second Parcel was assigned by the Employer to the Raytheon Company, a unrelated third party, on July 11, 1997.[28]

4. The Property consists of a tract of approximately 13.2 acres of land which is improved by an office/industrial facility, situated at the intersection of Walnut Lane and Floyd Road in the northern portion of Dallas, Texas. The Plan acquired the Property on July 23, 1979, from the Royal Gorge Company, an unrelated third party, and completed construction of the office/industrial facility on March 18, 1981, at a total cost for the land and building of approximately $6 million.[29]

The Property was appraised (the Appraisal) on January 14, 2000, by Jan Whatley (Ms. Whatley), a Certified Residential Real Estate Appraiser. Ms. Whatley is independent of the Employer and is an appraiser with the Pyles Whatley Corporation located in Dallas, Texas.

Ms. Whatley determined the best use and highest value of the Property was associated with valuing the Property with the so-called direct sales comparison method. In this method, sales of similar use land in the market area are compared to the subject to arrive at an indication of value. In arriving at value conclusions the tracts are compared as to the rights conveyed, financing terms, sale conditions, market conditions, location, and physical characteristics. Therefore, based on the valuation procedure, Ms. Whatley concluded that the fair market value of the Property is $9,400,000 as of August 22, 2000.

The Property is leased to the Employer, pursuant to a lease agreement which provided for an initial lease term of ten (10) years, commencing on March 18, 1981, and expiring on March 17, 1991. During the initial ten year term of the lease, the monthly lease rentals of $61,904.32 provided the Plan with an annual return equal to approximately 12.25% of the Plan's total investment in the Property. Pursuant to the lease agreement, the lease has been renewed for two of the three additional five year terms, the second of which will expire on March 17, 2001, and the third of which will commence on March 18, 2001 and expire on March 17, 2006. At the commencement of each additional five (5) year extended term, rent was determined by reference to prevailing market rates at the beginning of each subsequent five (5) year term, but such reference in no instance caused a decrease in rent. During the first extended five year term, beginning on March 18, 1991, the monthly lease rental of $61,904.32 provided the Plan with an annual net return equal to approximately 12.25% of the Plan's total investment in the Property. During the second extended five year term, beginning on March 18, 1996, the monthly lease rental of $68,186.05 provided the Plan with an annual net return equal to approximately 13.49% of the Plan's total investment in the Property.

5. The applicant represents that the proposed exemption is in the interest of the Plan, and its participants and beneficiaries. The proposed exemption is designed to allow the Plan, and thus its participants and their beneficiaries, to receive maximum value for the Property due to the current favorable real estate market in the locale of the Property. The Plan fiduciaries, other than the Subtrustee, also recently have established new investment guidelines for the Plan under which the Plan's real property holdings will be sold and the resulting proceeds re-invested in other more liquid forms of investment. These guidelines were formulated, in part, because the Property and the remaining real property in the Plan are now in one geographic locale, in or near Dallas, Texas. The sale of the Property will promote diversification, maximize investment return for the Plan and improve the Plan's liquidity. The resulting diversification and improved liquidity will benefit and protect the Plan participants and their beneficiaries. Furthermore, the Plan will not pay any commissions, costs or other expenses in connection with the Sale.

6. In summary, the applicant represents that the subject transaction satisfies the statutory criteria contained in section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons:

(a) All terms and conditions of the Sale will be at least as favorable to the Plan as those which the Plan could obtain in an arms-length transaction with an unrelated party;

[28] The Department expresses no opinion herein regarding the application of Title I of the Act as to the assignment of the Second Parcel to the Raytheon Company.

[29] The Department expresses no opinion herein as to whether the acquisition and holding of the Property by the Plan violated any of the provisions of Part 4 of Title I of the Act.

(b) The fair market value for the Property has been determined by an independent, qualified appraiser;

(c) The Sale will be a one-time transaction for cash;

(d) The Plan will not pay any commissions, costs or other expenses in connection with the Sale;

(e) The Plan will receive an amount equal to the greater of:

(i) $9,400,000; or

(ii) The fair market value of the Property, as of the date of the Sale.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 219–8883 (this is not a toll-free number).

UAM Fund Services, Inc., Located in Boston, MA

[Application No. D–10938]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Transactions

If the exemption is granted, the restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to (i) the acquisition of shares of one or more of the UAM Funds (Shares) by a Plan for which a Fund Adviser serves as investment manager, through the in-kind exchange of the Plan's assets held in one or more separate accounts (each, an Account) maintained by a Fund Adviser, and (ii) the redemption of Shares by a Plan for which a Fund Adviser serves as investment manager, through the in-kind exchange of assets from one or more UAM Funds to one or more Account(s), provided that the conditions set forth in Section II below are met.

Section II. Conditions

(a) The Fund Adviser is not an employer of employees covered by the Plan.

(b) The Plan does not pay sales commissions, redemption fees, or other fees in connection with such acquisition or redemption.

(c) The assets transferred pursuant to such acquisition or redemption consist entirely of cash and Transferable Securities.

(d) In the case of an acquisition, the Plan receives Shares of the Funds that have a total Net Asset Value equal to the value of the Plan's assets exchanged for such Shares on the date of the transfer, as determined (with respect to Transferable Securities) in a single valuation performed in the same manner, at the close of the same business day, in accordance with the procedures set forth in Rule 17a–7 under the Investment Company Act of 1940 (the 1940 Act), as amended from time to time, or any successor rule, regulation, or similar pronouncement (Rule 17a–7) (using sources independent of the UAM Funds and the Fund Adviser) and the procedures established by the UAM Funds pursuant to Rule 17a–7.

(e) In the case of a redemption, with respect to Transferable Securities, the Plan receives a pro rata portion of the securities of the UAM Fund that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner, at the close of the same business day, in accordance with the procedures set forth in Rule 17a–7 (using sources independent of the UAM Funds and the Fund Adviser). With respect to all other assets, the Plan receives cash equal to its pro rata share of the fair market value of such assets, determined in accordance with Rule 17a–7 of the 1940 Act and the valuation policies and procedures of the UAM Fund.

(f) The price that is paid or received by the Plan for Shares is the Net Asset Value per Share at the time of the transaction and is the same price for the Shares that would have been paid or received by any other investor for Shares of the same class at such time.

(g) Prior to the in-kind acquisition or redemption, an Independent Fiduciary with respect to the Plan receives full and detailed written disclosure of information regarding the in-kind acquisition or redemption, including, without limitation, the following:

(i) A current prospectus for each UAM Fund to or from which Plan assets may be transferred (updated as necessary to reflect the investment mix of the UAM Fund at the time of the in-kind acquisition or redemption);

(ii) A statement describing the rate of fees for investment advisory and other services to be charged to and paid by the Plan (and by the UAM Funds in which the Plan invests) to the Fund Adviser, including the nature and extent of any differential between the rates of the fees paid by the UAM Funds and the rates of the fees otherwise payable by the Plan to the Fund Adviser;

(iii) A statement of the reasons why the Fund Adviser may consider the in-kind acquisition or redemption to be appropriate for the Plan;

(iv) A statement as to whether there are any limitations on the Fund Adviser with respect to which Plan assets may be invested in Shares of the UAM Funds and, if so, the nature of such limitations;

(v) The identity of all securities that are deemed suitable by the Fund Adviser for transfer to the UAM Funds (in the case of an acquisition) or from the UAM Funds (in the case of a redemption);

(vi) The identity of all such securities that will be valued in accordance with the procedures set forth in Rule 17a–7(b)(4) under the 1940 Act; and

(vii) Copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for in-kind acquisitions and redemptions.

(h) On the basis of such disclosures, the Independent Fiduciary, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Subtitle B of Title I of the Act, (i) makes a determination as to whether the terms of the in-kind acquisition or redemption are fair to the participants of the Plan and are comparable to and no less favorable than terms that would be reached at arms' length between unaffiliated parties, and that the in-kind acquisition or redemption (as opposed to an acquisition or redemption for cash) is in the best interest of the Plan and its participants and beneficiaries, and (ii) gives prior written approval for the in-kind acquisition or redemption, including agreement as to the date on which the in-kind acquisition or redemption will take place.

(i) The authorization by the Independent Fiduciary is terminable at will without penalty to the Plan at any time prior to the date of acquisition or redemption, and any such termination will be effected by the close of the business day following the date of receipt by the Fund Adviser, either by mail, hand delivery, facsimile, or other available means of written or electronic communication at the option of the Independent Fiduciary, of any written notice of termination.

(j) In the case of an acquisition, all of the Plan's assets held in an Account (other than Shares already held in the Account) are transferred in-kind to one

or more UAM Funds in exchange for Shares, except that any Plan assets in the Account which are not suitable for acquisition by the UAM Fund shall be liquidated as soon as reasonably practicable, and the cash proceeds shall be invested directly in Shares.

(k) The Fund Adviser sends to the Independent Fiduciary, by regular mail or personal delivery, the following information:

(i) No later than 30 days after the completion of the in-kind transfer, a written confirmation which contains:

(A) The identity of each Transferable Security that was valued for purposes of the in-kind transfer in accordance with Rule 17a–7;

(B) The current market price, as of the date of the in-kind transfer, of each such Transferable Security; and

(C) The identity of each pricing service or market-maker consulted in determining the current market price of such Transferable Securities.

(ii) No later than 105 days after each in-kind transfer, a written confirmation which contains:

(A) In the case of an in-kind acquisition, the number of Shares in the UAM Funds that are held by the Plan immediately following the acquisition, the related per-Share Net Asset Value, and the total dollar value of such Shares.

(B) In the case of an in-kind redemption, the number of Shares in the UAM Funds that were held by the Plan immediately prior to the redemption, the related per-Share Net Asset Value, and the total dollar value of such Shares.

(l) With respect to each of the UAM Funds in which a Plan continues to hold Shares acquired in connection with an in-kind acquisition, the Fund Adviser provides the Independent Fiduciary with:

(i) A copy of an updated prospectus of such UAM Fund, at least annually; and

(ii) Upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other statement) containing a description of all fees paid by the UAM Fund to the Fund Adviser.

(m) The combined total of all fees received by the Fund Adviser for the provision of services to the Plan, and in connection with the provision of services to the UAM Funds in which the Plan holds shares purchased in connection with an in-kind exchange, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(n) The Fund Adviser does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the acquisition or redemption.

(o) All other dealings between the Plan and the UAM Funds are on a basis no less favorable to the Plan than dealings between the UAM Funds and other shareholders holding the same Shares of the same class as the Plan.

(p) The Fund Adviser maintains for a period of six years the records necessary to enable the persons described in paragraph (q) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Fund Adviser, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Fund Adviser shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (q) below.

(q)(1) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (p) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service; (ii) any fiduciary of the Plan who has authority to acquire or dispose of Shares of the UAM Funds owned by the Plan, or any duly authorized employee or representative of such fiduciary; and (iii) any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (q)(1)(ii) and (iii) above shall be authorized to examine trade secrets of the UAM Funds or the Fund Adviser, or commercial or financial information which is privileged or confidential.

Section III. Availability of Prohibited Transaction Exemption 77–4 (PTE 77–4)

Any in-kind acquisition of Shares of the UAM Funds that complies with the conditions of Section II of this exemption shall be treated as a "purchase or sale" of shares of a registered, open-end investment company for purposes of PTE 77–4, 42 FR 18732 (April 8, 1977), and shall be deemed to have satisfied paragraphs (a), (d) and (e) of section II of that exemption.

Section IV. Definitions

For purposes of this proposed exemption:

(a) The term "UAM" means United Asset Management Corporation, a Delaware corporation with headquarters in Boston, Massachusetts, and any affiliate thereof;

(b) The term "UAM Funds" means UAM Funds Inc., UAM Funds, Inc. II, and UAM Funds Trust, each of which is an open-end investment company registered under the 1940 Act, or any portfolio or group of portfolios thereof, for which UAM or a Fund Advisor serves as investment advisor and may provide other services.

(c) The term "Fund Adviser" means (i) any affiliate of UAM which serves as an investment adviser to a UAM Fund, and (ii) any former affiliate of UAM which was divested within 12 months of the acquisition of UAM by Old Mutual, and which serves as an investment adviser to a UAM Fund pursuant to a contractual relationship with UAM, and (iii) any affiliate of an investment adviser identified in subsections (i) or (ii).

(d) An "affiliate" of a person includes:

(i) Any person directly or indirectly through one or more intermediaries controlling, controlled by, or under common control with the person;

(ii) Any officer, director, employee, relative, or partner in any such person;

(iii) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(e) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or spouse of a brother or a sister.

(g) The term "Plan" includes any pension, profit sharing or stock bonus plan qualified under section 401(a) of the Code, individual retirement account, simplified employee pension plan, custodial account plans as described in section 403(b) of the Code, or savings incentive match plans for employees.

(h) The term "Independent Fiduciary" means the Plan sponsor or other fiduciary of a Plan who is independent of and unrelated to UAM or the Fund Adviser. For purposes of this exemption, the Independent Fiduciary will not be deemed to be independent of and unrelated to UAM or the Fund Adviser if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with UAM or the Fund Adviser;

(ii) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, or employee of UAM or the Fund Adviser (or is a relative of such persons); or

(iii) Such fiduciary directly or indirectly receives compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

(i) The term "Transferable Securities" shall mean securities (1) for which market quotations are readily available; and (2) which are not in any of the following categories: (i) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933 (the 1933 Act); (ii) securities issued by entities in foreign countries which (A) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the UAM Funds, or (B) permit transfers of ownership or securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements); and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

(j) The term "Net Asset Value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the UAM Fund's prospectus and statement of additional information, and other assets belonging to the UAM Fund less the liabilities charged to such UAM Fund, by the number of outstanding Shares.

Summary of Facts and Representations

1. UAM Fund Services, Inc. (FSI) is a wholly-owned subsidiary of United Asset Management Corporation (UAM), a Delaware corporation which is one of the largest investment management organizations in the world, providing a broad range of investment management services through a diverse group of affiliated firms. As of June 30, 2000, UAM, through its affiliates, had approximately $195 billion in assets under management, including approximately $119 billion in institutional accounts (primarily corporate and governmental accounts), $53 billion in mutual funds, and $23 billion in private accounts. Old Mutual plc (Old Mutual), a public limited company based in the United Kingdom, recently acquired UAM, so that UAM is now a wholly-owned subsidiary of Old Mutual.

FSI serves as administrator to UAM Funds Inc., UAM Funds Inc. II, and UAM Funds Trust, each of which is an open-end investment company registered under the 1940 Act (the UAM Funds). As administrator, FSI provides a wide variety of services to the UAM Funds and their shareholders (including employee benefit plans). For example, FSI is responsible for: Coordinating and performing legal reviews prior to the commencement of various operations by the UAM Funds; handling regulatory filings and registrations on behalf of the UAM Funds; overseeing compliance with regulatory requirements; preparing financial statements and tax reporting; handling trade processing and settlements; processing advisory fees; and providing various shareholder services to shareholders of the UAM Funds.

2. The investment advisers to the UAM Funds are comprised of directly or indirectly wholly-owned subsidiaries of UAM, as well as entities that formerly were affiliated with UAM but which have been divested as part of the acquisition by Old Mutual (Fund Advisers). All of the Fund Advisers are registered investment advisers under the Investment Advisers Act of 1940, as amended (the Advisers Act), with the exception of the Pell Rudman Trust Company N.A. (a nationally chartered trust company which is exempt from registration under the Advisers Act).

The Fund Advisers also serve as investment managers to pension, profit sharing, and stock bonus plans qualified under section 401(a) of the Code, individual retirement accounts; simplified employee pension plans; custodial account plans as described in section 403(b) of the Code; and savings incentive match plans for employees (Plans). None of the Fund Advisers serves as plan administrator to any of the Plans, nor are any of the Fund Advisers employers of employees covered by a Plan.

3. In certain cases, Plans will receive investment management services directly from a Fund Adviser on a "separate account" basis; in other cases, Plans will avail themselves of the Fund Adviser's expertise through investment in a UAM Fund. Depending on facts and circumstances which may change over time, it may be more cost-effective for an individual Plan to receive investment management services on a separate account basis, or through investment in a UAM Fund. Thus, for example, a Plan with a large amount of assets invested in a UAM Fund may save investment costs by withdrawing from the UAM Fund and negotiating a separate investment agreement with the Fund Adviser. Conversely, a smaller Plan that is advised by a Fund Adviser may realize cost savings by investing in a UAM Fund. Assuming that the Fund Adviser will follow a similar investment strategy whether it is investing assets of the Plan directly or is investing assets of the UAM Fund in which the Plan invests, the underlying assets are likely to be substantially the same in many cases both before and after the transaction.

4. Currently, all acquisition and redemption transactions between Plans and the UAM Funds are handled on a cash basis. Thus, if a Plan desires to invest assets currently invested in particular securities in a UAM Fund which also invests in such securities, the Plan first liquidates its securities for cash, uses the cash to purchase UAM Fund shares (Shares); the UAM Fund then uses the cash to purchase additional securities. Similarly, if a Plan which invests in a UAM Fund wishes to withdraw from the UAM Fund but to invest in the same securities as the UAM Fund, the UAM Fund liquidates the Plan's pro rata share of the underlying securities of the UAM Fund for cash and distributes the cash to the Plan in exchange for the redeemed Shares, and the Plan then reinvests the cash in the securities. In such situations, both the Plan and the UAM Fund could save transaction costs to the extent the transaction is handled on an in-kind basis.

5. The proposed exemption relates to two types of in-kind transactions between UAM Funds and Plans: in-kind acquisitions of Shares (Acquisition Transactions) [30] and in-kind redemption

[30] The applicant states that this exemption is being requested because Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977) would be unavailable for the purchase of shares in the UAM Funds other than for cash (see ERISA Adv. Op. 94–35A, n.3 (Nov. 3, 1994)). In pertinent part, PTE 77–4 permits the cash purchase or sale

Continued

of Shares (Redemption Transactions). Acquisition and Redemption Transactions will be performed in accordance with pre-established objective procedures. The types of securities that may be transferred on an in-kind basis in an Acquisition or Redemption Transaction (Transferable Securities) include securities (1) for which market quotations are readily available, and (2) which are not in any of the following categories: (i) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933, as amended (the 1933 Act); (ii) securities issued by entities in foreign countries which (A) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as UAM Funds, or (B) permit transfers of ownership or securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements); and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

In an Acquisition Transaction, a Plan that is advised by a Fund Adviser will acquire Shares of a UAM Fund on an in-kind basis by transferring Plan assets to the UAM Fund in exchange for the Shares. All of the Plan assets held in a separate account (other than Shares already held in the account) will be transferred to the UAM Fund in exchange for Shares, except that any Plan assets in the Account which are not suitable for acquisition by the UAM Fund will be liquidated and the cash proceeds invested directly in Shares. The Plan will receive Shares that have a total net asset value equal to the value of the Plan's transferred assets on the date of the transfer, as determined (with respect to Transferable Securities) in a single valuation for each asset, with all valuations performed in the same manner, at the close on the same business day, in accordance with Securities and Exchange Commission Rule 17a–7, as amended from time to time, or any successor rule, regulation, or similar pronouncement (Rule 17a–7) (using sources independent of the UAM Funds and the Fund Adviser) and the procedures established by the UAM Funds pursuant to Rule 17a–7.[31]

In a Redemption Transaction, a Plan that invests in Shares of a UAM Fund will redeem all or a portion of such Shares on an in-kind basis by receiving assets from the UAM Fund in exchange for the redeemed Shares. With respect to Transferable Securities, the Plan will receive a pro rata portion of the securities of the UAM Fund equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner, at the close of the same business day, in accordance with Rule 17a–7 (using sources independent of the UAM Funds and the Fund Adviser). With respect to all other assets, the Plan will receive cash equal to its pro rata share of the fair market value of such assets, determined in accordance with Section 17a–7 of the 1940 Act and the valuation policies and procedures of the UAM Fund.

6. The in-kind acquisition or redemption will be approved in advance by FSI and by an Independent Fiduciary of the Plan. The Independent Fiduciary may be the Plan sponsor or may be another Plan fiduciary, but in any event will be independent of and unrelated to UAM and the Fund Adviser. If the Independent Fiduciary does not approve the transaction, then the Shares will not be purchased or redeemed on an in-kind basis.

Before approving any Acquisition or Redemption Transaction, the Independent Fiduciary will receive full and detailed written disclosure of information regarding the in-kind acquisition or redemption. On the basis of such disclosure, the Independent Fiduciary will (i) make a determination as to whether the terms of the in-kind acquisition or redemption are fair to the participants of the Plan and are comparable to and no less favorable than terms that would be reached at arm's length between unaffiliated parties, and that the in-kind acquisition or redemption (as opposed to an acquisition or redemption for cash) is in the best interest of the Plan and its participants and beneficiaries, and (ii) give prior written approval to the in-kind acquisition or redemption, including agreement as to the date on which the in-kind acquisition or redemption will take place. The authorization by the Independent Fiduciary will be terminable at will without penalty to the Plan at any time prior to the date of acquisition or redemption, and any such termination will be effected by the close of the business day following the date of receipt by the Fund Adviser, either by mail, hand delivery, facsimile, or other available means of written or electronic communication at the option of the Independent Fiduciary, of any written notice of termination.

7. Plan assets transferred pursuant to an Acquisition or Redemption Transaction will consist entirely of cash and Transferable Securities. The price that is paid or received by the Plan for Shares will be the net asset value per Share at the time of the transaction and will be the same price for the Shares that would have been paid or received by any other investor for Shares of the same class at such time. Plans will not pay sales commissions, redemption fees, or other fees in connection with the Acquisition and Redemption Transactions.

8. FSI will review all proposed Acquisition and Redemption Transactions for compliance with applicable requirements, including the requirements of the proposed exemption. If the Acquisition or Redemption Transaction is approved, FSI will coordinate the transaction and will ensure that all aspects of the transaction are properly documented and that all applicable requirements are satisfied.

9. Following an Acquisition Transaction, either (i) any Fund-level investment management, investment

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by an employee benefit plan of shares of an open-end investment company registered under the 1940 Act (i.e., a mutual fund) when a fiduciary with respect to the plan is also the investment adviser of the investment company but is not an employer of employees covered by the plan.

The Department notes that PTE 97–41 (62 FR 42830, August 8, 1997) also permits an employee benefit plan to purchase shares of a registered open-end management investment company, the investment adviser for which is a bank (as defined therein) or plan adviser (as defined therein) registered under the Advisers Act, that also serves as a fiduciary of the plan, in exchange for plan assets transferred in-kind to the investment company from a collective investment fund (CIF) maintained by the bank or plan adviser, in connection with a complete withdrawal of a plan's assets from the CIF.

[31] Rule 17a–7 is an exemption from the prohibited transaction provisions of section 17(a) of the 1940 Act (15 U.S.C. 80a–17(a)), which prohibit, among other things, transactions between an investment company and its investment adviser or affiliates of its investment adviser. Thus, Rule 17a–7 permits transactions between mutual funds and other accounts that use the same or affiliated investment advisers, subject to certain conditions that are designed to assure fair valuation of the assets involved in the transaction and fair treatment of both parties to the transaction. Among the conditions of Rule 17a–7 is the requirement that the transaction be effected at the "independent current market price" as defined therein (see Rule 17a–7(b)(1)–(4)) for the security involved.

advisory or similar fees received by a Fund Adviser as a result of a Plan's investment in the UAM Funds will be credited against the Plan-level fee charged by the Fund Adviser for investment advisory services, or (ii) the Plan will not pay a Plan-level investment advisory fee with respect to those assets invested in the UAM Funds. In either case, the Fund Adviser will comply with the requirements regarding such fees set forth in PTE 77–4.[32] The Fund Adviser will not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the acquisition or redemption. The combined total of all fees received by the Fund Adviser for the provision of services to the Plan, and in connection with the provision of services to the UAM Funds in which the Plan holds shares purchased in connection with an in-kind transfer, will not exceed "reasonable compensation" within the meaning of section 408(b)(2) of the Act.[33]

10. Not later than 30 days after completion of the Acquisition or Redemption Transaction, the Fund Adviser will provide a written confirmation to the Independent Fiduciary that will contain: (i) The identity of each Transferable Security that was valued in accordance with Rule 17a–7, as described above; (ii) the current market price, as of the date of the in-kind transfer, of each such Transferable Security; and (iii) the identity of each pricing service or market-maker consulted in determining the current market price of such Transferable Securities.

11. Not later than 105 days after each Acquisition or Redemption Transaction, the Fund Adviser will provide a written confirmation to the Independent Fiduciary that will contain: (i) In the case of an Acquisition Transaction, the number of Shares in the UAM Funds that are held by the Plan immediately following the acquisition, the related per-Share net asset value, and the total dollar value of such Shares; and (ii) in the case of a Redemption Transaction, the number of Shares in the UAM Funds that were held by the Plan immediately prior to the redemption, the related per-Share net asset value, and the total dollar value of such Shares.

12. With respect to each of the UAM Funds in which a Plan continues to hold Shares in connection with an in-kind acquisition, the Fund Adviser will provide the Independent Fiduciary with: (i) A copy of an updated prospectus of such UAM Fund, at least annually; and (ii) upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other statement) containing a description of all fees paid by the UAM Fund to the Investment Adviser.

13. All other dealings between the Plan and the UAM Funds will be on a basis no less favorable to the Plan than dealings between the UAM Funds and other shareholders holding the same Shares of the same class as the Plan.

14. In summary, it is represented that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The proposed exemption is administratively feasible because it establishes objective criteria for its application, and compliance with such criteria may be readily determined and audited.

(b) The proposed exemption is in the interests of the Plans and their participants and beneficiaries because it will reduce the amount of brokerage commissions and other transaction costs paid by the Plans. Additionally, the in-kind transactions will eliminate the market risks associated with having Plan assets uninvested, even if for only a short time.

(c) The proposed exemption will be protective of Plan participants and beneficiaries because (i) an Independent Fiduciary will retain ultimate discretion as to whether an in-kind acquisition or redemption occurs; (ii) the affiliation among the UAM Funds, the Fund Advisers, and FSI, and the fees received from the UAM Funds by the Fund Advisers and FSI, will be fully disclosed to the Independent Fiduciary; (iii) the in-kind acquisition or redemption of Shares will not result in any Plan paying multiple fees for the same or similar services because either (A) any investment advisory Fund-level fees received by a Fund Adviser as a result of a Plan's investment in the UAM Funds will be credited against the Plan-level fee charged by the Fund Adviser for investment advisory services, or (B) the Plan will not pay a Plan-level investment advisory fee with respect to assets invested in the UAM Funds, in either case in accordance with the requirements of PTE 77–4; (iv) the UAM Funds are subject to the protections offered investors under the 1940 Act, including the 1940 Act's regulation of fees paid to investment advisers; and (v) no Plan will pay sales loads or commissions or redemption fees in connection with the acquisition or redemption of Shares.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd of the Department, telephone (202) 219–8194. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative

[32] As noted previously, PTE 77–4 permits the cash purchase or sale by an employee benefit plan of shares of a registered, open-end investment company where a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

[33] The Department is providing no opinion in this proposed exemption as to whether the total fees to be paid by any Plan would be considered "reasonable" under section 408(b)(2) of the Act. Such a determination must be made by the appropriate plan fiduciaries who are independent of UAM and the Fund Adviser (i.e., the Independent Fiduciaries of the Plans) upon review of the information concerning such fees which must be disclosed to such fiduciaries.

exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of February, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 01–3688 Filed 2–14–01; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel (NEGP). This notice also describes the functions of the Panel.

DATE AND TIME: Saturday, February 24, 2001 from 9:30 a.m. to 11 a.m.

ADDRESSES: National Press Club, 529 14th Street, NW., Holeman Lounge, 13th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Emily Wurtz, Acting Executive Director, 1255 22nd Street, NW., Suite 502, Washington, DC 20037, Telephone: (202) 724–0015.

SUMMARY: The National Education Goals Panel was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on the progress.

Agenda Items: The agenda items will focus upon recommendations made by NEGP's Measuring Success Task Force. Governor John R. McKernan, Task Force Chair, will report recommendations of new data in student academic achievement, adult literacy, teacher education and professional development, and early childhood education. In addition, the incoming NEGP Chair, Governor Frank O'Bannon, will announce upcoming Panel initiatives for 2001.

Dated: February 9, 2001.

Emily Wurtz,

Acting Executive Director, National Education Goals Panel.

[FR Doc. 01–3798 Filed 2–14–01; 8:45 am]

BILLING CODE 4010–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 25—Access Authorization for Licensee Personnel.

2. *Current OMB approval number:* 3150–0046.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.

5. *The number of annual respondents:* 20.

6. *The number of hours needed annually to complete the requirement or request:* 257 hours (197 hours reporting and 60 hours recordkeeping) or approximately.5 hours per response.

7. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided NRC-classified information and material.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site http://www.nrc.gov/NRC/Public/OMB/index.html. The document will be available on the NRC home page site for 60 days after the signature date to this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 19, 2001. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Amy Farrell, Office of Information and Regulatory Affairs (3150–0046), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–7318.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 7th day of February, 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–3828 Filed 2–14–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Nuclear Management Company, LLC; Kewaunee Nuclear Power Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–43, issued to Nuclear Management Company, LLC (NMC or the licensee) for operation of the Kewaunee Nuclear Power Plant (KNPP), located in Kewaunee County, Wisconsin.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Technical Specification (TS) Section 1.0, "Definitions," to incorporate a line item improvement to provide additional clarification on channel calibration; TS Section 6.4, "Training," to remove the title of director for the KNPP training program and relocate the title reference to the Operational Quality Assurance Program Description (OQAPD); TS Section 6.10, "Record Retention," to revise the off-site review committee title; and correct typographical errors in the TS Table of Contents.

The proposed action is in accordance with the licensee's application for amendment dated November 10, 2000.

The Need for the Proposed Action

The proposed action would provide clarity to the TSs and remove an

unnecessary NRC and licensee burden with no change in safety when titles are changed.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the changes to the TSs are administrative in nature.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Kewaunee.

Agencies and Persons Consulted

In accordance with its stated policy, on January 29, 2001, the staff consulted with the Wisconsin State official, Ms. S. Jenkins, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated November 10, 2000, which is available for public inspection at the Commission's Public Document Room, One White Flint Building, 11555 Rockville Pike, Rockville, MD. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 9th day of February 2001.

For the Nuclear Regulatory Commission.

John G. Lamb,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–3824 Filed 2–14–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22, issued to Nuclear Management Company, LLC (NMC, or the licensee), for operation of the Monticello Nuclear Generating Plant located in Wright County, Minnesota.

The proposed amendment would remove the inservice inspection (ISI) requirements of Section XI of the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (the Code) from the Monticello Technical Specifications (TSs) and relocate them to a licensee-controlled program.

NMC is requesting that this license amendment request be processed in an exigent manner in accordance with 10 CFR 50.91(a)(6) because the plant is currently operating under a Notice of Enforcement Discretion (NOED) with respect to TS 3.15.A.1. In accordance with NRC procedures described in NRC Inspection Manual, Part 9900, Operations—Notices of Enforcement Discretion, dated December 12, 2000, NMC applied for this license amendment within 2 working days after the NRC staff issued the NOED on January 30, 2001. The NRC staff will process this amendment in an exigent manner, in order to minimize the time the plant is operated under the NOED.

In its application, NMC explained why it could not have foreseen the need for this amendment. Compliance with the current wording of TS 3.15.A requires full compliance with the Code as a condition for considering Section XI-required equipment operable. Application of TS 3.15.A requires declaring equipment inoperable and following the specified limiting conditions for operation when a Code non-compliance is discovered. This may require an unnecessary plant shutdown when the equipment is fully operable in all other respects. This exigent situation occurred because the potential for TS 3.15.A.1 to cause unnecessary operational evolutions was not previously recognized. Code nonconformances were recently identified during the course of inspections conducted by NRC staff. TS 3.15.A.1 directs that affected components be declared inoperable without regard for actual impact on operability. The need for a license amendment that would allow such nonconformances to be evaluated for their affect on equipment operability, thus preventing unnecessary operational evolutions, was subsequently identified. As a result, the need for a license amendment was determined to be unavoidable and not created by a failure to make a timely application for a license amendment.

The staff has determined that the licensee used its best efforts to make a timely application for the proposed changes and that exigent circumstances do exist and were not the result of any intentional delay on the part of the licensee.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR

50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested changes are administrative in nature in that they relocate ISI requirements from the TS to the Monticello ISI program. The requested changes will not revise previous commitments to 10 CFR 50.55a or ASME Code Section XI ISI requirements.

The proposed changes do not involve a change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor do they affect any assumptions or conditions in any of the accident analyses. Since the accident analyses remain bounding, their radiological consequences are not adversely affected.

Therefore, the probability or consequences of an accident previously evaluated are not affected.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The requested changes are administrative in nature in that they relocate ISI requirements from the TS to the Monticello ISI program. The requested changes will not revise previous commitments to 10 CFR 50.55a or ASME Code Section XI ISI requirements.

The proposed changes do not involve a change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor do they affect any assumptions or conditions in any of the accident analyses. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes.

Therefore the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The requested changes are administrative in nature in that they relocate ISI requirements from the TS to the Monticello ISI program. The requested changes will not revise previous commitments to 10 CFR 50.55a or ASME Code Section XI ISI requirements. Program requirements will ensure that Code requirements are met.

Therefore, a significant reduction in the margin of safety is not involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 19, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with

the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esq., at Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 1, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 8th day of February 2001.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–3608 Filed 2–14–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of a Public Meeting on Assessing Future Regulatory Research Needs

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will hold a fourth and final meeting of nuclear experts from the government, the nuclear industry, academia, and the public on February 21, 2001. As a result of the first two meetings, the nuclear experts issued a draft report composed of the individual views of the experts on the role and direction of regulatory research. The draft report contains a number of recommendations. The third meeting focused on strategies for implementing recommendations and briefings by the NRC licensing offices and the regions. The purpose of this meeting is to review, discuss, and propose individual recommendations on the role and future direction of regulatory research for Commission consideration. The Expert Panel will also discuss their perspectives and responses to questions posed to the panel by NRC Chairman Richard A. Meserve. The meeting is open to the public and all interested parties may attend.

DATES: The meeting will be held from 9:15 a.m. to 5 p.m. on February 21, 2001, at the Center for Strategic and International Studies (CSIS) located at 1800 K Street, NW., in Washington, DC (corner of 18th and K Streets). The telephone number for CSIS is 202–775–3115 (Lisa Hyland).

FOR FURTHER INFORMATION CONTACT: Questions with respect to this meeting should be referred to James W. Johnson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission at (301) 415–6293; fax (301) 415–5153; E-mail jwj@nrc.gov.

SUPPLEMENTARY INFORMATION: Parking is available in the vicinity of the CSIS location for a modest cost. CSIS can also be reached by Metro. CSIS is located one block west of the Farragut North Metro stop on the Red Line and one block north of the Farragut West Metro stop on the orange and blue lines. Seating for the public is limited and therefore will be on a first-come, first-serve basis.

Dated at Rockville, Maryland this 9th day of February 2001.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission.

[FR Doc. 01–3829 Filed 2–14–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

National Materials Program Working Group

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of formation of working group and public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has formed a working group to provide the Commission with regulatory program options for a proposed National Materials Program. The working group is composed of the Organization of Agreement States (OAS), Conference of Radiation Control Program Directors, Inc., (CRCPD) and NRC representatives.

The working group held its first meeting in March 2000 and will produce a paper for the Commission that examines the impact of an increased number of Agreement States (AS) on the NRC's regulatory program and provides options for the Commission's consideration. The completion date for the working group's product is May 2001. To assure that the broadest possible alternatives are considered, the working group intends to hold a stakeholder's meeting to garner additional ideas for the working group's consideration as it finalizes the options it is considering.

DATES: The meeting will be held on February 21, 2001 from 8:30 am–5 pm; February 22, 2001 from 8:30 am–12 noon. Registration will begin at 8 am each day. To facilitate maximum participation and information sharing, the meeting will be open to the public.

ADDRESSES: The meeting will be held at the NRC's Region IV Office, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–8064.

Members of the public who are unable to attend the meeting can send comments to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: National Materials Program Working Group.

A notice about this meeting is also published at the NRC web site, News and Information, Public Meetings, Other Meetings (*http://www.nrc.gov/NRC/PUBLIC/meet.html#OTHER*).

FOR FURTHER INFORMATION CONTACT: James Myers, Project Manager, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: 301–415–2328; E-mail: *jhm@nrc.gov*

SUPPLEMENTARY INFORMATION: The 32 Agreement States (AS) regulate about 70 percent of the total number of radioactive materials licensees. NRC is forecasting three more AS by FY 2003. This will bring the percentage of licensees regulated by AS to more than 80 percent. With a declining number of licensees, NRC believes that its activities that support the national program infrastructure (rulemaking, guidance development, information technology systems, technical support, event follow up and the Integrated Materials Performance Evaluation Program) will have a significant impact on an increasingly smaller number of NRC licensees.

The NRC staff determined that the following issues were key to defining and implementing State and Federal roles under a national program: delineate the scope of activities to be covered by the program and need for statutory changes at the State and Federal levels; establish formal program coordination mechanisms; establish performance indicators, a program assessment process to measure performance and ensure program evolution; and provisioning and budgeting of both State and Federal resources for the program. Additionally, it was directed that the project be completed by May 1, 2001.

To assure adequate coordination and sharing of information with OAS, CRCPD and the public, it is the intention of the working group to place information at the Office of State and Tribal Programs web site *http://www.hsrd.ornl.gov/nrc/home.html*. Notices of future meetings will be posted at the NRC web site's Public Meeting Notice area: *http://www.nrc.gov/NRC/PUBLIC/meet.html#OTHER*. To facilitate maximum participation and information sharing, the working group's meetings will be open to the public. Future meeting notices will be published at the NRC web site, News and Information, Public Meetings, Other Meetings.

Dated at Rockville, Maryland this 8th day of February, 2001.

For the Nuclear Regulatory Commission.

Frederick C. Combs,

Deputy Director, Office of State and Tribal Programs.

[FR Doc. 01–3826 Filed 2–14–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

On February 7, 2001 (66 FR 9377), the **Federal Register** published the "Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations." On page 9377, column 3, second paragraph, "January 29, 2001, through February 9, 2001" should read "January 16, 2001 through January 26, 2001."

Dated at Rockville, Maryland, this 9th day of February 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–3827 Filed 2–14–01; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (*http://www.pbgc.gov*).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in February 2001. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in March 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in February 2001 is 4.71 percent (*i.e.*, 85 percent of the 5.54 percent yield figure for January 2001).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between March 2000 and February 2001.

For premium payment years beginning in	The assumed interest rate is
March 2000	5.30
April 2000	5.14
May 2000	4.97
June 2000	5.23
July 2000	5.04
August 2000	4.97
September 2000	4.86
October 2000	4.96
November 2000	4.93
December 2000	4.91

For premium payment years beginning in	The assumed interest rate is
January 2001	4.67
February 2001	4.71

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in March 2001 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 12th day of February 2001.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01–3882 Filed 2–14–01; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43938; File No. SR-Amex–01–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Prohibition Against Members Functioning as Market Makers and the Entry of Electronically Generated Orders Into the Exchange's Order Routing System

February 7, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] (the "Act") and Rule 19b–4 thereunder [2], notice is hereby given that on February 1, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC") or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by 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 Amex proposes to adopt new Rule 934, which restricts the entry of certain option limit orders and prohibits the entry of orders that are created and communicated electronically without manual input into the Exchange's order routing and execution systems. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rule 934 restricting the entry of certain option limit orders and of orders that are created and communicated electronically without manual input into the Exchange's electronic order routing and delivery system (Amex Order File—AOF), which routes orders of up to 250 option contracts to the Exchange's electronic order execution and processing systems (*i.e.*, Auto-Ex and the Amex Options Display Book or AODB).

The proposed new rule provides that members, acting as either principal or agent, may not permit the entry of orders into the electronic order routing system if the orders are limit orders for the account or accounts of the same or related beneficial owners and the limit orders are entered in such a manner that the member of the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such securities on a regular or continuous basis. In determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same security; the multiple acquisition and liquidation of positions in the security during the same day; and the entry of multiple limit orders at different prices in the same security.[4]

The proposed rule would also prohibit members from entering orders that are created and communicated electronically without manual input and if such orders are eligible for execution through the Exchange's Automatic Execution System ("Auto-Ex").[5] Orders entered by customers or associated persons of members will be deemed to involve manual input if the terms of the order are entered into an order-entry screen or there is a manual selection of a displayed order against which an off-setting order should be sent. It should be noted that members shall not be prohibited from electronically communicating to the Exchange orders entered by customers into front-end communication systems (*e.g.*, Internet gateways, online networks, etc.).

The Exchange states that its business model depends upon specialists and registered options traders for competition and liquidity. To encourage participation by these market makers, the Exchange needs to limit the ability of non-specialists/registered traders to compete on preferential terms within its automated systems. In addition, customer orders are provided with certain benefits such as automatic execution, priority of bids and offers and firm quote guarantees, and thus should not be allowed to act as market makers. The proposed rule will prevent non-specialist/registered trader members and their customers from reaping the benefits of market making activities without any of the concomitant obligations such as providing continuous quotations during

[1] 15 U.S.C 78s(b)(1)

[2] 17 CFR 240.19b–4

[3] 17 CFR 240.19b(f)(6).

[4] Since the proposal rule change was filed with the Commission, the Exchange made a technical change to the text of proposed Amex Rule 934(a) to insert the word "and." The change does not affect the substance of the rule. Telephone conversation between Claire McGrath, Vice President and Special Counsel, Amex, and Jennifer Colihan, Special Counsel. Division of Market Regulation, Commission, on February 6, 2001.

[5] Currently, only market and marketable limit orders up to specifically established sizes are eligible for execution through Auto-Ex; however, the Exchange has a proposal pending before the Commission that would allow the automatic execution of non-marketable limit orders that improve the best price available on the Exchange by automatically executing such limit order if the current best bid/offer quote on another market is better than the Amex quote by a predefined number of ticks. (*See* SR-Amex 00–29.)

all market conditions. The proposed rule is designed to prevent certain members and customers from obtaining an unfair advantage by acting as unregistered specialists and traders while having priority over the specialists and registered traders by virtue of their customer status. Permitting members or customers to enter multiple limit orders to such an extent that they are effectively acting as market makers in an option, while at the same time giving them priority over all other orders on the book, would give such members and customers an inordinate advantage over the market participants. In addition, allowing electronically generated and communicated orders to be routed directly through the Exchange systems and to Auto-Ex would give customers with such electronic systems a significant advantage over specialists and registered traders. In the Exchange's view, these circumstances reduce the incentive to engage in market making on the Exchange, which could reduce liquidity and competition and could undercut the Exchange's business model.[6] Lastly, the Exchange notes that computer generated orders can still be sent to the Exchange for execution, however, they may not be sent for execution through the Exchange's order routing system. Instead, such orders will be routed to the trading crowd and represented in open outcry.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is disigned to prevent fradulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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.

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 with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, it has become effective pursuant to Section (19(b)(3)(A) of the Act and Rule 19b–4(f)(6).

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of the filing of the proposed rule change. The Commission finds that it is appropriate to accelerate the operative date of the proposal and designate the proposal to become operative today.[11]

The Commission finds good cause for accelerating the operative date of the proposed rule change. The Commission notes that it has approved similar proposals filed by the ISE,[12] the CBOE,[13] the Pacific Exchange, Inc. ("PCX"),[14] and the Philadelphia Stock Exchange, Inc. ("Phlx").[15] Approval of this proposal on an accelerated basis will enable the Amex to compete on an equal basis with these other exchanges and thus is consistent with Section 6(b)(8) of the Act.[16]

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 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–01–03 and should be submitted by March 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–3802 Filed 2–14–01; 8:45 am]

BILLING CODE 8010–01–M

[6] In approving a similar proposal currently in place at the Chicago Board Options Exchange ("CBOE"), the Commission noted that allowing electronic order entry into ORS (the counterpart to Amex's AOF) could give automated customers a significant advantage over market makers. See Securities Exchange ACt Release No. 43285 (September 12, 2000), 65 FR 56972 (September 20, 2000).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (approving application of ISE for registration as a national securities exchange).

[13] *See* Securities Exchange Act Release No. 43285 (September 12, 2000), 65 FR 56972 (September 20, 2000) (approving SR–CBOE–00–01).

[14] *See* Securities Exchange Act Release No. 43328 (September 22, 2000), 65 FR 58834 (October 2, 2000) (approving SR–PCX–00–13).

[15] *See* Securities Exchange Act Release No. 43376 (September 28, 2000), 65 FR 58834 (October 5, 2000) (approving SR–Phlx–00–79).

[16] 15 U.S.C. 78f(b)(8).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43944; File No. SR–NASD–00–22]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and No. 2 by the National Association of Securities Dealers, Inc. Relating to Limit Order Protection for OTC Bulletin Board Securities

February 8, 2001.

I. Introduction

On April 19, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change that would, for a 12-month pilot period, apply limit order protection to a select subset of securities traded on the OTC Bulletin Board ("OTCBB").[3] The proposal was published for comment in the **Federal Register** on June 16, 2000.[4] On December 7, 2000, Nasdaq filed Amendment No. 1 to the proposal.[5] On January 24, 2001, Nasdaq filed Amendment No. 2 to the proposal.[6] The Commission received twelve comments on the proposal. This notice and order approves the proposed rule change, solicits comment from interested persons on Amendment Nos. 1 and 2, and approves Amendment Nos. 1 and 2 on an accelerated basis.

II. Description of the Proposal

Nasdaq has proposed to adopt the following new rule:

6541. Limit Order Protection

(a) Members shall be prohibited from "trading ahead" of customer limit orders that a member accepts in securities quoted on the OTCBB. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.

(b) Members may not avoid such obligation specified in paragraph (a) through the provision of price improvement, unless such price improvement is for a minimum of the lesser of $.05 or one-half (1/2) of the current inside spread. For purposes of this rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security.

(c) Notwithstanding subparagraph (a) of this rule, a member may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to such orders that are:

(1) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or

(2) for 10,000 shares or more, and grater than $20,000 in value.

(d) Contemporaneous trades

A member that trades through a held limit order must execute such limit order contemporaneously, or as soon as practicable, but in no case later than five minutes after the member has traded at a price more favorable than the customer's price.

(e) Application

(1) This rule shall apply only to OTCBB securities specifically identified as such through the Nasdaq Workstation service.

(2) This rule shall apply, regardless of whether the subject security is additionally quoted in a separate quotation medium.

(3) This rule shall apply from 9:30 a.m. to 4 p.m. Eastern Time.

(4) This rule shall be in effect until [12 months from date of Commission approval].

NASD IM–2110–2 currently prohibits NASD member firms from trading ahead of customer limit orders in Nasdaq securities. The impetus for this rule (commonly known as the "Manning Rule") was a case brought by a customer of a member firm, William Manning, who alleged that the firm had accepted his limit order, failed to execute it, and violated its fiduciary duty to him by trading ahead of the order. In the *Manning* decision,[7] the NASD found, and the Commission affirmed, that a member firm, upon acceptance of a customer's limit order, undertakes a fiduciary duty to its customer and cannot trade for its own account at prices more favorable than the customer's order. Although at one time the NASD took the position that its members could trade ahead of customer limit orders provided they disclosed such practice to the customer,[8] NASD IM–2110–2 eliminated this disclosure "safe-harbor" for all securities listed on Nasdaq.

Nasdaq states that it is now appropriate to extend the principles of the Manning Rule to the OTCBB and has proposed to adopt NASD Rule 6541 that will apply limit order protection to a select subset of OTCBB securities.[9] NASD Rule 6541 will be instituted as a 12-month pilot program. While NASD members will be under no obligation to accept limit orders, those willing to do so will be prohibited from trading the securities covered by the pilot program at prices equal or superior to any customer limit orders held by the firm, regardless of whether those orders are from their own customers or from customers of firms who have routed those orders to the member for execution.[10] NASD Rule 6541 will apply even to those members who, in the past, have fully disclosed to their customers that they may trade ahead of customer limit orders.

Nasdaq intends to apply the pilot program to approximately 325 OTCBB securities.[11] Nasdaq will select securities for the pilot that will afford it

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[2] 17 CFR 240.19b–4.

[3] The OTCBB is a quotation medium, owned by the NASD and operated by Nasdaq, for subscribing NASD members that permits quotations for securities that generally are not traded on a national securities exchange or quoted on Nasdaq.

[4] Securities Exchange Act Release No. 42908 (June 7, 2000), 65 FR 37808.

[5] *See* Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC (December 5, 2000). In Amendment No. 1, Nasdaq proposed additional rule text that sets forth a minimum increment by which an NASD member must trade ahead of a customer limit order to avoid violation of the proposed rule ("trading-ahead increment"). This minimum increment is the lesser of $0.05 (5 cents) per share or one-half of the current inside spread.

[6] *See* Letter from Jeffrey S. Davis, Assistant General Counsel, Nasdaq, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC (January 24, 2001). In Amendment No. 2, Nasdaq provided additional explanation of the new rule text and why the trading-ahead increment of the lesser of $0.05 per share or one-half of the current inside spread was selected.

[7] *See In re E.F. Hutton & Co.*, Exchange Act

[2] 17 CFR 240.19b–4.

[3] The OTCBB is a quotation medium, owned by the NASD and operated by Nasdaq, for subscribing NASD members that permits quotations for securities that generally are not traded on a national securities exchange or quoted on Nasdaq.

[4] Securities Exchange Act Release No. 42908 (June 7, 2000), 65 FR 37808.

[5] *See* Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC (December 5, 2000). In Amendment No. 1, Nasdaq proposed additional rule text that sets forth a minimum increment by which an NASD member must trade ahead of a customer limit order to avoid violation of the proposed rule ("trading-ahead increment"). This minimum increment is the lesser of $0.05 (5 cents) per share or one-half of the current inside spread.

[6] *See* Letter from Jeffrey S. Davis, Assistant General Counsel, Nasdaq, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC (January 24, 2001). In Amendment No. 2, Nasdaq provided additional explanation of the new rule text and why the trading-ahead increment of the lesser of $0.05 per share or one-half of the current inside spread was selected.

the best opportunity to test the effects of the proposed rule on a wide range of OTCBB securities. One set will include the 200 most actively traded OTCBB securities, which will be chosen on the basis of specific price and volume parameters. An additional 100 securities will be selected as a representative cross-section of all remaining OTCBB securities. The implementation of the proposed rule upon these 300 securities will be phased in over a period of several weeks, beginning with the top 200 actively traded securities, then proceeding to the 100 representative cross-section securities. According to Nasdaq, this phase-in process is intended to protect against any unanticipated or deleterious effect that might occur through an immediate application to all securities. The remaining 25 securities will be selected on a case-by-case basis after the initial phase-in period has been completed. Nasdaq anticipates that this remainder will be securities that are either highly liquid and widely held by retail investors or securities or have been delisted from Nasdaq or an exchange.

Nasdaq advises that it will monitor the operation of this rule and its effect on the OTCBB market throughout the pilot period. Prior to the end of the pilot, Nasdaq will evaluate the impact of the proposed rule and report its findings to the Commission and, thereafter, determine the appropriate course of action.

Nasdaq points out that there are significant differences between Nasdaq and the OTCBB. While both are quotation mediums, the OTCBB does not afford issuers a means to list their securities on the service and, thus, does not maintain relationships with quoted issuers or impose quantitative listing standards. In addition, OTCBB securities are quoted by market makers that enter their quotes through a closed computer network, which is accessed through the Nasdaq Workstation II. Unlike Nasdaq, the OTCBB does not have an order delivery or execution system. Therefore, although application of NASD Rule 6541 is intended to substantially mirror NASD IM–2110–2, Nasdaq has made four modifications to accommodate the differences between the Nasdaq and the OTCBB.

First, NASD Rule 6541 contains a lower threshold for order size at which the prohibition on trading ahead of customer limit orders would not apply. NASD IM–2110–2, which sets forth a general prohibition against trading ahead of customer limit orders in Nasdaq securities, permits NASD members to negotiate exceptions to the general rule with a customer when the customer submits an order for a Nasdaq security of at least 10,000 shares that has a value greater than $100,000.[12] Due to the relatively lower share prices of OTCBB securities, Nasdaq has set the corresponding thresholds at 10,000 shares and $20,000 for the securities covered by the OTCBB pilot program. Nasdaq advises that it will study these thresholds as part of its analysis of the pilot and may recommend adjustments, if necessary.

Second, the Manning Rule for Nasdaq securities and the rule to be applied to the OTCBB will differ with respect to the time interval allowed for "contemporaneous" executions. Under NASD IM–2110–2, an NASD member is not deemed to have traded ahead of a customer limit order in a Nasdaq security if the member provides a "contemporaneous" execution of that order. "Contemporaneous" has been interpreted for Nasdaq securities to require an execution as quickly as possible, but, absent reasonable and documented justification, within one minute.[13] Unlike Nasdaq, which has an automated order delivery and execution system, the OTCBB currently provides no means of automated communication. Market makers in OTCBB securities generally must contact each other via telephone, a time consuming process that can provide especially burdensome during periods of high trading volume. Therefore, Nasdaq has proposed that, for OTCBB securities covered by the pilot, a "contemporaneous" trade must be executed as quickly as possible, but in no case later than five minutes after becoming marketable.[14] Nasdaq advises that it will study this provision and may recommend modifications, as appropriate, in conjunction with the review of the pilot program.

Third, the pilot program will apply only from 9:30 a.m. to 4 p.m.,[15] although NASD IM–2110–2 applies from 9:30 a.m. until 6:30 p.m.[16] This is to accommodate the fact that, although the OTCBB service is available from 7:30 a.m. to 6:30 p.m., prices on the OTCBB are required to be firmly only during the normal market hours of 9:30 a.m. to 4 p.m.

The fourth difference between NASD Rule 6541 and NASD IM–2110–2 is discussed in the following section.

III. Amendment Nos. 1 and 2

Under NASD IM–2110–2, a member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in a Nasdaq security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order, is deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of NASD Rule 2110. However, the NASD issued guidance stating that an NASD member would not be deemed to violate NASD member would not be deemed to violate NASD IM–2110–2 if it executed its own trade ahead of the customer limit order at a price that improved on the customer's order by at least the lesser of 1/16th of $1.00 per share (6.25 cents) or one-half the inside spread.[17] The fourth principal difference between NASD Rule 6541 and NASD IM–2110–2 is that, for the OTCBB pilot program, an NASD member will be permitted to trade ahead of a customer limit order if it offers price improvement of the lesser of $0.05 (5 cents) per share or one-half of the inside spread. This modification reflects the fact that OTCBB securities generally trade in decimals while Nasdaq securities trade in fractions (with the exception of certain securities trading in decimals on a pilot basis).

In Amendment No. 1, Nasdaq proposed additional rule text[18] which set forth the trading-ahead increment discussed above. In Amendment No. 2,

[12] "The value of a limit order is calculated by multiplying the price per share specified in that order by the number of shares specified in the order. Thus, the value of a limit order does not include any markup, markdown, commission, commission equivalent, sales credit, or other internal credit." Securities Exchange Act Release No. 35751 (May 22, 1995), 60 FR 27997, 27998 n.17 (May 26, 1995) (order approving SR–NASD–94–62, which amended NASD IM–2110–2 to prohibit a member firm from trading ahead of limit orders of other firm's customers that have been sent to that member).

[13] *See* NASD Notice to Members 95–67 (Question and Answer No. 5) (establishing a "general time parameter" of one minute); NASD Notice to Members 98–78 (clarifying that, outside of normal market conditions, an NASD member would not be presumptively deemed in violation of the limit order protection rule if it failed to execute a customer limit order within the one-minute period, provided it did so "as soon as possible under the circumstances").

[14] NASD Rule 6541 also provides that, if market conditions or other circumstances cause the member to exceed this five-minute requirement, the member should continue to attempt to execute the order as quicly as possible while sufficiently documenting the particular conditions or circumstances causing this delay.

[15] Nasdaq has stated that the hours of application would adjust accordingly on days in which the OTCBB's market hours are shortened due to holidays or other events.

[16] *See* NASD IM–2110–2(a).

[17] *See* NASD Notice to Members 97–57 (Question and Answer No. 7). *See also* Securities Exchange Act Release No. 39049 (September 10, 1997), 62 FR 48912 (September 17, 1997) (increasing minimum trading-ahead increment in Nasdaq securities from 1/64th to 1/16th of $1.00 per share).

[18] *See* NASD Rule 6541(b).

Nasdaq indicated that this increment is based upon, and consistent with, Nasdaq's guidance on members' Manning obligations when trading Nasdaq National Market and SmallCap securities. Nasdaq also stated that there is a balance to be struck, because requiring too much price improvement could limit price competition by raising market makers' trading costs too high, while requiring too little price improvement could potentially isolate pending limit orders without meaningfully benefiting the market. Nasdaq advised that its OTC Bulletin Board Advisory Committee considered the matter and concluded that $0.05 per share is a reasonable, meaningful cost to impose for stepping ahead of a customer limit order. Nasdaq believes that, based upon this analysis and its experience in applying the Manning Rule to Nasdaq securities, the aggregate benefit to the market of narrowing the spread by a $0.05 appears to outweigh the costs to a single market participant of not receiving an execution.

In Amendment No. 2, Nasdaq also clarified the requirement that, for purposes of NASD Rule 6541(b), the inside spread will be defined as the difference between "the best reasonably available bid and offer." Nasdaq states that this phrase comes from judicial precedent describing the broker-dealer's duty of best execution and cites the case of *Newton* v. *Merill, Lynch, Pierce, Fenner and Smith*.[19] Nasdaq indicates that, by importing this standard into NASD Rule 6541, it will signal to NASD members that they must use the same reasonable diligence and care to find the best prices when trading OTCBB securities that they use when trading Nasdaq National Market and SmallCap securities.

Nasdaq believes, however, that the determination of what is "reasonably available" is largely factual and best performed on a case-by-case basis. Nasdaq expects that broker-dealers seeking the best inter-dealer market for a customer order would, at a minimum, monitor not only the OTCBB quotations distributed as part of the Nasdaq Level 1 service, but also quotations for those same securities in the Pink Sheets or any other system of general circulation to broker-dealers that regularly disseminates quotations of identified broker-dealers.

Finally, Nasdaq states in Amendment No. 2 that, to assist members in fulfilling their obligations under NASD Rule 6541, it will issue a Notice to Members describing the new rule's operation within 30 days following Commission approval of the proposal. Nasdaq has stated that it will then wait an additional 30 days following publication of this Notice to Members before making NASD Rule 6541 operational.

[19] 153 F.3d 266, 271 (3d Cir. 1998) (duty of best execution "requires that a broker-dealer seek to obtain for its customer orders the most favorable terms reasonably available under the circumstances").

IV. Summary of Comments on Original Proposal

The Commission received twelve comments on the proposal. Nine of the commenters strongly supported Nasdaq's proposal.[20] The three other commenters, while also supporting the application of Manning Rule principles to the OTCBB, expressed disappointment that the proposal did not go further by establishing limit order protection for all OTCBB securities on a permanent basis, rather than for just a selector group of OTCBB securities on a pilot basis.[21]

V. Discussion

A. Approval of Proposal

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to the NASD.[22] In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act.[23] Section 15A(b)(6) 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 equivalent principals of trade; to remove impediments to the perfect the mechanism of a free and open market and a national market system; in general, to protect investors and the public interest.

When the Commission approved the original proposal that instituted limit order protection for Nasdaq securities, it stated:

> The Commission believes that the rule change [which instituted NASD IM–2110–2] will enhance investor confidence by improving the quality of executions for customers. By giving a customer's limit order priority over the marker's proprietary trading, more trade volume will be available to be matched with the customer's order, resulting in quicker and more frequent executions for customers.
>
> The NASD's proposal will also improve the price discovery process in NASDAQ securities. Limit order aid price discovery by adding liquidity to the market and by tightening the spread between the bid and ask price of a security. In the past, customers may have refrained from placing limit orders because of the uncertainty of the difficulty in obtaining an execution at a price between the spread. The new rule will encourage dealers to executive customer limit orders in a timely fashion so that they may resume their proprietary trading activities. The practice of delaying executions until the inside price reaches the customer's limit order also impedes price discovery by shielding those orders from the rest of the investing public. More expeditious handling of customer limit orders * * * will provide investors with a more accurate indication of the buy and sell interest at a given moment.[24]

The Commission finds that the reasons for providing limit order protection for customer limit orders in Nasdaq securities, set forth above, also apply in the context of OTCBB securities. In the Commission's view, the proposed rule change is an appropriate first step in bringing limit order protection to the OTCBB, and the pilot program will also Nasdaq the opportunity to study the application of the new rule for OTCBB securities and to consider further refinements. Moreover, the Commission finds that Nasdaq's proposal for selecting the number and types of securities to participate in the pilot program to be reasonable and consistent with the Act.

The Commission also believes that the four accommodations made from NASD IM–2110–2 to recognize the structure of the OTCBB are reasonable and consistent with the Act. In particular, the minimum size threshold that qualifies larger orders for an exception to NASD Rule 6541 and the hours of effectiveness appropriately recognize the OTCBB environment. In addition, the Commission believes that the increment by which OTCBB market makers will be required to step ahead of

[20] *See* E-mail from Kjrock5649@aol.com to SEC (June 22, 2000); E-mail from Al Glenn to SEC (June 22, 2000); E-mail from Dan Tramantozzi to SEC (June 22, 2000); E-mail from Mike Mimbach to SEC (June 25, 2000); E-mail from R. Richardson to SEC (June 26, 2000); Letter from William L. Morrow, Principal, SBX, Inc. to SEC (July 5, 2000); E-mail from Victor A. Marzarella to SEC (July 13, 2000); E-mail from Jonathan A. Janssen to SEC (July 13, 2000); E-mail from Kenneth Veneziano, Senior Vice President and General Counsel, GlobeNet Capital Corporation, to SEC (July 13, 2000) ("GlobeNet E-mail").

[21] *See* E-mail from Erol Denizkurt to SEC (June 22, 2000); E-mail from Jim Mareno to SEC (June 22, 2000); E-mail from T.L. Kimber to SEC (June 26, 2000).

[22] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78o–3(b)(6).

[24] *See* Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994).

customer limit orders—the lesser of $0.05 per share or one-half of the current inside spread—is appropriate for the pilot program. As the Commission has previously noted, market makers electing to trade ahead of customer limit orders must be required to do so by a sufficiently large increment, otherwise the benefits of limit orders on price competition are lost.[25] The Commission believes that the proposed increment for the pilot program satisfactorily balances the interests of providing limit order protection against the benefits of offering price improvement. However, the Commission expects that, during the pilot period, Nasdaq will study all aspects of new NASD Rule 6541. After reviewing the pilot's operation, Nasdaq will have the opportunity to propose further refinements to the rule, if necessary.

In addition, one commenter recommended that NASD Rule 6541 include a two-minute standard for contemporaneous executions, rather than five minutes proposed by Nasdaq. The Commission believes that the five-minute standard is a reasonable first step, and that Nasdaq will have the opportunity to propose any appropriate refinements to NASD Rule 6541 at the conclusion of the pilot program.

B. Pilot Program

The Commission is approving this proposal on a 12-month pilot basis ending as of February 8, 2002. As noted above, Nasdaq has stated that NASD Rule 6541 will not become operational until 30 days after issuance of a Notice to Members discussing the operation of the new rule and that the pilot securities will be subject to a phase-in period.

C. Accelerated Approval of Amendment Nos. 1 and 2

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposal prior to the thirtieth day after the date of public of notice in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.[26] The original proposal has been published in the **Federal Register**, and public comment on the proposal was favorable. The Commission believes that Amendment Nos. 1 and 2 do not materially alter the original filing, but merely clarify the obligations imposed by NASD Rule 6541 in a manner consistent with the obligations that already exist with respect to Nasdaq National Market and SmallCap securities. The Commission believes, moreover, that approving Amendment Nos. 1 and 2—which set forth and describe the trading-ahead increment—at the same time as the original proposal furthers the investor protection goals of the Act.

VI. Solicitation of Comments on Amendments Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–22 and should be submitted by March 8, 2001.

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–NASD–00–22) is approved on a pilot basis and that Amendment Nos. 1 and 2 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–3800 Filed 2–14–01; 8:45 am]

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[25] *See* Securities Exchange Act Release No. 43084 (July 28, 2000), 65 FR 48406, 48420 (August 8, 2000) (proposing release for rules relating to disclosure of order execution and routing practices).

[26] 15 U.S.C. 78s(b)(2).

[27] *Id.*

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43943; File No. SR–NASD–00–79]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to EWN II Fees for NASD Members

February 8, 2001.

Introduction

On December 21, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to 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 relating to Enterprise Wide Network II ("EWN II") Fees for NASD Members.

The proposed rule change was published for comment in the **Federal Register** on January 16, 2001.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

In its proposed rule change, Nasdaq proposed to pass on costs associated with increased bandwidth demands of the EWN II to NASD members for the period December 1–12, 2000.[4] In the September/October 200 issue of Nasdaq's *Subscriber Bulletin*,[5] Nasdaq announced that it had increased the bandwidth of its Enterprise Wide Network II from 128 kilobits ("kb") to 192 kb. This increased bandwidth provides Nasdaq with the ability to support increased share volume and new products and trading applications that will be introduced. A description of the history of EWN II and the recent bandwith increase may be found in SR–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43814 (January 8, 2001), 66 FR 3630.)

[4] Nasdaq previously filed under section 19(b)(3)(A)(ii) a proposed rule change to increase the fees beginning December 13, 2000, which was immediately effective upon filing. Securities Exchange Act Release No. 43769 (December 22, 2000) (SR–NASD–00–73), 66 FR 826 (January 4, 2001). Nasdaq also filed a parallel rule filing to effect amendments to the EWN II fee structure to apply to non-NASD members. Securities Exchange Act Release No. 43768 (December 22, 2000) (SR–NASD–00–74), 66 FR 824 (January 4, 2001).

[5] *Subscriber Bulletins* are mailed to Nasdaq Workstation II subscribers and also may be found at *www.nasdaqtrader.com/trader/news/subscriberbulletins.*

NASD–00–73.[6] The *Subscriber Bulletin* also announced that the increased cost of the expanded bandwidth ($375 per month per circuit) would be passed on to Nasdaq subscribers beginning December 1, 2000. Nasdaq absorbed all of increased costs for the month of November 2000.

Because the original filing relating to NASD members was made under section 19(b)(3)(A)(ii), which makes the rule change immediately effective upon filing with the Commission, the fee increase became effective as of December 13, 2000. In this filing, Nasdaq seeks to recover the costs associated with the expanded bandwidth for the period of December 1–12, 2000, as announced in the *Subscriber Bulletin*.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed the Nasdaq's proposed rule change and finds, for he reasons set forth below, that the proposal is consistent with the requirements of section 15A of the Act[7] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with sections 15A(b)(5) of the Act.[8] Section 15A(b)(5) requires that the rules of a registered securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The fee increases proposed by Nasdaq would pass on the costs associated with increasing the capacity of EWN II to users of the Nasdaq Workstation II service.

The Commission believes that Nasdaq's proposal to increase NASD members' fees relating to the EWN II for the period December 1–12, 2000 is a fair means of recovering the costs associated with increasing the bandwidth of the EWN II. The Commission finds that the proposal is consistent with section 15A(b)(5)[9] insofar as the new fees reflect the additional cost that Nasdaq is incurring as a result of the expanded bandwidth. The Commission believes that such fee increases, necessitated by recent system volume increases, are a reasonable means by which Nasdaq intends to ensure adequate capacity of its EWN II system and thus, protect the ongoing integrity of the Nasdaq market.[10]

Nasdaq has requested that the Commission approve this proposed rule change on an accelerated basis.[11] The original EWN II fee increases for members were effective upon filing with the Commission on December 13, 2000, and have been subject to a full notice and comment period,[12] and that this current proposal imposing the same fees for the period of December 1–12, 2000, has been subject to a full notice and comment period.[13] No comments were received on either filing. Thus, the proposed rule change concerns issues that previously have been the subject to a full comment period pursuant to section 19(b) of the Act.[14] For these reasons, the Commission believes accelerated approval of the proposal is appropriate. Accordingly, the Commission finds good cause for approving the proposed rule change (SR–NASD–00–79) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.**

IV. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASD–00–79) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[6] Securities Exchange Act Release No. 43769 (December 22, 2000) (SR–NASD–00–73), 66 FR 826 (January 4, 2001).

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(5).

[9] *Id.*

[10] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] Telephone conversation between Mary Dunbar, Vice President, Nasdaq, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission, on February 7, 2001.

[12] Securities Exchange Act Release No. 43769 (December 22, 2000) (SR–NASD–00–73), 66 FR 826 (January 4, 2001).

[13] Securities Exchange Act Release No. 43814 (January 8, 2001) (SR–NASAD–00–79), 66 FR 3630 (January 16, 2001).

[14] 15 U.S.C. 78s(b).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43941; File No. SR–PCX–00–40]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Audit Committee Requirements for Listed Companies

I. Introduction

On October 23, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary, PCX Equities, Inc. ("PCXE"), submitted to the Secreties and Exchange Commission ("SEC" or "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 amending the PCXE's audit committee requirements. PCXE filed Amendment No. 1 to the proposed rule change on November 22, 2000.[3] The **Federal Register** published the proposed rule change for comment on December 7, 2000.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

PCXE proposes to modify PCXE Rule 5.3(b), regarding audit committee requirements for listed domestic issuers, to conform to recommendations made by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees and rule changes adopted by other self-regulatory organizations ("SROs").[5] The proposed rule change specifies four requirements for qualified audit committees, defines certain terms for purposes of the proposed audit committee requirements, and sets forth requirements for companies listing on PCXE in conjunction with an initial public offering.

First, proposed rule 5.3(b)(1) requires the board of directors of companies listed on PCXE to adopt and approve a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter dated November 20, 2000 from Cindy L. Sink, Senior Attorney, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). Amendment No. 1 specifies an implementation plan for the proposed rule change.

[4] Securities Exchange Act Release No. 43641 (Nov. 29, 2000), 64 FR 55514.

[5] *See* Securities Exchange Act Release Nos. 42231 (Dec. 14, 1999), 64 FR 71523 (Dec. 21, 1999) (approving SR–NASD–99–48); 42232 (Dec. 14, 1999), 64 FR 71518 (Dec. 21, 1999) (approving SR–AMEX–99–38); 42233 (Dec. 14, 1999), 64 FR 71529 (Dec. 21, 1999) (approving SR–NYSE–99–39).

formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on annual basis. The charter must specify: (i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements; (ii) that the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, and that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); (iii) that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company; (iv) that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor; and (v) that the audit committee is responsible for recommending that the board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

Second, proposed Rule 5.3(b)(2) sets forth the composition and expertise requirements of audit committee members. The proposal requires: (i) Each audit committee to consist of at least three independent directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company ("Independent"); (ii) each member of the audit committee to be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or to become financially literate within a reasonable period of time after his or her appointment to the audit committee; and (iii) at least one member of the audit committee to have accounting or related financial management expertise, as the board of directors interprets such qualification in its business judgment.

Third, proposed Rule 5.3(b)(3) provides the independence requirements of audit committee members. In addition to the definition of Independent provided in Rule 5.3(b)(2)(i), the following restrictions apply to every audit committee member:

(i) *Employees.* A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. "Affiliate" includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

(ii) *Business Relationship.* A director: (a) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company; or (b) who has a direct business relationship with the company; or (b) who has a direct business relationship with the company (*e.g.*, a consultant) may serve on the audit committee only if the company's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this provision, the board of directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated. "Business relationships" can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced board of director's determination after three years following the termination of, as applicable: (a) the relationship between the organization with which the director is affiliated and the company; (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position; or (c) the direct business relationship between the director and the company.

(iii) *Cross Compensation Committee Link.* A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

(iv) *Immediate Family.* A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. "Immediate Family" includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.

(v) Notwithstanding the requirements of subparagraphs (3)(i) and (30(iv) of Rule 5.3(b), one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered Independent pursuant to these provisions due to the three-year restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company's board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

Fourth, proposed Rule 5.3(b)(4) sets forth an ongoing written affirmation requirement. The proposal provides that as part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company must provide the Exchange written confirmation regarding: (i) any determination that the company's board of directors has made regarding the independence of directors; (ii) the financial literacy of the audit committee members; (iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and (iv) the annual review and reassessment of the adequacy of the audit committee charter.

Proposed Rule 5.3(b)(5) defines "Officer" to have the meaning specified in Rule 16a–1(f) under the Act,[6] or any successor rule. Moreover, proposed Rule 5.3(b)(6) provides that companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and

[6] 17 CFR 240.16a–(f).

a third qualified member in place within twelve months of listing.

Finally, PCXE proposes to implement a transition period in order to provide its issuers with sufficient time to come into compliance with the proposed rule change.[7] Specifically, PCXE proposes: (i) to "grandfather" all public company audit committee members qualified under current PCX rules until they are re-elected or replaced; and (ii) give companies eighteen months from the date of Commission approval of this rule filing to recruit the requisite members for their audit committees. Issuers listed on PCXE as of the effective date of the proposed rule change will have six months to adopt a formal written audit committee charter.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,[9] in that it is 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 Commission believes that the proposed rule change will protect investors by improving the effectiveness of audit committee of companeis listed on PCXE. The Commission also believes that the new requirements will enhance the quality and reliability of financial statements of companies listed on PCXE by making it more difficult for companies to inappropriately distort their true financial performance. These new provisions should help to assure that investors have quality and reliable financial information regarding PCXE listed issuers, including for investors who decide to buy or sell the securities of these issuers in secondary market transactions.

Specifically, the Commission believes that the proposed definition of independence will promote the objectivity and reliability of a company's financial statements. The Commission believes that directors without financial, familial, or other material personal ties to management will be more likely to objectively evaluate the propriety of management's accounting, internal control, and financial reporting practices. In addition, the Commission considers that the proposed provision permitting a company to appoint one non-independent director to its audit committee, if the board determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, adequately balances the need for objective, independent directors with the company's need for flexibility in exceptional and unusual circumstances. The Commission believes that the proposal's requirement that the company disclose in its next annual proxy statement the nature of the relationship and the board's reasons for determining that the appointment was in the best interests of the corporation will adequately guard against abuse of the proposed exception to the independence requirement.

In addition, the Commission believes that requiring boards of directors of listed companies to adopt formal written charters specifying the audit committee's responsibilities, and how it carries out those responsibilities, will help the audit committee, management, investors, and the company's auditors recognize, and understand the function of the audit committee and the relationship among the parties. Moreover, the Commission believes that the proposal's requirement that companies provide yearly written confirmation regarding the independence, financial literacy, and financial expertise of directors, as well as the adequacy of the audit committee charter, will help the Exchange to ensure that listed companies are complying with the proposed rule change.

The Commission believes that the proposed rule change's requirement that each issuer have an audit committee composed on three independent directors who are able to read and understand fundamental financial statements, will enhance the effectiveness of the audit committee and help to ensure that audit committee members are able to adequately fulfill their responsibilities. The Commission believes that requiring each audit committee member to satisfy this standard will help to ensure that the committee as a whole is financially literate. Moreover, the Commission believes that requiring one member of the audit committee to have accounting or related financial management expertise will further enhance the effectiveness of the audit committee in carrying out its financial oversight responsibilities.

Finally, the Commission believes that the proposed transition period will enable issuers to determine when they must comply with the new requirements and will enable investors to determine when the protections afforded by the proposed rule change will be operational.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal to amend PCXE's audit committee requirements is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PC–00–40) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–3803 Filed 2–14–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43939; File No. SR–Phlx–01–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Prohibition Against Off-Floor Members Functioning as Market Makers.

February 7, 2001.

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 17, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.

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[7] *See* Amendment No. 1 *supra* note 3.

[8] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires the rules of an exchange to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by 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 proposes to amend Phlx Rule 1080 relating to the Exchange's Automated Options Market (AUTOM) and Automatic Execution system (AUTO–X),[4] by adopting Rule 1080(j). This proposed rule would prohibit members from entering, or facilitating the entry of, limit orders in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the member or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis.

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 purpose of the proposed rule change is to prevent persons from functioning as market makers through Phlx member firms without those persons being held to the affirmative obligations and restrictions imposed on on-floor market makers (Registered Options Traders, or "ROTs").[5] Phlx Rule 1014(b) defines a ROT as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. ROTs are subject to numerous affirmative trading, margin and capitalization requirements and prohibitions pursuant to the Act and the regulations thereunder, and to Exchange rules.[6]

Phlx states that recently certain off-floor traders have demonstrated their ability to engage in simultaneous or near-simultaneous entry of limit orders, to buy and sell the same options contract. In Phlx's view, persons engaged in such practices are effectively functioning as market makers from off the floor of the Exchange.

The proposed rule would prohibit members from entering, or facilitating the entry of, limit orders in the same options series from off the floor of the Exchange, for the account or accounts of the same or related beneficial owners, in such a manner that the off floor member or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis. The Exchange proposes this change to prohibit users from acting as market makers through AUTOM and AUTO–X.

In determining whether an off-floor member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same options contract; the multiple acquisition and liquidation of positions in the same options series during the same day; and the entry of multiple limit orders at different prices in the same options series.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[7] of the Act in general, and with Section 6(b)(5)[8] of the Act in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by prohibiting AUTOM users from functioning as market makers from off the floor of the Exchange.

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

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

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 proposes of the Act.

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[3] 17 CFR 240.19b(f)(6).

[4] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or automatically if they are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[5] Telephone call between Rick Rudolph, Counsel, Phlx, and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, on January 24, 2001.

[6] For example, Exchange Rule 1014, Obligations And Restrictions Applicable To Specialists and Registered Options Traders, sets forth numerous obligations and restrictions applicable to ROTs on the floor on the Exchange, including the obligation of a ROT to engage in dealings reasonably calculated to contribute to the maintenance of a fair and orderly market; limitations on quote spread parameters; limitations on price change parameters; the requirement to yield priority to customer orders; and in-person, on-floor quarterly trading requirements. Off-floor traders that enter orders through AUTOM and effectively function as market makers are not currently subject to such affirmative requirements and limitations.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file No. SR–Phlx–01–05 and should be submitted by March 8, 2001.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–3801 Filed 2–14–01; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3576]

Bureau of Educational and Cultural Affairs Project To Develop a Master's Degree Program in Business Administration for Croatia; Request for Grant Proposals

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to support the Consortium of Faculties of Economics in Croatia as the Consortium develops a full-time Master's Degree program in Business Administration to be based in the city of Zadar. Core program instruction for the MBA program will take place in Zadar during the second year of the program, once a curriculum is developed in collaboration with the Consortium of Faculties of Economics. Accredited post-secondary educational institutions and other organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals that address these objectives. The means for achieving these objectives may include curriculum development, faculty training, case study development, consultation, research, distance education, internship training and professional outreach to public and private sector managers and entrepreneurs.

[11] 17 CFR 200.30–3(a)(12).

Overview and Project Objectives

The project is designed to support the development of a Master's Degree program in Business Administration (MBA) in English to be based in Zadar, while also strengthening business education throughout Croatia. The Consortium of Faculties of Economics in Croatia (which includes the Universities of Zagreb, Split, Rijeka and Osijek) intends to develop core subjects and specializations. The project will focus on faculty and curriculum development for faculty at institutions belonging to the consortium.

Applicants are encouraged to develop creative strategies to pursue these objectives and that reflect an understanding of the status, achievements, and current needs of business education in Croatia.

The project should pursue these objectives through a strategy that coordinates the participation of junior and senior level faculty, administrators, or graduate students for any appropriate combination of teaching, research, mentoring, internships, and outreach, for exchange visits ranging from one week to an academic year. Visits of one semester or longer for participants from Croatia are strongly encouraged and program activities must be tied to the goals and objectives of the project.

If the proposed project would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described with details about the amounts and sources of external support. Previous projects should be described in the proposal, and the results of the evaluation of previous cooperative efforts should be summarized.

The project should pursue these objectives through a strategy that coordinates the participation of junior and senior level faculty, administrators, or graduate students for any appropriate combination of teaching, research, mentoring, internships, and outreach, for exchange visits ranging from one week to an academic year. Visits of one semester or longer for participants from Croatia are strongly encouraged and program activities must be tied to the goals and objectives of the project.

If the proposed project would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described with details about the amounts and sources of external support. Previous projects should be described in the proposal, and the results of the evaluation of previous cooperative efforts should be summarized.

U.S. Institution and Participant Eligibility

In the United States, participation in the program is open to accredited two and four-year colleges and universities, including graduate schools as well as other organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c). Applications from consortia or other combinations of U.S. colleges and universities are eligible. The lead U.S. organization in the consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners.

With the exception of outside consultants reporting on the degree to which project objectives have been achieved, participants who are traveling under the Bureau's grant funds must be teachers, advanced graduate students who are teaching or research assistants, or administrators from the participating institution(s). Participants representing the U.S. institution(s) must be U.S. citizens. Advanced graduate students are eligible for Bureau-funded participaion in this program only if they are working under the direction of an accompanying faculty participant or project director on the achievement of project objectives.

Croatian Institutional and Participant Eligibility

The Croatian partner is the Consortium of Faculties of Economics in Croatia. Secondary foreign partners may include relevant governmental and non-governmental organizations, as well as non-profit service and professional organizations concerned with the development of the MBA Program in Croatia. Foreign participants must be instructors at a university belonging to

the Consortium of Faculties of Economics in Croatia and must be citizens or permanent residents of Croatia who are eligible to receive a J–1 visa.

Budget Guidelines

The Bureau anticipates awarding one grant not to exceed $320,250. Applicants may submit a budget not to exceed this amount. Organizations with less than four years experience in conducting international exchanges are limited to $60,000, and are not encouraged to apply. Budget notes should carefully justify the amounts needed. There must be a summary budget as well as a breakdown reflecting the program and administrative budgets including unit costs. Cost sharing will be considered an important indicator of institutional commitment.

Funds will be awarded for a period up to two years to defray the costs of exchanges, to provide educational materials, to increase library holdings and improve Internet connections. Up to 25% of the grant total may be used to defray the costs of project administration.

Please refer to the Solicitation Package for complete guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau of Educational and Cultural Affairs concerning this RFGP should reference the "Project to Develop a Master's Degree Program in Business Administration for Croatia" and reference number ECA/A/S/U–01–17.

FOR FURTHER INFORMATION CONTACT: Contact the Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349, SA–44; U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, phone (202) 619–5289, fax: (202) 401–1433, e-mail: *affiliation@pd.state.gov* to request a Solicitation Package.

The Solicitation Package contains detailed review criteria, required application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the above reference number on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline of Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, April 27, 2001. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received on a later date will not be accepted. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate Program Dates

Grants should begin on or about August 1, 2001.

DURATION: August 1, 2001–August 30, 2003.

Submissions

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Ref.: ECA/A/S/U–01–17, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

All copies should include the documents specified under Tabs A through E in the "Project Objectives, Goals, and Implementation" (POGI) section of the Solicitation Package. The documents under Tab F of the POGI should be submitted with the original application and with one of the ten copies.

Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Applicants must also submit the "Executive Summary," and "Proposal Narrative" Sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Section of the U.S. Embassy in Zagreb for its advisory review, with the goal of reducing time it takes to get the post's comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs Section of the U.S. Embassy in Zagreb. Eligible proposals will be subject to review for compliance with Federal and Bureau regulations and guidelines and will be forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

State Department officers in Washington, D.C. and overseas will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered or weighted.

1. Broad Significance and Clarity of Institutional Objectives

Proposals should outline clearly formulated objectives that relate specifically to the needs of the participating institutions. Project objectives should also have significant but realistically anticipated ongoing results for the participating institutions and demonstrate how these results will also contribute to the transition in Croatia to a more transparent, market-oriented economy.

2. Creativity and Feasibility of Strategy To Achieve Project Objectives

Strategies to achieve project objectives should demonstrate the feasibility of doing so during the period of award by utilizing and reinforcing exchange activities realistically and with creativity.

3. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity relate to project objectives and how these issues will be addressed during project implementation. Proposals should also outline the institutional profile of each participating institution with regard to issues of diversity.

4. Institutional Commitment

Proposals should demonstrate significant understanding of the institutional needs of the Consortium of Faculties of Economics in Croatia and of the U.S. institution's capacity to address these needs while also benefiting from its involvement with the Croatian partners. Proposals should also demonstrate a strong commitment, during and after the period of grant activity, to cooperate in the pursuit of institutional objectives.

5. Institutional Record/Ability

Proposals should demonstrate an institutional record of administering successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the State Department's contracts officers. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Reviewers will also consider the quality of exchange participants' academic credentials, skills, commitment and experience relative to the goals and activities of the project plan.

6. Project Evaluation

The proposal should outline a methodology for determining the degree to which the project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies.

7. Cost-Effectiveness

Administrative and program costs should be reasonable and appropriate with cost sharing provided as a reflection of the applicant's commitment to the project.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Support for East European Democracy (SEED) Act of 1989.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Projects must conform with Bureau requirements and guidelines outlined in the solicitation Package. The POGI, a document describing this project's objectives, goals, and implementation is included in the Solicitation Package.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: February 9, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 01–3878 Filed 2–14–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3571]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Freedom Support Act Contemporary Issues Fellowship Program; Notice: Request for Grant Proposals

SUMMARY: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for administration of the Freedom Support Act Contemporary Issues Fellowship Program for the academic year 2001–2002. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to administer recruitment, selection, placement, monitoring, evaluation and follow-on activities.

Program Information: The Freedom Support Act Fellowships in Contemporary Issues Program selects highly qualified government officials, NGO leaders, and other professionals from the Newly Independent States who are engaged in the political, economic, social and educational transformation of their countries to receive fellowships at U.S. universities, think tanks, NGOs and U.S. Government offices. Fellows conduct research on topics that help advance the transition to democracy, free markets and the building of a civil society in their countries. Fellowships are for a duration of four months and include a one-month optional internship. Fellows are matched with U.S. host advisors who guide their research, writing and professional development.

ECA will award one grant for this program. Should an applicant organization wish to work with other organizations in the implementation of this program, a subgrant agreement must be arranged. Programs and projects must conform with Bureau requirements and guidelines outlined in the Solicitation Package. ECA programs are subject to the availability of funds. Programs must

comply with J–1 Visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines: Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. ECA anticipates awarding one grant not to exceed $2,095,236. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/E/EUR–01–09.*

FOR FURTHER INFORMATION CONTACT: The Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Phone: 202–205–0525; Fax: 202–260–7985, *ljilka@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Manager Lucy Jilka on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website:http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on *April 6, 2001.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and *eight* copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/E/EUR–01–09,* Program Management, ECA/EX/PM, Room 534, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Sections the U.S. Embassies for its review, with the goal of reducing the time it takes to get Embassies' comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program content, to the fullest extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs Sections overseas, where appropriate. Eligible proposals will be forwarded to panels of Department of State officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program plan:* Proposals should include academic rigor, thorough conception of the project, demonstration of meeting participants' needs, contributions to understanding the partner country, specific details of recruitment, selection, placement, professional development, and monitoring processes, proposed alumni activities and alumni tracking, qualifications and expertise of program staff and participants, and relevance to ECA's mission and U.S. foreign policy goals and objectives.

2. *Program planning and organizational capacity:* A detailed work plan and timeline should demonstrate the organization's logistical and administrative capacity to implement the program. Proposals must demonstrate how the organization and its staff will meet the program's objectives and work plan. Proposed personnel and organizational resources should be adequate and appropriate to implement the program requirements and achieve program objectives.

3. *Institution's record/ability:* Proposals should demonstrate experience in developing, implementing, administering, and evaluating scholarly research exchanges with the NIS. This includes responsible fiscal management and full compliance with all reporting requirements for past ECA grants as determined by ECA's Office of Contracts.

4. *Multiplier effect/impact:* Proposed program must demonstrate an impact on the wider community of scholars, policymakers, opinion-leaders, and public, private, and third sector professionals through the sharing of information and the establishment of long-term institutional and individual

linkages among U.S. and NIS scholars and practitioners.

5. *Cost effectiveness and cost sharing:* The overhead and administrative components of the proposals, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

6. *Support of diversity and pluralism:* Proposals should demonstrate substantive support of the ECA's policy on diversity through the recruitment, selection, and placement of participants, as well as through orientation presentations, to the extent feasible for the applicant organization.

7. *Alumni tracking:* Proposals should provide a plan for effective tracking of participants after the completion of the program.

8. *Program evaluation:* Proposals should include a plan to evaluate the program's success. A results-oriented draft survey questionnaire or other technique plus a description of a methodology to be used to link outcomes to original project objectives is required as well as a comprehensive plan to track participants before, during, and after their Fellowships.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom Support Act.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: February 7, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 01–3755 Filed 2–14–01; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 3572]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Regional Scholar Exchange Program; Notice: Request for Grant Proposals

SUMMARY: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for administration of the Regional Scholar Exchange Program for the academic year 2002–2003. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to administer recruitment, selection, placement, monitoring, evaluation, and follow-on activities.

Program Information: The Regional Scholar Exchange Program provides opportunities for junior and mid-level university faculty, researchers, and scholars in the social sciences and humanities from the Newly Independent States (NIS) and the United States to receive fellowships for study at U.S. and NIS institutions.

All RSEP fellows are matched with host advisors who guide their research and professional development. All fellows conduct research on specific topics, write academic papers, articles and books, and deliver lectures with the goal of contributing to the further development of higher education and scholarship in their home countries. Fellowships are for a duration of four months for scholars from the NIS and up to nine months for scholars from the United States.

ECA will consider awarding one or more grants for this program. Applicant organizations may apply to recruit and host all fellows or a number of fellows considered feasible and reasonable for the organization. Should more than one organization be selected to administer the program, the Bureau will decide on the distribution of fellows between administering organizations.

Should an applicant organization wish to work with other organizations in the implementation of this program, a sub grant agreement must be arranged. Programs and projects must conform with Bureau requirements and guidelines outlined in the Solicitation Package. ECA programs are subject to the availability of funds. Programs must comply with J–1 Visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines: Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program or any number of fellows that the organization applies to administer. The total award for the entire program will not exceed $2,000,000. If more than one organization is awarded a grant, the Bureau will divide the total funding between the organizations. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/E/EUR–01–10.*

FOR FURTHER INFORMATION CONTACT: The Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Phone: 202–205–0525; Fax: 202–260-7985, *ljilka@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Manager Lucy Jilka on all other inquiries and correspondence. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP

deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from the Bureau's website: http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on April 6, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and *eight* copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/E/EUR–01–10*, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get Embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program content, to the fullest extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs Sections overseas, where appropriate. Eligible proposals will be forwarded to panels of Department of State officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program plan:* Proposals should include academic rigor, thorough conception of the project, demonstration of meeting participants' needs, contributions to understanding the partner country, specific details of recruitment, selection, placement, professional development, and monitoring processes, proposed alumni and follow-on activities, alumni tracking, qualifications and expertise of program staff and participants, and relevance to ECA's mission and U.S. foreign policy goals and objectives.

2. *Program planning and organizational capacity:* A detailed work plan and time line should demonstrate the organization's logistical and administrative capacity to implement the program. Proposals must demonstrate how the organization and its staff will meet the program's objectives and work plan. Proposed personnel and organizational resources should be adequate and appropriate to implement the program requirements and achieve program objectives.

3. *Organization's track record:* ECA will consider relevant ECA and outside assessments of the organization's experience in developing, implementing, administering, and evaluating scholarly research exchanges with the NIS, including responsible fiscal management and full compliance with all reporting requirements for past ECA grants as determined by ECA's Office of Contracts. ECA will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. *Multiplier effect/impact:* Proposed programs must demonstrate an impact on the wider community of scholars, policy makers, opinion-leaders, and public, private, and third sector professionals through the sharing of information and the establishment of long-term institutional and individual linkages among U.S. and NIS scholars and practitioners.

5. *Cost effectiveness and cost sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Organizations should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

6. *Support of diversity and pluralism:* Proposals should demonstrate substantive support of ECA's policy on diversity through the recruitment, selection and placement of participants, to the extent feasible for the applicant organizations.

7. *Alumni and follow-on activities:* Proposals should provide a plan for alumni and other follow-on activities (without ECA support) which ensures that ECA supported programs are coordinated with and incorporated into other ECA and PAS alumni activities so that fellows may benefit from overall ECA supported alumni programs.

8. *Program evaluation:* Proposals should include a plan to evaluate the program's success. A results-oriented draft survey questionnaire or other technique plus a description of a methodology to be used to link outcomes to original project objectives is required as well as a comprehensive plan to track participants before, during, and after their fellowships.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act

of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Bureau of Educational and Cultural Affairs.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. In addition, it reserves the right to accept proposals in whole or in part and make an award or awards in accordance with what serves the best interest of the Regional Scholar Exchange Program. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: February 7, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 01–3756 Filed 2–14–01; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 3577]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: *Internet Access and Training Program in the Western NIS*

SUMMARY: The Office of Academic Exchange Programs/European Programs Branch of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the *Internet Access and Training Program in the Western NIS*. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to administer the Internet Access and Training Program (IATP) in the Western NIS (Belarus, Moldova and Ukraine). The grantee organization will oversee and carry out IATP operations, including the establishment of new IATP sites in the Western NIS, the maintenance and enhancement of existing sites, the development of Internet outreach and educational projects, and engaging ECA alumni and other interested groups in the IATP. All activities of the IATP will be undertaken in regular and consistent consultation with the Public Affairs Section (PAS) of the U.S. Embassy in each participating country.

Program Information

Overview

The IATP sponsors public access Internet sites throughout the former Soviet Union. The IATP makes e-mail and the World Wide Web available to ECA alumni and other target audiences through its support of these Internet sites. IATP sites are typically located at public libraries, NGOs and universities with which the IATP administering organization has entered into mutually beneficial agreements that govern how the sites are managed and maintained. In addition, the IATP serves as a means to train its target audiences in the effective and meaningful use of the World Wide Web, including instruction in the design and maintenance of websites, databases and distance education courses. The goals of the program are to promote the development of on-line information resources in the Western NIS and to facilitate the exposure of ECA alumni and targeted audiences to the World Wide Web. The IATP also sponsors a small grants competition by which ECA alumni and other groups may receive funding for Internet projects of their own design.

Subject to the availability of funds, it is anticipated that this grant will begin on or about September 1, 2001. Please refer to the Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. ECA anticipates awarding one grant in the amount of $1,750,000 ($350,000 for Belarus; $400,000 for Moldova; $1,000,000 for Ukraine) to support the program and administrative costs required to implement this program. ECA encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with ECA concerning this RFGP should reference the above title and number *ECA/A/E/EUR–01–11.*

FOR FURTHER INFORMATION CONTACT: The Office of Academic Exchanges, ECA/A/E/EUR, Room 246, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, tel. (202) 205–0525, fax (202) 260–7985, *exchanges@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify ECA Program Officer Sheila Casey on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Department of State staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from ECA's website at http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on *Friday, April 6, 2001.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure

that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and *eight (8)* copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/E/EUR–01–11*, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. ECA will transmit these files electronically to the Public Affairs Sections at U.S. Embassies for review, with the goal of reducing the time it takes to obtain Embassy comments for ECA's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," ECA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

ECA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as by the Public Diplomacy Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and ECA regulations and guidelines and forwarded to Department of State grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with ECA's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* The proposal should exhibit originality, substance, precision, innovation, and relevance to ECA's mission. Objectives should be reasonable, feasible and flexible. The proposal should clearly demonstrate how the grantee organization will meet the program's objectives. A relevant work plan should demonstrate substantive undertakings and logistical capacity. The work plan should adhere to the program overview and guidelines described above.

2. *Multiplier Effect/Impact:* The IATP should strengthen long-term mutual understanding, including maximum sharing of information and Internet expertise. The grantee organization should include ECA alumni as a resource for facilitating IATP outreach and education.

3. *Support of Diversity:* The proposal should demonstrate the grantee organization's commitment to promoting the awareness and understanding of diversity through geographic distribution of IATP sites and outreach to groups identified in consultation with PAS officers in Belarus, Moldova and Ukraine.

4. *Institution's Record/Ability:* The proposal should demonstrate an institutional record of successful administration of Internet programs. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

5. *Project Evaluation:* The proposal should include a plan to evaluate the success of the IATP. ECA recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. The grantee organization will be expected to submit periodic progress reports that elucidate the successes achieved, and obstacles encountered, by the IATP.

6. *Cost-effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

7. *Follow-on and Sustainability:* The proposal should provide a plan for continued follow-on activity that ensures that ECA-supported programs are not isolated events, but have meaning and scope beyond the time the actual exchange took place. The proposal should address the feasibility of sustaining viable IATP sites and training seminars after ECA funding ends.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided in part through the FREEDOM Support Act of 1993.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any ECA representative. Explanatory information provided by ECA that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. ECA reserves the right to reduce, revise, or increase proposal

budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal ECA procedures.

Dated: February 9, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 01–3879 Filed 2–14–01; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Supplemental Environmental Impact Statement: Browns Ferry Nuclear Plant Operating License Renewal

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500–1508) and TVA's procedures for implementing the National Environmental Policy Act. The Tennessee Valley Authority (TVA) will prepare a supplemental environmental impact statement (SEIS) to address the environmental impacts associated with obtaining license extensions for the Browns Ferry Nuclear Plant (BFN) located in Limestone County, Alabama. Renewal of the operating licenses will allow the plant to continue to operate for an additional 20 years beyond the expiration dates of the current operating licenses. The regulations of the Nuclear Regulatory Commission (NRC) in 10 CFR part 54 set forth the applicable license extension requirements. This SEIS will also consider the impacts of the possible restart of Unit 1, which has been in a non-operational status since 1985, with an extended operating license. At this early stage, TVA contemplates that the action alternatives in the EIS could include a combination of license renewal and restart of Unit 1. The no-action alternative considered is a decision by TVA to not seek renewal of the operating licenses for the BFN units. Public comment is invited concerning both the scope of alternatives and environmental issues that should be addressed as part of the SEIS.

DATES: Comments on the scope of the SEIS must be postmarked or e-mailed no later than March 23, 2001 to ensure consideration.

ADDRESSES: Written comments or e-mails on the scope of issues to be addressed in the SEIS should be sent to Bruce L. Yeager, Senior Specialist, National Environmental Policy Act, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Mail Stop WT 8C–K, Knoxville, Tennessee 37902 (e-mail: blyeager@tva.gov).

FOR FURTHER INFORMATION CONTACT: Charles L. Wilson, Nuclear Licensing Staff, Tennessee Valley Authority, 1101 Market Street, Mail Stop BR 4X–C, Chattanooga, Tennessee, 37402 (e-mail: clwilson@tva.gov), Roy V. Carter, Tennessee Valley Authority, Mail Stop CEB 4C–M, Muscle Shoals, Alabama, 35662 (e-mail: rvcarter@tva.gov) or Bruce Yeager, Tennessee Valley Authority, 400 West Summit Hill Drive, Mail Stop WT 8C–K, Knoxville, Tennessee 37902 (e-mail: blyeager@tva.gov).

SUPPLEMENTARY INFORMATION:

Background

The proposal to renew the operating licenses for the Browns Ferry Nuclear Plant (BFN) was part of a system-wide evaluation of future power needs. A range of options to meet those needs was evaluated in TVA's Integrated Resource Plan and Environmental Impact Statement, *Energy Vision 2020*, released on December 21, 1995.

The Final Environmental Statement for BFN was published in 1972. BFN was TVA's first nuclear power plant. The facility is located on an 840-acre tract adjacent to Wheeler Reservoir in Limestone County, Alabama, 10 miles southwest of Athens, Alabama. BFN has three General Electric boiling water reactors and associated turbine-generators that can produce more than 3,000 megawatts (MW) of power. Unit 1 began commercial operation in August 1974, Unit 2 in 1975 and Unit 3 in 1977. An extended shutdown of all units at Browns Ferry began in 1985 to review the TVA nuclear power program. Unit 2 returned to service in May 1991 and Unit 3 in November 1995. Unit 1 has been idled since 1985, and changes would be necessary prior to restarting the unit. The current operating characteristics of Units 2 and 3 are considered representative of future operations at Browns Ferry because of the changes in personnel, procedures, and equipment that occurred during and following the extended regulatory outage which began in 1985. For example, since return to service from the regulatory outage, Units 2 and 3 have performed well with consistently higher levels of availability and generating capacity than before the outage.

Proposed Action

TVA proposes to submit an application to the Nuclear Regulatory Commission (NRC) requesting renewal of BFN operating licenses. Renewal of the current operating licenses would permit operation for an additional twenty years past the current (original) 40-year operating license terms which expire in 2014 and 2016 for Units 2 and 3, respectively. The Unit 1 operating license expires in 2013. License renewal of the operating BFN facilities does not involve new major construction or modifications beyond normal maintenance and minor refurbishment.

The SEIS will also examine the impacts associated with the possible recovery and restart of Unit 1, which has been in a non-operational status for 15 years. Among the impacts to be examined in this SEIS are those resulting from thermal (heat) discharges to Wheeler Reservoir associated with three-unit operation. The cooling capaicity necessary to mitigate thermal impacts under the various alternatives would also be examined in the SEIS. Other aspects of the actions under consideration include the impacts associated with a spent fuel storage facility and a few new office buildings.

Independent of the matters considered in the SEIS, TVA is considering a project which would uprate the maximum operating power level of Units 2 and 3 to 120 percent of their originally licensed power levels. If this project is approved, the various alternatives in the SEIS will be modified as appropriate to reflect the higher operating levels. If Unit 1 is returned to service, it is currently contemplated that it would also be operated at 120 percent of its originally licensed power level. Additional information about the uprate project is available from the contacts listed above.

Range of Alternatives

As required by Council on Environmental Quality (CEQ) regulations (40 CFR 1502.14), TVA will evaluate a reasonable range of alternatives in this SEIS. Action alternatives TVA is currently considering include license extensions for Units 2 and 3 to continue power operation for an additional 20 years, and the possible return to service of Unit 1 with a 20-year license extension. TVA will also consider a "no action" alternative which would be a decision by the TVA Board of Directors to not

pursue license renewal. Under the no action alternative the plant would cease to produce power and TVA would choose one of the decommissioning options. Under this alternative, the power no longer being produced by Browns Ferry may or may not be generated or obtained by other means.

Preliminary Identification of Environmental Issues

This SEIS will discuss the need to continue to operate the plant and will describe the existing environmental, cultural, recreational, and socioeconomic resources. The SEIS will consider the potential environmental impacts resulting from refurbishment, operation and maintenance of the existing facilities, as well as any additional impacts from returning Unit 1 to service. TVA's evaluation of environmental impacts to resources will include, but not necessarily be limited to, the potential impacts on air quality, surface and ground water quality and resources, vegetation, wildlife, aquatic ecology, endangered and threatened species, floodplains, wetlands and wetland wildlife, aesthetics and visual resources, land use, cultural and historic resources, light, noise, socioeconomics, transportation, spent fuel management, and radiological impacts. These concerns and other important issues identified during the scoping process will be addressed as appropriate in the SEIS.

Additionally, TVA will review the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, in which the U.S. Nuclear Regulatory Commission (NRC) considered the environmental effects of renewing nuclear power plant operating licenses for a 20-year period (results are codified in 10 CFR Part 51). The GEIS identifies 92 environmental issues and reaches generic conclusions on environmental impacts for 69 of those issues that apply to all plants or to plants with specific design or site characteristics. It is expected that the generic assessment in NRC's EIS would be relevant to the assessment of impacts of the proposed actions at the Browns Ferry Plant. Information from NRC's EIS that is relevant to the current assessment would be incorporated by reference following the procedures described in 40 CFR 1502.21. Alternatively, TVA may choose to tier off this EIS after first adopting this EIS in accordance with 40 CFR 1506.3. Additional plant-specific review would likely be necessary for the remaining issues, which are encompassed by the range of resource issue areas identified above.

Public Participation

This Supplemental Environmental Impact Statement (SEIS) is being prepared to provide the public an opportunity to provide input to TVA's assessment of the environmental impacts of the suite of proposals at BFN including the request for license renewal and the possible return to service of Unit 1. The SEIS will also serve to inform the public and the decision-makers of the reasonable alternatives that would minimize adverse impacts.

The scoping process will include both interagency and public scoping. The agencies expected to participate in interagency scoping include the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, various State of Alabama agencies including the Department of Environmental Management, and other federal, state and local agencies as appropriate.

The public is invited to submit written comments or e-mail comments on the scope of this SEIS no later than the date given under the **DATES** section of this notice.

Comments may also be provided in an oral or written format at the public scoping meeting. TVA will conduct a public meeting on the scope of the SEIS in Limestone County, Alabama, on Tuesday, March 6, 2001. The meeting will be held at the Aerospace Technology Building Auditorium on the campus of Calhoun State Community College on Highway 31 North. Registration for the meeting will be from 6 to 6:30 p.m. There will be visual displays and information handouts available during the registration period. The meeting will begin with brief presentations by TVA staff explaining the SEIS process and the proposed license renewal project. Following these presentations there will be group discussions facilitated by staff of TVA and Calhoun State Community College to record the issues and concerns that the public believes should be considered in the SEIS.

Upon consideration of the scoping comments, TVA will develop alternatives and identify important environmental issues to be addressed in the SEIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft SEIS for public review and comment. Notice of availability of the draft SEIS will be published in the **Federal Register**. TVA will solicit written comments on the draft SEIS through this **Federal Register** notice. Any meetings that are scheduled to comment on the draft SEIS will be announced by TVA. TVA expects to release a final SEIS by January 2002.

Dated: February 9, 2001.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 01–3823 Filed 2–14–01; 8:45 am]

BILLING CODE 8120–08–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request From the Office of Management and Budget (OMB) of Six Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on six currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before April 16, 2001.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: the FAA solicits comments on the following six current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following are short synopses of the information collection activities which will be submitted to OMB for review and request for renewal:

1. 2120–0001, Notice of Proposed Construction or Alteration and Notice of Actual Construction or Alteration, and Project Status Request. Federal regulations require all persons to report proposed or actual construction/alteration of structures affecting air safety. The reporting requirements as prescribed in 14 CFR Part 77 affects any persons or business planning to construct or alter a structure that may affect air safety. The information is used to ensure the safe and efficient use of the navigable airspace by aircraft. The

current estimated annual reporting burden on the public is 8,820 hours.

2. 2120–0022, Certification: Mechanics Repairmen, Parachute Riggers, and Inspection Authorizations, FAR–65. FAR part 65 prescribes rules governing the issuance of certificates and associated rating for mechanics, repairmen, parachute riggers, and the issuance of inspection authorizations. The current estimated annual burden is 28,943 hours.

3. 2120–0056, Report of Inspections Required by Airworthiness Directives. The Airworthiness Directive (AD) is the medium used by the FAA to provide notice to aircraft owners and operators that an unsafe condition exists and to prescribe the conditions and/or limitations, including inspections, under which the product may continue to be operated. AD's are issued to require corrective action to correct unsafe conditions in aircraft engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition. The respondents are an estimated 81,000 owners/operators. The current estimated annual burden is 6,771 hours.

4. 2120–0101, Physiological training. This report is necessary to establish qualifications of eligibility to receive voluntary physiological training and will be used as proper evidence of training. An application form is completed by pilots and crewmembers as a request to receive voluntary physiological training. The current estimated annual burden is 5,500 hours.

5. 2120–0524, High Density Traffic airports; Slot Allocation and Transfer Methods. The information collection requirements of the rule involve the air carriers or commuter operators notifying the FAA of their current and planned activities regarding use of the arrival and departure slots at the high-density airports. The FAA logs, verifies, and processes the requests made by the operators. This information is used to allocate and withdraw takeoff and landing slots at the high-density airports, and confirms transfers of slots made among the operators. The current estimated annual burden is 2,581 hours.

6. 2120–0628, Employment History Verification, and Criminal History Records Check. The rule requires screeners and their supervisors to complete employment background checks. The current estimated annual burden is 2,969 hours.

Issued in Washington, DC, on February 9, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–3899 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 01–05–C–00–ABE To Impose and Use Revenue From a Passenger Facility Charge (PFC) at the Lehigh Valley International Airport, Allentown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use revenue from a PFC at the Lehigh Valley International airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 19, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Harrisburg Airports District Office, 3911 Hartzdale Drive, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Doughty, Airport Director, Lehigh Valley International Airport, at the following address: 3311 Airport Road, Allentown, PA 18103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Lehigh-Northampton Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sullivan, Team Leader, Airports District Office, 3911 Hartzdale Drive, Camp Hill, Pennsylvania, (717) 730–2832. The application may be reviewed in person at the same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Lehigh Valley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 8, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Lehigh-Northampton Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 10, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–05–C–00–ABE.

Level of the Proposed PFC: $3.00.

Proposed Charge Effective Date: June 1, 2001.

Proposed Charge Expiration Date: June 1, 2003.

Total Estimated PFC Revenue: $2,807,573.

Brief Description of Proposed Project(s):

—Land Acquisition R/W 24—Noise-Toye Settlement
—Land Acquisition R/W 24 RPZ—Piechota, Stahley, FeastaPizza, Fegley Electronics
—Land Acquisition R/W 13 Approach—Sovereign Bank/ABE Industrial
—Land Acquisition R/W 24 Noise—Mobile Homes
—Land Acquisition R/W 13 Approach—Willow Brook/Willow Brook East
—Land Acquisition R/W 24 RPZ—Dr. Prah and Partridge Peartree
—Install Mimic Panel
—Purchase ARFF Vehicle
—Conduct Master Plan
—Rehabilitate R/W 6–24
—Construct Air Cargo Apron
—Install Noise Monitoring System
—Conduct Part 150 Study
—Construct RON Apron

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing form 18–31.

Any person my inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: 1 Aviation Plaza, Airports Division, AEA–610, Jamaica, New York, 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the offices of the Lehigh-Northampton Airport Authority.

Issued in Camp Hill, Pennsylvania, on February 8, 2001.

Sharon A. Daboin,

Manager, Harrisburg ADO, Eastern Region.

[FR Doc. 01–3900 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Fourth Quarterly Meeting of the Crash Injury Research and Engineering Network

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the Fourth Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at nine Level 1 Trauma Centers which are linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATE AND TIME: The meeting is scheduled from 9 a.m. to 5 p.m. on March 16, 2001.

ADDRESSES: The meeting will be held in Room 6200–04 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. NHTSA has held three Annual Conferences where CIREN research results were presented. Further information about the three previous CIREN conferences is available through the NHTSA website at: http://www-nrd.nhtsa.dot.gov/include/bio_and_trauma/ciren-final.htm. NHTSA held the first quarterly meeting on May 5, 2000, with a topic of lower extremity injuries in motor vehicle crashes, the second quarterly meeting on July 21, 2000, with a topic of side impact crashes, and the third quarterly meeting on November 30, 2000, with a topic of thoracic injuries in crashes. Information from the May 5, July 21, and November 30, 2000, meetings are also available through the NHTSA website.

NHTSA plans to continue holding quarterly meetings on a regular basis to disseminate CIREN information to interested parties. This is the fourth such meeting. The topic for this meeting is offset frontal collisions. Subsequent meetings have tentatively been scheduled for June, September, and December 2001. These quarterly meetings will be in lieu of an annual CIREN conference.

FOR FURTHER INFORMATION CONTACT: Mrs. Donna Stemski, Office of Human-Centered Research, 400 Seventh Street, SW., Room 6206, Washington, DC 20590, telephone: (202) 366–5662.

Issued on: February 8, 2001.

Raymond P. Owings,

Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 01–3831 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957 Notice 26]

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request for public comment.

AGENCY: Research and Special Programs Administration, DOT.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Research and Special Programs Administration (RSPA) is requesting to renew its information collection "Reporting of Safety-Related Conditions on Gas, Hazardous Liquid and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities". The public has 60 days to provide comments.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6205, or by Fax (202) 366–4566, or via electronic mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Reporting of Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

OMB Number: 2137–0578.

Type of Request: Renewal of existing information collection.

Abstract: 49 U.S.C. 60102 requires each operator of a pipeline facility (except master meter) to submit to the Department of Transportation a written report on any safety-related condition that causes or has caused a significant change or restriction in the operation of pipeline facility or a condition that is a hazard to life, property or the environment.

Estimate of Burden: The average burden hour per response is 6 hours.

Respondents: Pipeline and Liquefied Natural Gas facility operators.

Estimated response per year: 47.

Estimated Total Annual Burden on Respondents: 282 hours.

Frequency: On occasion.

Use: To alert RSPA of hazardous conditions that might continue uncorrected.

Copies of this information can be reviewed at the Dockets Unit, Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C., 10 a.m. to 4 p.m. Monday through Friday excluding Federal Holidays or through the internet at *dms.dot.gov.*

Comments are invited on (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility: (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond including the use of the appropriate automated, electronic, mechanical, or other technological collection techniques. Send comments to Dockets Unit, Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 or via e-mail to *dms.dot.gov.* Please be sure to include the docket number 4957.

Issued in Washington, DC on February 9, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 01–3830 Filed 2–14–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 8, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this

information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 19, 2001 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0023.
Form Number: PD F 4000.
Type of Review: Extension.
Title: Request to Reissue United States Savings Bonds.
Description: The form is used by owners to identify securities for which reissue is requested and to indicate the new registration required.
Respondents: Individuals or households.
Estimated Number of Respondents: 600,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 300,000 hours.

OMB Number: 1535–0042.
Form Number: PD F 2216.
Type of Review: Extension.
Title: Application by Preferred Creditor for Disposition Without Administration Where Deceased Owner's Estate Includes United States Registered Securities and/or Related Checks in an Amount not Exceeding $500.
Description: PD F 2216 is used by a preferred creditor of a decedent's estate to request payment of savings bonds/notes and/or related checks not exceeding $500, when estate is not being administered.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 835 hours.

OMB Number: 1535–0062.
Form Number: PD F 2966.
Type of Review: Extension.
Title: Special Bond of Indemnity to the United States of America.
Description: The form is used by the purchaser of savings bonds in a chain letter scheme to request refund of the purchase price of the bonds.
Respondents: Individuals or households.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 8 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 665 hours.

OMB Number: 1535–0091.
Form Number: None.
Type of Review: Extension.
Title: Regulations governing United States Treasury Certificates of Indebtedness—State and Local Government Series.
Description: These are regulations authorizing the issuing of United States Treasury Bonds, Notes and Certificates of Indebtedness of the State and Local Government Series.
Respondents: State, Local, or Tribal Government.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 167 hours.
Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports, Management Office.
[FR Doc. 01–3839 Filed 2–14–01; 8:45 am]
BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 8, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 19, 2001 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0092.
Form Number: PD Fs 4144, 4144–1, 4144–2, 4144–5, 4144–6, 4144–7, and 4144–8.
Type of Review: Extension.
Title: Subscription for Purchase and Issue of U.S. Treasury Securities—State and Local Government Series.
Description: The information is necessary to establish the accounts for owners of securities of State and Local Government Series.
Respondents: State, Local, or Tribal Government.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 2,500 hours.

OMB Number: 1535–0111.
Form Numbers: SB 2104, 2152, 2153, 2205, 2253, 2272, and 2305.
Type of Review: Extension.
Title: Authorization for Purchase and Request for Change United States Savings Bonds.
Description: These forms are used to authorize employers to allot funds from employee's pay for the purchase of Savings Bonds.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,600,000.
Estimated Burden Hours Per Respondent: 1 minute.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 33,333 hours.

OMB Number: 1535–0127.
Form Number: None.
Type of Review: Extension.
Title: Offering of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.
Description: Regulations governing the issue, reissue, and redemption of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 37.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 20 hours.
Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New

Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 01–3840 Filed 2–14–01; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice of a new Privacy Act system of records.

SUMMARY: The Treasury Department, Bureau of the Public Debt, proposes to add a new system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records systems maintained by the agency (5 U.S.C. 552a(e)(4)).

DATES: The Bureau of the Public Debt invites interested parties to submit comments concerning the new system of records on or before March 19, 2001. The new system will become effective without further notice on March 29, 2001 unless comments dictate otherwise.

ADDRESSES: Please send written comments to: Privacy Act Officer, Bureau of the Public Debt, 999 E Street, NW., Room 500, Washington, DC 20239–0001.

FOR FURTHER INFORMATION CONTACT: Catherine Sargent, Information Resources Management Analyst, (304) 480–7751.

SUPPLEMENTARY INFORMATION: The purpose of this system of records is to support Public Debt business processes, provide electronic services to the public (E-government), and improve service to investors in Treasury securities.

Participation by Treasury securities customers and potential customers is entirely voluntary. Information collected will allow Public Debt to personalize services and provide choices relating to the presentation of account information held in Public Debt systems.

The new system of records report as required by 5 U.S.C. 552a(r) of the Privacy Act has been submitted 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, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996.

The proposed Treasury/BPD .008-Retail Treasury Securities Access Application is published in its entirety below.

Dated: February 8, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

TREASURY/BPD.008

SYSTEM NAME:

Retail Treasury Securities Access Application—Treasury/BPD.

SYSTEM LOCATION:

Records are maintained at the following Public Debt locations: (1) 200 Third Street, Parkersburg, WV; (2) Park Center, 90 Park Center, Parkersburg, WV; (3) H.J. Hintgen Building, 2nd and Avery Streets, Parkersburg, WV; (4) United Building, 5th and Avery Streets, Parkersburg, WV; and 999 E Street, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records cover those individuals who own or make inquiries concerning United States Treasury securities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The types of personal information collected/used by this system are necessary to ensure the accurate identification of individuals doing business with Public Debt or to provide personalized service to these individuals. The types of personal information presently include or potentially could include the following:

(a) Personal identifiers (name, including previous name used; Social Security number; physical and electronic addresses; telephone, fax, and pager numbers);

(b) authentication aids (personal identification number, password, account number, shared-secret identifier, digitized signature, or other unique identifier);

(c) customer demographics (age, gender, marital status, income, number in household, etc.); and

(d) customer preferences (favorite color, hobby, magazine, etc.; preferred sources for information, such as television, newspaper, Internet, etc; or dates of importance to the customer, such as birth, anniversary, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3101, *et seq.* and 5 U.S.C. 301.

PURPOSE:

The purpose of this system of records is to support Public Debt business processes, process electronic services to the public (E-government), and improve service to investors in Treasury securities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to:

(1) Appropriate Federal, State, local, or foreign agencies or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order or license where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) 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 court-ordered subpoena, or in connection with criminal law proceedings where relevant or potentially relevant to a proceeding;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Agents or contractors who have been engaged to assist the Bureau of the Public Debt in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity;

(5) The Department of Justice when seeking legal advice or when (a) the Department of the Treasury (agency) or (b) the Bureau of the Public Debt, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or the Bureau of the Public Debt, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media, multiple client-server platforms that are backed-up to magnetic tape or other storage media, and/or hard copy.

RETRIEVABILITY:

Records may be retrieved by name, alias names, Social Security number, account number, or other unique identifier.

SAFEGUARDS:

Public Debt has sophisticated Internet firewall security via hardware and software configurations as well as specific monitoring tools. Records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords, sign-on protocols, and user authentication that are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records.

RETENTION AND DISPOSAL:

Public Debt is in the process of requesting approval of a new records schedule that will permit records to be maintained for not more than 90 calendar days after the business relationship with the customer ends. These records will not be destroyed until we receive such approval. Paper records that are ready for disposal are destroyed by shredding or burning. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner and Chief Information Officer, Office of Information Technology, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination of whether the system contains records about them or for access to records as provided under "Records Access Procedures." Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but showing a name and signature. If the individual is seeking access by mail, identity may be established by presenting a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) The request should be submitted to the Assistant Commissioner and Chief Information Officer; Office of Information Technology, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV, 26101. The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii).

CONTESTING RECORD PROCEDURES:

Initial amendment requests: (1) A request by an individual contesting the content of records or for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) The initial request should be submitted to the Assistant Commissioner and Chief Information Officer, Office of Information Technology, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV, 26101.

(3) The request should specify: (a) The dates of records in question, (b) the specific records alleged to be incorrect, (c) the correction requested, and (d) the reasons.

(4) The request must include available evidence in support of the request.

Appeals from an initial denial of a request for correction of records: (1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals should be addressed to, or delivered personally to: Chief Counsel, Bureau of the Public Debt, 999 E Street, NW., Room 502, Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must be marked "Privacy Act Amendment Appeal" and specify: (a) The records to which the appeal relates, (b) the date of the initial request made for correction of the records, and (c) the date the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information is provided by the individual covered by this system of records or, with their authorization, is derived from other systems of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–3841 Filed 2–14–01; 8:45 am]
BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW–IRIS]

Proposed Information Collection Activity: New Collection

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to automatically direct an electronic inquiry to the appropriate office for action.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 16, 2001.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail comments to: *ann.bickoff@mail.va.gov*. Please refer to "OMB Control No. 2900–NEW–IRIS" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Inquiry Routing and Information System (IRIS).

OMB Control Number: 2900–NEW–IRIS.

Type of Review: New collection.

Abstract: The World Wide Web is a powerful media for the delivery of information and services to veterans, dependents, and active duty personnel worldwide. The proposed Inquiry Routing and Information System (IRIS) would allow a VA customer to be able to submit their questions at any time and receive answers more quickly than through standard mail. Because the system is automated, inquires would be directed to the appropriate individual/office automatically. The contact information being solicited will be used to identify the particular veteran. VA personnel will use the contact information to determine the location of a specific veteran's file, and to accomplish the action requested by the correspondent such as process a benefit claim or file material in the individual's claims folder.

Affected Public: Individuals or Households.

Estimated Annual Burden: 2,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12,000.

Dated: January 23, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–3863 Filed 2–14–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0012]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to apply for cash surrender value or policy loan on a veteran's Government Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 16, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0012" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Cash Surrender or Policy Loan, Government Life Insurance, VA Form 29–1546.

OMB Control Number: 2900–0012.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to apply for cash surrender value or policy loan on his/her Government Life Insurance. The information is used by VA to process the insurer's request for a loan or cash surrender.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,939 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 29,636.

Dated: January 10, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–3864 Filed 2–14–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0117]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Human Resources Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Human Resources Management (OHRM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine an applicant's suitability and qualifications for employment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 16, 2001.

ADDRESSES: Submit written comments on the collection of information to Ginny B. Daniels, Office of Human Resources Management (054), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail comments to: *ginny.daniels@mail.va.gov*. Please refer to "OMB Control No. 2900–0117" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ginny B. Daniels at (202) 273–5001.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OHRM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of OHRM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Inquiry Concerning Applicant for Employment, VA Form Letter 5–127.

OMB Control Number: 2900–0117.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form letter is used to obtain information from individuals who have knowledge of the applicants' past work record, performance, and character. The information is used by VA personnel officials to verify qualifications and determine suitability of the applicant for VA employment.

Affected Public: Individuals or households—Business or other for-profit—State, Local or Tribal Government.

Estimated Annual Burden: 3,125 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 12,500.

Dated: January 23, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–3865 Filed 2–14–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0600]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to review denied claims for medical treatment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 16, 2001.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0600" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Regulation for Reconsideration of Denied Claims (Title 38 CFR 17.133).

OMB Control Number: 2900–0600.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The purpose of this data collection is to provide a vehicle for veterans to request an informal review of their denied claims. Veterans whose applications for healthcare benefits have been denied will initiate these requests. The data submitted by denied applicants will be reviewed by hospital administrative personnel to ensure the correctness of the decision to deny.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 25,413 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 101,652.

Dated: January 10, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–3866 Filed 2–14–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0554]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs:

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before March 19, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0554" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Homeless Provider Grant and Per Diem Program, VA Form 10–0361.

OMB Control Number: 2900–0554.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: VA requires the applicant for grants and/or per diem to submit information that assists in the determination of funds to be awarded. The requested information addresses the ability of the organization to effectively administer a program and requires the organization to demonstrate the quality of the project, how homeless veterans will be targeted, need for the program, coordination with other agencies, and the project's cost effectiveness. If this information were not collected, VA would not be able to implement provisions of Public Law 102–592 in a responsible manner.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 31, 2000, at page 53093.

Affected Public: Not-for-profit institutions and State, Local or Tribal Governments.

Estimated Annual Burden: 38,500 hours.

Estimated Average Burden Per Respondent: 35 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,100.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "CMB Control No. 2900–0554" in any correspondence.

Dated: January 24, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–3862 Filed 2–14–01; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 66, No. 32
Thursday, February 15, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–64–000]

Trailblazer Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Trailblazer Expansion Project and Request for Comments on Environmental Issues

Correction

In notice document 01–3144 beginning on page 9312 in the issue of Wednesday February 7, 2001, make the following correction:

On page 9312, in the second column, in the heading, the date "February 2, 2001" should read "February 1, 2001".

[FR Doc. C1–3144 Filed 2–14–01; 8:45 am]
BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[WT Docket No. 01–14; FCC 01–28]

2000 Biennial Regulatory Review–Spectrum Aggregation Limits for Commercial Mobile Radio Services

Correction

In proposed rule document 01–3521 beginning on page 9798 in the issue of Monday, February 12, 2001, make the following correction:

On page 9798, in the second column, under the heading **DATES**, in the third line "March 14, 2001" should read "May 14, 2001".

[FR Doc. C1–3521 Filed 2–14–01; 8:45 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Note: The List of Public Laws for the 106th Congress, Second Session has been completed and will resume when bills are enacted into public law during the next session of Congress.

A cumulative List of Public Laws was published in Part II of the **Federal Register** on January 16, 2001.

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Public Laws

106th Congress, 2nd Session, 2000

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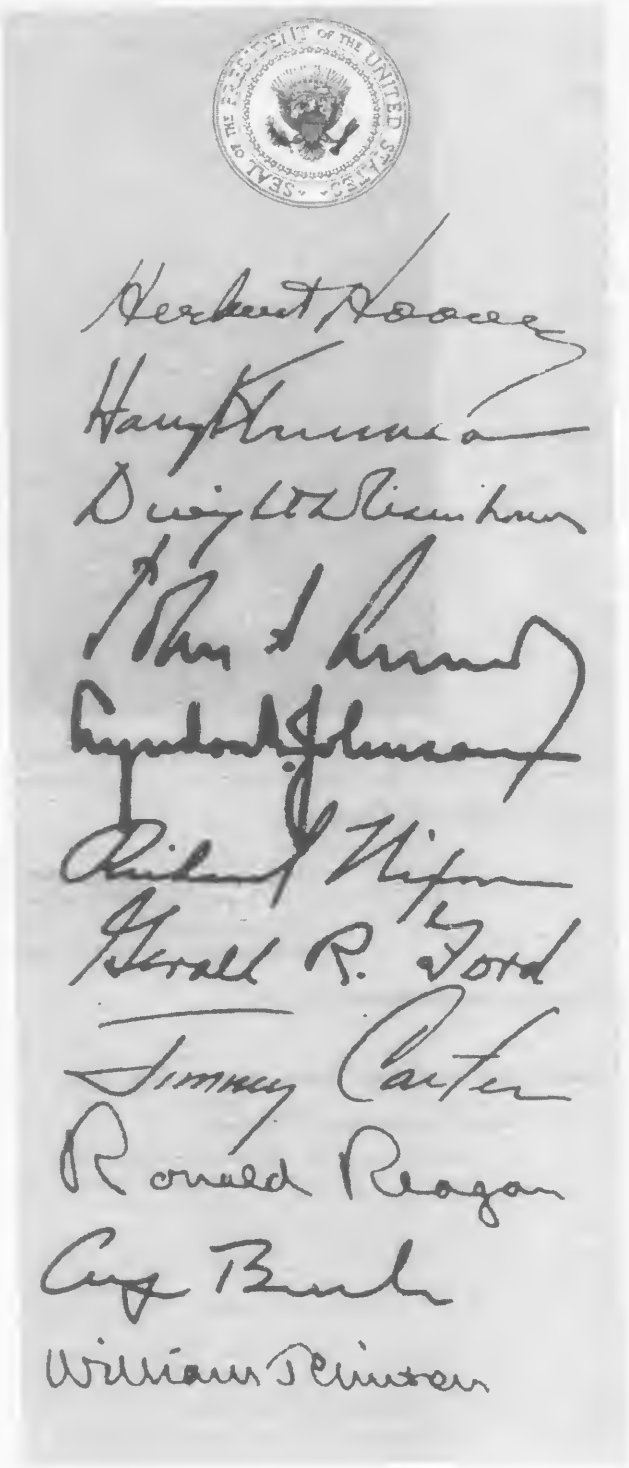

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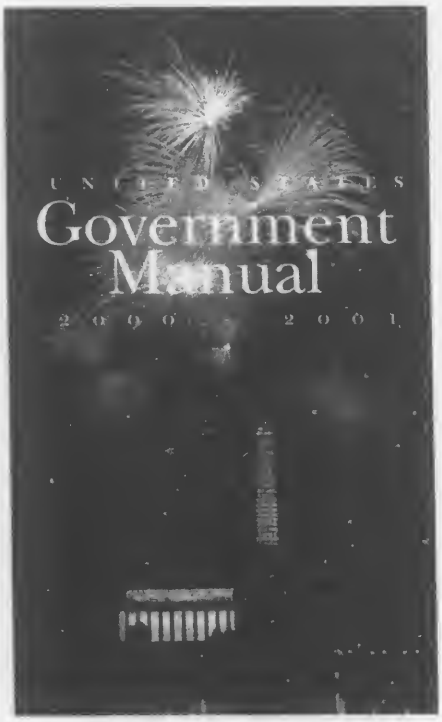

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