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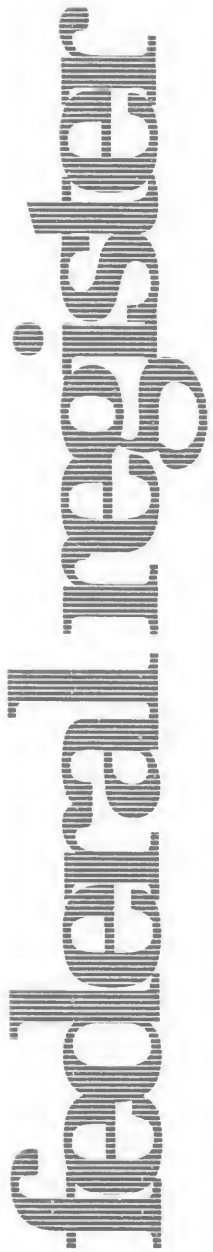

Monday
September 14, 1998

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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

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV98–981–2 FR]

Almonds Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate from $0.02 to $0.025 per pound of almonds established for the Almond Board of California (Board) under Marketing Order No. 981 for the 1998–99 and subsequent crop years. The Board is responsible for local administration of the marketing order which regulates the handling of almonds grown in California. Authorization to assess almond handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The crop year began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 15, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Martin J. Engeler, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California almond handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds beginning August 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 1998–99 and subsequent crop years from $0.02 per pound to $0.025 per pound.

The California almond marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent crop years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on June 4, 1998, and unanimously recommended 1998–99 expenditures of $13,049,437 and an assessment rate of $0.025 per pound of almonds. In comparison, last year's budgeted expenditures were $11,333,876. The assessment rate of $0.025 is $.005 higher than the rate currently in effect. The higher rate is needed primarily because of a smaller crop this year. The 1997–98 crop was initially estimated at 681,600,000 pounds compared to 528,000,000 pounds estimated for the 1998–99 crop year. The higher assessment rate, when combined with other revenue sources, will generate adequate revenue to fund the recommended expenses and programs. The Board also recommended to continue the credit-back program whereby handlers can receive credit for their own promotional activities of up to $0.0125 per pound against their assessment obligation. Handlers not participating in this program will remit the entire $0.025 to the Board.

The major expenditures recommended by the Board for the 1998–99 crop year include $4,500,000 for paid generic advertising, $2,500,000 for other domestic promotion programs, $1,495,000 for international promotion, $1,144,842 for salaries, $700,000 for nutrition research, $548,207 for

production research, $155,000 for market research, $125,000 for travel, $124,700 for quality control programs, $100,700 for crop estimates, and $100,000 for compliance audits. Budgeted expenses for these items in 1997–98 were $3,408,000 for paid generic advertising, $3,174,000 for other domestic promotion programs, $794,043 for international promotion, $881,534 for salaries, $695,000 for nutrition research, $568,679 for production research, $125,000 for market research, $90,000 for travel, $152,175 for quality control programs, $95,400 for crop estimates, and $92,500 for compliance audits.

The assessment rate recommended by the Board was derived by considering anticipated expenses and production levels of California almonds, and additional pertinent factors. In its recommendation, the Board utilized an estimate of 528,000,000 pounds of assessable almonds for the 1998–99 crop year. If realized, this will provide estimated assessment revenue of $6,600,000 from all handlers, and an additional $3,630,000 from those handlers who do not participate in the credit-back program, for a total of $10,230,000. In addition, it is anticipated that $2,819,437 will be provided by other sources, including interest income, Market Access Program reimbursement from the Department for international promotion activities, revenue generated from the Board's annual research conference, miscellaneous income, funds derived from the Board's authorized monetary reserve, and a grant from the State of California. When combined, revenue from these sources will be adequate to cover budgeted expenses. Any unexpended funds from the 1998–99 crop year may be carried over to cover expenses during the succeeding crop year. Funds in the reserve at the end of the 1998–99 crop year are estimated to be approximately $3,500,000, which is within the maximum of approximately six months budgeted expenses as permitted by the order (§ 981.81).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1998–99 budget has been approved; and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 7,000 producers of almonds in the production area and approximately 102 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Currently, about 57 percent of the handlers ship under $5,000,000 worth of almonds and 43 percent ship over $5,000,000 worth of almonds on an annual basis. In addition, based on reported acreage, production, and grower prices, and the total number of almond growers, the average annual grower revenue is estimated to be approximately $160,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 1998–99 and subsequent crop years from $0.02 per pound to $0.025 per pound. The Board unanimously recommended 1998–99 expenditures of $13,049,437 and an assessment rate of $0.025 per pound. This is compared to $11,333,876 budgeted for the 1997–98 crop year and an assessment rate of $0.025 for 1998–99 that is $.005 higher than the 1997–98 rate. The quantity of assessable almonds for the 1998–99 crop year is estimated at 528,000,000 pounds. Income from assessments and other sources is expected to generate sufficient revenue to fund this year's expenses and programs. Any unexpended funds from the 1998–99 crop year may be carried over to cover expenses during the succeeding crop year.

The major expenditures recommended by the Board for the 1998–99 crop year include $4,500,000 for paid generic advertising, $2,500,000 for other domestic promotion programs, $1,495,000 for international promotion, $1,144,842 for salaries, $700,000 for nutrition research, $548,207 for production research, $155,000 for market research, $125,000 for travel, $124,700 for quality control programs, $100,700 for crop estimates, and $100,000 for compliance audits.

Comparable expenditures recommended by the Board for the 1997–98 crop year were $3,408,000 for paid generic advertising, $3,174,000 for other domestic promotion programs, $794,043 for international promotion, $881,534 for salaries, $695,000 for nutrition research, $568,679 for production research, $125,000 for market research, $90,000 for travel, $152,175 for quality control programs, $95,400 for crop estimates, and $92,500 for compliance audits.

The higher assessment rate is needed primarily because of a smaller crop this year. The 1997–98 assessable crop was initially estimated at 681,600,000 pounds, compared to 528,000,000 for the 1998–99 crop year. The higher assessment rate will help generate adequate revenue to fund the recommended expenses and programs.

Prior to arriving at the recommended expenditure level and assessment rate, the Board considered alternatives and ultimately concurred on the recommended programs and expenditure level, and determined a rate of $0.025 per pound of assessable almonds is necessary to generate adequate revenue to fund the recommended expenses and programs.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 1998–99 season could range between $1.50 and $2.00 per pound of almonds. Therefore, the estimated assessment revenue for the 1998–99 crop year as a percentage of total grower revenue could range between .97 and 1.3 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the June 4, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 24, 1998 (63 FR 39755). Copies of the proposed rule were also mailed or sent via facsimile to all almond handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register.

A 30-day comment period ending August 24, 1998, was provided for interested persons to respond to the proposal. One comment in support of the proposed rule was received from a large cooperative handler. This handler supports increasing the assessment rate and continuing the credit-back program mentioned earlier.

The proposed regulatory language in § 981.343 incorrectly stated that the assessment rate of $0.025 per pound of assessable almonds would apply on and after June 4, 1998. The date should have been August 1, 1998, and has been corrected.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board, the comment received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 1998–99 crop year began on August 1, 1998, and the marketing order requires the assessment rate to apply to all almonds received during the 1998–99 and subsequent crop years. Further, handlers are already receiving 1998–99 crop year almonds from growers, the Board needs to have sufficient funds to cover its expenses that are incurred on a continuous basis, and handlers are aware of this rule which was recommended unanimously at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and a comment was received in support of this action from a large cooperative almond handler.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.343 is revised to read as follows:

§ 981.343 Assessment rate.

On and after August 1, 1998, an assessment rate of $0.025 per pound is established for California almonds. Of the $0.025 assessment rate, $0.0125 per assessable pound is available for handler credit-back.

Dated: September 8, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–24535 Filed 9–11–98; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–03–AD; Amendment 39–10487]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–6B11 (CL–415 Variant) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: This action withdraws a direct final rule with request for comments that adopted a new airworthiness directive (AD), applicable to all Bombardier Model CL–215–6B11 (CL–415 Variant) series airplanes. That action would have required revising the Airplane Flight Manual (AFM) to provide the flightcrew with procedures to address a temporary loss of battery bus power during engine failure and consequent erroneous indications of hydraulic system pressure, brake pressure, rudder pressure, and rudder and elevator reversion to manual mode. Since the issuance of the direct final rule, the Federal Aviation Administration (FAA) has received a written adverse comment. Accordingly, the direct final rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Rodrigo J. Huete, Flight Test Pilot, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7518; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: The FAA published a direct final rule with request for comments in the **Federal Register** on July 9, 1998 (63 FR 37063). That direct final rule amended part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all Bombardier Model CL–215–6B11 (CL–415 Variant) series airplanes, to require revising the Airplane Flight Manual (AFM) to provide the flightcrew with procedures to address a temporary loss of battery bus power during engine failure and consequent erroneous indications of hydraulic system pressure, brake pressure, rudder pressure, and rudder and elevator reversion to manual mode. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The specified actions were intended to ensure that the flightcrew is advised of the potential hazard associated with a temporary loss of battery bus power during failure of the left engine or the left generator on the left engine and of the procedures necessary to address it.

Actions Since the Issuance of the Direct Final Rule

During the comment period for the direct final rule, the FAA received a written adverse comment. Accordingly, the direct final rule is hereby withdrawn.

Withdrawal of this direct final rule constitutes only such action, and does

not preclude the agency from issuing a notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a direct final rule, it has no adverse economic impact and imposes no additional burden on any person. It will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the direct final rule with request for comments, Docket 98–NM–03–AD, published in the **Federal Register** on July 9, 1998 (63 FR 37063), is withdrawn.

Issued in Renton, Washington, on September 4, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–24549 Filed 9–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29330; Amdt. No. 1890]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airport. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigation facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's

currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

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

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 4, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 FR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAPs, effective at 0901 UTC on the dates specified:

** * * Effective October 8, 1998*

Monterey, CA, Monterey Peninsula, NDB or GPS RWY 10R, Amdt 12A CANCELLED
Monterey, CA, Monterey Peninsula, NDB RWY 10R, Amdt 12A
Cortez, CO, Cortez Muni, VOR or GPS RWY 21, Amdt 5 CANCELLED
Cortez, CO, Cortez Muni, VOR RWY 21, Amdt 5
Keystone Heights, FL, Keystone Airpark, VOR/DME or GPS RWY 4, Amdt 1 CANCELLED
Keystone Heights, FL, Keystone Airpark, VOR/DME RWY 4, Amdt 1
Iola, KS, Iola/Allen County, NDB or GPS RWY 1, Amdt 1 CANCELLED
Iola, KS, Iola/Allen County, NDB RWY 1, Amdt 1 Liberal, KS, Liberal Muni, VOR/DME or GPS RWY 17, Amdt 2 CANCELLED
Liberal, KS, Liberal Muni, VOR/DME RWY 17, Amdt 2
Scott City, KS, Scott City Muni, NDB or GPS RWY 35, Amdt 1 CANCELLED
Scott City, KS, Scott City Muni, NDB RWY 35, Amdt 1
Fitchburg, MA, Fitchburg Muni, NDB or GPS–A, Amdt 2 CANCELLED
Appleton, MN, Appleton Muni, NDB or GPS RWY 13, Amdt 1 CANCELLED
Appleton, MN, Appleton Muni, NDB RWY 13, Amdt
Bowman, ND, Bowman Muni, NDB or GPS RWY 29, Amdt 3 CANCELLED
Bowman, ND, Bowman Muni, NDB RWY 29, Amdt 3
Lumberton, NJ, Lumberton/Flying W, VOR or GPS–A, Amdt 2 CANCELLED
Andover, NJ, Aeroflex-Andover, VOR or GPS–A, Amdt 7A CANCELLED
Andover, NJ, Aeroflex-Andover, VOR–A, Amdt 7A
Lumberton, NJ, Lumberton/Flying W, VOR–A, Amdt 2
Hudson, NY, Columbia County, NDB or GPS–A, Amdt 3 CANCELLED
Hudson, NY, Columbia County, NDB–A, Amdt 3
Saratoga Springs, NY, Saratoga County, VOR or GPS–A, Amdt 5 CANCELLED
Saratoga Springs, NY, Saratoga County, VOR–A, Amdt 5
Walla Walla, WA, Walla Walla Regional, VOR or GPS RWY 2, Amdt 10 CANCELLED
Walla Walla, WA, Walla Walla Regional, VOR RWY 2, Amdt 10
Walla Walla, WA, Walla Walla Regional, NDB or GPS RWY 20, Amdt 5 CANCELLED
Walla Walla, WA, Walla Walla Regional, NDB RWY 20, Amdt 5
Menomonie, WI, Menomonie Muni-Score Field, VOR/DME or GPS RWY 27, Orig CANCELLED
Menomonie, WI, Menomonie Muni-Score Field, VOR/DME RWY 27, Orig

[FR Doc. 98–24617 Filed 9–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29329; Amdt. No. 1889]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporated by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal

Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 9720 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 4, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

** * * Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	SIAP
08/21/98	IL	CHICAGO/PROSPECT HEIGHTS/WHEELING.	PALWAUKEE MUNI	8/5934	ILS RWY 16, ORIG...
08/21/98	IN	ANDERSON	ANDERSON MUNI–DARLINGTON FIELD.	8/5940	NDB OR GPS RWY 30, AMDT 5A...
08/21/98	IN	ANDERSON	ANDERSON MUNI–DARLINGTON FIELD.	8/5941	VOR OR GPS–A, AMDT 8A...
08/21/98	PA	PITTSBURGH	PITTSBURGH INTL	8/5935	CONVERGING ILS RWY 28R, AMDT 1...
08/25/98	GA	GREENSBORO	GREENE COUNTY REGIONAL	8/6058	GPS RWY 6, ORIG...
08/25/98	GA	GREENSBORO	GREENE COUNTY REGIONAL	8/6059	GPS RWY24, ORIG...
08/25/98	GA	GREENSBORO	GREENE COUNTY REGIONAL	8/6060	VOR/DME–B, ORIG...
08/25/98	MT	STEVENSVILLE	STEVENSVILLE	8/6066	GPS–A ORIG...
08/25/98	NY	NEW YORK	JOHN F. KENNEDY INTL	8/6069	ILS RWY 31R AMDT 13A...
08/25/98	NY	NEW YORK	JOHN F. KENNEDY INTL	8/6070	RWY 31L AMDT 9B...
08/25/98	NY	NEW YORK	JOHN F. KENNEDY INTL	8/6071	ILS RWY 22R ORIG...
08/25/98	OH	OXFORD	MIAMI UNIVERSITY	8/6046	NDB OR GPS RWY 5, AMDT 10...
08/27/98	CA	APPLE VALLEY	APPLE VALLEY	8/6117	GPS RWY 18 ORIG...
08/27/98	NJ	MT HOLLY	SOUTH JERSEY REGIONAL	8/6112	GPS RWY 8 ORIG...

FDC Date	State	City	Airport	FDC No.	SIAP
08/27/98	NJ	MT HOLLY	SOUTH JERSEY REGIONAL	8/6113	VOR OR GPS RWY 26 AMDT 2...
08/28/98	MN	MINNEAPOLIS	MINNEAPOLIS-ST PAUL INTL (WOLD-CHAMBERLAIN).	8/6130	ILS RWY 12R, AMDT 6...
08/28/98	MN	MINNEAPOLIS	MINNEAPOLIS-ST PAUL INTL (WOLD-CHAMBERLAIN).	8/6131	ILS PRM RWY 12R, AMDT 2...
08/28/98	MN	MINNEAPOLIS	MINNEAPOLIS-ST PAUL INTL (WOLD-CHAMBERLAIN).	8/6132	ILS PRM RWY 30L, AMDT 3...
08/28/98	MN	MINNEAPOLIS	MINNEAPOLIS-ST PAUL INTL (WOLD-CHAMBERLAIN).	8/6133	ILS RWY 30L (CAT I AND II), AMDT 42...
08/28/98	MN	ROCHESTER	ROCHESTER INTL	8/6145	VOR OR GPS RWY 2, AMDT 15A...
09/01/98	KY	BARDSTOWN	SAMUELS FIELD	8/6217	GPS RWY 20, ORIG...
09/01/98	KY	BARDSTOWN	SAMUELS FIELD	8/6218	NDG OR GPS–A, AMDT 5...
09/01/98	KY	BARDSTOWN	SAMUELS FIELD	8/6219	VOR/DME OR GPS RWY 2, AMDT 3...

[FR Doc. 98–24616 Filed 9–11–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29328; Amdt. No. 1888]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR Part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination of purchase as stated above.

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for

Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 4, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

** * * Effective 8 October, 1998*

Tallahassee, FL, Tallahasse Regional, ILS RWY 27, Amdt 6
Greensboro, GA, Greene County Regional, LOC RWY 24, Orig
Greensboro, GA, Greene County Regional, NDB RWY 24, Orig
Boise, ID, Boise Air Terminal/Gowen Field, VOR/DME OR TACAN RWY 10L, Orig
Boise, ID, Boise Air Terminal/Gowen Field, NDB RWY 10L, Orig
Chicago, IL, Merrill C. Meigs, VOR/DME–A, Orig
De Kalb IL, De Kalb Taylor Muni, NDB RWY 27, Amdt 2, CANCELLED
De Kalb IL, De Kalb Taylor Muni, NDB RWY 27, Orig
Hawesville, KY, Hancock Airfield, NDB OR GPS–A, Amdt 6, CANCELLED
Hawesville, KY, Hancock Airfield, VOR OR GPS RWY 15, Amdt 6, CANCELLED
Hawesville, KY, Hancock Airfield, VOR RWY 33, Amdt 6, CANCELLED

** * * Effective 5 November, 1998*

Winfield/Arkansas, KS, Strother Field, VOR RWY 35, Orig–A, CANCELLED

** * * Effective 3 December, 1998*

Pueblo, CO, Pueblo Memorial, GPS RWY 8L, Orig
Pueblo, CO, Pueblo Memorial, GPS RWY 26R, Orig
Glenwood, MN, Glenwood Muni, VOR RWY 33, Amdt 2
Glenwood, MN, Glenwood Muni, GPS RWY 33, Orig
Slayton, MN, Slayton Muni, GPS RWY 35, Orig
Robbinsville, NJ, Trenton-Robbinsville, GPS RWY 11, Orig
Robbinsville, NJ, Trenton-Robbinsville, GPS RWY 29, Orig
Woodbine, NJ, Woodbine Muni, GPS RWY 19, Orig
Millbrook, NY, Sky Acres, VOR–A, Amdt 7
Millbrook, NY, Sky Acres, GPS RWY 17, Orig
Millbrook, NY, Sky Acres, GPS RWY 35, Orig
New Richmond, WI, New Richmond Muni, GPS RWY 32, Orig

Note: The FAA published the following amendment in Docket No. 29293, Amdt No. 1881 to Part 97 of the Federal Aviation Regulations (Volume 63, No. 152, Page 42225; dated Friday, August 7, 1998) under Section 97.23 effective October 8, 1998 which is hereby rescinded:

Camarillo, CA, Camarillo, VOR RWY 26, Amdt 5

[FR Doc. 98–24615 Filed 9–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Enrofloxacin Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Bayer Corp., Agriculture Division, Animal Health. The NADA provides for subcutaneous use of enrofloxacin solution in cattle for the treatment of bovine respiratory disease.

EFFECTIVE DATE: September 14, 1998.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201, has filed NADA 141–068 Baytril 100 Injectable Solution (100 milligrams enrofloxacin per milliliter) for subcutaneous injection for the treatment of cattle for bovine respiratory disease associated with *Pasteurella haemolytica*, *P. multocida*, and *Haemophilus somnus*. The NADA is approved as of July 24, 1998, and the regulations are amended by revising 21 CFR 522.812 to reflect the approval. The regulations are also amended to provide for a tolerance for enrofloxacin residues in cattle by revising 21 CFR 556.228. The basis of approval is discussed in the freedom of information summary.

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

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning July 24, 1998, because the NADA contains substantial evidence of the effectiveness of the drug

involved, studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant.

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

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.812 is amended by revising paragraph (a), by redesignating paragraphs (d)(1), (d)(2), and (d)(3) as paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), respectively, by adding a new heading to paragraph (d)(1), and by adding paragraphs (c) and (d)(2) to read as follows:

§ 522.812 Enrofloxacin solution.

(a) *Specifications.* Each milliliter of sterile solution contains either 22.7 milligrams of enrofloxacin when intended for use in dogs or 100 milligrams of enrofloxacin when intended for use in cattle.

* * * * *

(c) *Related tolerance.* See § 556.228 of this chapter.

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* * * *

* * * * *

(2) *Cattle*—(i) *Amount.* Single-dose therapy: 7.5 to 12.5 milligrams enrofloxacin per kilogram of body weight (3.4 to 5.7 milliliters per 100 pounds). Multiple-day therapy: 2.5 to 5.0 milligrams per kilogram of body weight (1.1 to 2.3 milliliters per 100 pounds) administered once daily for 3 to 5 days.

(ii) *Indications for use.* For the treatment of bovine respiratory disease (BRD) associated with *Pasteurella haemolytica*, *P. multocida*, and *Haemophilus somnus.*

(iii) *Limitations.* For subcutaneous use in cattle only. Do not inject more than 20 milliliters at each site. Do not slaughter within 28 days of last treatment. Do not use in cattle intended for dairy production. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. The effect of enrofloxacin on bovine reproductive performance, pregnancy, and lactation have not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extra-label use of this drug in food-producing animals.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.228 is amended by redesignating the text as paragraph (a), by adding a heading to the newly redesignated paragraph (a), and by adding an introductory text and paragraph (b) to read as follows:

§ 556.228 Enrofloxacin.

The acceptable daily intake for enrofloxacin is 3 micrograms per kilogram of body weight per day.

(a) *Chickens and turkeys.* * * *

(b) *Cattle.* A tolerance of 0.1 part per million for desethylene ciprofloxacin (marker residue) has been established in liver (target tissue) of cattle.

Dated: August 25, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–24497 Filed 9–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 234

Conduct on the Pentagon Reservation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document makes administrative amendments to the Department of Defense rule on "Conduct on the Pentagon Reservation".

EFFECTIVE DATE: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703/697–4111.

List of Subjects in 32 CFR Part 234

Alcohol abuse, Drug abuse, Drug testing, Federal buildings and facilities, Security measures, Traffic regulation.

Accordingly, 32 CFR Part 234 is amended as follows:

PART 234—[AMENDED]

1. The authority citation for part 234 continues to read as follows:

Authority: 10 U.S.C. 131 and 2674(c).

§ 234.1 [Amended]

2. Section 234.1, *Possession*, is amended by revising "of dominion" to read "or dominion" and *Weapons* by revising "and bow" to read "any bow".

§ 234.7 [Amended]

3. Section 234.7(e) is amended by removing the word "which" both times if appears.

§ 234.13 [Amended]

4. Sections 234.13(e) and 234.14 are amended by revising "§ 234.4(d)" to read "§ 234.3(d)".

§ 234.17 [Amended]

5. Section 234.17 is amended in paragraph (b)(3)(i) after the word trunk, by removing the word "to"; paragraph (b)(3)(ii) by revising the semicolon to a period, paragraph (c)(1)(ii) first sentence by revising "0.08 grams of" to read "0.08 grams or"; paragraphs (c)(2) and (c)(3)(i) by revising "(b)(1)" to read "(c)(1)"; paragraph (c)(4) by revising "(b)(1)(ii)" read "(c)(1)(ii)"; paragraph (c)(4)(ii) by revising "paragraph (b)(4)(i)" to read "paragraphs (c)(3) and (c)(4)(i)" and paragraph (c)(3)(ii) first sentence by adding the word "to" after "submit."

Dated: September 8, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 98–24547 Filed 9–11–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 100

[CGD08–98–051]

Special Local Regulations; Rising Sun Regatta, Ohio River Mile 505.0–507.0, Rising Sun, IN

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Rising Sun Regatta Inboard Hydroplane Races. This event will be held on September 12 & 13, 1998 from 12 p.m. until 6 p.m. at Rising Sun, Indiana. If the event is cancelled due to weather this rule will be effective from 12 p.m. until 6 p.m., on September 26 & 27, 1998. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 12 p.m. until 6 p.m., on September 12 and 13, 1998.

ADDRESSES: Unless otherwise indicated, all documents referred to in this regulation are available for review at Marine Safety Office, Louisville, 600 Martin Luther King Jr. Place, Rm 360, Louisville, KY 40202–2230.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeff Johnson, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY (502) 582–5194, ext. 39.

SUPPLEMENTARY INFORMATION:

Drafting Information. The drafters of this regulation are Lieutenant Jeff Johnson, Project Officer, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, and LTJG M. Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication in the Federal Regulation. Following normal rule making procedures would be impracticable. The details of the event not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a series of high speed hydroplane boat races. The event is sponsored by the Community Heritage Promotions. The course to be followed by the race participants will be marked by precisely placed marker buoys, mid-channel of the Ohio River, between river miles 505.0–507.0. Commercial vessels will be permitted to transit the area every three hours.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration, and commercial vessel transit schedule stated above.

Small Entities

The Coast Guard finds that the impact, if any, on small entities is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration, and commercial vessel transit schedule stated above.

Collection of Information

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

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(h) of Commandant Instruction M16465.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T08–051 is added to read as follows:

§ 100.35–T08–051 Ohio River at Rising Sun, Indiana.

(a) *Regulated Area:* A regulated area is established between mile 505.0 and 507.0 of the Ohio River.

(b) *Special Local Regulation:* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. "Participants" are those persons and/or vessels identified by the sponsor as taking part in the event. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessel assigned to patrol the event. The Coast Guard "Patrol Commander" is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, Coast Guard Marine Safety Office Louisville.

(1) No vessel shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given, failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call sign "PATCOM".

(c) *Effective Date:* This section is effective from 12 p.m. until 6 p.m. on September 12 & 13, 1998. If this event is canceled due to weather, this section is effective from 12 p.m. until 6 p.m., on September 26 & 27, 1998.

Dated: August 21, 1998.

Paul J. Pluta,

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

[FR Doc. 98–24423 Filed 9–11–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–047–1–9825a; FRL 6156–9]

Approval and Promulgation of Implementation Plans: Revisions to Several Chapters of the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on March 5, 1998, by the State of Alabama. They made these revisions to comply with the regulations set forth in the Clean Air Act (CAA). Included are revisions to the definition of volatile organic compounds (VOC), the capture efficiency regulations in Appendix F, and the requirements for new source review.

DATES: This action is effective November 13, 1998, unless adverse or critical comments are received by October 14, 1998. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by ADEM may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Alabama Department of Environmental Management, 1751 Congressman W. L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9038.

SUPPLEMENTARY INFORMATION:

I. Analysis of State Submittal

Chapter 335–3–1—General Provisions

The Alabama Department of Environmental Management (ADEM) submitted the revisions to this chapter to add to the list of chemicals excluded from the definition of VOC on the basis that these chemicals have been determined to have negligible photochemical reactivity. The chemicals listed below have a potential for use as refrigerants, aerosol propellants, fire extinguishants, blowing agents and solvents.

- (HFC–32) Difluoromethane;
- (HFC–161) Ethylfluoride;
- (HFC–236fa) 1,1,1,3,3,3-Hexafluoropropane;
- (HFC–245ca) 1,1,2,2,3-Pentafluoropropane;
- (HFC–245ea) 1,1,2,3,3-Pentafluoropropane;
- (HFC–245eb) 1,1,1,2,3-Pentafluoropropane;
- (HFC–245fa) 1,1,1,3,3-Pentafluoropropane;
- (HFC–236ea) 1,1,1,2,3,3-Hexafluoropropane;
- (HFC–365mfc) 1,1,1,3,3-Pentafluorobutane;
- (HCFC–31) Chlorofluoromethane;
- (HCFC–123a) 1,2-Dichloro-1,1,2-trifluoroethane;
- (HCFC–151a) 1-Chloro-1-fluoroethane;
- (C4F9OCH3) 1,1,1,2,2,3,3,4,4-Nonafluoro-4-methoxybutane;
- ((CF3) 2CFCF2OCH3) 2-(Difluoromethoxymethyl)-1,1,1,2,3,3,3-Heptafluoropropane;
- (C4F9OC2H5) 1-Ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane; and ((CF3) 2CFCF2OC2H5) 2-(Ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane.

Periodically EPA updates the list of exempt chemicals after extensive research has been conducted on the specified chemicals. For a more detailed rationale on why these chemicals were found to have negligible photochemical reactivity see the document published in the **Federal Register** on August 25, 1997, (62 FR 44900).

Chapter 335–3–12—Continuous Monitoring Requirements for Existing Sources

Rule 335–3–12–.02(1)(b) deletes the phrase "of this Chapter" and replaces it with "of Chapter 335–3–10." ADEM submitted this revision to clarify and make the appropriate reference to Chapter 335–35–10.

Chapter 335–3–14—Air Permits

On August 30, 1993, EPA granted Alabama a waiver exempting new source review offsets for NO_X in the Birmingham ozone nonattainment area under section 182(f) of the CAA. EPA determined at the time that the area had clean air data that supported the exemption. On August 18, 1995, violations of the ozone national ambient air quality standard were detected. Subsequent exceedances of the ozone NAAQS propelled EPA to rescind the NO_X waiver effective September 19, 1997. As a result, ADEM revised this chapter to include NO_X offsets for major new or modified stationary sources of NO_X. In addition, ADEM submitted minor wording changes. All of the revisions that are being approved in this action are listed below:

- Rule 335–3–14–.01(7)(c) will include a reference to rule "335–3–14–.06";
- Rule 335–3–14–.05(2)(c)2 now reads as follows, "Furthermore, a major facility that is major for volatile organic compounds and/or nitrogen oxides also shall be considered major for the pollutant ozone'; and
- Rule 335–3–14–.05(3)(c) changes the paragraph number (6) to (7).

Appendix F—Capture Efficiency Procedures

ADEM submitted numerous revisions to Appendix F. ADEM amended the capture efficiency procedures to adopt EPA's current rule.

II. Final Action

EPA is approving the aforementioned changes to the SIP. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective November 13, 1998 without further notice unless the Agency receives relevant adverse comments by October 14, 1998.

If the EPA receives such comments, then EPA will publish a timely

withdrawal of the direct final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Only parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 13, 1998, and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled Regulatory Planning and Review.

B. Executive Order 13045

This final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an "economically significant" action under Executive Order 12866.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Submission to Congress and the Comptroller General

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

F. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: August 24, 1998.

A. Stan Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(72) read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(72) The State of Alabama submitted revisions to the ADEM Administrative Code for the Air Pollution Control Program on March 5, 1998. These revisions involve changes to Chapters 335–3–1, 335–3–12, 335–3–14 and Appendix F.

(i) Incorporation by reference. Rules 335–3–1–.02(gggg), 335–3–12–.02(1)(b), 335–3–14–.01(7)(c), 335–3–14–.05(2)(c)2, 335–3–14–.05(3)(c), and Appendix F were adopted on February 17, 1998.

(ii) Other material. None.

[FR Doc. 98–24605 Filed 9–11–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD34

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Endangered or Threatened Status for Six Plants From the Mountains of Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines endangered status

pursuant to the Endangered Species Act of 1973, as amended (Act), for two plants, *Poa atropurpurea* (San Bernardino bluegrass) and *Taraxacum californicum* (California taraxacum), and determines threatened status for four plants, *Arenaria ursina* (Bear Valley sandwort), *Castilleja cinerea* (ash-gray Indian paintbrush), *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild buckwheat), and *Trichostema austromontanum* ssp. *compactum* (Hidden Lake bluecurls). These six plant taxa are found in the San Bernardino, San Jacinto, Laguna, and Palomar mountains of southern California. They are imperiled by one or more of the following factors—destruction and degradation of habitat by urbanization, off-road vehicle (ORV) use, trampling, recreational development, domestic animal grazing, livestock grazing, alteration of the hydrological regimes, competition from introduced plants, over collection, and hybridization (genetic absorption) by alien species. This rule implements the Federal protection and recovery provisions afforded by the Act for these six plants. A notice of withdrawal of the proposal to list *Arabis johnstonii* (Johnston's rock-cress), which was proposed for listing along with the six plant taxa considered in this rule, is being published in the **Federal Register** concurrently with this final rule.

EFFECTIVE DATE: This rule is effective October 14, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Gary D. Wallace, Ph.D., Botanist, U.S. Fish and Wildlife Service (see **ADDRESSES** section above or telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Background

Arenaria ursina, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* are low perennial plants that predominantly occur on pebble plain habitat within a 240 square kilometer (sq km) (92 square mile (sq mi)) area in the San Bernardino Mountains of San Bernardino County, California (Derby and Wilson 1978, Derby 1979, Krantz 1981a, Neel and Barrows 1990). Pebble plains are characteristically treeless openings within the surrounding montane pinyon-juniper woodland or coniferous forest, located at elevations between 1,800 and 2,300 meters (m) (6,000 and 7,500 feet (ft)). Pebble plains are remnants of a Pleistocene lake bed, which are level to sloping plains with clay soils covered with quartzite pebbles (Derby 1979, Krantz 1983). Frost heaving and alternating wet and dry cycles force associated saragosa quartzite pebbles to the soil surface to create the characteristic appearance of the pebble plains (Neel and Barrows 1990). These soils have an extremely slow infiltration rate and, thus, have a high runoff potential (Neel and Barrows 1990). Pebble plains are the result of a combination of soil and climatic factors that support a unique assemblage of plant species, some of which are endemic while others represent disjunct occurrences of species more common elsewhere. Neel and Barrows (1990) noted that pebble plains often are associated with meadow habitats in the Big Bear Lake area. Natural meadows and pebble plains provide habitat for several sensitive taxa (Krantz 1981b).

The pebble plain taxa included in this final rule are predominantly restricted to pebble plain habitat. Each of these taxa has a mosaic distribution among the various pebble plain complexes and within a given complex. All nine pebble plain complexes (except Coxey Meadow) noted by Neel and Barrows, 1990, support two or more of the pebble plain taxa included in this rule. Coxey Meadow is more isolated and not as well known as the other pebble plain sites, but supports other elements of the known pebble plain flora (e.g. *Arabis parishii* and *Ivesia argyrocoma*).

Damage or curtailment of any pebble plain habitat will threaten the continued existence and recovery of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*, as well as other associated pebble plain flora. Coxey Meadow may represent a historical occurrence or ecologically marginal pebble plain.

Poa atropurpurea and *Taraxacum californicum* are found in meadow habitats in the Big Bear Valley in the San Bernardino Mountains. The former species also is found in seven meadow areas in San Diego County. There were 38 hectares (ha) (93 acres (ac)) of *P. atropurpurea* meadow habitat in the Big Bear area in 1981 (Krantz 1981b). *Trichostema austromontanum* ssp. *compactum* is found about the margins of a single vernal pool in the San Jacinto Mountains at 2,650 m (8,600 ft).

Discussion of the Six Plant Taxa

Arenaria ursina

Arenaria ursina, a member of the pink family (Caryophyllaceae), was described by Benjamin L. Robinson (1894) on the basis of a collection made in 1882 by Samuel B. Parish at Bear Valley in the San Bernardino Mountains, California. This taxon was reduced to a variety of *A. capillaris* by Robinson (1897) but Maguire (1951) and subsequent authors (Munz and Keck 1959, Munz 1974, Hartman 1993) treat it as a species. *Arenaria ursina* is a low, tufted, perennial herb with stems from 6 to 15 centimeters (cm) (2 to 6 inches (in)) long. The leaves are opposite, 4 to12 millimeters (mm) (0.16 to 0.5 in) long. The white, five-parted flowers are arranged in open cymes (clusters) 4 to 15 cm (1.5 to 6 in) high. The petals are 4 to 5 mm (0.16 to 0.2 in) long, the sepals are up to 4 mm (0.16 in) long in fruit. This species flowers from May to August. *Arenaria ursina* is distinguished from other members of the genus within its range by its glabrous (hairless), filiform (thread-like), nerveless leaves less than 2 mm (0.08 in) wide and its rounded, 3 to 4 mm (0.12 to 0.16 in) long sepals (Hartman 1993).

Arenaria ursina is found on pebble plains and dry slopes in the San Bernardino Mountains of southwest San Bernardino County. The dry slopes mentioned here are areas that fit the general description of pebble plains but do not support both characteristic species *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum* (Neel and Barrows 1990). Populations of *A. ursina* are known from eight pebble plain complexes in the vicinity of Big Bear and Baldwin lakes (Krantz 1981a, Neel and Barrows 1990, California Natural Diversity Data Base (CNDDB) 1997). Most of the occurrences are on U.S. Forest Service (FS) land at elevations from 1,800 to 2,900 m (6,000 to 9,500 ft) (Griggs 1979, Krantz 1981a, Neel and Barrows 1990). Some occur on land owned by the California Department of Fish and Game (CDFG), The Nature Conservancy (TNC), or private landowners. *Arenaria ursina* is threatened at six of the eight sites where it occurs.

Castilleja cinerea

Castilleja cinerea, a member of the figwort family (Scrophulariaceae), was described by Asa Gray (1884) based on a collection made in 1882 by S.B. and W.F. Parish at Bear Valley, San Bernardino Mountains, California. Jepson (1925) included this species in the genus *Orthocarpus* as *O. cinereus*

(A. Gray) Jepson, although this combination has not been recognized by any other authorities (Chuang and Heckard 1993). *Castilleja cinerea* is a semi-parasitic perennial with several, ascending to decumbent (trailing), grayish stems sprouting from the root-crown. The stems are 1 to 2 decimeters (dm) (4 to 8 in) tall. The inflorescence (flower stalk) is greenish yellow (occasionally reddish-orange tinged) with distinctive yellowish hairs on the lower bracts. The calyx (united sepals) is nearly equally divided into linear lobes, and the corolla is yellowish. It flowers primarily in June and July. *Castilleja cinerea* is distinguished from other species of *Castilleja* within its range by its perennial nature, ashy-puberulent (short hairs) stems and leaves, yellowish flowers, and calyx lobes of equal length (Chuang and Heckard 1993).

Castilleja cinerea is known from fewer than 20 localities at the eastern end of the San Bernardino Mountains, (Heckard 1980, Neel and Barrows 1990). Most populations occur on pebble plains, but *C. cinerea* is also found in pine forest habitats near the Snow Valley Ski Area, along Sugarloaf Ridge, and in the vicinity of Lost Creek. *Castilleja cinerea* is known to occur on private lands, CDFG land, and FS land including that leased for vacation homes and a ski area.

Eriogonum kennedyi var. austromontanum

Eriogonum kennedyi var. *austromontanum*, a member of the buckwheat family (Polygonaceae), was described by Munz and Johnston (1924) based on a collection made on July 4, 1920, by R. D. Harwood near the lake at Big Bear Valley in the San Bernardino Mountains, California. *Eriogonum kennedyi* var. *austromontanum* was treated as a subspecies by Stokes (1936), Munz and Keck (1959), and Munz (1974). The taxon was treated as a variety by Reveal and Munz (1968) and Hickman (1993).

Eriogonum kennedyi var. *austromontanum* is a woody-based perennial with stems forming loose cushion-like leafy mats 5 to 35 cm (6 to 14 in) wide. The leaves are oblanceolate (with rounded end broader than the base), 6 to 10 mm (0.2 to 0.4 in) long and densely white hairy. The inflorescences are 8 to 15 cm (3 to 6 in) high, bearing head-like flower clusters. The perianth (united calyx and corolla) is white to rose, and composed of inner and outer lobes that are similar in appearance. This taxon flowers from July through September. This variety can be distinguished from *E. kennedyi* var. *kennedyi* and *E. kennedyi* var. *alpigenum*, which also occur in the San Bernardino Mountains, by its long, loosely wooly-haired inflorescences, longer involucres (whorl of bracts) (2.5 to 4 mm (0.1 to 0.2 in) long), longer (3.5 to 4 mm (0.2 in)) fruits, and longer leaves (6 to 10 mm (0.2 to 0.4 in)) (Reveal 1989, Hickman 1993). *Eriogonum kennedyi* var. *austromontanum* could also be confused with *E. wrightii* ssp. *subscaposum*. However, *E. wrightii* ssp. subscaposum has racemose flower stalks, wider (2 to 4 mm (0.1 to 0.2 in)) leaves, shorter (2 to 2.5 mm (0.1 in)) fruits, and is found in yellow pine forest (Reveal 1989, Neel and Barrows 1990, Hickman 1993).

Eriogonum kennedyi var. *austromontanum* is known from seven pebble plain complexes in the San Bernardino Mountains (Krantz 1981a, Neel and Barrows 1990, CNDDB 1997). Reports of this taxon in Ventura County (Twisselmann 1967, Reveal 1979, and Hickman 1993) are based on specimens subsequently determined to be *E. kennedyi* var. *kennedyi* (Reveal and Munz 1968, Reveal 1989). *Eriogonum kennedyi* var. *austromontanum* is known to occur on FS, CDFG, and private lands. All of the sites supporting this taxon are threatened.

Poa atropurpurea

Poa atropurpurea, a member of the grass family (Poaceae), was described by Frank Lamson-Scribner (1898) based on two collections by Samuel B. Parish. One specimen (number 2968) was collected in 1894 and another (number 3696) was collected in 1895 at Bear Valley, San Bernardino Mountains, California. This species has not been known by any other name (Keck 1959, Soreng 1993). *Poa atropurpurea* is a dioecious (separate male and female plants), tufted perennial with creeping rhizomes (Soreng 1993). The inflorescence is an erect, dense spike-like panicle (compound floral axis) 3 to 7 cm (8 to 18 in) high. The lemmas (lower of the two bracts enclosing the flower in the spikelet of grasses) are smooth, faintly nerved and less than 3.5 mm (0.14 in) long. The glumes (scaly bracts of the spikelets) are 1.5 to 2 mm (0.06 to 0.08 in) long. This species flowers from early May to June or July. *Poa atropurpurea* may be distinguished from *P. pratensis* (Kentucky bluegrass), with which it is often associated, by its shorter inflorescences, contracted panicles, and glabrous lemmas and calluses (extension of the inner scale of the spikelet) (Soreng 1993).

Poa atropurpurea occurs in montane meadows in the Big Bear region of the San Bernardino Mountains, as well as in meadows in the Laguna Mountains and Palomar Mountains of San Diego County at elevations of 1,800 to 2,300 m (6,000 to 7,500 ft) (Sproul 1979, Krantz 1981b, Winter 1991, Curto 1992). This species occurs near the drier margins of meadows (Krantz 1981b, Winter 1991) described as vernally wet marshlands by Hirshberg (1994). Eleven population centers of *P. atropurpurea* currently are known to exist in the San Bernardino Mountains and are often found at meadow sites with *Taraxacum californicum* (Krantz 1981b). Clones, consisting of numerous erect culms (stems), are about 1 m (3 ft) in diameter and may intermingle (Soreng, pers. comm. 1996). Two of the 11 known populations in the San Bernardino Mountains are about 9 ha (23 ac) in size and are located on FS land (Holcomb Valley and Wildhorse Meadows), one 2 ha (5 ac) site is administered by CDFG (North Baldwin Lake), one 9-ha (20-ac) site is cooperatively owned by the FS and a private youth camp (Hitchcock Ranch), and seven sites, about 20 ha (50 ac) total, are privately owned (Krantz 1981b). Eight of the sites are less than 2.5 ha (6 ac) in area. Fewer than 40 ha (100 ac) of habitat for this species are known to remain in the San Bernardino Mountains.

Sproul (1979) reported that there were four known populations of *Poa atropurpurea* in the Laguna Mountains of San Diego County, California. Curto (1992) reported a 1981 collection of *P. atropurpurea* from Mendenhall Meadow in the Palomar Mountains of San Diego County. *Poa atropurpurea* was thought to be extirpated from the Laguna Mountains and the Palomar Mountains (Curto 1992). However, in 1993, two populations, each consisting of about 50 individuals, were located within the Cleveland National Forest in the Laguna Mountains (Winter, pers. comm. 1993). Hirshberg (1994) reported finding more than 1,000 plants of *P. atropurpurea* at seven sites near Laguna Meadow. Five of these sites appear to encompass the four sites noted by Sproul (1979), the other two are apparently newly reported sites. In total, this species is known from less than 20 populations throughout its range.

Co-occurrence of male and female plants of this species is necessary for seed production. Curto (1992) found that although male and female culms were about equal in number among herbarium collections of this species from the San Bernardino Mountains, collections from Big Laguna and Mendenhall meadows of San Diego County were all female culms. Hirshberg (1994) found only four male

plants, two at each of two different sites, during her study of *P. atropurpurea* on the Cleveland National Forest in San Diego County. Soreng (pers. comm. 1996) suggested that it is possible the San Diego County populations have turned apomictic (not needing fertilization). This would be evident by a seed set of 20 percent or higher. See Factor E for further discussion of the importance of dioecy in this species.

Taraxacum californicum

Taraxacum californicum, a member of the sunflower family (Asteraceae), was described by Philip A. Munz and Ivan Johnston (1925) based on a specimen collected by W.M. Pierce in May 1922 in Bear Valley, San Bernardino Mountains, California. Specimens referable to this species have been previously considered *T. officinale* var. *lividum* (Waldst. & Kit.) Koch (Hall 1907), *T. lapponicum* Kililm. (Handel-Mazzetti 1907), *T. ceratophorum* DC. (Sherff 1920), or *T. ceratophorum* var. *bernardinum* Jepson (Jepson 1925). The first three combinations are taxa now known not to be present in the region or included with other European species. The last combination (Jepson 1925) was published after the combination *T. californicum* had been published and therefore is considered a synonym.

Taraxacum californicum is a thick-rooted perennial herb. The leaves, arranged in basal rosettes, 0.5 to 2 dm (2 to 8 in) high, are light green, oblanceolate, nearly entire to sinuate-dentate (wavy toothed) from 5 to 12 cm (2 to 5 in) long and 1 to 3 cm (0.4 to 1.2 in) wide. The light yellow flowers are clustered in heads on leafless stalks. The outer phyllaries (bracts of the inflorescence) are erect, lance-ovate and 5 to 7 mm (0.2 to 0.3 in) long while the inner phyllaries are lance-linear, and 12 to 15 mm (0.5 to 0.6 in) long. Plants flower from May to August. *Taraxacum californicum* is readily distinguished from other exotic members of this genus within its range by its lighter green foliage, sub-entire leaves, stocky cylindrical heads with truncate bases, erect phyllaries, paler yellow flowers, and small fruits (Munz and Johnston 1925, Stebbins 1993).

Taraxacum californicum occurs in moist meadow habitats in the San Bernardino Mountains at elevations from 2,000 to 2,800 m (6,700 to 9,000 ft) and is often associated with *Poa atropurpurea*. These taxa are restricted to the relatively open edges apart from more mesic plants such as *P. pratensis*, *Carex* spp. or *Juncus* spp. (Krantz 1981b). The perimeter of such meadows often intergrades with sagebrush scrub dominated by sagebrush or pine forest (Krantz 1981b). *Taraxacum californicum* is known to occur on FS, CDFG, municipal, and private lands. About 20 occurrences of the species are currently known, with population sizes ranging from 2 to 300 individuals. About half of these occurrences are located within, or adjacent to, urbanized areas such as Big Bear City, Big Bear Lake Village, and Sugarloaf in San Bernardino County, California. All of these occurrences are threatened by urbanization.

Trichostema austromontanum ssp. *compactum*

Trichostema austromontanum ssp. *compactum*, a member of the mint family (Lamiaceae), was described by F. Harlan Lewis (1945) based on specimens collected in 1941 by M. L. Hilend at Hidden Lake, San Jacinto Mountains, Riverside County, California. *Trichostema austromontanum* ssp. *compactum* is a compact, soft-villous (with long, shaggy hairs) annual approximately 10 cm (4 in) tall with short internodes (stem segments between leaves). The leaves are elliptic (oval but narrowed at both ends). The blue, five-lobed flowers are less than 7 mm (0.3 in) long, with two blue stamens. The fruit is a smooth, four-lobed nutlet. This taxon flowers in July and August. *T. austromontanum* ssp. *compactum* is shorter and has shorter internodes than *T. austromontanum* ssp. *austromontanum*.

Trichostema austromontanum ssp. *compactum* historically has been restricted to a single vernal pool known as Hidden Lake (Lake Surprise in Hall (1902)) at an elevation of about 2,650 m (8,700 ft) in the Mount San Jacinto State Wilderness. Hidden Lake is the only naturally occurring body of water in the San Jacinto Mountains. The entire known range for this plant encompasses less than 0.8 ha (2 ac) (Michael Hamilton, pers. comm., 1996). The population size of *T. austromontanum* ssp. *compactum* declines during periods of either above or below normal precipitation because of its position along the perimeter of the vernal pool habitat (Hamilton 1991). Between 1979 and 1991, the population sizes of this species fluctuated from less than 50 to 10,000 individuals (Hamilton 1991).

Previous Federal Action

Federal government action on five of the six taxa contained in this rule began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be threatened, endangered, or extinct in the United States. This report, designated as House Document No. 94–51, and presented to Congress on January 9, 1975, recommended *Arenaria ursina*, *Poa atropurpurea*, and *Trichostema austromontanum* ssp. *compactum* for endangered status. *Castilleja cinerea*, and *Taraxacum californicum*, included in House Document No. 94–51, were recommended for threatened status. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and of the Service's intention to review the status of the plant taxa named therein, including *Arenaria ursina*, *Castilleja cinerea*, *Poa atropurpurea*, *Taraxacum californica*, and *Trichostema austromontanum* ssp. *compactum*. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to list approximately 1,700 vascular plant species as endangered species pursuant to section 4 of the Act. *Arenaria ursina*, *Trichostema austromontanum* ssp. *compactum*, *Poa atropurpurea*, and *Eriogonum kennedyi* var. *austromontanum* were included in the June 16, 1976, **Federal Register** notice.

General comments received in response to the June 16, 1976, proposal were summarized in an April 26, 1978, **Federal Register** notice (43 FR 17909). A revision of the Smithsonian report (Ayensu and DeFilipps 1978), provided new lists based on additional data on taxonomy, geographic range, and endangered status of taxa as well as suggestions of taxa to be included or deleted from the earlier listing. *Eriogonum kennedyi* var. *austromontanum*, not included in the first Smithsonian report, was recommended for threatened status in Ayensu and DeFilipps (1978). The recommended status for other taxa listed above did not change from the House Document 94–51 listings. Acknowledgment of the Service's acceptance of this document as a petition was included in a notice of findings on certain petitions published in the **Federal Register** on February 15, 1983 (48 FR 6752). Although the 1978 amendments to the Act required that all proposals over 2 years old be withdrawn, a 1-year grace period was given to those proposals already more than 2 years old. On December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal for the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated Notice of Review of plants on December 15, 1980 (45 FR 82479). This notice included *Poa atropurpurea, Taraxacum californicum,* and *Trichostema austromontanum* ssp. *compactum* as category-1 candidates. Category-1 candidates were those species for which the Service had sufficient information concerning biological vulnerability and threats to support preparation of listing proposals. *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* were included in the notice as category-2 candidate species. Category-2 candidates were those species for which available data indicated listing was probably appropriate, but for which sufficient data on biological vulnerability and threats were not presently available to support proposed rules. On November 28, 1983, the Service published a supplement (48 FR 53639) to the December 15, 1980, Notice of Review, (45 FR 82479). The status of the six taxa remained unchanged until the Service published a Notice of Review in the **Federal Register** on February 21, 1990 (55 FR 6183), in which the status of *Arenaria ursina* was changed to category-1. Subsequent to the 1990 notice, additional information became available resulting in *Castilleja cinerea* and *Eriogonum kennedyi* var. *austromontanum* being changed to category-1 status.

On August 2, 1995, the Service published in the **Federal Register** (60 FR 39337) a proposal to list two species, *Poa atropurpurea* and *Taraxacum californicum,* as endangered and four taxa, *Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum,* and *Trichostema austromontanum* ssp. *compactum,* as threatened. That proposed rule also included *Arabis johnstonii* to be listed as threatened. The proposal to list *Arabis johnstonii* has been withdrawn and is addressed in a separate document published concurrently in this same **Federal Register** issue. The Service now determines *Poa atropurpurea* and *Taraxacum californicum* to be endangered species and *Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum,* and *Trichostema austromontanum* ssp. *compactum* to be threatened species.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for the six taxa covered by this rule, because the 1975 and 1978 Smithsonian reports had been accepted as petitions. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii), of the Act. Notification of this finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled annually, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed each October, annually from 1984 through 1993. Publication of the proposed rule constituted the warranted finding for these six taxa.

The processing of this final rule follows the Service's listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings. Highest priority will be processing emergency listing rules for any species determined to face a significant and imminent risk to its well being (Tier 1). Second priority will be processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants; the processing of new proposals to add species to the lists; the processing of administrative petition findings to add species to the lists, delist species, or reclassify listed species (petitions filed under section 4 of the Act); and a limited number of delisting and reclassifying actions (Tier 2). Processing of proposed or final designations of critical habitat will be accorded the lowest priority (Tier 3). This final rule is a Tier 2 action and is being completed in concurrence with the current Listing Priority Guidance. All six taxa in this rule face high magnitude threats. This rule has been updated to reflect any changes in information concerning distribution, status and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

In the August 2, 1995, proposed rule (60 FR 39337) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The 30-day comment period closed on October 9, 1995. Appropriate Federal and State agencies, County and City governments, scientific organizations, and other interested parties were contacted and requested to comment. Individual newspaper notices of the proposed rule were published in the *San Diego Union-Tribune* and *The Press-Enterprise* on August 10, 1995. No request for a public hearing was received.

During the comment period, the Service received two written comments, both of which opposed the proposed listing. Both comments related only to the taxa that occur in the Big Bear Valley region of the San Bernardino Mountains, California. The comments relevant to this final rule have been organized into specific issues. These issues and the Service's response to each are summarized as follows:

Issue 1: One commenter questioned the existence of pebble plains in Big Bear Valley.

Service Response: Pebble plains as a biological community have been described in several scientific studies (Holland 1986; Skinner and Pavlik 1994; Krantz 1981a, 1983; Freas and Murphy 1990; Neel and Barrows 1990; and Sawyer and Keeler-Wolf 1995). They were first called pavement plains (Derby 1979, Derby and Wilson 1978). Several of these studies (Derby 1979, Krantz 1981a) describe the distribution of pebble plain habitat in Big Bear Valley. The ecologically unique nature of these areas and their associated flora were discussed in Derby and Wilson (1978). Pebble plains have been described as the "most spectacular ecologic island" in Southern California (Schoenherr 1992).

Issue 2: One commenter stated that although meadow and pebble plains habitat was eliminated by the filling of Big Bear Lake Reservoir, the plants are "still abundant in the entire valley." This commenter also stated that mining was not a threat to the plant species because vegetation was still growing on the old mine tailing piles.

Service Response: Pebble plains are often associated with montane meadow habitat, as described in the Background section. Meadow habitat in the Bear Valley region, including near Holcomb Valley and Erwin Lake, decreased by 76 percent between the late 1800's and 1932. From 1932 to 1990 there was a further decrease of 64 percent in remaining meadow habitat (Krantz 1990). Overall there has been a 91 percent decrease in meadow habitat since the late 1800's. A 91 percent decrease is significant because it represents the permanent loss of occupied and potential habitat for several of the taxa included in this final rule, and other sensitive or listed species associated with this habitat. Although a number of native and exotic plant species are able to grow on mine tailing piles, this habitat does not provide suitable conditions for any of the species addressed in this final rule. Meadow and pebble plain habitat has

never been extensive in the Big Bear Valley area relative to the surrounding forest region. For example, one estimate of the number of remaining acres of pebble plain habitat on National Forest lands is 208 ha (514 ac) or about 0.3 percent of the total acreage of just the Big Bear Ranger District. These taxa, endemic to the Big Bear Valley area, are, by all accounts, rare in the region, the County, and the State.

Issue 3: One commenter stated that the threat of hybridization or "promiscuous occupation of genetic absorption with exotic species" is not supported by documentation.

Service Response: In a recent review of extinction by hybridization, Rhymer and Simberloff (1996) stated that non-indigenous taxa can bring about the extinction of native flora or fauna. They cited examples among mammals, birds, amphibians, fish, and plants. Rieseberg (1991) outlined case histories of introgression in plants, including *Cercocarpus traskiae*, an endangered species from Santa Catalina Island, California. Krantz (in litt. 1993) noted specimens that had characteristics of both *Taraxacum californicum* and the introduced species *T. officinale*. The precise origin of these intermediate individuals has not yet been determined. Genetic swamping by *Poa pratensis* is a possible threat to *P. atropurpurea* (Curto 1992).

Issue 4: One commenter questioned the threat of fuelwood harvesting to the pebble plain species. The commenter noted that people are required to have a permit to cut fuelwood and are not allowed to drive off existing roads to collect this wood. The commenter further stated that there would be less harm done to plant growth by trampling and rolling of cut wood to get to the trucks if the trucks were allowed to drive to the trees on the old woodcutters' roads, which have now been fenced off.

Service Response: Fuelwood harvest is permitted in designated areas of the Big Bear region, such as portions of Holcomb Valley (SBNF, *in litt.* 1995). Most sensitive habitats are not within the areas where fuelwood harvesting is permitted. However, impacts related to the use of roads that traverse nearby sensitive habitats do occur. The San Bernardino National Forest (Odell 1988) has closed roads to protect sensitive plant habitat in the Arrastre Flats and Union Flats area. Few, if any, areas of the Forest open to permitted fuelwood harvest have been impacted by these road closures. The closures do not preclude access by forest users and have produced no adverse cumulative impacts. However, vehicles utilizing unauthorized off-road areas directly impact pebble plains habitat (Odell 1988). Damage caused by ORVs on pebble plains and meadows can be significant. ORVs destroy smaller shrubs and annuals (Wilshire 1983). There have been numerous incidents of damage to the vehicle exclusion fencing around several pebble plain sites (Henderson, *in litt.* 1997). These incidents were often associated with damage to the habitat. An incident of vehicle trespass on a pebble plain in March 1992, resulted in direct damage to approximately 930 square meters (10,000 sq ft) of habitat (Neel and Chaney 1992). Also, damage to surface hydrological characteristics occurred because the soils were wet and deep ruts were produced by the vehicle. These incidents are further discussed under Factor A.

Issue 5: One commenter questioned the economic value of the taxa listed herein and another stated that listing these plants would result in severe depreciation of property value.

Service Response: Under section 4(b)(7)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological criteria from affecting such decisions" (H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982)). As further stated in the congressional report, "economic considerations have no relevance to determinations regarding the status of species." Because the Service is specifically precluded from considering economic impacts in a final decision on a proposed listing, the Service cannot consider the possible economic consequences of listing the six taxa.

Issue 6: A commenter questioned whether cattle grazing is a threat to these species because he claims cattle had not grazed in Big Bear Valley for over 40 years.

Service Response: Several of the meadow sites in the Big Bear area have been impacted by grazing by domestic livestock (e.g., Bluff Lake, Hitchcock Ranch, Shay Meadow, Wildhorse Meadow (Krantz 1981b; Krantz, in litt. 1993)). All of the populations of *Poa atropurpurea* in the Laguna Meadow and Mendenhall Meadow are located within grazing allotments currently used by cattle (Winter 1991). Grazing by domestic and feral animals other than cattle also poses a threat to the species listed herein. Native ungulates are facultative browser/grazers or browsers (feed primarily on woody plants) rather than grazers (feed primarily on herbaceous plants) (Painter 1995). Domestic ungulates are grazers which tend to do more damage to herbaceous plants such as *Poa atropurpurea*. Krantz (1981a) documented the presence of feral burros on the Sawmill and Baldwin Lake pebble plains. Neel and Barrows (1990) concurred with this assessment and added that burros regularly have been observed on the Gold Mountain pebble plain. Grazing can destabilize plant communities by aiding the spread and establishment of non-native taxa (Painter 1995) and thus diminish populations of *Poa atropurpurea* (Winter 1991), as well as *T. californicum* because *Taraxacum officinale* is favored over *T. californicum* under grazing conditions (Henderson, *in litt.* 1997).

Issue 7: One commenter asked why Federal and State agencies and their projects or actions are exempt from protecting endangered or threatened species.

Service Response: The Act directs Federal agencies to protect and promote the recovery of listed species. Collection of listed plants on Federal lands is prohibited. Proposed Federal projects and actions including activities on private or non-Federal lands that involve Federal funding or permitting require review to ensure they will not jeopardize the survival of any listed species, including plants. The Act does not prohibit "take" of listed plants on private lands, but landowners should be aware of State laws protecting imperiled plants.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Although State law may provide a measure of protection to species, these laws are not adequate to protect the species in all cases. Numerous activities do not fall under the purview of State law, such as certain projects proposed by the Federal government and projects falling under State statutory exemptions. Where overriding social and economic considerations can be demonstrated, these laws allow project proposals to go forward, even in cases where the continued existence of the

species may be jeopardized or where adverse impacts are not mitigated to the point of insignificance. The inadequacy of existing State and Federal regulatory mechanisms is one of the factors that necessitates Federal listing of these plant taxa. Please see the "Summary of Factors Affecting the Species" section, specifically Factor D, and the "Available Conservation Measures" section in this rule for additional information about this issue.

Issue 8: One commenter stated that "large scale" timber harvest does not occur in the Big Bear Valley region, only dead trees are removed and some thinning is done by the FS, therefore timber harvest is not a threat to the plant species.

Service Response: The "Background" section of the proposed rule identified timber harvest as having affected the habitat of *Arenia ursina*, *Castilleja cinerea* over the past 100 years, and further stated that timber harvest has continued to affect the habitat of *Eriogonum kennedyi* var. *austromontanum*, *Poa atropupurea*, and *Taraxacum californicum*. Although impacts have occurred in the past from timber harvest, the final rule has been revised and does not identify timber harvest as a current threat to any of the plant taxa.

Issue 9: One commenter questioned the threat from hiking and other recreational activities, as well as threats from collecting, scientific studies, and "overutilization."

Service Response: Excessive trampling may alter the hydrology of the habitats of the taxa listed herein and cause conditions such as ponding along trails or drying below the trails as a result of soil compression. These in turn may lead to conditions that affect seedling establishment or species persistence in these areas. Recreational activities that include the use of ORVs continue to have significant negative impacts on pebble plain habitat (see discussion under Factor A). Botanists often prefer to collect species considered rare for exchange with other institutions (see discussion under Factor B). Some limited collection from Federal lands could be permitted for responsible research by qualified individuals, as well as for periodic documentation purposes for recognized institutional collections.

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), the Service solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for the taxa under consideration for listing. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. There were no responses to the Service's requests for peer review of this listing action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (Act) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal list. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Arenaria ursina* B.L. Rob. (Bear Valley sandwort), *Castilleja cinerea* A. Gray (ash-gray Indian paintbrush), *Eriogonum kennedyi* S. Watson var. *austromontanum* Munz & I.M. Johnst. (southern mountain wild buckwheat), *Poa atropurpurea* Scribn. (San Bernardino bluegrass), *Taraxacum californicum* Munz & I.M. Johnst. (California taraxacum), and *Trichostema austromontanum* F.H. Lewis ssp. *compactum* F.H. Lewis (Hidden Lake bluecurls) are as follows. A summary of the threats to each of these taxa is provided in Table 1.

A. *The Present or threatened destruction, modification, or curtailment of their habitat or range.* The six taxa listed herein currently are imperiled by a variety of activities that result in habitat modification, destruction, degradation, and fragmentation. These activities include urbanization, ORV activity, alteration of hydrological conditions, and vandalism.

TABLE 1.—SUMMARY OF THREATS

Species	Threats					
	Trampling	Exotic plants	*ORV activity	Urbanization	Grazing/ browsing	Limited numbers
Arenaria ursina	x	x	x	x		
Castilleja cinerea	x	x	x	x	x	
Eriogonum kennedyi var. *kennedyi*	x	x	x	x		
Poa atropurpurea	x	x	x	x	x	x
Taraxacum californicum	x	x	x	x	x	x
Trichostema austromontanum ssp. *compactum*	x					x

*ORV = off road vehicle.

Meadow Habitats

Significant loss of meadow habitats in the Bear Valley began in the late 1880's with the construction of a dam that resulted in the formation of Big Bear Lake. There were 6,200 ha (15,300 ac) of meadow/grassland in the Big Bear Valley region and Big Meadow area of the Santa Ana River prior to construction of the dam (Leiberg 1900) and 1,190 ha (2,900 ac) about 30 years later (USFS 1932). This represents an 81 percent decrease. Krantz (1990) estimated that there are currently less than 400 ha (1,000 ac) of meadow habitat remaining in Big Bear and Holcomb valleys. Overall, 91 percent of all meadow habitat in those areas has been destroyed since the turn of the century.

The decline of *Poa atropurpurea* and *Taraxacum californicum* can be attributed to urbanization, ORV traffic, and alteration of hydrological regimes that have destroyed, degraded, or fragmented their meadow habitat (Krantz 1980, 1981b). Approximately 70 percent of the remaining *Poa atropurpurea* habitat in the Big Bear region is unprotected and none of the *P. atropurpurea* populations in San Diego County are protected (see Factor D and Factor E for additional discussion). Portions of two populations in Laguna Meadows were destroyed by telephone line trenching and soil removal for

construction of the earthen dam at Big Laguna Lake (Sproul and Beauchamp 1979). A portion of one site in Big Bear Valley, intentionally graded by the landowner in 1991, contained *P. atropurpurea* and habitat for the federally listed pedate checker-mallow (*Sidalcea pedata*) (Krantz, *in litt.*, 1993). Populations of *P. atropurpurea* were also destroyed by development of the facilities at Big Bear Airport and expansion of Bear Mountain Ski Area (Krantz, *in litt.*, 1993). Krantz (in litt., 1993) further noted, without indicating causes, the apparent extirpation of the occurrences of *Taraxacum californicum* at Moonridge Meadow, Rathbone Meadow, Sugarloaf, and Erwin Lake.

Current continuing threats to the meadow taxa discussed in this rule include the relatively unrestricted development of privately owned parcels in the Big Bear area outside the boundaries of the San Bernardino National Forest. Apparently, all of the known occurrences of *Poa atropurpurea* and *Taraxacum californicum* that fall within areas depicted on a current zoning map for the City of Big Bear Lake are at sites zoned residential, commercial or flood plain. This includes four of the seven privately owned sites and over half of the privately owned habitat of *Poa atropurpurea* in the Big Bear area. This also includes four of the 10 privately owned sites supporting *Taraxacum californicum*. Within a tract on Eagle Point there is, however, one exclusionary 2.8 ha (7 ac) parcel set aside for rare plant protection by the City of Big Bear Lake that reportedly includes meadow habitat as well as some plants of *Castilleja cinerea* (City of Big Bear Lake, *in litt.* 1997). There are no apparent use restrictions on this parcel other than access limitations and no building sites. The City of Big Bear Lake zoning map includes the community of Moonridge. Within the area covered by this zoning map there are at least five occurrences of *Poa atropurpurea*, at least four occurrences of *Taraxacum californicum*, and occurrences of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. Some sites for the listed species *Sidalcea pedata* are also covered by the zoning map. The Service is aware of interest by a property owner in opening a facility at Pan Hot Springs. This area supports *Poa atropurpurea* and *Taraxacum californicum*, as well as the federally listed endangered species *Sidalcea pedata* and *Thelypodium stenopetalum* (slender-petaled mustard). This proposed facility has the potential of fragmenting and degrading the meadow habitat of these taxa. A current proposal for construction on nine parcels totaling 1.6 ha (4 ac) at Boulder Bay on the south shore of Big Bear Lake could adversely impact *Poa atropurpurea* and *T. californicum*. These taxa, as well as other sensitive taxa, are known to occur in the vicinity of the project site.

A road traverses a site along Rathbone Creek that was meadow and pebble plain habitat. The area between the road and the creek is a parcel being used as a dump site for dredge materials. Roads, such as the one just east of Bluff Lake, traverse occupied habitat of *Poa atropurpurea* and *Taraxacum californicum*. Several of the meadow sites, such as North Baldwin Lake, Wildhorse Springs, and Holcomb Valley are fragmented by ORV incursions. Road ruts can lead to alterations in the surface hydrology of meadow habitats (Krantz 1981b). Campground development has been proposed for meadow sites at Cienega Seca and the north shore of Big Bear Lake (CNDDB 1997).

Poa atropurpurea faces high magnitude threats throughout the majority of its range from one or more of the following—development, grazing, road maintenance, and introduced taxa, as well as the increased fragmentation of habitat associated with the above activities. The dioecious nature (separate male and female plants) of this species compounds any threat at a given site. *Taraxacum californicum* faces the same high magnitude threats from the same sources over about half of its range.

Pebble Plains Habitat

The decline of *Arenaria ursina*, *Castilleja cinerea* and *Eriogonum kennedyi* var. *austromontanum*, all of which are largely confined to pebble plain habitats, can be attributed to habitat destruction, degradation, and fragmentation resulting from urbanization, ORV traffic, fuelwood harvesting, mining activities, and the alteration of hydrological regimes. Neel and Barrows (1990) listed the current total acreage of pebble plains as 220 ha (545 ac), including about 60 ha (150 ac) of pebble plains habitat not considered by Krantz (1981a, *in litt.* 1987). Krantz (*in litt.* 1987) estimated that historically there were 280 ha (700 ac) of pebble plains, and that currently there are only 170 ha (420 ac). Neel and Barrows' (1990) figure represents a 21 percent decrease from the estimated historic extent of pebble plains in the region. Krantz (*in litt.* 1987) did not include two areas considered pebble plains by Neel and Barrows (1990). These omissions were probably due, in part, to the fact that these areas were not known to support an indicator species, *Eriogonum kennedyi* var. *austromontanum*.

Nine existing pebble plain complexes were identified by Neel and Barrows (1990). Of the 220 ha (545 ac) of this highly restricted habitat, about 208 ha (514 ac) is administered by the FS and 12 ha (32 ac) occurs on private land (Neel and Barrows 1990). Nearly all the complexes support populations of these species and generally, such populations are fairly evenly distributed throughout.

Urbanization has resulted in the destruction of 85 ha (210 ac) of former habitat in the Sawmill complex near the community of Sugarloaf (Krantz, *in litt.* 1987). Similarly, development has eliminated habitat within the Big Bear Lake complex, including areas near Fawnskin, Mallard Lagoon, Eagle Point, and Metcalf Bay (CNDDB 1997) and has continued on small unprotected sites (Neel and Barrows 1990). Relatively unrestricted development of privately owned parcels that support pebble plain species is a threat to *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. This was described above under the "Meadow habitats" section. Unpermitted grading eliminated pebble plains habitat at Castle Glen (Krantz, *in litt.*, 1993). A current proposal for development on nine parcels totaling 1.6 ha (4 ac) at Boulder Bay (Big Bear Lake complex) on the south shore of Big Bear Lake could adversely impact sensitive taxa including *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* ssp. *austromontanum*.

The most significant and persistent threat to the pebble plains is ORV activity (Krantz, *in litt.* 1987; Neel and Barrows 1990; Henderson, *in litt.* 1997). Incidents involving destruction or degradation of pebble plains habitat by ORVs continue to present a significant threat to all pebble plain sites (Maile Neel, SBNF, pers. comm. 1993; Krantz, *in litt.* 1993; Henderson, *in litt.* 1997). Most privately owned pebble plain sites receive no protection. A few sites, however, have voluntary non-binding landowner agreements (see Factor D).

Over 11 km (7 mi) of FS roads and 16 km (10 mi) of unauthorized routes directly impact pebble plain sites, such as Arrastre/Union Flats (complex), Sawmill (part of Sawmill complex), Holcomb Valley (complex), and Nelson Ridge (part of the North Baldwin Lake complex) (Odell 1988). Although the FS does not permit activities that alter the hydrology of pebble plains or meadows, unauthorized ORV traffic continues to be a problem in many areas and contributes to hydrological

modifications of these sensitive habitats. The majority of the pebble plains complexes are directly impacted by vehicle routes that may lead to alterations in the surface hydrology (Krantz 1981a, Neel and Barrows 1990, Neel and Chaney 1992).

Normally, surface water flows evenly across the relatively impervious pebble plains (Odell 1988). Pebble plains are extremely susceptible to damage during spring thaw (Krantz 1981a). ORVs can destroy plants and create deep ruts that change the water flow patterns over the pebble plains and lead to increased erosion, which indirectly affects a greater number of plants (Neel and Barrows 1990). ORVs can cause the breakdown of soil structure although the erosion potential of the soil is not considered high due to the moderate slopes and rainfall (Neel and Barrows 1990). Vehicular activity also favors the establishment of species more tolerant of such disturbance, thereby altering the composition of the plant community over time (Lathrop 1983).

The pebble plain site at upper Sugarloaf (part of the Sawmill complex) has been completely devegetated by ORV activity (Krantz *in litt.*, 1987) and Horseshoe Meadow has been degraded by unregulated vehicle activity (Krantz, *in litt.* 1993). Pebble plain habitat in upper Holcomb Valley (part of the Holcomb Valley complex) has been degraded by vehicles driven around depressions with standing water during winter (Neel and Barrows 1990; Krantz, *in litt.* 1987). This vehicle traffic creates muddy areas unsuitable for the persistence or recruitment of the plants. Vehicle roads and tracks lead to habitat fragmentation and increase the potential for edge effects on the pebble plains.

The FS has implemented a number of measures including fencing, signage, road closures, and active monitoring in an effort to protect pebble plains from illegal ORV activity. Despite this action, over 40 percent of the pebble plain habitat within FS jurisdiction remains unprotected (Neel and Barrows 1990).

Fences that protect virtually all of the large pebble plain sites are often cut or removed, thus enabling vehicles to enter the plains (Henderson, *in litt.*, 1997). In February 1997, the FS removed rocks placed on the Sawmill pebble plain, filled holes, and rewired the gate as a result of "extreme vehicle use" at the Upper Sugarloaf/Sugarloaf pebble plain area in August 1996. Vehicles were observed on a closed road in Union Flat in July 1996, and, in that same month, vehicles had driven onto the pebble plain at Gold Mountain (Henderson, *in litt.* 1997). All of these incidents occurred within fenced sites.

The FS has kept records of incidents of human-caused damage and destruction to fenced areas of pebble plains from 1990 to 1997 (Henderson, *in litt.* 1997), but has not always correlated specific habitat destruction events with incidents of trespass. However, a single, well documented example is cited below.

The pebble plains near North Baldwin Lake, fenced and posted as rare plant habitat, were extensively damaged in March 1992. A construction vehicle from the San Bernardino County landfill was driven over this site in an apparently intentional act of vandalism (Krantz, *in litt.* 1993; Neel and Chaney 1992). The driver trespassed, drove over the identifying signs and fences, and caused extensive damage to the habitat (Neel and Chaney 1992). The soils were highly vulnerable to disturbance because they were saturated. Over 1,200 sq m (13,000 sq ft) of pebble plain habitat was moderately to severely damaged during this incident (Neel and Chaney 1992). Restoration was required by the FS, but it was not entirely successful because the indirect effects of the vehicle incursion, including alteration of surface hydrology and the subsequent invasion of exotic species, have significant, long-term effects (Neel and Chaney 1992; Krantz, *in litt.* 1993).

Some sites near Baldwin Lake are subject to quartzite theft (CNDDB 1997). Mineral rights have been claimed on or near several of these pebble plains, such as Arrastre Flat and North Baldwin Lake. There is a deposit of high grade limestone just west of lower Holcomb Valley. Quarrying of this limestone would eliminate the pebble plain (Neel and Barrows 1990). Mining activities threaten pebble plain habitat by direct removal or indirect impacts. This pebble plain reportedly supports *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. The associated meadows likely to be impacted support *Poa atropurpurea* and *Taraxacum californicum*.

Activation or installation of wells north of the pebble plain in lower Holcomb Valley (Neel and Barrows 1990), near Baldwin Lake (Barrows 1989), or in Garner Valley, can alter the hydrological regime of the habitat and threaten sensitive species. Alteration of the direction of surface flow and rate of percolation may lead to changes in the species composition of the site (Neel and Barrows 1990), make the site unsuitable for one or more of the native taxa, and/or facilitate the encroachment of non-native species.

The majority of the pebble plains and their associated species have been and continue to be affected by habitat destruction and degradation most frequently associated with ORV traffic and development of privately owned parcels.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Some of the taxa may have become vulnerable to collecting by curiosity seekers as a result of the increased publicity following publication of the proposed rule. Some professional and amateur botanists favor rare or unusual species for their collections or because these are valuable to trade with other individuals or collections (Mariah Steenson pers. comm. 1997). A survey of the collections of a major herbarium in the region showed significant increases in the numbers of collections of several pebble plain taxa, following publication of an article describing this new habitat type. These taxa include *Arenaria ursina*, *Castilleja cinerea*, *Eriogonum kennedyi* var. *austromontanum*, considered in this rule, as well as other pebble plain taxa, such as *Arabis parishii*, *Antennaria dimorpha*, and *Dudleya abramsii* ssp. *affinis* (Wallace, *in litt.* 1997). A similar increase in numbers of collections of the rare, native, meadow species *Taraxacum californicum* occurred but not for the associated introduced exotic *T. officinale* (Wallace pers. obs. 1997). Ayensu and DeFilipps (1978) specifically cite over-collection as a threat to *Eriogonum kennedyi* var. *austromontanum*. It is likely that the additional attention given to these taxa as a result of this final rule will result in efforts by some to collect specimens. This potential would be exacerbated by publication of maps and descriptions of critical habitat.

C. *Disease or predation.* Disease is not known to be a factor affecting any of the taxa listed herein. The indirect effects of grazing/browsing are discussed under Factor E. Soreng (pers. comm. 1996) found considerable thrip (minute insects that feed on plants) damage to the ovaries of *Poa atropurpurea* in the Big Bear area. This may result in low seed set but is presumably a natural phenomenon. In some taxa, low seed set, high seed mortality, and infrequent establishment may be offset by low mortality and greater longevity of the plants (Pavlik 1987). Soreng (pers. comm. 1996) stated that seed set in sexual taxa of *Poa* is about 10 percent. The additional impacts associated with persistent grazing could eliminate any seed production by this taxon. This, in turn, could decrease or eliminate establishment of new plants of divergent genetic constitution.

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could provide some protection for these species include—(1) listing under the California Endangered Species Act (CESA), (2) consideration under the California Environmental Quality Act (CEQA), (3) FS management policies, (4) conservation provisions under section 404 of the Federal Clean Water Act, and (5) land management by Federal, State, or local agencies, or by private groups and organizations.

State Laws

The six taxa addressed in this rule are included in the California Native Plant Society's Inventory (Skinner and Pavlik 1994), but none have been listed as endangered or threatened by the State. Thus, the CESA (Division 3, chapter 1.5, section 2050 *et seq.*) and the Native Plant Protection Act (NPPA) (Division 2, chapter 10, section 1900 *et seq.* of the California Fish and Game Code) provide no protection for the six taxa in this rule.

The CDFG recognizes that the majority of plants on Lists 1A, 1B, and 2 of the CNPS Inventory of Rare and Endangered Vascular Plants of California (Skinner and Pavlik 1994) would normally qualify for State listing (Morey and Berg 1994). All six plant taxa in this rule are in the CNPS Inventory on List 1B (Plants Rare, Threatened, or Endangered in California and Elsewhere) (Skinner and Pavlik 1994). Under CEQA, impacts to List 1B plants are considered significant and must be addressed. CEQA obligates disclosure of environmental resources within proposed project areas and may enhance opportunities for conservation efforts. However, CEQA does not guarantee that such conservation efforts will be implemented and several projects have resulted in the unmitigated loss of habitat for *Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum, Poa atropurpurea,* and *Taraxacum californicum.* These projects include expansion of the Big Bear Airport, construction of ski areas, development of the Moonridge Golf Course (Krantz 1981b), and approval of the Eagle Point development (Neel, *in litt.* 1993). Furthermore, these taxa face threats that are not easily controlled by existing regulations, particularly those discussed under Factor A.

The CEQA requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as resulting in the loss of sites supporting State-listed species. Mitigation plans usually involve the transplantation of the plant species to an existing habitat or an artificially created habitat. Following the creation of the transplantation plan, the original site is destroyed. Therefore, if the mitigation effort fails, the resource has already been lost. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agency involved.

FS Management

With the exception of *Trichostema austromontanum* ssp. *compactum,* which only occurs on State lands, all of the taxa listed herein are found on the San Bernardino National Forest and are recognized by the FS as "sensitive species" (SBNF 1989). The FS has policies to protect sensitive plant taxa, including attempting to establish these species in suitable or historic habitat, encouraging land acquisitions to protect sensitive plant habitat, establishing refugia for pebble plains species, and not permitting activities that may alter the hydrology or meadow habitat for sensitive plants (SBNF 1989). These guidelines, however, have not been entirely effective. Bluff Lake, which is privately owned and contains populations of *Poa atropurpurea* and *Taraxacum californicum,* was identified as a potentially suitable mitigation bank of wetland and wet meadow habitat for urban developments in the region. However, plans by the FS to acquire Bluff Lake are no longer being pursued because the parcel is not available for sale (Maile Neel, SBNF, pers. comm. 1993). The extensive monitoring and fence maintenance activities carried out by the San Bernardino National Forest have not prevented damage to pebble plain sites in the area.

Even if most of the remaining pebble plain and meadow habitats on the San Bernardino National Forest could be adequately protected from human disturbance, the amount of habitat presently occupied by *Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum, Poa atropurpurea* and *Taraxacum californicum* may not be sufficient to maintain their long-term viability in the absence of appropriate recovery measures.

The Holcomb Valley/North Baldwin Lake region, which supports populations of *Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum, Poa atropurpurea* and *Taraxacum californicum,* and significant examples of pebble plain habitat, was designated a Special Interest Area by the FS in 1989. No specific management plan has been developed for the area due to resources being directed to higher priority activities (Neel, pers. comm. 1993).

Management guidelines for meadow sites on the Cleveland National Forest supporting *Poa atropurpurea* are outlined by Winter (1991). These include the requirement to maintain viable populations at all known localities. Other guidelines call for protection, enhancement, and prevention of adverse modification of habitat for sensitive species. They also call for prevention of fragmentation of the montane meadows. However, there are no specific steps to achieve these goals outlined in the document.

Clean Water Act

Poa atropurpurea and *Taraxacum californicum* could potentially be affected by projects requiring a permit under section 404 of the Clean Water Act. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, which includes navigable and isolated waters, headwaters, and adjacent wetlands. Section 404 regulations require that applicants obtain an individual permit to place fill for projects affecting greater than 1.2 ha (3 ac) of waters of the United States or greater than 500 linear feet of a streambed. Nationwide Permit (NWP) No. 26 (33 CFR part 330) was established by the Department of the Army to facilitate authorization of discharges of fill into isolated waters (including wetlands and vernal pools) that cause the loss of less than 1.2 ha (3 ac) of waters of the United States, and that cause minimal individual and cumulative environmental impacts. Projects that qualify for authorization under NWP 26 and that affect less than 0.1 ha (⅓ ac) of isolated waters including wetlands may proceed. Although the permittee must submit a report to the Corps within 30 days of completion of the work, evaluation of

the impacts of such projects through the section 404 permit process is precluded. It is possible that even projects as small as 0.1 ha (⅓ ac) could destroy some of the smaller occurrences in the urbanized areas of Big Bear Valley, or alter the hydrology of a meadow or pebble plain site. Road widening or stream channelization, such as that near Fox Farm Road and Rathbone Creek may affect the surrounding habitat. Even though *Trichostema austromontanum* ssp. *compactum* is associated with a single vernal pool, it would not be affected by the Clean Water Act because its entire distribution lies within Mount San Jacinto State Wilderness.

The Corps may require that an individual section 404 permit be obtained if projects otherwise qualifying under NWP 26 would have greater than minimal individual or cumulative environmental impacts. The Corps has been reluctant to withhold authorization under NWP 26 unless the existence of a federally listed threatened or endangered species would be jeopardized.

Land Management

Representatives from various Federal, State, and local agencies, and individuals from the private sector are developing a Coordinated Resource Management Plan (CRMP) for the Big Bear Valley region. The CRMP process is a planning tool that operates on the local level to minimize conflicts among various user groups, landowners, and governmental agencies. The goal of this process is to identify sensitive biological resources and to integrate conservation efforts with those of public and private entities. Although the Service supports these efforts, little or no protection for the species described herein will be guaranteed. This process is not legally binding.

E. *Other natural or manmade factors affecting their continued existence.* The six taxa listed herein are threatened by a variety of other factors including trampling by livestock and humans, indirect effects of grazing and browsing, competition with other plant species, habitat fragmentation, and hybridization with non-native taxa.

Trampling may degrade habitat by soil compression and introduction of seeds of non-native species. This leads to changes in the composition of the vegetation and facilitates persistence of these non-native species (Lathrop 1983, Fleischner 1994). The presence of livestock typically changes the composition of native plant communities by reducing or eliminating those species that cannot withstand trampling, which enables more resistant, usually non-native species to increase in abundance (Painter 1995).

Sites supporting *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi var. austromontanum* have been moderately to heavily degraded by cattle trampling in the past (e.g., Wildhorse Meadow, Holcomb Valley, and North Baldwin Lake) (Krantz 1981a, Neel and Barrows 1990, Krantz, *in litt.* 1993). These same taxa are occasionally trampled by horses which gain access to some fenced pebble plain sites when the fences are cut (Henderson, *in litt.* 1997). Some areas continue to be impacted by cattle, horses, and feral burros. Habitat degradation from trampling by feral burros continues at the North Baldwin Lake, Sawmill, Onyx, and Gold Mountain pebble plain complexes (Barrows 1989, Neel and Barrows 1990). This threat will be alleviated once burros are completely removed and kept away from pebble plain sites, except Broom Flat (about 50 percent of the Onyx complex). This removal process is currently underway under provisions of the Big Bear Wild Burro Territory Management Plan (Lardner 1996). It is not clear whether burros will attempt to return to the area and what the FS's response will be if that occurs.

Trampling by hikers and visitors has been noted at some sites. Due to its accessibility, and localized habitat, the *Trichostema austromontanum* ssp. *compactum* population at Mount San Jacinto State Wilderness is particularly vulnerable to trampling by recreational users. This site has been popular since the development of the Palm Springs tramway in 1964 and the Desert Divide Trail from 1979 to 1981 (Hamilton, pers. comm. 1996). Several measures were initiated by the State during the past decade to protect the vernal pool ecosystem and the *Trichostema* population, including removing references to the site from park interpretive materials and the elimination of marked trails to the lake. These measures, however, have not prevented on-going impacts from trampling by hikers and horses. Trampling by horses crushes plants and creates depressions that retain water where seeds and adult plants of *T. austromontanum* ssp. *compactum* drown (Hamilton 1991; Hamilton, pers. comm. 1996). Livestock concentrate their activities around ponds and vernal wetlands. As a result, impacts to mountain meadows may persist for decades (Painter 1995).

Trampling by livestock and people adversely affects *Taraxacum californicum* and favors the establishment of the non-native *T. officinale*. Only the latter species seems to have the ability to produce flower heads and leaves close to the soil surface (Krantz, *in litt.* 1993). Several sites supporting this species are near, or traversed by trails, including Bluff Lake, sites along the south side of Big Bear Lake, and Cienega Seca, for example (CNDDG 1997). Two populations of *Poa atropurpurea* in Laguna Meadow (San Diego County) were damaged by cattle trails (Sproul 1979). All of the occurrences of *Poa atropurpurea* in Laguna Meadow and Mendenhall Meadow, Cleveland National Forest, San Diego County are on currently occupied grazing allotments, although cattle exclosures are on two of the sites (Winter 1991). Grazing by cattle during the fruiting season of *Poa atropurpurea* is likely to eliminate a significant portion of any seed produced in a given year. This problem is compounded by several factors; the species is dioecious (separate male and female plants), and destruction of flowers of either sexual form would likely directly affect the sexual reproductive success for that year, which could, in turn, decrease the potential for long term survival of the species. Meadow sites in the Big Bear area, such as Bluff Lake, are also subject to trampling by people and animals. One population of *Castilleja cinerea*, across from Snow Valley Ski Area, was fragmented by trampling associated with the construction of several large cabins, a parking lot, and trails.

Grazing by cattle, horses, and feral burros is a continuing threat to *Poa atropurpurea* and *Taraxacum californicum* at meadow sites such as Hitchcock Ranch, Shay Meadow, Bluff Lake, and Laguna Meadow (Winter 1991; CNDDB 1997; Lardner, pers. comm. 1997). Painter (1995) used the term grazing to mean feeding primarily on herbaceous plants, and the term browsing to mean feeding primarily on woody plants. Herbivory is a combination of both of these terms (Painter 1995). Painter (1995) considered cattle to be grazers, burros and horses to be browser/grazers, and native deer to be browser/grazers. The significance of the differences is that control of the non-native animals will reduce grazing and browsing damage to levels tolerable by the native species. Fleischner (1994) indicated that the loss of biodiversity, lowering of population density, and disruption of ecosystem functioning are some of the ecological costs of grazing by livestock. Krantz (1981b) noted that the number of seeds produced by *P. atropurpurea* is reduced if it is grazed during its flowering period.

Cattle grazing is a threat to *Poa atropurpurea* in grazing allotments on

the Cleveland National Forest (Winter 1991, CNDDB 1997). Grazing can reduce or eliminate seed set and thereby decrease recruitment and genetic diversity. On the San Bernardino National Forest, there is no current permittee for the grazing allotment at Wildhorse Meadow (Lardner, pers. comm. 1997). *Castilleja cinerea* is on the Santa Ana grazing allotment on Sugarloaf Ridge, which lacks a current permittee (Lardner, pers. comm. 1997). Another population of *Castilleja cinerea* is at Broom Flat where burros will continue to be allowed under the Big Bear Wild Burro Territory Management Plan (Lardner, pers. comm. 1997).

Introduced species of grasses and forbs have invaded many of California's native plant communities, where they often displace the native flora. Non-native taxa often have greater invasive capabilities than endemic species (Huenneke and Thompson 1995). Disturbances, such as grazing, urban and residential development, and various recreational activities facilitate introduction of non-native species. Non-native plants may flourish under a grazing regime and may reduce or eliminate native taxa through crowding or competition for resources. Deposition of animal waste spreads ingested seeds and alters nutrient cycling patterns, often favoring non-native taxa. Introduced plant taxa have become established in many portions of the San Bernardino, San Jacinto, and Laguna mountains and have likely reduced the amount of suitable habitat for *Taraxacum californicum, Poa atropurpurea* (Krantz 1981b, Curto 1992) and other associated native plant taxa. For example, the invasion of the alien *Bromus tectorum* (cheatgrass) is a threat to the Sawmill pebble plain habitat, which supports populations of *Arenaria ursina, Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* (Neel and Barrows 1990). Neel and Barrows (1990) also raised concerns that damaged pebble plain sites will be taken over by native pines. Pines can shade out other plants and the decay of their leaves releases nutrients that support additional trees, further decreasing available pebble plain habitat (Neel and Barrows 1990). Introduced species are used as forage in San Bernardino and Cleveland National Forest grazing allotments. *Poa atropurpurea* cannot successfully compete with non-native grass species that are locally abundant by comparison (Winter 1991).

The dissected nature of the pebble plain complexes maximizes the potential of edge effects on these complexes. There are normally low levels of gene transfer among the complexes because of the differing seasonal developmental stages of plants from different sites (Freas and Murphy 1990). Further dissection of pebble plain sites makes them more vulnerable to incursions of invasive exotics. There would likely also be a decrease of gene flow among the remaining pebble plains sites. *Poa atropurpurea* is dioecious (separate male and female plants) and has a limited range. These species attributes are likely to increase the probability that the species could be threatened if its habitat or populations were further dissected.

Taraxacum californicum may be threatened by hybridization with the introduced *T. officinale* (Krantz, *in litt.* 1993). Apparent hybrids between these two taxa were observed in areas where they overlap in distribution (Krantz, *in litt.* 1993; Krantz 1980). Because *T. californicum* rarely occurs in the absence of *T. officinale*, the potential for loss of genetic distinctiveness of the restricted species exists. *Poa atropurpurea* may be threatened with the loss of its genetic distinctiveness due to hybridization with *P. pratensis*. Curto (1992) describes the different distinctive morphs of *Poa pratensis* complex maintained by apomictic means described by Clausen (1961). Clausen (1961) demonstrated, in controlled experiments, that progeny of crosses between *P. pratensis* and other *Poa* species are morphologically within the range of variation of *P. pratensis*. According to Clausen (1961), *Poa pratensis* has the ability to absorb other entities. Curto (1992) speculated that this may have been the fate of *Poa atropurpurea* in Laguna Meadow. Mixed or simultaneous collections of both *Poa atropurpurea* and *P. pratensis* are found in herbaria (Curto 1992, Wallace pers. obs. 1997). This is in contrast to a statement by Hirshberg (1994) that *P. atropurpurea* flowers 3 to 4 weeks earlier than *P. pratensis*.

When a species exists in limited numbers of individuals, factors that negatively affect the individuals may pose more significant threats to the survival of the species. *Poa atropurpurea, Taraxacum californicum*, and *Trichostema austromontana* ssp. *compactum* face this threat. *Poa atropurpurea* has limited and possibly localized distribution of the different sexual forms of the species. If one sexual form is effectively isolated from the other, formation of fertile seeds may be precluded and this will likely lead to some loss of genetic diversity. Grazing may eliminate all of the seed crop for the year. The threat of limited numbers in *Taraxacum californicum* would likely make grazing and hybridization threats more significant within local populations. The limited numbers and extremely localized range of *Trichostema austromontana* ssp. *compactum* make this taxon more susceptible to single disturbance events such as trampling during the flowering season or alteration of the local water table from soil compression.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these six taxa in determining to issue this final rule. Based on this evaluation, the preferred action is to list *Poa atropurpurea* and *Taraxacum californicum* as endangered. About 91 percent of the meadow habitat for these species has been eliminated since the turn of the century. Approximately 70 percent of the remaining meadow habitat is unprotected, subject to development such as that recently proposed at Boulder Bay, wildlife viewing walks at Baldwin Lake, fragmentation from ORV traffic, and grazing at several sites such as Bluff Lake and Laguna Meadows. Both *P. atropurpurea* and *T. californicum* may be crowded out by successful, invasive, co-occurring, non-native species with which they may also hybridize. All of the San Diego County sites for *P. atropurpurea* are on unprotected grazing lands. These taxa are in danger of extinction throughout all or a significant portion of their ranges due to habitat destruction and alteration resulting from urban and recreational development, alteration of hydrological regime, grazing by livestock and feral burros, hybridization with non-native taxa, and competition from exotic plant species. Alternatives to this action were considered but not preferred because not listing these species, or listing them as threatened, would not provide adequate protection and would not be consistent with the Act.

For the reasons discussed below, the Service finds that *Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum*, and *Trichostema austromontanum* ssp. *compactum* are likely to become endangered within the foreseeable future throughout all or a significant portion of their ranges if identified threats are not reduced or eliminated. Threats to these four taxa include habitat destruction and alteration from urban development, ORV activity, habitat degradation, predation by livestock and feral burros, and trampling. The Service has determined that threatened rather than endangered status is appropriate for these taxa primarily because the FS has

initiated measures that afford some protection to *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* and the State has taken measures to protect *Trichostema austromontanum*. Management activities conducted by the FS (such as fencing, signing, and monitoring various sensitive habitat areas) have reduced the potential for habitat destruction by human activities to the degree that the danger of extinction for these three taxa is not imminent. Measures implemented by the State to obscure access routes to the only known locality of, and delete references to *Trichostema austromontanum* ssp. *compactum* in recreational literature afford this plant some measure of protection. Alternatives to this action were considered but not preferred because not listing these species would not provide adequate protection and would not be consistent with the Act. In addition, listing the species as endangered would not be appropriate because the FS and the State of California have significantly decreased the danger of extinction of these taxa at the present time.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) the specific areas within the geographical 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 geographical 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 the species to the point at which the measures provided pursuant to the Act are no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12(a)) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these taxa at this time. Service 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: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species.

Designation of critical habitat would likely increase the threat from vandalism, noted under Factor A. For the three pebble plain species, *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these species more vulnerable to incidents of vandalism and, therefore, make recovery more difficult and contribute to the decline of these species. Several documented examples of a pattern of intentional destruction of pebble plains and associated habitats have been cited under Factor A. The San Bernardino National Forest has kept a record of repairs to fences around most of the larger pebble plain sites since 1990 (Henderson *in litt.* 1997). There is a record of persistent trespass into these fenced areas which have been variously marked with signs stating "Critical Rare Plant Habitat. No Vehicles." (Neel and Barrows 1990). The incidents recorded generally consist of entry following the cutting of fence wires but include records of vehicle access, placement of "rock art," removal of fence wires and fence posts, and destruction of signage (Henderson, *in litt.* 1997). These records indicate 40 such incidents at the Sawmill pebble plain complex between 1990 and 1997. At the north Baldwin Lake site these same records indicate 20 incidents of wires having been cut during the period 1990 to 1996. Pebble plain areas occasionally are associated with meadow sites containing several sensitive plant species. A specific act of vandalism was directed at a meadow-associated species following the release of location information for populations of *Sidalcea pedata*, a federally listed species resulted in a legal action suit (Krantz, *in litt.* 1993).

The threat of over-collection to the pebble plain and meadow taxa is discussed under Factor B. Significant increases were seen in the number of specimens in the collections in a large regional herbarium. Specimens of *Arenaria ursina*, *Castilleja cinerea*, *Eriogonum kennedyi* var. *austromontanum*, as well as the meadow species *Taraxacum californicum* and *Poa atropurpurea*, were increased subsequent to the publication of two articles discussing these taxa and their unique habitats (Wallace pers. obs. 1997). Of particular interest is the fact that there was an increase in the numbers of collections of *Poa pratensis*, commonly mistaken for *Poa atropurpurea* (Wallace pers. obs. 1997). Finally, there was an increase in the numbers of collections of *Taraxacum californicum* while there was no increase in the numbers of collections of the often associated introduced taxon *T. officinale* from the same areas (Wallace pers. obs. 1997). The implication is that collectors specifically sought out the rare *T. californicum*. It should be noted that often additional specimens, beyond those housed by the home institution, are collected for exchange with other institutions. The listing of species as endangered or threatened publicizes their rarity and may make them more susceptible to collection by researchers or curiosity seekers (Mariah Steenson pers. comm. 1997). This would likely be exacerbated by the publication of precise maps and descriptions of critical habitat in the **Federal Register**. Dissemination of sensitive site locations can encourage over-collection (M. Bosch, FS *in litt.* 1997). The Service feels that publication of precise maps for these species' locations (i.e., designation of critical habitat boundaries), coupled with this final listing rule, would put these species at further risk for over-collection by plant enthusiasts given this well documented history of previous collections.

Enforcement problems could increase as a result of critical habitat designation because frequent visits to many of the occurrences are not possible due to funding constraints as well as the distances and terrain involved (Neel and Barrows 1990). The meadow and pebble plain habitats rely, in part, on particular hydrological conditions and, as a consequence of the low visit frequency, remediation for incidents and vandalism may be too late to prevent erosion, devegetation, and other habitat alterations detrimental to the habitat and the species.

Arenaria ursina, *Castilleja cinerea*, *Eriogonum kennedyi* var. *austromontanum*, *Taraxacum californicum* and *Poa atropurpurea* occur on Federal, State and private lands. The first three taxa are co-occurring endemics found primarily on pebble plain complexes in the San Bernardino Mountains. Private lands make up portions of four of the eight pebble plain complexes that support *Arenaria ursina*. Private lands make up all or portions of 5 of the 13 pebble plain complexes and other areas that support *Castilleja cinerea*. Private lands that support *Eriogonum kennedyi* var. *austromontanum* are nearly all associated with one, the Big Bear Lake

pebble plain complex, of the seven pebble plain complexes that support this taxon. Private lands make up 8 of the 20 occurrences of *Taraxacum californicum* in meadow areas of the San Bernardino Mountains. Private lands make up all or portions of 7 of the 18 occurrences in the San Bernardino, Laguna, and Palomar Mountains of the meadow associated species *Poa atropurpurea*.

Designation of critical habitat would be of little benefit to occurrences of these taxa on State and private lands. Any future Federal involvement, such as through the permitting process or funding by the U.S. Department of Agriculture, the Corps through section 404 of the Clean Water Act, the U.S. Federal Department of Housing and Urban Development or the Federal Highway Administration, would be subject to consultation under section 7 of the Act (as amended). Federal involvement, where it does occur, can be identified without the designation of critical habitat because interagency coordination requirements such as the Fish and Wildlife Coordination Act (FWCA) and section 7 of the Act are already in place. When these plant taxa are listed, activities occurring on all lands under Federal jurisdiction or ownership that may adversely affect these taxa would prompt the requirement for consultation pursuant to section 7(a)(2) of the Act and the implementing regulations pertaining thereto, regardless of whether or not critical habitat has been designated. The FWCA, for example, requires that any federally funded or permitted water resource development proposal or project be consulted on with the Service and State conservation agencies. Designating critical habitat would not create a management plan for these plant species, or establish numerical population goals for long-term survival of the species, nor directly effect areas not designated as critical habitat.

Arenaria ursina, *Castilleja cinerea*, *Eriogonum kennedyi* var. *austromontanum*, *Taraxacum californicum*, and *Poa atropurpurea* occur on the Baldwin Lake preserve which is administered by the CDFG. The CDFG is aware of the occurrences of these taxa on this preserve and currently conducts demographic monitoring of *Sidalcea pedata* and *Thelypodium stenopetalum*, State and Federal listed taxa, at this site.

Trichostema austromontanum ssp. *compactum* occurs only in a wilderness area on State lands with little potential for Federal involvement. Trails, signage, map notations, and references to the habitat area have been removed by the State to reduce impacts to this highly localized taxon. Designation of critical habitat would have little benefit to this taxon and would not increase the commitment or management efforts of the State. In fact, designation of critical habitat would likely be quite detrimental to this taxon. Publishing maps and descriptions of the exact locality identifies the site as a unique area which would likely encourage hikers and horseback riders to investigate the vernal pool, the very site that the State has attempted to protect by removing such map references and descriptions.

Four of the eight known occurrences of *Arenaria ursina* are completely on Federal lands, as are portions of the other four occurrences. Eight of the 13 known occurrences of *Castilleja cinerea* are on Federal lands, along with portions of another 4. Six of the eight known occurrences of *Eriogonum kennedyi* var. *austromontanum* are on Federal lands, while portions of two other occurrences are also on Federal lands. Ten of the nearly 20 known occurrences of *Taraxacum californicum* are on Federal lands as well as a portion of another. Nine of the 18 known occurrences of *Poa atropurpurea* are on Federal lands and portions of three other occurrences are also on Federal lands.

There would be no benefit from designating critical habitat for the occurrences on FS (i.e. Federal) lands supporting the taxa noted above. The FS is aware of the occurrences of this species on their lands. The San Bernardino National Forest has developed a management plan for pebble plain species including *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. The FS actively conducts management and monitoring activities that include these species and has already fenced all of the larger pebble plain sites to protect them from trespass, ORV use, and grazing. The two meadow taxa, *Taraxacum californicum* and *Poa atropurpurea* are monitored to a lesser extent. The San Bernardino National Forest consults with the Service under section 7 for activities related to other listed taxa in the area and would be subject to similar requirements as a result of this listing. Designation of critical habitat would not increase the commitment or management efforts of the FS.

Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, funded or carried out by such agency (agency action). This requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Implementing regulations (50 CFR part 402.02) define "jeopardize the continuing existence of" and "destruction or adverse modification of" in very similar terms. To jeopardize the continuing existence of a species means to engage in an action "that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification of habitat means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. In the case of adverse modification of critical habitat, the survival and recovery of the species has been appreciably diminished by reducing the value to the species' designated critical habitat. An action resulting in adverse modification may also jeopardize the continued existence of the species concerned. Given the limited range of *Trichostema austromontanum* ssp. *compactum* to a single vernal pool, adverse modification of the habitat would likely constitute jeopardy for the taxon.

The Service acknowledges that critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat may also benefit these species by alerting permitting agencies to potential sites for reintroduction and allowing them the opportunity to evaluate proposals that may affect these areas. However, in this case, the existing sites of the listed taxa herein are currently known by the FS and State agencies. If future management actions include unoccupied habitat, any benefit provided by designation of such habitat as critical will be accomplished more effectively and efficiently with the current coordination processes.

Taking of plants is regulated by the Act only in cases of—(1) removal and reduction to possession of federally listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging-up, or damaging or destroying in knowing violation of any State law or regulation.

including State criminal trespass law. Designation of critical habitat provides no additional benefits beyond those that these taxa would receive by virtue of their listing as endangered or threatened species and likely would increase the degree of threat from vandalism, collecting, or other human activities. Protection of *Arenaria ursina*, *Castilleja cinerea*, *Eriogonum kennedyi* var. *austromontanum*, *Taraxacum californicum*, *Poa atropurpurea*, and *Trichostema austromontanum* ssp. *compactum* will be most effectively addressed through the recovery process under section 4 and the consultation process under section 7 of the Act, and the current interagency coordination processes.

Given all of the above considerations, the Service finds that designation of critical habitat for these taxa is not prudent because the minimal benefit of such designation would be far outweighed by the increase of threats from vandalism, over-collection, or other human activities. All Federal and State agencies and local planning agencies involved have been notified of the location and importance of protecting habitat for these species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages public awareness and results in conservation actions by Federal, State and local agencies, private organizations and individuals. The Act provides for possible land acquisition from willing sellers and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies expected to have involvement with section 7 regarding these species include the FS (through its management activities associated with, for example, grazing permits and ORV activity), and the Corps and the Environmental Protection Agency through their permit authority under section 404 of the Clean Water Act. The Federal Housing Administration may be affected through funding of housing loans where these species or their habitat occurs. The Federal Highway Administration may be affected through potential funding associated with compensation measures relating to future highway construction affecting these species. The Federal Energy Regulatory Commission may be involved through its permitting authority for utility projects that might potentially affect these taxa.

Five of the six plant taxa considered in this rule are found on lands managed by the FS. The FS provides a measure of protection for all of these taxa. Most areas of the Bear Valley are closed to fuelwood cutting (SBNF, *in litt.* 1995). The closure or relocation of some roads associated with fuelwood cutting sites, as well as those that traverse pebble plain sites (Odell 1988) offers some measure of protection for the plant taxa. Most of the larger pebble plain sites, which support *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*, are protected by fencing to reduce or eliminate incursions by vehicle and grazers/browsers. The FS monitors these sites, records the type of fence damage and repairs the damage as soon as possible. Completion of the implementation of the Big Bear Wild Burro Management Plan will eliminate or significantly reduce impacts from burro grazing, browsing, and trampling in most pebble plain and meadow sites in the Big Bear Valley area, except Broom Flat.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR parts 17.61 (endangered plants) and 17.71 (threatened plants), apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Seeds from cultivated specimens of threatened plants are exempt from these regulations provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to increase public understanding of the prohibited acts that will apply under section 9 of the Act. *Arenaria ursina*, *Castilleja cinerea*, *Eriogonum kennedyi* var. *austromontanum*, *Poa atropurpurea*, and *Taraxacum californicum* are known to occur on Federal lands under the jurisdiction of the FS. Collection, damage or destruction of listed species on Federal lands is prohibited, except as authorized under section 7 or section 10(a)(1)(A) of the Act. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if activities were conducted in knowing violation of California State law or regulation, or in violation of California State criminal trespass law.

The Service believes that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat,) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (e.g., bird watching, sightseeing, photography, camping, hiking);

(3) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control,

residential development, road construction, and pesticide/herbicide application when consistent with label restrictions;

(4) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire break.

The Service believes that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Application of herbicides violating label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Intentional collection, damage, or destruction on non-Federal lands may be a violation of State law or regulations or in violation of State criminal trespass law and therefore a violation of section 9. The Act and 50 CFR 17.62, 17.63, and 17.72 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. None of the taxa are currently known to be in commercial trade. Intrastate commerce (commerce within the State) is not prohibited under the Act. However, interstate and foreign commerce (sale or offering for sale across State or international boundaries) requires a Federal endangered species permit.

The Act and 50 CFR 17.62 and 17.63 for endangered plants and 17.72 for threatened plants provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few permits would ever be sought or issued because none of these species are common in cultivation or common in the wild.

Questions regarding whether specific activities would constitute violations of section 9 should be directed to the Field Supervisor of the Service's Carlsbad Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants (50 CFR 17.61 and 17.71) and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

The Service has determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of 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 the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any information collection requirements for which the Office of Management and Budget (OMB) approval under the Paperwork reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein is available upon request from the Carlsbad Field Office (see **ADDRESSES** section).

Author. The primary authors of this document are Gary D. Wallace, Ph.D., Carlsbad Field Office (see **ADDRESSES** section) and Edna Rey Vizgirdas, Snake River Basin Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends 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. Amend § 17.12(h) by adding 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	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Arenaria ursina	Bear Valley sandwort.	U.S.A.(CA)	Caryophyllaceae—Pink.	T	644	NA	NA
*	*	*	*	*	*	*	
Castilleja cinerea	Ash-gray Indian paintbrush.	U.S.A.(CA)	Scrophulariaceae—Figwort.	T	644	NA	NA
*	*	*	*	*	*	*	
Eriogonum kennedyi var. *Austromontanum.*	Southern mountain wild buckwheat.	U.S.A.(CA)	Polygonaceae—Buckwheat.	T	644	NA	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Poa atropurpurea	San Bernardino bluegrass.	U.S.A.(CA)	Poaceae—Grass	E	644	NA	NA
*	*	*	*	*	*	*	
Taraxacum californicum.	California taraxacum	U.S.A.(CA)	Asteraceae—Sunflower.	E	644	NA	NA
*	*	*	*	*	*	*	
Trichostema austromontanum ssp. *compactum.*	Hidden Lake bluecurls.	U.S.A.(CA)	Lamiaceae—Mint	T	644	NA	NA
*	*	*	*	*	*	*	

Dated: September 1, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–24502 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC99

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Four Plants From the Foothills of the Sierra Nevada Mountains in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines threatened status for *Brodiaea pallida* (Chinese Camp brodiaea), *Calyptridium puchellum* (Mariposa pussypaws), *Clarkia springvillensis* (Springville clarkia), and *Verbena californica* (California vervain) pursuant to the Endangered Species Act of 1973, as amended (Act). These four plants are known from serpentine, clay, or granitic soils in the southwestern foothills of the Sierra Nevada Mountains in central California. These plants are variously threatened by one or more of the following: urbanization, roadway maintenance activities, off-highway vehicle use, recreational placer gold mining, heavy livestock grazing and/or trampling, and inadequate regulatory mechanisms. These species are also vulnerable to extirpations from random events due to small number and size of populations, and/or small range of the species. A notice of withdrawal of the proposal to list *Allium tuolumnense* (Rawhide Hill onion), *Carpenteria californica* (carpenteria), *Fritillaria striata* (Greenhorn adobe lily), *Lupinus citrinus* var. *deflexus* (Mariposa lupine), *Mimulus shevockii* (Kelso Creek monkeyflower) and *Navarretia setiloba* (Piute Mountain navarretia) is being published concurrently with this final rule.

DATES: This rule becomes effective October 14, 1998.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340.

FOR FURTHER INFORMATION CONTACT: Ken Fuller or Dwight Harvey (see **ADDRESSES** section) telephone number 916/979–2725; facsimile 916/979–2128.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) published a proposed rule (59 FR 50540) to list *Brodiaea pallida* (Chinese Camp brodiaea) and *Calyptridium puchellum* (Mariposa pussypaws) as endangered, and *Clarkia springvillensis* (Springville clarkia), and *Verbena californica* (California vervain) as threatened on October 4, 1994. Also included in the proposed rule were *Lupinus citrinus* var. *deflexus* (Mariposa lupine) and *Mimulus shevockii* (Kelso Creek monkeyflower) as endangered, and *Allium tuolumnense* (Rawhide Hill onion), *Carpenteria californica* (carpenteria), *Fritillaria striata* (Greenhorn adobe lily), and *Navarretia setiloba* (Puite Mountain navarretia) to be listed as threatened. The Service has determined that the threats to the latter six taxa are insufficient to warrant listing, and is publishing a withdrawal notice for these six taxa concurrently with this final rule. This final rule discusses the final determination to list four species as threatened.

Robert Hoover (1938) first described *Brodiaea pallida* based on specimens collected near Chinese Camp in Tuolumne County. *Brodiaea pallida* is an erect, herbaceous perennial plant belonging to the lily family (Liliaceae). *Brodiaea pallida* grows from underground bulbs to a height of 1 to 3 decimeters (dm) (4 to 12 inches (in)), and has long, narrow, thick, succulent leaves. Several to many rose-pink flowers appear in an umbrella-like cluster at the top of a leafless stem in late May to early June. *Brodiaea pallida* grows in association with, and can hybridize with, *B. elegans* ssp. *elegans* (Skinner and Pavlick 1994). *Brodiaea pallida* can be distinguished from *B. elegans* ssp. *elegans* by the corolla being constricted mid-way to form a strongly recurved waist, the color of the corolla, and the non-pollen bearing stamens (staminodia) being held close to the stamens. *Brodiaea pallida* grows in overflow channels and seeps and springs in clays derived from serpentine soils. The Service is not listing hybrids of *B. pallida* and *B. elegans* ssp. *elegans*. The entire range of *B. pallida* is a 3 to 6 meter (m) (10 to 20 feet (ft)) wide and 0.8 kilometer (km) (0.5 mile (mi)) long stretch of an intermittent stream channel at an elevation of 385 m (1,260 ft). The entire population of *B. pallida* is scattered over an estimated 26 hectares (ha) (65 acres (ac)) (California Natural Diversity Data Base (CNDDB) 1997), all of which is privately owned. Because of the complex nature of *B. pallida* reproduction (spreading via shoots and suckers), the number of individuals in the population is unknown. Despite purposeful surveys for this species in other nearby areas, the species has been found only at this

site. The sole population is threatened by urbanization and inadequate regulatory mechanisms, however the immediacy of these threats has remained unchanged for the last 10–12 years. This species is also vulnerable to extirpation from random events due to the small range of the species.

Joseph Congdon collected the type specimen of *Calyptridium pulchellum* on "Pea Ridge"' in Mariposa County in 1901. Alice Eastwood (1902) first described this plant as *Spraguea pulchella*. Robert Hoover (1940) revised the genera *Spraguea* and *Calyptridium* and renamed this plant *Calyptridium pulchellum* based upon vegetative organization and habitat. *Calyptridium pulchellum* is a small, compact, rosette forming, annual herb belonging to the purslane family (Portulacaceae). The smooth, slender, prostrate stems are 1 to 2 dm (4 to 8 in) long. The spatula-shaped leaves have smooth surfaces. Rose-colored, four-petaled flowers appear in loose panicles between May and August. This fibrous rooted plant grows in small, barren areas on decomposed granitic sands, between 460 and 1,090 m (1,500 to 3,600 ft) in the annual grasslands and woodlands in the southwestern foothills of the Sierra Nevada Mountains. The seven populations in six locations are estimated to occupy a total of only 6 ha (14 ac) in Fresno, Madera, and Mariposa counties over a range of about 64 km (40 mi) (CNDDB 1997). Six of the seven populations occur on private land. Five of these populations are marginal in quality and contain fewer than 300 plants (Ann Mendershausen, Mariposa Resource Conservation District, pers. comm. 1997; CNDDB 1997). The sixth population on private land has about 900 plants (CNDDB 1997). The seventh population of *C. pulchellum*, occurs on lands administered by the Sierra National Forest and is fenced to protect it from livestock trampling and grazing (James Boynton and Joanna Clines Sierra National Forest, *in litt.*, 1993). *Calyptridium pulchellum* is threatened with urbanization. Due to the few populations and low numbers, the species is susceptible to extirpation from random events.

Frank Vasek (1964) described *Clarkia springvillensis* based on his collection along Balch Park Road, the type locality, near Springville. *Clarkia springvillensis* is an erect annual herb in the evening primrose family (Onagraceae). The 1 m (3 ft) tall plant has simple or usually branched stems. The bright green leaves are 2 to 9 centimeters (cm) (0.8 to 3.5 in) long and 5 to 20 millimeters (mm) (0.2 to 0.8 in) broad. The lavender-pink flowers appear in May to July and usually have a dark purplish basal spot. *Clarkia springvillensis* can be separated from the co-occurring *C. unguiculata* by the absence of long hairs on the calyx and ovary, the purple sepals, and the dark purplish spot at the base of the petals. *Clarkia springvillensis* is found on granitic soils in sunny sites from 360 to 910 m (1,220 to 3,000 ft) in elevation. *Clarkia springvillensis* grows mostly on the uphill slope of roadbanks, on small decomposing granitic domes, and in openings within the blue oak (*Quercus douglasii*) woodland community in the foothills of the southern Sierra Nevada Mountains of Tulare County, where 15 populations occur. Collectively, the populations are estimated to occupy a total of 61 ha (150 ac) (CNDDB 1997). All but one of the 15 populations are found within about a 24 km (15) mi range, with the remaining population occurring 26 km (16 mi) to the northwest. One site is partially protected by the CDFG, one is on Bureau of Land Management (BLM) land, eight are on U.S. Forest Service land, and five are on private land. With the variability typical of an annual plant, six populations of *C. springvillensis* have ranged from 20 to 200 plants. Four populations along roadsides have become restricted to a narrow band just above a zone of herbicide use and just below heavily grazed terrain. The largest population of this plant occurs on the 1.8 ha (4.5 ac) preserve owned by the CDFG. The status of *C. springvillensis* is stable to declining according to the CDFG (CDFG 1995). *Clarkia springvillensis* is threatened by urban development, inadequate regulatory mechanisms, heavy livestock grazing, and roadway maintenance activities. Due to its few populations and low numbers, *C. springvillensis* is vulnerable to extirpation from random events.

Harold A. Moldenke (1942) described *Verbena californica* from specimens collected by Robert Hoover from an area north of Keystone in Tuolumne County. *Verbena californica* is an erect perennial herb belonging to the vervain family (Verbenaceae). *Verbena californica* grows to 60 cm (23 in) in height and has opposite, bright green, stalkless (sessile) leaves. White-blue to purple blossoms appear in May through September. *Verbena californica* grows in nine populations between 260 and 335 m (850 to 1,150 ft) in elevation. The populations are restricted to intermittent and perennial streams within serpentine areas of the Red Hills of Tuolumne County. The entire range of the species is about 16 km (10 mi). Within this narrow range, the total area occupied by the populations is estimated to be 36 ha (90 ac) (CNDDB 1997). Eight of the nine populations occur in drainages that feed into Don Pedro Reservoir; five of these eight are on Six Bit Gulch and its tributaries. The ninth population is on Andrew Creek that feeds into Tullock Reservoir (CDFG 1993, CNDDB 1997). Four of the nine populations are wholly on BLM lands, and two are partially on BLM lands, although these six sites contain only 15 percent of *Verbena californica* plants. The remaining 85 percent of *Verbena californica* plants are on private lands. When last surveyed, two populations were estimated to contain several thousand plants each, four populations were estimated to contain 200 to 500 plants each, and the remaining three populations were estimated to contain fewer than 100 plants each (CDFG 1993, CNDDB 1997). The two largest populations, at Andrew Creek and Big Creek, occur entirely or primarily on private lands (CDFG 1993, CNDDB 1997). *Verbena californica* is threatened by urbanization, recreational placer gold mining, off-highway vehicle use (OHV), inadequate regulatory mechanisms, dumping, and heavy grazing and trampling. Due to the few populations and low numbers, it is also vulnerable to extirpation from random events.

Previous Federal Action

Federal government actions on these four plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Brodiaea pallida* as endangered. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. *Brodiaea pallida* was included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–

51 and the July 1, 1975, **Federal Register** publication. *Brodiaea pallida* and *Calyptridium puchellum* were included as endangered in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals more than 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Brodiaea pallida*, *Calyptridium puchellum*, *Clarkia springvillensis*, and *Verbena californica* as category 1 candidates. Category 1 species were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640) in which *Brodiaea pallida* and *Verbena californica* were designated as category 1 candidates for Federal listing. This supplement also changed *Clarkia springvillensis* and *Calyptridium puchellum* to category 2. Category 2 included taxa for which information in the possession of the Service indicated that a listing proposal was possibly appropriate, but for which sufficient data on biological vulnerability and threat were not available to support a proposed rule. On February 28, 1996, the Service published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates.

The plant notice was revised again on September 27, 1985 (50 FR 39526). The status of these four plants remained unchanged from the 1983 supplement. Another revision of the plant notice was published on February 21, 1990 (55 FR 6184). In this revision, *Clarkia springvillensis* was returned to category 1 status. On September 30, 1993, the Service published another notice and the status of the species remained unchanged (58 FR 51144).

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Brodiaea pallida* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984 through 1993.

On October 4, 1994, the Service published a proposed rule in the **Federal Register** (59 FR 50540) to list *Brodiaea pallida*, *Calyptridium pulchellum*, *Lupinus citrinus* var. *deflexus*, and *Mimulus shevockii* as endangered and *Allium tuolumnense*, *Clarkia springvillensis*, *Carpenteria californica*, *Fritillaria striata*, *Navarretia setiloba*, and *Verbena californica* as threatened. This proposed rule constituted the warranted finding for *Brodiaea pallida*.

Based upon information received during public comment periods subsequent to the publication of the proposed rule, the Service now determines *Brodiaea pallida*, *Calyptridium pulchellum*, *Clarkia springvillensis*, and *Verbena californica* to be threatened species. The proposed listing of *Allium tuolumnense*, *Carpenteria californica*, *Fritillaria striata*, *Lupinus citrinus* var. *deflexus*, *Mimulus shevockii*, and *Navarretia setiloba* is being withdrawn by the Service as announced in a separate **Federal Register** notice published concurrently with this final rule.

The processing of this final rule follows the Service's fiscal years 1998 and 1999 listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance establishes the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings. Processing critical habitat determinations is included in Tier 3 of the guidance. This final rule is a Tier 2 action and is being completed in accordance with the current listing priority guidance.

Summary of Comments and Recommendations

In the October 4, 1994, proposed rule (59 FR 50540) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Appropriate Federal agencies, State agencies, County and City governments, scientific organizations, and other interested parties were contacted and requested to provide comments. Newspaper notices inviting public comment were published in the *Bakersfield Californian* and *Porterville Recorder* on October 10, 1994, and the *Fresno Bee* and *Tuolumne Union Democrat* on October 25, 1994. The comment period closed on December 5, 1994.

As a result of receiving seven requests for one or more public hearings, the Service reopened and extended the comment period until February 13, 1995 (59 FR 67268). The Service held informational meetings with interested parties about the proposed rule in Fresno on January 25, 1995, in Visalia on January 26, 1995, and in Bakersfield on January 27, 1995. On January 31, 1995, the Service conducted a public hearing in Bakersfield. The Service received three requests to postpone or delay the public hearing and three additional requests to extend the comment period beyond February 13, 1995. Responding to these requests, the Service extended the comment period until June 4, 1995 (60 FR 8342). From April 1995, through April 1997, the Service was under a congressionally imposed moratorium on final listings. The Service reopened the comment period on February 4, 1997, (62 FR 5199) and again on June 30, 1997, (62 FR 35116) to update and clarify information received during the three prior comment periods.

The Service has reviewed all the comments received during the four comment periods. General comments received on all ten taxa included in the proposed rule, and specific comments on the four taxa for which the Service has determined that listing is appropriate are addressed in this final rule. Specific comments pertaining to the six taxa being withdrawn (*Allium tuolumnense* (Rawhide Hill onion), *Carpenteria californica* (carpenteria), *Fritillaria striata* (Greenhorn adobe lily), *Lupinus citrinus* var. *deflexus* (Mariposa lupine), *Mimulus shevockii* (Kelso Creek monkeyflower) and *Navarretia setiloba* (Puite Mountain navarretia)) are addressed in a separate **Federal Register** notice published concurrently with this rule.

The Service received 525 comments (i.e., letters, phone calls, facsimiles, and oral testimony) from 164 individuals or agencies or group representatives concerning the proposed rule. Seventy-one commenters provided opposing comments, 39 commenters provided supporting comments, and 54 commenters provided neutral comments. Of the 525 comments, 310 were opposed to the proposed listing, 87 supported the listing, and 128 had no position regarding the proposed listing. Several commenters provided additional information that, along with other clarifications, has been incorporated into the "Background" or "Summary of Factors" sections of this final rule. Opposing and technical comments have been organized into specific issues. These issues and the Service's response to each, are summarized as follows.

Issue 1—Insufficiency of Data

Comment: Several commenters stated that data used in the proposed rule to list these ten plants was either inaccurate, insufficient, inconsistent, erroneous, unsubstantiated, unverified, unjustified, based only on biased opinions in favor of listing the species, not peer-reviewed, or required additional research.

Service Response: Information used by the Service to list the species was gathered from a variety of sources, including Federal and State agencies, local governments, and private individuals, including species experts and scientists. This information, and additional information received during public comment periods, including those of peer reviewers and comments received at public hearings, provide the foundation for determining the final status of these ten plants. All information received was carefully evaluated in accordance with the interagency policy on information standards under the Act, published on July 1, 1994 (59 FR 34271). Five of the seven independent species experts that reviewed the proposed rule supported the listing of one or more of the ten plant taxa. Criteria for what information may be considered are discussed in the "Summary of Factors Affecting the Species" section. As previously stated, this final rule concerns four of the ten taxa proposed on October 4, 1994. The other six taxa are addressed in a separate notice published concurrently with this final rule.

Comment: Several commenters stated that the information on these four plants was collected during drought years, and therefore, the data were biased. Another commenter suggested that the Service extend the comment period for another two or three growing seasons so more information could be collected on the species in non-drought years.

Service Response: Professional and amateur botanists have known of and searched for three of the four plants for decades. *Brodiaea pallida, Calyptridium pulchellum,* and *Verbena californica* were all described prior to 1960 and were included in Philip Munz and David Keck's, "A California Flora of California, 1959." The first State-wide inventory of rare plants was assembled by the California Native Plant Society (CNPS) in 1974. Monitoring efforts on the locations and habitats of the four plants have been more consistent since this time. Continuing inventory efforts have not been conducted on all populations of the four plants in all years over the last twenty years. However, site visits to locations of populations of these plants have been undertaken in both drought and non-drought years, as discussed in the "Summary of Factors Affecting the Species" section. Under section 4(b)(1)(A) of the Act, the Service is required to make its determination upon the best available scientific and commercial data. The Service is neither required, funded, nor authorized to conduct further surveys for these species, and concludes that the best available information is sufficient to support the listing of these species under the Act.

Comment: Several commenters stated that data were, or may have been, collected by trespass and questioned the legality and admissibility of the data under those circumstances.

Service Response: Among the information sources used by the Service is the information from the CNDDB, a part of the California Department of Fish and Game (CDFG). The data comprising the CNDDB and data at the Sacramento Fish and Wildlife Office is checked for accuracy, but whether or not observers obtained written or verbal permission to visit private land is not investigated. Many of the older observations may predate the more recent heightened sensitivity of landowners to individuals searching for rare plants on their property. Neither the Service nor the CDFG condone trespassing.

Comment: Several commenters expressed concern that the Service did not collect information from ranchers and that the information to list the four plants may not be accurate without this information.

Service Response: The Service collected and has used the best scientific and commercially information available from Federal, State and local agencies, species experts, ecologists, botanists, and interested individuals in the preparation of the proposed and final rules, consistent with section 4(a)(1)(B) of the Act. A list of all data sources and information used to formulate the proposed and final rules are available from the Sacramento Fish and Wildlife Office upon request. The Service participated in two informal information exchange meetings with State and County representatives and private landowning ranchers in Bakersfield, California, to discuss the importance, usefulness, and thresholds of useful information during the fourth comment period and received information from ranchers during all comment periods. Some of this information pertained to specific or general locational references and has been incorporated into this final rule.

Issue 2—Species Are Not Threatened or Threats Are Not Substantiated

Comment: Several commenters stated that some of the species are more common than indicated in the proposed rule, or some, if not all of the species are not threatened by one or more factors across the range of the species. One commenter stated that *Clarkia springvillensis* is not threatened by urbanization, timber operations, or road maintenance across its range. Another commenter stated that *Clarkia springvillensis* is more widespread than is indicated in the proposed rule.

Service Response: The Service has reviewed all the information and comments from many sources and has determined that logging does not pose a significant threat to *Clarkia springvillensis.* Urbanization poses a threat to *C. springvillensis* on private lands, but not to those populations found on public lands. Road maintenance threatens the species at four of its 15 locations. Additional information regarding threats to the species are discussed in the "Summary of Factors Affecting the Species" section of this document. The Service has determined that each of these four taxa meets the definition of a threatened species under the Act. A list of all data sources and information used to formulate the proposed and final rules are available at the Sacramento Fish and Wildlife Office upon request.

Issue 3—Economic Effects of Listing

Comment: Numerous commenters stated that listing may limit, curtail, or impinge on the existing uses of private property, or that listing would result in the loss of management opportunities on private lands as well as the loss of economic productivity of those lands.

Service Response: The Act does not restrict the damage or destruction of listed plants due to otherwise lawful private activities on private land beyond any level of protection that may be provided under State law. Listing the four plants as threatened or endangered will not regulate logging, farming, or ranching operations, including cattle grazing, on private land. Other activities that do not violate the taking prohibitions of section 9(a)(2) of the Act, as well as prohibited activities, are discussed further under "Available Conservation Measures" section of this rule.

Comment: Numerous commenters stated that the Service should consider the economic effects of the listing on the local economies and industries in the counties where the plants occur.

Service Response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available about whether a species meets the Acts definition of a threatened or endangered species. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions," H.R. Rep. NO. 97–835, 97th Cong., 2nd Sess. 19 (1982). As further stated in the legislative history, "applying economic criteria . . . to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word "solely" in the legislation," H.R. Rep. NO. 97–835, 97th Cong. 2nd Sess. 19 (1982). Because the Service is precluded from considering economic impacts, in a final decision on a proposed listing, the Service does not examine such impacts.

Comment: One commenter stated that listing may result in "takings" of private property and therefore the Service should complete a Takings Implications Assessment.

Service Response: The U.S. Attorney General has issued guidelines to the Department of the Interior (Department) on the implementation of Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights." Under these guidelines, a special rule applies when an agency within the Department is required by law to act without exercising its usual discretion. The provisions in the guidelines relating to non-discretionary actions clearly are applicable to the determination of endangered or threatened status for the four plants in this rule.

In this context, an agency's actions might be subject to legal challenge if it did not consider or act upon economic data. In these cases, the Attorney General's guidelines state that Takings Implications Assessments (TIA) will be prepared after, rather than before, the agency makes the decision upon which its discretion is restricted. The purpose of TIAs in these special circumstances is to inform policy makers of areas where unavoidable takings exposures exist. Such TIAs shall not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact. In enacting the Act, Congress required the Department to list species based solely upon scientific and commercial data indicating whether they are in danger of extinction. Thus, by law and U.S. Attorney guidelines, the Service cannot conduct such TIA's prior to listing.

Issue 4—Designation of Critical Habitat

Comment: Several commenters stated that the Service needed to designate critical habitat, and had no prudent basis for refusal to do so.

Service Response: The Service has determined that critical habitat for these four species is not prudent. Please refer to the "Critical Habitat" section of this rule for a detailed discussion of the Service's basis for not designating critical habitat at this time.

Comment: One commenter stated that the Service needed to designate critical habitat to help locate populations and verify data. Another commenter disagreed with the Service that the designation of critical habitat and subsequent publication of critical habitat maps would cause vandalism to the plants.

Service Response: Protection that these species will receive as a result of listing is discussed under "Available Conservation Measures" portion of this rule. The public has access to general locational information on all four of these plants through the CDFG's CNDDB. The Service considers the risk of malicious damage to most of these plants to be relatively small, especially for the species that are inconspicuous. Please refer to the "Critical Habitat" section of this rule for a detailed discussion of the Service's reasons for not designating critical habitat at this time.

Issue 5—Recovery Planning

Comment: Several commenters stated that the Service should not list these four species without a recovery plan. Another commenter stated that the lack of a recovery plan hampers a county's ability to provide adequate protection measures for these species. One commenter stated that the Service could not prepare a recovery plan without an economic assessment.

Service Response: The recovery planning process typically occurs after the species has been listed and provides recovery objectives and criteria to delist the species. The recovery planning process will involve species experts, scientists, and interested members of the public in accordance with interagency policy on recovery plans under the Act, published on July 1, 1994 (59 FR 34272). The information and public education needs for successful recovery of these species are many and will be incorporated into the recovery plan. Economic assessments are not part of the recovery planning process; however, every recovery plan includes an estimate of the costs of all recovery tasks identified in the plan.

Issue 6—National Environmental Policy Act and Information Availability

Comment: Numerous commenters stated that the Service needed to prepare an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA) on this rule.

Service Response: For reasons described in the NEPA section of this document, the Service has determined that the rules issued pursuant to section 4(a) of the Act do not require the preparation of an EIS. The Federal courts have held in *Pacific Legal Foundation* v. *Andrus*, 657 f2d. 829 (6th Circuit 1981) that an EIS is not required for listing under the Act. The court decision noted that preparing an EIS on listing actions does not further the goals of NEPA or the Act.

Comment: Several commenters wanted to personally view the evidence used by the Service to list these plants, or specifically wanted to know the names of individuals who conducted site visits or provided peer review for the proposed rule.

Service Response: A full administrative record of the information considered in the proposed and final rules for these species is available at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Issue 7—Existing Regulatory Mechanisms

Comment: Numerous commenters stated that the existing regulatory measures available through State, Federal and local laws, rules and regulations provide adequate protection for the four species to be listed in this

rule. Other commenters stated that the existing regulatory mechanisms were not sufficient to protect the species included in this rule, and therefore the listing should go forward to provide the protection necessary for the continued existence of these species.

Service Response: The Service believes that the existing regulatory mechanisms provided in the State, local and county regulations are inadequate to protect these four plants. Please see Factor D of the "Summary of Factors Affecting the Species," section of this rule.

Issue 8—Grazing

Comment: Several commenters stated that grazing and/or trampling is good for these species by promoting plant vigor, or creates a better seedbed. One commenter stated that the Service holds the position that all grazing is overgrazing. One commenter stated that other environmental factors (e.g., rainfall) are more of an issue for these species than grazing.

Service Response: The Service has no evidence to support the general position that grazing is beneficial or detrimental for these species. Numerous factors involved in livestock management and grazing practices, such as season of use, intensity, duration, and stocking levels, as well as varying climatic conditions, may affect these species and/or their habitats. No available literature supports the position that grazing is beneficial to these species. Site specific observations and local extirpations suggest that heavy grazing may have impacted some populations of these species. The Service does not hold that all grazing is overgrazing, but rather that grazing at some locations has had adverse impacts on the species considered in this rule. Virtually all the information that the Service received or located regarding beneficial and adverse livestock grazing effects on the four taxa is anecdotal. However, repeated observations over time coupled with knowledge of historical land uses has validity even though that information was not scientifically collected. That kind of information was provided for some of the locations for some of the taxa in this rule. Based upon this information, it appears that some levels of livestock grazing are compatible with, and may be beneficial to, some of these species. Competition from alien grasses may pose a threat to some of these species and grazing, to the extent that it can alleviate such competition without eliminating or weakening a rare plant population through direct consumption or trampling, or secondary effects such as accelerated soil erosion, is compatible with rare plants on many sites. The listing provisions of the Act provide that species may be determined to be endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The effects of herbivory by any animal, including livestock, is discussed under Factor C of the "Disease and Predation" section of this rule.

Comment: Several commenters stated that threats associated with livestock grazing were either false, purely speculative, or lacked any scientific credence.

Service Response: During the preparation of this rule, the Service evaluated site specific observations of known plant populations, and reviewed an extensive body of literature on the impacts of grazing mammals to plant species. Please refer to Factor C in the "Summary of Factors Affecting the Species" section of this rule for further discussion on the effects of herbivory, including livestock grazing.

Comment: Several commenters stated that grazing of *Clarkia springvillensis* is not a problem or that grazing is necessary for the survival of the species.

Service Response: Grazing, in combination with other environmental and human factors, have led to deleterious effects on the habitat of *Clarkia springvillensis*. According to observers (Tim Holtsford and Kimberlie McCue-Harvey, University of Missouri, *in litt.* 1993), livestock grazing is damaging eight of the 15 known locations of this species by direct consumption and trampling. The Service believes that these effects, together with other threats discussed in "Summary of Factors Affecting the Species" section support the determination of threatened status for this species.

Issue 9—Alternative Status

Comment: Several commenters requested that the species considered in this rule should either not be listed at this time, be listed with an alternate status, withdrawn, delayed in listing, or retain current status.

Service Response: Substantive information provided by commenters in support of arguments for alternative listing status, including delay or withdrawal, has been incorporated into this final rule and the accompanying withdrawal notice. The Service believes there is sufficient information to list these four species, and that the appropriate determination of the status of each of these species has been made. The Service has made these determinations based on consideration of the best available information, in accordance with section 4(a)(1)(B) of the Act. Please refer to the "Summary of Factors Affecting the Species" section of this rule regarding threats to *Brodiaea pallida*, *Calyptridium pulchellum*, *Clarkia springvillensis*, and *Verbena californica*, and to the notice of withdrawal being published concurrently with this rule [insert FR#] for information regarding *Allium tuolumnense*, *Carpenteria californica*, *Clarkia springvillensis*, *Fritillaria striata*, *Lupinus citrinus* var. *deflexus*, *Mimulus shevockii*, and *Navarretia setiloba*.

Issue 10—Lack of Regulatory Authority to List Plant Species

Comment: One commenter stated the Service lacks jurisdiction to enact the proposed rule, and that the rule should be withdrawn since there is no connection between regulation of these plants and a substantial effect on "interstate commerce."

Service Response: The Service maintains that it does have the authority to list plants such as those included in the proposed rule pursuant to the Act. Several Federal court cases have confirmed this authority (see e.g. *National Association of Home Builders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *petition for cert. filed* (March 5, 1998)).

Peer Review

Consistent with the interagency policy on peer review published on July 1, 1994 (59 FR 34270), the Service solicited the expert opinions of seven independent and appropriate specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supporting biological and ecological information for the ten proposed plants. Five of the seven peer reviewers provided comments. Not all reviewers commented on all of the taxa that were proposed for listing. One reviewer supported the listing of all species addressed in this rule, noted that each species is taxonomically distinct, and commented that the low numbers of individuals in populations make them especially susceptible to detrimental genetic phenomena, including inbreeding depression and loss of genetic variability. This reviewer characterized the population sizes of *Brodiaea pallida* and *Calyptridium pulchellum* as "perilously low" and the populations of *Clarkia springvillensis* and *Verbena californica* as approaching that condition. A second reviewer also supported the listing of all species addressed in this rule and commented specifically on *Brodiaea pallida*,

Calyptridium pulchellum, and *Clarkia springvillensis*. The reviewer noted that the restriction of *Brodiaea pallida* to a single population and its "dangerously low" population size make it susceptible to extinction by random events. The same reviewer also commented that further reductions in populations of *Calyptridium pulchellum* and *Clarkia springvillensis* may place them in danger of extinction by random events. A third reviewer, who only addressed *Calyptridium pulchellum* and *Clarkia springvillensis*, noted that each is taxonomically distinct and of such limited range that listing is warranted. A fourth reviewer provided information on the taxonomic distinctiveness, ecology, and non-native competitors of *Navarretia setiloba*, a species that is being withdrawn, and also emphasized the importance of conserving the species. The fifth reviewer provided no specific comments but supported the listing of all four taxa addressed in this final rule.

Summary of the Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Brodiaea pallida* Hoover (Chinese Camp brodiaea), *Calyptridium puchellum* (Eastwood) Hoover (Mariposa pussypaws), *Clarkia springvillensis* Vasek (Springville clarkia), and *Verbena californica* Moldenke (California vervain) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Brodiaea pallida, *Calyptridium puchellum*, *Clarkia springvillensis*, and *Verbena californica* are restricted to grassland and woodland communities of the southwestern foothills of the central Sierra Nevada Mountains. These four species have been variously impacted and face future impacts from development projects and other human activities.

Historically, the only known population of *Brodiaea pallida* extended up to 0.6 km (1 mi) south of the Red Hills Road; however, large parts of the population were destroyed by non-permitted construction around 1982 (Blaine Rogers, Columbia College, *in litt.* 1990; CNDDB 1997). A subdivision has been proposed for the remainder of the site (B. Rogers, *in litt.* 1997; Pat Stone, CNPS, *in litt.* 1997). The proposed subdivision divides some of the population into 2 ha (5 ac) parcels and would impact approximately one half of all the known individual plants (P. Stone, *in litt.* 1994). No construction activity has occurred since 1989 at the proposed subdivision that was believed to threaten *B. pallida*. No construction activity is currently planned at the site where the species occurs. Thus, in reassessing the threat to the single population of *Brodiaea pallida* and recognizing that the threat is less imminent than initially thought, the Service has determined that threatened status is more appropriate for *Brodiaea pallida*.

Two populations of *Calyptridium puchellum* occur on lots in the midst of a subdivision (Ann Mendershausen, Mariposa County Resource Conservation District, pers. comm. 1993, 1997; CNDDB 1997). This subdivision had a vacancy rate of 23 percent as of March 1997 (David Deel, Madera County Planning Department, pers. comm. 1997) and additional human impacts may occur to the two populations as the subdivision fills to 100 percent occupancy. A third population of *C. pulchellum* occurs in an area including commercial and residential zoning adjacent to the location of the population (A. Mendershausen *in litt.* 1995; Thomas Kidwell, Madera County Assessors Office, *in litt.* 1997; D. Deel, *in litt.* 1997). Although one subdivision was constructed prior to the proposed rule, none of the proposed subdivisions that were thought to threaten populations of *C. pulchellum* have been constructed since the proposed rule was published in 1994. No construction activities are planned at the sites where the species occurs. A fourth population of *C. pulchellum* occurs on a ranch that is for sale (A. Mendershausen pers. comm. 1993, 1997; CNDDB 1997). The populations of Madera and Mariposa counties, where *C. pulchellum* occurs on private lands, are expected to increase by 58 percent and 55 percent, respectively, between 1996 and 2010 (California Department of Finance 1993, 1996). Thus, the Service has determined that the threats to populations of *Calyptridium puchellum* from subdivisions are not as imminent as first thought and has determined that threatened status is more appropriate for *Calyptridium puchellum*.

Two populations of *Clarkia springvillensis* on the Sequoia National Forest (CNDDB 1997) and three populations on non-Federal lands are threatened by road maintenance activities such as grading and roadside mowing (T. Holtsford, *in litt.* 1993, T. Holtsford and K. McCue-Harvey, *in litt.* 1993, CNDDB 1997). These five populations comprise more than 40 percent of the known acreage of *C. springvillensis* habitat (CNDDB 1997). Four of these five populations are small and have become restricted to a narrow band above and/or below the part of the roadbank that is not graded and above and/or below the heavily grazed terrain across a fence adjacent to the roadway (CDFG 1990). Mowing usually occurs when the grass turns golden, just when *C. springvillensis* begins to flower (James Shevock, U.S. Forest Service, *in litt.* 1985). One of the five sites is along a county road (County Road M–220) that is graded infrequently by the Tulare County Public Works Department; the plants extend to the edge of the road and are graded and buried periodically (T. Holtsford, 1994 pers. comm.). At this same site, *C. springvillensis* appears to be threatened by the Public Works Department dumping of sand (T. Holtsford, pers. comm. 1994).

A sixth population of *Clarkia springvillensis*, on private land, is threatened by development (Andrew Pacheco, Tulare County Planning Department, *in litt.* 1997; CNDDB 1997). Zoning in portions of the area allows one dwelling per ha (2.5 ac) as long as the dwellings are occupied by family, employees, or farm laborers (A. Pacheco, *in litt.* 1997). This is in addition to an allowance for one dwelling for the owner. Further subdivision of parcels requires an amendment to the general plan. Applications for general plan amendments can be submitted whenever, and as frequently as, the land owner wishes in Tulare County (A. Pacheco pers. comm. 1997). Three small populations of *C. springvillensis* occur on lands owned by Tulare County. These populations are subject to incidental impacts associated with frequent large nature group walks and livestock grazing (CNDDB 1997).

The largest population of *Clarkia springvillensis* occurs on a 1.8 ha (4.5 ac) preserve owned by CDFG. Prior to acquisition by CDFG, this property had an access road cut into the preserve, a water well drilled, and a knoll leveled as a pad for home construction. The type locality for *C. springvillensis*,, which covered a 27 ha (67 ac) area, was extirpated by mobile home development (CNDDB 1997).

Both of the largest populations of *Verbena californica* are on private land that currently is being developed, or could be developed soon. When last surveyed, each of these populations was estimated to contain several thousand

plants; the next largest population was estimated to contain fewer than 500 plants (CDFG 1993, CNDDB 1997). In August 1997, the Tuolumne County Board of Supervisors rescinded the 1994 Environmental Impact Report (prepared pursuant to CEQA, discussed below) for a planned subdivision at one of these populations on Andrew Creek. Because of this action, a 1989 vested map dividing the land into 23 parcels is in effect (Robin Wood, Tuolumne County Planning Department, pers. comm. 1997a). Grading and road building are currently occurring in *V. californica* habitat on the site (Rich Hunter, Central Sierra Environmental Resources Center, pers. comm. 1997; R. Wood, pers. comm. 1997a). This population was estimated to contain at least 35 to 40 percent of all *V. californica* plants, based on CDFG 1993 population sizes. In addition, it is the only population of *V. californica* known from the Andrew Creek drainage and the most westerly population of the species. The second of the two largest populations of *V. californica* is on Big Creek (CDFG 1993). The parcel recently was sold, and the owners are planning to build a house on a knoll about 300 feet from the creek where *V. californica* grows. The parcel is currently zoned so that it could be divided into 15 ha (37 ac) parcels. The parcel could be further divided if the general plan was amended; amending can take place three times a year in Tuolumne County. In addition, the busy, nearby intersection of Old Don Pedro Road and La Grange Road may be developed, if the general plan is amended. Other areas of rapid development in the vicinity of *V. californica* in Tuolumne County include the intersection of Highways 108 and 120 and the area around Chinese Camp (R. Wood, pers. comm. 1997b).

Recreational placer gold mining has not been allowed since 1993 in Andrew and Big creeks, but it is still allowed in Poor Man's and Six Bit gulches (Art Champ, U.S. Army Corps of Engineers *in litt.* 1995). Three populations of *Verbena californica* on BLM land in Six Bit Gulch and one on BLM land in an unnamed drainage between Six Bit Gulch and Big Creek are threatened by recreational placer gold mining (CDFG 1993). Impacts from casual mining continue to occur despite designation of the entire Red Hills as an Area of Critical Environmental Concern by BLM (Ed Hastey, BLM, *in litt.* 1992). *Verbena californica* was only found on areas of the stream in the Six Bit Gulch area where mining activities had not changed land contours and habitat (Rogers 1983). Another impact from recreational mining is trampling by humans, which negatively affects *V. californica* and its habitat (Anne Knox, BLM, pers. comm. 1997a).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not currently known to be a factor for these four plants, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this final rule.

C. Disease or Predation

Many *Clarkia springvillensis* sites are reported to be grazed by domestic livestock (Kimberlie McCue, Missouri Botanical Garden, *in litt.* 1997). Grazing can negatively affect *C. springvillensis* although the degree of impact depends on the timing and intensity of grazing. Grazed plants have the ability to continue producing flowers, but heavy, repeated, and/or late season grazing can adversely affect the plants (K. McCue, *in litt.* 1997). Intensive grazing has been identified as one of the greatest threats to the species and the "basic cause of its rarity" (J. Shevock *in litt.* 1985). Heavy livestock grazing and/or trampling have been reported in three populations of *C. springvillensis* in Tulare County (T. Holtsford and K. McCue-Harvey, *in litt.* 1993; CNDDB 1997). An additional five occurrences are grazed, but heavy grazing and/or trampling have not been reported at these sites (CNDDB 1997). Appropriate grazing regimes may benefit *C. springvillensis* in some situations by reducing the abundance of alien plants and thereby lessening competitive pressure on *C. springvillensis* (K. McCue, *in litt.* 1997).

Several populations of *Verbena californica* are grazed (CNDDB 1997). Although the effects of grazing on *V. californica* are not thoroughly understood, plants in grazed sites are noticeably smaller than those in ungrazed sites (Mark Skinner, CNPS, pers. comm. 1993; A. Knox, pers. comm. 1997b). Field observations suggest that *V. californica* can tolerate only light grazing before it disappears from occupied habitat (Rogers 1983). Even if grazing itself does not threaten *V. californica*, trampling associated with grazing negatively impacts the plants and their habitat (A. Knox, pers. comm. 1997a, b). One of the two largest populations of *V. californica* is subject to trampling (A. Knox, pers. comm. 1997b) and heavy grazing (CNDDB 1997). When last surveyed, this population contained several thousand plants on about 13 percent of the total acreage occupied by *V. californica*, and was estimated to contain approximately 40 to 50 percent of all *V. californica* plants (CDFG 1993; CNDDB 1997) Recently, a cattle feeder was installed 3 m (10 ft) from the creek where *V. californica* grows at this site (P. Stone, pers. comm. 1997a), which may increase trampling effects. Trampling has also been identified as a threat at two other populations of *V. californica* (CDFG 1993; A. Knox, pers. comm. 1997b). At one of these sites, the trampling was due to trespass grazing (A. Knox, pers. comm. 1997b).

The Service has not received any scientific studies suggesting that heavy livestock grazing has adverse effects on any of the populations of the four taxa in this final rule. The Service maintains that, depending on a wide variety of circumstances, livestock grazing may have little, or no detectable, adverse effects on plant communities. The effects on plants from livestock grazing are highly variable and dependent on many factors, including but not limited to, livestock class, timing, intensity, and duration of livestock use, and the species of plants themselves, (Heady 1975). Soil and ambient air temperatures, along with effective soil moisture from spring rainfall also influence plant germination, growth, and availability for livestock consumption (Heady 1975; Huenneke and Mooney 1989). Livestock grazing occurs where many of the four plant species populations are located, and the Service is aware of numerous circumstances where, under a specific set of circumstances, livestock grazing has no or little adverse effect on any of the four plants. The BLM and Sierra National Forest constructed livestock exclusion fences around one population of *Verbena californica* and one population of *Calyptridium pulchellum* to promote and protect the plants and their habitats. There have been observations of neutral, little, and adverse effects of livestock grazing on these four taxa (K. McCue, *in litt.* 1997; CNDDB 1997).

D. The Inadequacy of Existing Regulatory Mechanisms

The State of California Fish and Game Commission has listed *Brodiaea pallida* and *Clarkia springvillensis* as endangered species under the California Endangered Species Act (CESA) (Chapter 1.5 § 2050 *et seq.* of the CDFG Code and Title 14 California Code of Regulations 670.2). In September 1994, the California Fish and Game Commission listed *Verbena californica* as a threatened species (Chapter 1.5

§ 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). Listing by the State of California requires individuals to obtain a memorandum of understanding with the California Department of Fish and Game (CDFG) to possess or "take" a listed species. Although the "take" of State-listed plants is prohibited (California Native Plant Protection Act (CNPPA), Chapter 10 § 1908 and CESA, Chapter 1.5 § 2080), State law appears to exempt the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires that the land owner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (CNPPA, Chapter 10 § 1913). California Senate Bill 879, passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from CDFG to take a listed species incidental to otherwise lawful activities, and requires that all impacts be fully mitigated and all measures be capable of successful implementation. These new requirements have not been tested and several years will be required to evaluate their effectiveness in protecting species.

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed by the State or Federal governments. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or deciding that overriding considerations make mitigation infeasible. In the latter case, projects that cause significant environmental damage, such as destruction of endangered species, may be approved. Protection of listed species through CEQA is therefore dependant upon the discretion of the agency involved. In addition, CEQA guidelines recently have been revised in ways which, if made final, may weaken protections for threatened, endangered, and other sensitive species.

Brodiaea pallida and *Verbena californica* occur in seeps, springs, and overflow channels, and in intermittent and perennial streams, respectively. Such features may be treated as waters of the United States for regulatory purposes by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. However, the Clean Water Act, alone, does not provide adequate protection for *Brodiaea pallida* and *Verbena californica*. For example, Nationwide Permit (NWP) No. 26 (33 CFR part 330 Appendix B (26)) was established by the Corps to facilitate issuance of permits for discharge of fill into wetlands. Under current regulations, NWPs may be issued for fills up to 1.2 ha (3.0 ac); fills greater than 1.2 ha require an individual permit (61 FR 65916). For project proposals falling under NWP 26, the Corps seldom withholds authorization unless a listed threatened or endangered species' continued existence would be jeopardized by the proposed action, regardless of the significance of other wetland resources. Moreover, for fills less than 0.13 ha (0.3 ac) only an after-the-fact report is required by the Corps. This report must be submitted within 30 days of completion of the work and include only the name, address, and telephone number of the permittee; location and description of the work; and, the type and acreage of the loss (61 FR 65917). Populations of *Verbena californica* and some parts of the single population of *Brodiaea pallida* may occur in wetlands smaller than 0.13 ha (0.3 ac). Although General Condition 11 of the NWP states that "no activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species . . . or which is likely to destroy or modify the critical habitat of such species' (61 FR 65880), the after-the-fact nature of the reporting requirement is inadequate to ensure the protection of populations that occur in areas smaller than the 0.13 ha (0.3 ac) threshold. For *Brodiaea pallida* and *Verbena californica*, the reporting requirement may be inadequate to prevent significant destruction of many individual plants and associated habitats.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Although the public lands in the Red Hills are closed to OHV use, a public loop road was constructed through the area in 1995, and OHV use continues to threaten populations of *Verbena californica* (P. Stone, pers. comm. 1997b; Patti Wilson, CNPS, *in litt.* 1997; CNDDB 1997). The BLM continues to issue small numbers of citations for shooting and OHV use in the Red Hills (Steve Martin, BLM, pers. comm. 1997). Trash dumping has also damaged one population of *Verbena californica* on BLM lands in Six Bit Gulch (A. Knox, pers. comm. 1997b).

Small population size increases the susceptibility of a population to extirpation from random demographic, environmental and/or genetic events (Shaffer 1981, 1987; Lande 1988; Meffe and Carroll 1994). *Brodiaea pallida* exists in only a single population comprising 26 ha (65 ac). Population sizes of 100 or fewer are known for at least five populations of *Calyptridium pulchellum* and three populations of *Verbena californica*, and populations sizes of 20 to 200 plants are reported for *Clarkia springvillensis* (CDFG 1990; CNDDB 1997). Although neither regular nor systematic inventories have been conducted for all populations at every location, populations of these plants have been examined in drought and non-drought years from 1901 for *Calyptridium pulchellum*, 1964 for *Clarkia cvspringvillensis*, and 1942 for *Verbena californica*. Demographic events that may put small populations of *Calyptridium pulchellum*, *Clarkia springvillensis*, and *Verbena californica* at risk involve random fluctuations in survival and reproduction of individuals (Shaffer 1981, 1987; Lande 1988; Meffe and Carroll 1994). These species may also be subject to increased genetic drift and inbreeding as a consequence of their small population sizes (Menges 1991; Ellstrand and Elam 1993). Populations that are continually small in size are particularly susceptible to genetic changes due to drift. However, drift may also cause genetic changes with populations that occasionally fluctuate to small sizes (e.g., undergo population bottlenecks). Increased homozygosity resulting from genetic drift and inbreeding may lead to a loss of fitness (ability of individuals to survive and reproduce) in small populations. In addition, reduced genetic variation in small populations may make any species less able to successfully adapt to future environmental changes (Ellstrand and Elam 1993).

Environmental events that may put small populations at risk include random or unpredictable fluctuations in the physical environment such as fire or flooding (Shaffer 1981, 1987; Primack 1993; Meffe and Carroll 1994). Human-

related activities, such as trash dumping or toxic chemical spills, may be considered random environmental events potentially leading to the extirpation of small populations. Thus, all four species are threatened by potential loss of fitness and/or genetic variability as well as by demographic and environmental events associated with small population sizes. The combination of few populations, small range, and/or restricted habitat makes all four species highly susceptible to extinction or extirpation from a significant portion of their ranges due to random events, such as flood, drought, disease, or other occurrences (Shaffer 1981, 1987, Meffe and Carroll 1994). Such events are not usually a concern until the number of populations or geographic distributions become severely limited, as is the case with the four species discussed here. Once the number of populations or the plant population sizes are reduced, the remnant populations, or portions of populations, have a higher probability of extinction from random events.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to make this final rule. Urban development has reduced the range of *Brodiaea pallida* and continues to threaten the species. Inadequate regulatory mechanisms, the existence of only one population, and the small range of the species also threaten the existence of the species. Urbanization, small size of populations and small number of populations threaten *Calyptridium puchellum* throughout all or a significant portion of its range. Urbanization, roadway maintenance activities, inadequate regulatory mechanisms, the small range of the species, and heavy livestock grazing threaten *Clarkia springvillensis* throughout all or a significant portion of its range. Urbanization, OHV use, recreational placer gold mining, heavy livestock grazing and trampling, trash dumping, inadequate regulatory mechanisms, and random extirpation from small size and number of populations threaten *Verbena californica* throughout all or a significant portion of its range. The Act defines a threatened species as a species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. An endangered species is any species which is in danger of extinction throughout all or a significant portion of its range. The Service considered other alternatives to this action, but based on the foregoing evaluation, the Service finds that all four species meet the definition of a threatened species throughout all or a significant portion of their range.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with section 4 of 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 consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation'" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

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 listed. Service 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. Service regulations also state that critical habitat is not determinable when one or both of the following situations exist—(i) information sufficient to perform required analysis of the impacts is lacking, or (ii) the biological needs of the species are not sufficiently well known to permit identification of an area of (50 CFR 424.12(a)(2)). If the Service finds that it is not determinable, the Service may extend up to one year the designation of critical habitat.

The designation of critical habitat may benefit listed plant species when actions affecting the species are likely to involve a Federal agency. Federal involvement is most likely on two situations—(1) where the species occurs on Federal lands and (2) when a Federal agency is involved in authorizing or funding actions on non-Federal lands (for example, through section 404 of the Clean Water Act or actions involving Federal funding). The designation of critical habitat may also provide benefit to a species by informing the general public about the species, and by identifying areas critical to species for purposes of recovery planning. Critical habitat designation may also provide information to Federal agencies in the instances when they may have to consult with the Service pursuant to section 7.

Brodiaea pallida

Brodiaea pallida occurs in a single location on private land (CNDDB 1997). The local County government, present landowner and adjacent landowners are aware of *B. pallida* and its location. The California Commission of Fish and Game held a public hearing regarding the proposal to list *B. pallida* as an endangered species and later designated *B. pallida* an endangered species pursuant to CESA in 1978. In 1985, the CDFG offered an acquisition proposal to the landowners to obtain ownership of the occupied habitat of *B. pallida* but the landowners were not willing to sell to CDFG. Additionally, owing to the Services' extensive efforts of public outreach prior to, during, and after the public hearing to list *B. pallida,* additional public recognition and awareness would not result from designation of critical habitat. The small amount of potential habitat has been surveyed, but no other *B. pallida* sites have ever been identified (B. Rogers, *in litt.* 1997). No historic locations are known (CNDDB 1997). The Service does not envision any benefits from designating critical habitat for *B. pallida* which is only on private lands. Although a Federal nexus for *B. pallida* may exist through the Clean Water Act because the species occurs in overflow channels, seeps and springs, the designation of critical habitat for this species would provide little or no benefit to the protection of this species beyond that provided by listing and any consultation that may occur in accordance with section 7 of the ESA. Because the area of occupied habitat is very small (i.e., an area 3 to 6 m (10 to 20 ft) wide and 0.8 km (0.5 mi) long), any adverse modification of the occupied habitat would likely jeopardize the continued existence of *B. pallida.* Critical habitat will not assist the Service or the general public in the recovery planning efforts because most interested parties are well informed about the range and distribution of *B. pallida.* Furthermore, the species experts that will be invited to assist the Service in developing a recovery plan for *B. pallida* will not be aided by the Service designating critical habitat. Because no benefits are to be found, the

Service finds that it is not prudent to designate critical habitat for *B. pallida*.

Calyptridium pulchellum

Calyptridium pulchellum is found in seven occurrences; six of these are on private lands and one is on the Sierra National Forest. No other sites containing *C. pulchellum* have been identified, and no historic locations are known (CNDDB 1997). Given that targeted searches for potential habitat have been conducted, little likelihood exists of finding unknown populations within the range of the species. Owing to the Services' extensive efforts of public outreach prior to, during, and after the public hearing to list *C. pulchellum*, additional public recognition and awareness would not result from the designation of critical habitat.

Moreover, there would be no benefit from the designation of critical habitat for the six locations on private land because *C. pulchellum* does not occur in wetlands regulated under the Clean Water Act and no other Federal actions or authorizations are likely to occur in its habitat. Even if a Federal nexus were identified, because of the small number and size of the *C. pulchellum* occurrences, any activity that would destroy or modify the habitat of the species would also likely jeopardize its continued existence. Four of the seven populations of *C. pulchellum* are from 1 to 5 sq. m (11 to 53 sq ft) in area and two are 0.05 ha (0.125 ac) in area and any disturbances associated with the occupied habitat of any of the six populations are likely to preclude the recovery of the species. The Service envisions no benefits to the species will accrue through the section 7 consultation process by virtue of designating critical habitat. The single population occupying less than 0.4 ha (1 ac) on U.S. Forest Service land has been fenced to protect it from cattle trampling and grazing (CNDDB 1997). Critical habitat will not assist the Service or the general public in the recovery planning efforts because most all interested parties are well informed about the range and distribution of *C. pulchellum*. Furthermore, the species experts that will be invited to assist the Service in developing a recovery plan for *C. pulchellum* will not be aided by the Service designating critical habitat. Therefore, the Service finds that it is not prudent to designate for *C. pulchellum* due to lack of benefit.

Clarkia springvillensis

Clarkia springvillensis is found in 15 occurrences. Eight of these occurrences are on U.S. Forest Service lands and one is on BLM lands. The remainder are on non-Federal lands, including private, County, and State lands. Owing to the Services' extensive efforts of public outreach prior to, during, and after the public hearing to list *C. springvillensis*, additional public recognition and awareness would not result from the designation of critical habitat. The only other known *C. springvillensis* population was extirpated by mobile home development in 1983; the species has not been relocated at the site because the habitat for the species is no longer present (CNDDB 1997). On Federal lands, modification of occupied habitat is unlikely to occur without consultation under section 7 of the Act because the presence of *C. springvillensis*, and its specific locations, are well known to the managers of the Sierra National Forest (Dale Pengilly, District Ranger, Sierra National Forest, *in litt.* 1996) and to the managers of the BLM lands where the species occurs (Susan Carter, BLM, *in litt.* 1995). The Sierra National Forest has written a species management guide for populations of *C. springvillensis* that occur on Federal lands. Likewise, the Bakersfield BLM office is aware of the single population of *C. springvillensis* which occurs on Federal land administered by that agency. On March 31, 1997, the Service completed formal consultation and formal conference and issued a 79-page biological opinion on the Caliente Resource Area Management Plan (CRMP). The CRMP covered many current and proposed land use actions, including those in Tulare County, which may affect *C. springvillensis*.

C. springvillensis does not occur in wetlands regulated under the Clean Water Act and no other Federal actions are likely to occur in its habitat on those sites located on non-Federal lands. Designation of critical habitat on Federal lands would provide no benefit to the species beyond listing because any action which would destroy or adversely modify the habitat of the remaining populations of this species would also likely jeopardize its continued existence. This is especially the case with such an edaphically (pertaining to soil) and narrowly restricted species as *C. springvillensis* because four populations have less than 300 plants and four others have less than 1,000 plants. Common actions such as logging, road building, and home construction would easily destroy populations of *C. springvillensis* and any adverse modification of *C. springvillensis* habitat would reduce appreciably the likelihood of the survival and recovery of *C. springvillensis*. Critical habitat will not assist the Service or the general public in the recovery planning efforts because interested parties are well informed about the range and distribution of *C. springvillensis*. Furthermore, the species experts that will be invited to assist the Service in developing a recovery plan for *C. springvillensis* will not be aided by the Service designating critical habitat. Therefore, because there is no benefit in designating critical habitat, the Service finds that it is not prudent to designate critical habitat for *C. springvillensis*.

Verbena californica

Verbena californica occurs in nine locations. Four of the locations are wholly on BLM lands, and two are partially on BLM lands. Owing to the Services' extensive efforts of public outreach prior to, during, and after the public hearing to list *V. californica*, additional public recognition and awareness would not result from the designation of critical habitat. Additionally, as a part of the outreach prior to the State of California Fish and Game Commission (SCFGC) listing *V. californica* as threatened, the CDFG notified private landowners who had populations of *V. californica* in 1992. Furthermore, the SCFGC held a public hearing to take testimony regarding the proposed designation. As a consequence of the State hearing, the CDFG was directed to conduct additional public outreach with landowners within Tuolumne County. The Tuolumne County Planning Department has detailed maps showing the southwest trending stream channels and the distribution of *V. californica*. Despite the public education and awareness program for *V. californica* ongoing since 1992, destruction of parts of one population occurred in 1997.

Although six of nine known locations are entirely or partially on BLM lands, BLM lands contain only 15 percent of *V. californica* plants. On Federal lands, no modification of occupied habitat is likely to occur without consultation under section 7 of the Act because the presence of *V. californica*, and its specific locations are well known to the managers of these BLM lands (A. Knox, pers. comm., 1997a). BLM installed, but has not maintained, fencing to exclude cattle from riparian areas in the Andrews Creek drainage that support *V. californica* (Franklin 1996; Al Franklin, BLM, pers. comm., 1997). Eighty-five percent of *V. californica* plants are on private lands. Despite repeated searches for additional locations of *V. californica*, no other sites containing *V. californica*

have been identified, and no historic locations are known (CNDDB 1997).

On private lands, a Federal nexus for *Verbena californica* may occur through the Clean Water Act because the species is found in a small series of southwest trending intermittent and perennial serpentintic stream channels within three small watersheds. Although a Federal nexus for *V. californica* may exist through the Clean Water Act, the designation of critical habitat for *V. californica* would provide little or no benefit to the protection of this species beyond that provided by listing and any consultation that may occur in accordance with section 7 of the Act.

Designation of critical habitat for *V. californica* would provide little benefit to the species beyond listing because any action which would destroy or adversely modify the habitat of the remaining populations of this species would also likely jeopardize its continued existence. The rationale for this overlap is found in the basis of the edaphic restriction to serpentine substrates, the small size of some populations, and the small number of plants in many of the populations. *Verbena californica* has four populations that contain fewer than 250 individual plants covering an estimated 1.4 ha (4 ac). Any common actions such as construction of dikes, detention dams, stream crossings, or bridges could very easily and completely destroy any of these smaller populations of *V. californica*. Likewise, any adverse modification of *V. californica* habitat would seriously and easily reduce the likelihood of survival and recovery of *V. californica*. The Service finds that the designation of critical habitat for *V. californica* is not prudent due to lack of benefit.

For the reasons discussed above, the Service finds that the designation of critical habitat for the four plants in this final rule is not prudent due to lack of benefit. Protection of the habitat of these species will be addressed through the section 4 recovery process and the section 7 consultation process. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat because the resource staffs of the BLM, Bureau of Reclamation, and national forests already have working knowledge of the locations of occupied habitats of the species and have undertaken targeted inventories of potential habitat since the publication of the proposed rule.

Available Conservation Measures

Conservation measures provided to species listed as threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) requires Federal agencies to use their authorities to further the purposes of the Act by carrying out programs for listed species. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Listing these four plants would provide for development of a recovery plan (or plans) for them. Such plans would bring together both State and Federal efforts for conservation of the plants. The plans would establish a framework for agencies, local government, and private interests to coordinate activities and cooperate with each other in conservation efforts. The plans would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of these four plants. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to affected States for management actions promoting the protection and recovery of these species.

Federal activities potentially affecting one or more of the four plants include mining, grazing authorizations, and issuance of special use permits and rights-of-ways. Populations of three of the four plants occur on Federal lands. Approximately half the occurrences of *Clarkia springvillensis* and one population of *Calyptridium pulchellum* occur on lands managed by the U.S. Forest Service. One population of *Clarkia springvillensis* occurs on lands managed by the BLM. Approximately two-thirds of the occurrences (representing 15 percent of the plants) of *Verbena californica* occur on lands managed by the BLM. These agencies would be required to consult with the Service if any activities authorized, funded, or carried out by these two agencies may affect these species. For example, consultations with the BLM and U.S. Forest Service may be required on road maintenance, livestock grazing authorizations, and right-of-way authorizations for projects that include adjacent or intermixed private land.

Other Federal agencies that may become involved as a result of this rule include the Federal Highways Administration and the Corps. Because at least two of these plants exist in or near seeps, springs, stream beds, perennial streams or drainages, the Corps may become involved through jurisdiction of section 404 of the Clean Water Act. In addition, when the Service issues permits for habitat conservation plans (HCPs) prepared by non-Federal parties, the Service must prepare an intra-Service section 7 biological opinion on the issuance of the 10(a) permit.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any of the plants, transport them in interstate or foreign commerce in the course of a commercial activity; sell or offer them for sale in interstate or foreign commerce; or remove and reduce any of the plants to possession, or maliciously damage or destroy threatened plants from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant taxa are exempt from these prohibitions provided that a statement "Of Cultivated Origin" appears on the shipping containers. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of

section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Two of the four species in this rule are known to occur on U.S. Forest Service lands, and two are known to occur on BLM lands. The Service believes that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility line crossing suitable habitat,) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service according to section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (e.g., bird watching, sightseeing, photography, camping, hiking);

(3) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide/herbicide application;

(4) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire break.

The Service believes that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Application of herbicides violating label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Intentional collection, damage, or destruction on non-Federal lands may be a violation of State law or regulations or in violation of State criminal trespass law and therefore a violation of section 9. The Act and 50 CFR 17.62, 17.63, and 17.72 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. The Service anticipates that few permits would ever be sought or issued for the four species because they are typically not sought for cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181; telephone 503/231–2063 or FAX 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of 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 the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any information collection requirements for which the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authors. The authors of this final rule are Maria Boroja, Diane Elam, Ken Fuller, and Dwight Harvey, Sacramento Fish and Wildlife Office (see **ADDRESSES** section); telephone (916) 979–2125.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends 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. Amend § 17.12(h) by adding 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	Status	When listed	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
FLOWERING PLANTS						
*	*	*	*	*	*	*
Brodiaea pallida	Chinese Camp brodiaea	U.S.A. (CA)	Liliaceae—Lily	T	643	NA

Species		Historic range	Family	Status	When listed	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Clarkia springvillensis	Springville clarkia	U.S.A. (CA)	Onagraceae—Evening primrose.	T	643	NA
*	*	*	*	*	*	*
Calyptridium pulchellum	Mariposa pussypaws	U.S.A. (CA)	Portulacaceae-Purslane	T	643	NA
*	*	*	*	*	*	*
Verbena californica	Red Hills vervain	U.S.A. (CA)	Verbenaceae-Vervain ...	T	643	NA
*	*	*	*	*	*	*

Dated: September 1, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–24500 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 980811214–8214–01; I.D. 052493B]

Endangered and Threatened Species; Threatened Status for Johnson's Seagrass

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing a final rule determining Johnson's seagrass (*Halophila johnsonii*) to be a threatened species pursuant to the Endangered Species Act (ESA) of 1973, as amended, which means it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Johnson's seagrass is rare and exhibits one of the most limited geographic distributions of any seagrass. Within its limited range (lagoons on the east coast of Florida from Sebastian Inlet to central Biscayne Bay), it is one of the least abundant species. Because of its limited reproductive capacity (apparently only asexual) and limited energy storage capacity (small root-rhizome structure and high biomass turnover), it is less likely to be able to repopulate an area when lost due to anthropogenic or natural disturbances. NMFS will soon issue protective regulations under section 4(d) of the ESA for this species.

DATES: Effective October 14, 1998.

ADDRESSES: Colleen Coogan, NMFS, Southeast Region, Protected Resources Division, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432; Angela Somma, NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Colleen Coogan, Southeast Region, NMFS, (727) 570–5312, or Angela Somma, Office of Protected Resources, NMFS, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule to list Johnson's seagrass as a threatened species on September 15, 1993 (58 FR 48326). Designation of critical habitat was proposed on August 4, 1994 (59 FR 39716). A public hearing on both the proposed listing and critical habitat designation was held in Vero Beach, Florida, on September 20, 1994. NMFS reopened the comment period for the proposed listing on April 20, 1998 (63 FR 19468).

The information forming the basis for NMFS' 1993 proposal has been peer reviewed, and new information confirms NMFS' conclusions regarding the threatened status of Johnson's seagrass. As stated in the notice reopening the comment period, the additional information supplements available data on the status and distribution of Johnson's seagrass. In order to update the original status report (Kenworthy, 1993) and to include information from new field and laboratory research on species distribution, ecology, genetics and phylogeny, NMFS convened a workshop on the biology, distribution, and abundance of *H. johnsonii*. The results of this workshop, held in St. Petersburg, Florida, in November 1996, were summarized in the workshop proceedings (Kenworthy, 1997) submitted to NMFS on October 15, 1997. The notice reopening the comment period contains a summary of the workshop proceedings (63 FR 19468). This final rule contains a brief description of those workshop proceedings, and updates the research findings and analysis since NMFS' 1993 proposal.

Updated Status Report

The biology of Johnson's seagrass is discussed in the proposed rule to list the species as threatened (58 FR 48326, September 15, 1993). The proposed rule includes information on the status of the species, its life history characteristics, and habitat requirements. Johnson's seagrass is one of twelve species of the genus *Halophila*. *Halophila* species are distinguished morphologically from other seagrasses in their possession of either a pair of stalked leaves without scales or a pseudo whorl of leaves. Identifying characteristics of *H. johnsonii* include smooth foliage leaves in pairs 10–20 mm long, a creeping rhizome stem, sessile (attached to their bases) flowers, and longnecked fruits. Most *Halophila* species are reduced in size, more shallow rooted, and have two to three orders of magnitude less biomass per unit area compared to all other seagrasses. The most outstanding difference between *H. johnsonii* and other species is its distinct differences in sexual reproductive characteristics. While *H. decipiens* is monoecious (has both female and male flowers on the same plant) and successfully reproduces and propagates by seed, *H. johnsonii* is dioecious (has flowers of a single sex on the same plant). However, the male flower has never been described either in the field or in laboratory culture. The absence of male flowers supports the hypothesis that sexual reproduction is absent in this species, and propagation must be exclusively vegetative. After periods of unfavorable environmental conditions of growth and vegetative branching, the regrowth and reestablishment of surviving populations of Johnson's seagrass would be significantly more difficult than for species with a sexual life history.

The status review that led to the proposed rule to list this species as threatened under the ESA included data from extensive field work at three sites (Hobe and Jupiter sounds, Sebastian Inlet, and Ft. Pierce Inlet) in the Indian River area during 1990 to 1992. Johnson's seagrass was the least abundant of the seagrass species within the study area and was distributed in patches that range in size from a few centimeters to hundreds of meters. Biomass, patch sizes, and leaf pair densities were always less than those measured in *H. decipiens*. The destruction of the benthic community due to boating activities, propeller dredging and anchor mooring was observed at all sites during this study.

Based on new qualitative and quantitative benthic surveys and interviews with scientists, the workshop report confirmed the extremely limited geographic distribution of *H. johnsonii* to patchy and vertically disjunct populations between Sebastian Inlet and northern Biscayne Bay on the east coast of Florida, finding no verifiable sightings outside the range already reported. Since additional surveys did not locate any male flowers, nor was seedling recruitment confirmed, the restricted distribution and abundance of Johnson's seagrass is attributed to a reliance on vegetative means of reproduction and growth (Kenworthy, 1993; Kenworthy, 1997). High densities of apical meristems, rapid rates of horizontal growth, and a fast biomass turnover were suggested to explain the appearance and disappearance of *H. johnsonii* observed in disturbed areas and on fixed survey transects. The workshop report confirms the conclusions from the previous data.

The results of expanded surveys during the period 1994 to 1996 corroborated previous information that: (1) *H. johnsonii* does not occur further north than Sebastian Inlet; and (2) areal distribution is patchy and disjunct from Sebastian Inlet to Jupiter Inlet. Additionally, these transects confirmed that *H. johnsonii* occurs over a depth range extending from the intertidal down to approximately –2 m mean tidal height. Average percent cover of *H. johnsonii* per transect ranged from a minimum of 0.2 percent in winter 1996 to 8.5 percent in summer 1994. Relative to the other six species that occur in the lagoon, *H. johnsonii* comprises less than 1.0 percent of the total abundance of seagrasses. The transect data corroborates previous intensive surveys in Jupiter and Hobe sounds, and near Fort Pierce Inlet (Kenworthy, 1993; Gallegos and Kenworthy, 1995; Kenworthy, 1997).

The potential for vegetative expansion, a perennial and intertidal growth habit, and a relatively high tolerance for fluctuating salinity and temperature may enable Johnson's seagrass to colonize and thrive in environments where other seagrasses cannot survive (Kenworthy, 1993; Kenworthy, 1997). Additional molecular genetic information was reviewed in the workshop which supports distinguishing *H. johnsonii* as a separate species from *H. decipiens* (Kenworthy, 1993), although more detailed and extensive phylogenetic studies were suggested to determine the origin and source of genetic diversity in Johnson's seagrass (Kenworthy, 1997). The first quantitative evidence of faunal community diversity and abundance in *H. johnsonii* meadows was also reported at this workshop. Results indicated that the infaunal communities of *H. johnsonii* are more similar to the larger seagrass, *Halodule wrightii* than to unvegetated bottom.

It is the policy of NMFS and the U.S. Fish and Wildlife Service (FWS) to solicit the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing. Also, it is NMFS' policy to summarize in the final decision document the opinions of all independent peer reviews received and to include all such reports, opinions, and other data in the administrative record of the final decision.

In response to NMFS's three solicitations of peer review on Johnson's seagrass, a response was received from Susan Williams, Ph.D., Associate Professor, Department of Biology and Director, Coastal and Marine Institute, College of Sciences, San Diego State University and from Kimon T. Bird, Ph.D., Center for Marine Science Research, University of North Carolina at Wilmington. Their opinions, which support the NMFS listing proposal, are included in the following Summary of Comments section.

Summary of Comments

The State of Florida's Department of Environmental Protection (FDEP) and Department of Community Affairs (DCA) submitted several sets of comments. Many of these comments pertained to the consideration of critical habitat designation, which is not being determined in this rulemaking. For this present rule, NMFS will address only the comments related to the listing of Johnson's seagrass as threatened.

The December 8, 1993, comments from FDEP concurred that threatened status under the ESA should be assigned to Johnson's seagrass because its distribution is among the most restricted of seagrass species, because it lacks sexual reproduction, and because it depends on vegetative reproduction. All of these factors make it particularly vulnerable to local extinction from various perturbations or environmental changes.

FDEP stated that *johnsonii* and other *Halophila* species have been shown to have relatively high productivity and turnover rates and may be more ecologically important than previously thought. Designation as a threatened species would encourage further study of Johnson's seagrass and would assist FDEP in developing conservation plans. Also, FDEP agreed with NMFS that existing protection for this species was inadequate.

FDEP included the following caveats: First, the presently known geographical locations include several inlets that have regularly experienced maintenance dredging (one since 1948). Yet Johnson's seagrass is still evident around these inlets and in other areas of high human use. It could be argued that maintenance dredging has enhanced this species, or at least not harmed it. Second, the proposed rulemaking states that there is no evidence that commercial, recreational, scientific or educational activities have contributed to the decline of this species. If this species is listed, what more needs to be done to protect it? Third, identification of this species is difficult except by seagrass experts. Those individuals surveying sites need to understand how to clearly identify *H. johnsonii* in the field.

In March 1994, NMFS received additional comments from FDEP concerning the listing proposal, stating that Johnson's seagrass has only recently been recognized as a separate species and that FDEP is seriously concerned with the general lack of knowledge about the organism, especially the many aspects of basic life history. FDEP assumed that the listing of this species as threatened under the ESA should promote the collection of additional knowledge for improved management decisions, including the ability to properly identify the plant in the field. Other *Halophila* species have been underestimated regarding their importance to nearshore ecosystems, and the FDEP did not want this species to be overlooked if it had a significant role. FDEP recommended that NMFS consider conducting an appropriate research program linked to the listing process and that more must be known

about the species so that the most appropriate management strategies can be developed. FDEP restated the caveats made in the December 1993, response.

In September 1994, FDEP commented that the steps being taken by NMFS are necessary to adequately protect this species from loss associated with human-related activities. Although FDEP had reservations as to the effects of inlet-related maintenance activities on the continued existence of Johnson's seagrass, it noted that it is clear that direct removal of existing seagrass will be detrimental to the survival of this species. It supported listing the species as a threatened species.

In January 1994 and June 1994, DCA responded to NMFS' request for a coastal zone consistency determination for the designation of critical habitat for Johnson's seagrass. Although DCA referred to both the proposed listing and critical habitat designation in responses to NMFS, the comments from individual state agencies and departments addressed primarily the critical habitat portion.

In 1998, DCA wrote, on behalf of the state, that it does not object to the listing of Johnson's seagrass as a threatened species.

Other Comments

Issue 1: Several commenters questioned whether NMFS has adequate information to determine that Johnson's seagrass should be listed. Others questioned whether it is a separate species rather than a possible mutation or an exotic species not native to the area. Some questioned whether NMFS could list a species without knowing how it reproduces.

One of the peer reviewers, Dr. Susan L. Williams, stated that while there are data gaps for the species and such data should be obtained, it is justifiable to extrapolate from other species in the genus because seagrass congeners are remarkably alike in their ecology. While it is important to clarify the taxonomic status of the species, it is not an issue that needs to be resolved before listing because the morphology of *H. johnsonii* is distinct enough from *H. decipiens* to enable field identification and thus its distribution across habitats.

In response to questions on whether *H. johnsonii* is a separate species, another peer reviewer, Dr. Kimon T. Bird, stated that the morphological and flowering characteristics of this species are markedly different from the conspecific species *H. engelmanii* and *H. decipiens*. Recently, *H. johnsonii* was compared to other *Halophila* species from Florida and the Indo-Pacific using isozymes sulfated flavonoids and DNA fingerprinting (Jewett-Smith et al. 1997). Based on these analyses, *H. johnsonii* separates out well from other *Halophila* species in Florida and appears more similar to the narrow leaved forms of the Indo-Pacific based on the use of this DNA analysis.

Regarding the mode of reproduction, Dr. Bird stated that the data provided support the absence of seeds, and he agrees that this species reproduces only by asexual methods. Dr. Williams states that there is concern about the lack of evidence of sexual reproduction since male flowers have not been observed in *H. johnsonii*. Furthermore, the sexual reproduction by seagrasses is poorly understood compared to other angiosperms (e.g. seaweeds), and there have been cases where further studies have revised conclusions on asexuality. Apomixis (vegetative reproduction where normal sexual processes are not functioning or greatly reduced in number) has not been verified in seagrasses.

Nonetheless, considerable field surveys and collections have been conducted on *H. johnsonii* to conclude that if males and/or viable seeds do occur, they are quite rare in the areas studied. Thus, the attributes of potentially limited distribution, rare (if present at all) sexual reproduction, and uncertain vegetative dispersal makes the species prone to disturbance. Dr. Williams also concludes that limited and isolated populations of *H. johnsonii* that rely primarily on vegetative dispersal are probably very prone to local extinction due to disturbances and stochastic events. The numerous field searches and laboratory transplant culture experiments have indicated the presence of pistillate flowers (no staminate flowers (i.e., only asexual reproduction) over the 16 years since *H. johnsonii* was first described.

NMFS Response: The 1996 NMFS sponsored workshop addressed several of these concerns. For example, since additional surveys have not located any male flowers, nor has seedling recruitment been confirmed, the workshop report attributed the distribution and abundance of Johnson's seagrass to a reliance on vegetative means of reproduction and growth. High densities of apical meristems, rapid rates of horizontal growth, and a fast leaf turnover were suggested to explain the appearance and disappearance of *H. johnsonii* observed in disturbed areas and on survey transects. The workshop report suggests that this potential for vegetative expansion, a perennial and intertidal growth habit, and a relatively high tolerance for fluctuating salinity and temperature may enable Johnson's seagrass to colonize and thrive in environments where other seagrasses cannot survive.

Additional molecular genetic information was reviewed in the workshop which supports distinguishing *H. johnsonii* as a separate species from *H. decipiens*, although more detailed and extensive phylogenetic studies were suggested to determine the origin and source of genetic diversity in Johnson's seagrass.

Issue 2: Some commenters believe the species is much more abundant in South Florida than the status review indicates and that it occurs in places other than the east coast of Florida (e.g., Bahamas or Florida west coast).

Dr. Bird states that he contacted three trained marine botanists along the west coast of Florida. They reported that they had never seen *H. johnsonii* along the west coast. In addition, McMillan made no reference to its presence in Texas when writing the paper describing the new species, even though he is far more familiar with the marine botany of Texas than Florida. While several commenters reported seeing it in the Bahamas, their observations were anecdotal. Based on the information provided, Dr. Bird concurs that *H. johnsonii* is limited to a narrow geographic range along the east coast of Florida.

Dr. Williams states that knowledge of the distribution of *H. johnsonii* throughout the subtropical and tropical Atlantic should be extended, but it should not affect listing the species because in its known distribution, it is vulnerable to disturbances of dredging and reduced water clarity, as are all the co-occurring seagrass species.

NMFS Response: In 1986, Robert Virnstein (St. John's River Water Management District) and Kalani Cairns (U.S. Fish and Wildlife Service) mapped a 50–mile section of the Indian River Lagoon from St. Lucie Inlet to Sebastian Inlet. Even though *H. johnsonii* and *H. decipiens* seemed to be proliferating, data did not indicate whether this was a trend or a one-time increase. Also, because both species have short leaves, they may have been overlooked in previous surveys. They stated that 1986 was considered a "good" year for seagrasses even though many areas were "stressed" and had lost seagrasses. Furthermore, they opined that one "bad" year could result in the loss of up to half of the present coverage and no one could predict whether such loss would be permanent or that the species would recover.

Virnstein and Morris (1996–personal communication) have said that their 3-year study of 74 seagrass transects in the

Indian River Lagoon has yielded information on deeper water distributions measuring a few centimeters to more than several hundred meters. These results do not change the distributional limits within the original range of the species.

The report of the NMFS workshop confirms the extremely limited geographic distribution of *H. johnsonii* to patchy and vertically disjunct areas between Sebastian Inlet and northern Biscayne Bay on the east coast of Florida, finding no verifiable sightings outside of the range already reported. This finding is based on new qualitative and quantitative benthic surveys and interviews with scientists.

Issue 3: Some commenters remarked that it is difficult to identify Johnson's seagrass in the field and that those reviewing sites need to understand how to clearly identify the species.

NMFS Response: Distinct morphological differences allow for both field and laboratory differentiation of the species. *H. johnsonii* is distinct from the conspecific *H. decipiens* in basic leaf characteristics. *H. johnsonii* has elongated linear leaves with complete margins and *H. decipiens* has broad, elliptical (paddle-shaped) leaves with serrated margins. Increased outreach after listing, including recovery planning and section 7 consultations, will improve stakeholders' familiarity with these differences.

Issue 4: Some commenters questioned the presence of Johnson's seagrass near inlets that have been routinely dredged for years and in other areas of high human usage. The question is whether certain dredging, especially maintenance dredging, impacts Johnson's seagrass, or whether the species occurs in these areas as a result of dredging.

NMFS Response: The effects of maintenance dredging on Johnson's seagrass have not yet been characterized. Johnson's seagrass requires suitable salinity levels, water transparency, and water quality as well as stable, unconsolidated sediments. These elements are found in shallow waters and shoals around inlets and disturbed areas as well as in undisturbed, more isolated deeper areas of the lagoon. Common factors in its distribution appear to be its ability to grow in association with other species and its ability to survive in shallow intertidal flats environments typical of the flood tide deltas near inlets. Johnson's seagrass may extend the coverage of seagrasses within lagoons in some of the zones where other grasses do not grow.

Dr. Bird questions the ability of *H. johnsonii* to withstand nearby dredging activities because the sediments of the Indian River contain a good deal of highly organic particulate materials. When resuspended by dredging activities or other physical disturbances, the fine particulate material can attenuate light (reducing Photosynthetically Active Radiation (PAR)) and be a limiting factor in photosynthesis and subsequent seagrass growth and maintenance.

Several scientists working in the area and for the state of Florida stated that it is clear that direct removal of existing seagrass through new construction will be detrimental to the survival of Johnson's seagrass. There have been no reports of healthy populations outside the presently known range. The survival of the species likely depends on maintaining existing viable populations, especially in areas where large patches are found.

Issue 5: Some commenters said that seagrasses have overwhelming importance to the ecology and economy of South Florida. Seagrasses are high primary producers within their ecosystem. They provide valuable habitat as nurseries, provide refuge for fisheries, and recycle nutrients throughout their ecosystems. Seagrasses are also a food source for endangered green turtles and the Florida manatee. When seagrass beds disappear, fishery productivity also decreases. They noted that declines in seagrass beds have been documented worldwide, particularly in the Indian River Lagoon, the primary habitat of *H. johnsonii*.

NMFS Response: NMFS agrees that seagrasses play an important role in their ecosystems and provide valuable habitat. The vulnerability of seagrasses in general and *H. johnsonii* in particular, provides the impetus for this listing.

Issue 6: Some commenters said that the species should be listed as endangered rather than threatened, and that NMFS underestimated the effects of climate change and increasing development and population growth in Florida.

NMFS Response: NMFS believes that only limited information exists regarding Johnson's seagrass, reproductive capacity, life history characteristics (growth rates, environmental requirements), and the effects of human disturbance which would be necessary in determining that Johnson's seagrass is in danger of extinction throughout all or a significant portion of its range. The protection afforded by listing as threatened will result in the subsequent development of a recovery plan for *H. johnsonii*. The recovery plan will address the gaps in our knowledge of the biology and ecology of Johnson's seagrass, and such knowledge will, in turn, lead to a better understanding of the demography and population biology of this species.

Dr. Bird states that although the evidence points to a valid species with a limited distribution, the questions of its degree of extinction is more difficult to resolve. *Halophila* species as a whole appear to be patchy with few species developing extensive stands. However, he agrees with NMFS' conclusions that human activities in the area could impact the species. Existing criteria and standards, as well as enforcement measures, are inadequate to protect seagrasses.

Issue 7: Several commenters expressed concern about whether maintenance dredging of existing inlets and channels would be allowed to continue if Johnson's seagrass is listed.

NMFS Response: NMFS is concerned about the possibility of losing patches of Johnson's seagrass that may be essential to the genetic viability of the species. However, NMFS expects that maintenance dredging activities will be authorized with the oversight provided by section 7 of the ESA.

Issue 8: Several commenters were concerned that the listing of Johnson's seagrass would prevent or severely curtail expansion or development of ports and maintenance of existing ports, channels and inlets. In turn, this would adversely affect the economy in their communities.

NMFS Response: The ESA mandates that listing determinations be made solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and taking into account those conservation efforts being made by any state. However, section 7 of the ESA provides a mechanism for actions requiring Federal funding permits or participation to be conducted in a manner that prevents jeopardy to any species. Therefore, NMFS anticipates that most marine related activities can continue when measures are taken through the section 7 consultation process with Federal agencies to reduce adverse impacts and avoid jeopardizing the continued existence of the species.

Issue 9: Some commenters stated that any threats to the habitat could be corrected or were being corrected without the species being listed. For example, problems due to prop scarring could be resolved by marking navigation channels and establishing speed zones. Several counties are installing storm water management systems to improve

water quality. Maintenance dredging is regulated by the state, and spoil is now deposited on beaches to protect shorelines rather than on spoil islands.

NMFS Response: Other embayments in the distributional range of Johnson's seagrass have marked navigational channels, but seagrass bed scarring still occurs. "Many of the sea-grass beds in the Indian River Lagoon have prop scars resulting from boaters attempting to cross shallow waters and running aground" (Indian River Lagoon Comprehensive Conservation and Management Plan, May 1996). Erosion caused by damage from boat wakes may also result in turbidity and siltation, which adversely affect seagrass.

Issue 10: One commenter wrote that the updated information provided by NMFS reveals that the species is doing well, and shows no signs of decrease in health or population. The commenter also wrote that its geographic range was, if anything, larger than what was reported in 1993.

NMFS Response: In order to update the original status report (Kenworthy, 1993) and to include information from new field and laboratory research on species distribution, ecology, use, genetics and phylogeny, NMFS convened a workshop on the biology, distribution, and abundance of *H. johnsonii*. The results of this workshop, held in St. Petersburg, Florida, in November 1996, have been summarized in the workshop proceedings (Kenworthy, 1997) submitted to NMFS on October 15, 1997. The new information confirmed NMFS' original determination that the species should be listed as threatened. This final rule is based on updated information.

Issue 11: Some commenters noted that in the proposed rule, NMFS stated that there is no evidence that the overutilization for commercial, recreational, scientific or educational purpose contributed to the decline of Johnson's seagrass. If this listing factor has not contributed to the decline, they questioned what more needs to be done to protect the species.

NMFS Response: This factor refers to the actual use of the species itself. For example, if a plant were harvested commercially for food, medicines, or other products, this use might have contributed to the decline of the organism. Johnson's seagrass habitat may be affected by other resource harvesting activities in the ecosystem, but the species itself is not used for commercial, recreational, or educational activities.

Issue 12: Several commenters stated that there are adequate Federal and State laws to protect all seagrasses which make the additional protection afforded by the ESA unnecessary.

NMFS Response: While it is clear that the intent of Federal and Florida state laws is to conserve and protect seagrass habitat, it is also clear that there is continued and well-documented loss of seagrass habitat in the United States and elsewhere. For example, seagrasses have declined in many areas of the Indian River Lagoon (Virnstein and Morris, 1996).

Previous transplantation efforts to mitigate for the loss of seagrass beds have failed. Until recently, *Halophila* species have not been transplanted successfully in the field and studies underway are incomplete (Kenworthy-personal communication). Many seagrass ecosystems are known to recover very slowly even under the most natural, pristine conditions. Current efforts are insufficient to protect critical seagrasses. This was also the conclusion and recommendation of scientists attending the International Seagrass Workshop in Kominato, Japan in August 1993.

NMFS believes that Johnson's seagrass needs the additional protection of listing, including consideration of effects of Federal actions on the species through the section 7 consultation process of the ESA. During consultation with other Federal agencies, NMFS can ensure that any federally funded, permitted, or authorized activity includes adequate measures to reduce adverse impacts from these activities and to prevent jeopardizing the continued existence of the species.

Issue 13: One commenter wrote that NMFS had exceeded the time limit for making a final determination after proposing to list Johnson's seagrass as threatened in 1993.

NMFS Response: In 1989, NMFS was notified by the FWS that it had received information indicating that *H. johnsonii* was a rare species which may need to be listed under the ESA. By 1993, NMFS had gathered enough information to propose listing the species as threatened. In 1994, NMFS proposed critical habitat for the species. A joint public hearing was held on both the proposed listing and proposed critical habitat. The proposed critical habitat designation was very controversial. Because of the controversy and new NMFS/FWS polices on listing, NMFS postponed the final listing decision until information used to make the original proposal had been peer reviewed and additional information gathered. Peer review of the original information and the results of new studies confirmed NMFS' original determination that the species should be listed as threatened. The new information was reviewed at a technical workshop in November 1996, and summarized in a report in October 1997. In addition to gathering new information, the final listing was delayed by the year-long Congressionally imposed moratorium on listing species in fiscal year 1996.

Summary of the Factors Affecting the Species

After a thorough review and consideration of all information available, NMFS concludes that *H. johnsonii* warrants listing as a threatened species. Procedures found at section 4(a)(1) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the ESA were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *H. johnsonii* are as follows:

1. Present or Threatened Destruction, Modification or Curtailment of its Habitat or Range.

Habitat within the limited range in which *H. johnsonii* exists is at risk of destruction by a number of human and natural perturbations including (1) dredging; (2) prop scoring; (3) storm surge; (4) altered water quality; and (5) siltation. Due to the fragile nature of *H. johnsonii's* shallow root system, the plants are vulnerable to human-induced disturbances in addition to the major natural disturbances to the sediment, and their potential for recovery may be limited. Destruction of benthic communities due to boating activities (propeller scarring and anchor mooring) was observed at all *H. johnsonii* sites during the NMFS study. Further, this condition is expected to worsen with the predicted increase in boating activity. This severely disrupts the benthic habitat by breaching root systems and severing rhizomes, and significantly reducing the viability of the community.

Turbidity is a critical factor in the distribution and survival of seagrasses, especially in deeper regions of the lagoon, where reduced PAR limits photosynthesis. Shallow regions are less affected by turbidity unless light is rapidly attenuated. In interior lagoonal areas where salinity is low, highly colored water typically is discharged via drainage systems. Stained waters attenuate shorter wavelengths rapidly, removing important PAR as well as potentially stressing plants due to the low salinity. This is a critical factor, especially in the vicinity of Sebastian,

St. Lucie, Jupiter, and Ft. Pierce Inlets, and Lake Worth and North Biscayne Bay where freshwater reaches the flood tide delta and nearby seagrass meadows via rivers and canal systems that discharge into the lagoon.

Trampling due to human disturbance and increased land-use induced siltation can threaten viability of the species. Degradation of water quality due to human impact is also a threat to the welfare of seagrass communities. Nutrient over-enrichment caused by inorganic and organic nitrogen and phosphorous loading via urban and agricultural land run-off can stimulate increased algal growth that may smother the understory of *H. johnsonii*, shade rooted vegetation, and diminish the oxygen content of the water. Such low oxygen conditions have a demonstrated severe negative impact on seagrasses and associated communities. Continued and increased degradation of environmental quality also will have a detrimental effect upon *H. johnsonii* communities.

2. Overutilization for Commercial, Recreational, Scientific or Educational Purposes.

Overutilization for these purposes has not been a documented factor in the decline of this species.

3. Disease or Predation

There are two known herbivores that occur in the range of *H. johnsonii*—the green sea turtle *(Chelonia mydas)*, and the West Indian manatee *(Trichechus manatus)*, both of which feed upon the seagrass. Herbivorous fish also feed upon the seagrass community. Predation pressures alone are not likely to be a threat to the species existence.

4. The Inadequacy of Existing Regulatory Mechanisms.

Despite existing Federal and Florida state laws to conserve and protect seagrass habitat, there is a continued and well-documented loss of seagrass habitat in the United States and elsewhere. For example, seagrasses have declined in many areas of the Indian River Lagoon (Virnstein and Morris, 1996). The Florida Department of Natural Resources and the Florida Department of Environmental Regulation have recently merged, greatly increasing the assignment of enforcement responsibilities without an associated increase in staff for the Marine Patrol. Although stormwater management systems are installed or being installed, the Florida Indian River Lagoon Act of 1990 does not cover other large inputs that will affect water quality, which in turn could affect seagrasses (e.g. industrial discharges, brine disposal, canals, processing plants).

Previous transplantation efforts to mitigate for the loss of seagrass beds have failed. Until recently, *Halophila* species have not been transplanted successfully in the field and studies underway are incomplete (Kenworthy-personal communication). Many seagrass ecosystems are known to recover very slowly even under the most natural, pristine conditions. Current efforts are insufficient to protect critical seagrasses. This was also the conclusion and recommendation of scientists attending the International Seagrass Workshop in Kominato, Japan in August 1993.

5. Other Natural or Human-made Factors Affecting Its Continued Existence.

The existence of the species in a very limited range increases the potential for extinction from stochastic events. Natural disasters such as hurricanes could easily diminish entire populations and a significant percentage of the species. Seagrass beds that are in proximity to inlets are especially vulnerable to storm surge from hurricanes and severe storm events.

Efforts Being Made To Protect Johnson's Seagrass

Section 4(b)(1) of the ESA requires the Secretary of Commerce (Secretary) to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account state efforts being made to protect the species. Therefore, in making its listing determinations, NMFS assesses the status of the species, identifies factors that have led to the decline of the species, and assesses available conservation measures to determine whether such measures ameliorate risks to the species.

There is a continued and well-documented loss of seagrass habitat notwithstanding existing Federal and state laws to conserve and protect this habitat. Previous transplantation efforts to mitigate for the loss of seagrass beds have failed. NMFS has determined that these existing conservation efforts are not sufficient to prevent a listing determination. NMFS will, however, consider state conservation efforts when developing protective regulations under section 4(d) of the ESA. State conservation efforts may also serve as a basis for a cooperative agreement under section 6 of the ESA.

Listing Determination

Based on available information, NMFS concludes that Johnson's seagrass warrants listing as a threatened species. This species is rare, has a limited reproductive capacity, and is vulnerable to a number of anthropogenic or natural disturbances. Also, it exhibits one of the most limited distributions of any seagrass. Within its limited range (lagoons on the east coast of Florida from Sebastian Inlet to central Biscayne Bay), it is one of the least abundant species. Because of its limited reproductive capacity and limited energy storage capacity, it is less likely to survive environmental perturbations and to be able to repopulate an area when lost. Finally, habitat loss has continued despite existing Federal and state conservation efforts.

Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, recovery action, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The ESA provides for cooperation with states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, here.

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species; as described below, this is not the case for threatened species.

Section 4(d) of the ESA directs the Secretary to implement regulations "to provide for the conservation of [threatened] species" that may include extending any or all of the prohibitions of section 9 to threatened species. Section 9(a)(2)(E) also prohibits violations of protective regulations for threatened species of plants implemented under section 4(d). While NMFS proposed extending the section 9 prohibitions to Johnson's seagrass, it is not including that proposal in this final rule. Rather, NMFS will issue protective regulations pursuant to section 4(d) for Johnson's seagrass in a separate proposed rulemaking.

Section 7 (a)(4) of the ESA requires Federal agencies to consult with NMFS on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. For listed species, section 7 (a)(2) requires Federal agencies to ensure that activities they

authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with NMFS.

Federal agency actions or programs that may affect populations of Johnson's seagrass and its habitat include U.S. Army Corps of Engineers authorization of projects affecting waters of the U.S. under section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (i.e., beach nourishment, dredging, and related activities including the construction of docks and marinas); Environmental Protection Agency authorization of pollutant discharges and management of freshwater discharges into waterways; U.S. Coast Guard regulation of vessel traffic; management of national refuges and protected species by the FWS; management of vessel traffic and other activities by the U.S. Navy; authorization of state coastal zone management plans by NOAA's National Ocean Service, and management of commercial fishing and protected species by NMFS.

Listing *H.* johnsonii as threatened provides for the development of a recovery plan for the taxon. The recovery plan would establish a framework for State and Federal agencies to coordinate activities and to cooperate with each other in conservation efforts. The plan would set recovery priorities and describe site-specific management actions necessary to achieve the conservation of Johnson's seagrass.

Critical Habitat

Section 4(b)(6)(C) of the ESA requires that, to the extent prudent, critical habitat be designated concurrently with the listing of a species unless such critical habitat is not determinable at that time. As stated previously, NMFS proposed a designation of critical habitat on August 4, 1994 (59 FR 39716). Given the passage of time since that proposal, NMFS will address the designation of critical habitat in a separate **Federal Register** notice and additional comments will be solicited at that time.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**).

Classification

The 1982 Amendments to the ESA, in section 4(b)(1)(A), restrict the information that must be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (6th Cir. 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of the National Environmental Policy Act (NEPA) under NOAA Administrative Order 216–6.

As noted in the Conference report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of the species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this final rule is exempt from review under E.O. 12866.

At this time NMFS is not issuing protective regulations under section 4(d) of the ESA. In the future, prior to finalizing its 4(d) regulations for this species, NMFS will comply with all relevant NEPA and RFA requirements.

This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: August 27, 1998.

Hilda Diaz-Soltero,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED SPECIES

1. The authority citation for part 227 reads as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, 227.12 also issued under 16 U.S.C., 1361 *et seq.*

2. The heading for part 227 is revised to read as set forth above.

3. Section 227.4 is amended by adding paragraph (p) to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(p) Johnson's seagrass (*Halophila johnsonii*)

[FR Doc. 98–24357 Filed 9–11–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 177
Monday, September 14, 1998

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA–98–07]

Milk in the Iowa Marketing Area; Termination of Proceeding on Proposed Temporary Revision of Pool Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed temporary revision of rule.

SUMMARY: This action terminates a proceeding that was initiated to consider a proposal to reduce temporarily the pooling standards for supply plants regulated by the Iowa Federal milk order. The proposal, which would reduce the shipping requirement for the months of September through November 1998 from 35 percent to 25 percent, was made by the operator of a pool supply plant. A fluid milk handler and a cooperative association representing a substantial number of the producers on the market submitted views and arguments opposing the temporary revision. In addition, the fluid milk handler suggested that the shipping requirements be increased by 5 percentage points for the same period. The Department has concluded that it will not temporarily reduce the shipping requirement for supply plants as proposed.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 720–2357, e-mail address: connie___brenner@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision: Issued July 21, 1998; published July 27, 1998 (63 FR 40068).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This proceeding was initiated by a notice of rulemaking published in the **Federal Register** on July 27, 1998 (63 FR 40068) concerning a proposed relaxation in the shipping requirement for pool supply plants for the months of September through November 1998. Interested parties were afforded 30 days in which to comment on the proposal by submitting written data, views, or arguments. Comments were received from three interested parties.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of March 1998, 3,768 dairy farmers were producers under the Iowa Order. Of these, all but 68 would be considered small businesses, having under 326,000 pounds of production for the month. Of the dairy farmers in the small business category, 2,682 produced under 100,000 pounds of milk, 876 produced between 100,000 and 200,000, and 142 produced between 200,000 and 326,000 pounds during March 1998.

Generally, the reports filed on behalf of the slightly more than 20 milk plants pooled, or regulated, under the Iowa Order in March 1998 were filed for establishments that would meet the SBA definition of a small business on an individual basis, having less than 500 employees. However, all but four of the milk handlers represented in the market are part of larger businesses that operate multiple plants at which their collective size exceeds the SBA definition of a small business entity.

Interested parties were invited to submit comments on the probable regulatory and informational impact of the proposed temporary revision on small entities, or to suggest modifications of the proposal for the purpose of tailoring their applicability to small businesses. No comments addressing the potential impact of the proposed action on small entities were received.

The reduction of the required supply plant shipping percentage for the months of September through November 1998 was proposed to allow the milk of producers traditionally associated with the Iowa market to continue to be pooled and priced under the order. A temporary revision was intended to lessen the likelihood that more milk shipments to pool plants might be required under the order than are actually needed to supply the fluid milk needs of the market, resulting in savings in hauling costs for handlers and producers.

However, based upon comments received, there are indications that the temporary revision could make it more difficult for handlers to obtain supplies of milk needed to supply the fluid needs of the market. It is not clear that the current supply plant shipping percentage will cause uneconomic shipments of milk. The Department has concluded that it will not temporarily reduce the shipping requirement for supply plants as proposed.

Statement of Consideration

This document terminates the proceeding initiated to temporarily reduce the pool supply plant shipping standards of the Iowa Federal milk order. Beatrice Cheese, Inc. (Beatrice), which operates a supply plant regulated under the Iowa milk order, requested a temporary reduction in the supply plant shipping requirement of 10 percentage points. Beatrice stated that a decrease was warranted due to a surplus of raw milk supplies available for fluid use over the needs of the fluid milk plants regulated under the Iowa order. Beatrice stated that if the pool supply shipping percentages remain unchanged, Beatrice would be forced to move milk

uneconomically or unfairly depool some milk produced by Iowa dairymen, denying them participation in the Order 79 pool.

Another proprietary cheese plant operator submitted comments supporting the proposed temporary revision, citing conditions requiring uneconomic shipments of milk or the need to depool milk to meet order requirements in 1996 when the shipping percentage was also at 35 percent.

Comments filed on behalf of Anderson-Erickson Dairy Company of Des Moines, Iowa (Anderson-Erickson), opposed the proposed temporary revision on the basis that, although there appears to be a sufficient supply of milk in the marketing area, that supply is not being made available as needed by fluid processing plants. Anderson-Erickson stated that it had requested additional fluid milk supplies from Beatrice for the fall season of traditionally high Class I use and been refused. Anderson-Erickson stated that the dairy has diligently pursued a substitute milk supply by contacting other sources of milk in and around Iowa. While its efforts succeeded to some extent in supplementing Anderson-Erickson's milk supply, the fluid milk handler stated that it would still fall short of its raw milk needs by nearly 2.5 million pounds per month beginning September 1998.

Anderson-Erickson requested that, since milk supplies appear to be limited for fluid use, USDA consider increasing the Iowa pool supply plant shipping percentage for the months of September through November 1998 by 5 percentage points instead of reducing them by 10 percentage points.

Associated Milk Producers, Inc., North Central AMPI (AMPI), filed a comment stating that current marketing conditions make it extremely difficult to determine Class I needs relative to available milk supply in the market. However, the cooperative association stated that its customer, Anderson-Erickson, is requesting more milk than it was a year earlier. The cooperative concluded that a reduction in shipping requirements does not appear to be appropriate at present.

There are no indications that milk supplies in the Iowa marketing area are any more plentiful for the fall months of 1998 than they were for the same months of 1997. As noted in the AMPI comment, current pricing relationships, the pooling of some milk supplies under other orders, and the failure of handlers to pool their full milk supplies make it very difficult to form any definitive conclusions about the supply and demand of producer milk for fluid use. However, the difficulty of a fluid milk handler in assuring an adequate supply of milk for its bottling needs, even with the procurement of additional sources, would indicate that the percentage shipping standards required for pooling should not be reduced. It is not clear that the current supply plant shipping percentage will cause uneconomic shipments of milk.

In view of the above circumstances, it is concluded that the supply plant shipping requirement should not be revised for the months of September through November 1998. Accordingly, the proceeding begun on this matter on July 21, 1998, is hereby terminated.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on September 8, 1998.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 98–24534 Filed 9–11–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 3

[EOIR No. 122P; AG Order No. 2177–98]

RIN 1125–AA22

Board of Immigration Appeals: Streamlining

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a streamlined appellate review procedure for the Board of Immigration Appeals. The proposed rule is in response to the enormous and unprecedented increase in the number of appeals being filed with the Board. The rule recognizes that in a significant number of the cases the Board decides, the result reached by the adjudicator below is correct and will not be changed on appeal. In these cases, a single permanent Board Member will be given authority to review the record and affirm the result reached below without issuing an opinion in the case. This procedure will promote fairness by enabling the Board to render decisions in a more timely manner, while allowing it to concentrate its resources primarily on those cases in which the decision below may be incorrect, or where a new or significant legal or procedural issue is presented. In addition, the proposed rule provides that a single Board Member or the Chief Attorney Examiner may adjudicate certain additional types of cases, motions, or other procedural or ministerial appeals, where the result is clearly dictated by the statute, regulations, or precedential decisions.

DATES: Written comments must be submitted on or before November 13, 1998.

ADDRESSES: Please submit written comments to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305–0470.

FOR FURTHER INFORMATION CONTACT: Margaret Philbin, (703) 305–0470.

SUPPLEMENTARY INFORMATION: The mission of the Board of Immigration Appeals is to provide fair and timely immigration adjudications and authoritative guidance and uniformity in the interpretation of the immigration laws. The rapidly growing number of appeals being filed with the Board has severely challenged the Board's ability to accomplish its mission and requires that new case management techniques be established and employed.

In 1984, the Board received fewer than 3,000 cases. In 1994, it received more than 14,000 cases. In 1997, in excess of 25,000 new appeals were filed. There is no reason to believe that the number of appeals filed is likely to decrease in the foreseeable future, especially as the number of Immigration Judges continues to increase.

At the same time that the number of appeals filed has increased, the need for the Board to provide guidance and uniformity to the Immigration Judges, the Immigration and Naturalization Service, affected individuals, the immigration bar, and the general public has grown. The Board now reviews the decisions of over 200 Immigration Judges, whereas there were 69 Judges in 1990 and 86 Judges in 1994. The frequent and significant changes in the complex immigration laws over the last several years, including a major overhaul of those laws in September 1996, also highlight the continued need for the Board's authoritative guidance in the immigration area, as does the fact that the recent legislation drastically reduced the alien's right to judicial review.

The Attorney General has made efforts to aid the Board in handling its

burgeoning caseload by increasing its size from 5 to 12 members in 1995 and by recently authorizing the addition of three additional permanent Board Members, bringing the total to 15 Board Members. Significant staff increases have accompanied the expansion of the Board.

To meet its overriding objective of providing fairness in adjudicating appeals, the Board must achieve four goals. It must: (1) Provide authoritative guidance and uniformity through high quality appellate decisions; (2) decide all incoming cases in a timely and fair manner; (3) assure the correctness of the results in individual cases; and (4) eliminate the backlog of cases.

To accomplish these goals under current conditions, the Board must limit its three-Member panel, quasi-judicial decision-making process to those cases where there is a realistic chance that review by a three-Member panel will change the result below. Accordingly, the proposed rule would add a new provision, 8 CFR 3.1(a)(5), giving the Board authority; by action of a single permanent Board Member, to affirm the result below without an opinion where: (1) The result reached in the decision under review was correct; (2) any errors in the decision under review were harmless or nonmaterial; and (3) either (a) the issue on appeal is squarely controlled by existing Board of federal court precedent and does not involve the application of such precedent to a novel fact situation; or (b) the factual and legal questions raised on appeal are so insubstantial that three-Member review is not warranted.

An affirmance without opinion would be issued only if no legal or factual basis for reversal of the decision below is apparent. If an appellant makes a substantial argument for reversal, the case would not be appropriate for affirmance without opinion. At the same time, an affirmance without opinion would relate only to the *result* below; it would not necessarily imply that the Board approved or adopted all the reasoning of the decision below, or that there were no harmless or nonmaterial errors in the decision below. The decision below would be the final administrative decision for judicial review purposes.

If the single permanent Board Member finds the case appropriate for affirmance without opinion, that Board Member will sign a simple order to that effect, without additional explanation or reasoning. If the Board finds affirmance without opinion inappropriate, the case will be assigned to a three-Member panel for review and decision. Thus, an affirmance without opinion is a determination that the result reached below is correct and that the case does not warrant three-Member review. The three-Member panel also will have authority to affirm without opinion, where it determines such disposition is appropriate. This new procedure will enable the Board Members to concentrate their time and efforts on those cases in which there is a chance that the result below was incorrect, as well as on cases involving new or significant legal issues.

Proposed 8 CFR 3.1(a)(5) would also give the Chairman authority to designate certain categories of cases as suitable for affirmance without opinion by a single permanent Board Member or by a three-Member panel. These categories may include, but are not limited to, the following: (1) Cases challenging findings of fact where the findings below are not against the weight of the evidence; (2) cases controlled by precedents of the Board, the controlling United States Court of Appeals, or the United States Supreme Court where there is no basis for overruling or distinguishing the precedent; (3) cases seeking discretionary relief for which the appellant clearly appears to be statutorily ineligible; (4) cases challenging discretionary decisions where it does not appear that the decision-maker has applied the wrong criteria or deviated from precedents of the Board or the controlling law from the United States Court of Appeals or the United States Supreme Court; and (5) cases challenging only procedural rulings or deficiencies that do not appear to be material to the outcome of the case.

The rules also authorizes the Chairman to designate, and change as the Chairman deems appropriate, who from among the permanent Board Members is authorized to affirm cases without opinion.

The proposed rule also amends the regulation regarding motions to reconsider to state that a motion to reconsider based solely on the argument that the case should have been heard by a three-Member panel, or otherwise should not have been summarily affirmed without a full opinion, is barred. This is set forth at 8 CFR 3.2(b)(3). Otherwise, the standard motions to reconsider and/or reopen would be allowed, but would be subject to all the regular requirements and restrictions regarding motions, including the time and number limitations.

In addition to providing for a new procedure for affirmance without opinion by a single Board Member, the proposed rule also provides that a single Board Member or the Chief Attorney Examiner may adjudicate certain motions or other procedural or ministerial appeals. Presently, the regulations allow a single Board Member or the Chief Attorney Examiner to adjudicate unopposed motions or motions to withdraw an appeal. *See* 8 CFR 3.1(a). The proposed rule designates additional categories of cases as suitable for disposition by a single Board Member or the Chief Attorney Examiner. Unlike the procedure described above for single Board Member affirmance without opinion, these dispositions will not generally be affirming a result below. Rather, in these cases, a single fact easily identified in the record of proceedings dictates the result directly through a statute, a regulation, or a controlling precedent, with little or no discretion required. Dispositions under this procedure are separate and distinct from affirmances without opinions.

Under the proposed rule, the additional instances in which a single Board Member or the Chief Attorney Examiner may adjudicate a matter under section 3.1(a)(1) are: (1) a Service motion to remand an appeal from the denial of a visa petition where the Regional service Center Director requests that the matter be remanded to the Service for further consideration of the appellant's arguments or evidence raised on appeal; (2) a case in which remand is required because of a defective or missing transcript; and (3) other procedural or ministerial adjudications as provided by the Chairman (for example, to dismiss an appeal as moot where the alien has since become a lawful permanent resident).

The proposed rule also amends the regulation regarding summary dismissals of appeals, presently set forth at 8 CFR 3.1(d)(1–a). The revised rule, redesignated as section 3.1(d)(2), adds to the existing rule other types of cases appropriate for summary dismissal, specifies that a single Board Member or Chief Attorney Examiner has the authority to dispose of such cases, and authorizes the Chairman to designate who from among the Board Members and Chief Attorney Examiner may exercise this authority Summary dismissal is also a procedure separate and distinct from affirmance without opinion.

In addition to the existing grounds for summary dismissal, this rule adds dismissals for lack of jurisdiction including (1) cases in which the appeal or motion does not fall within the Board's jurisdiction; (2) cases in which jurisdiction over a motion lies with the

Immigration Judge rather than with the Board; (3) untimely appeals and motions; and (4) cases in which it is clear that the right of appeal was affirmatively waived.

The complexity of the language of this streamlining rule clearly indicates the need for a complete reorganization of Part 3 of 8 CFR. The Executive Office for Immigration Review is presently working on such a reorganization. This proposed rule is being published in advance of that reorganization because of the urgent need to implement the streamlining procedures without delay.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this proposed rule affects only individuals in immigration proceedings before the Executive Office for Immigration Review whose appeals are decided by the Board of Immigration Appeals. Therefore, this proposed rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This proposed rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly has not been submitted to OMB for review.

Executive Order 12612

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 12612, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

Executive Order 12988

The proposed rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, 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 proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness 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 Untied States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

Accordingly, part 3 of chapter 1 of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100.

2. Section 3.1 is amended by:

a. Adding two sentences at the end of paragraph (a)(1);

b. Adding a new paragraph (a)(7);

c. Redesignating paragraphs (d)(1–a), (2), and (3) as paragraphs (d)(2), (3), and (4), respectively;

d. Removing the word "or" at the end of newly designated paragraph (d)(2)(i)(E);

e. Further redesignating paragraph (d)(2)(i)(F) as paragraph (d)(2)(i)(H);

f. Adding new paragraphs (d)(2)(i)(F) and (G);

g. Redesignating paragraph (d)(2)(ii) as paragraph (d)(2)(iii); and by

h. Adding a new paragraph (d)(2)(ii), to read as follows:

§ 3.1 General authorities.

(a)(1) *Organization.* * * * In addition, a single Board Member or the Chief Attorney Examiner may exercise such authority in the following instances: a Service motion to remand an appeal from the denial of a visa petition where the Regional Service Center Director requests that the matter be remanded to the Service for further consideration of the appellant's arguments or evidence raised on appeal; a case where remand is required because of a defective or missing transcript; and other procedural or ministerial adjudications as provided by the Chairman. A motion to reconsider or to reopen a decision that was rendered by a single Board Member or the Chief Attorney Examiner may be adjudicated by that Board Member or by the Chief Attorney Examiner.

* * * * *

(5) *Affirmance without opinion.* (i) A single permanent Board Member may affirm, without opinion, any decision in which the Board Member concludes that there is no legal or factual basis for reversal of the decision by the Service or the Immigration Judge. The Chairman may designate, from time to time, the Board Members who are authorized to exercise the authority to affirm cases without opinion. The Chairman may designate certain categories of cases as suitable for review pursuant to this paragraph.

(ii) The single Board Member to whom a case is assigned may affirm the decision of the Service or the Immigration Judge, without opinion, if the Board Member determines that the result reached in the decision under review was correct; and any errors in the decision under review were harmless or nonmaterial; and

(A) The issue on appeal is squarely controlled by existing Board or federal court precedent and does not involve the application of such precedent to a novel fact situation; or

(B) The factual and legal questions raised on appeal are so insubstantial that three-Member review is not warranted.

(iii) If the Board Member determines that the decision should be affirmed without opinion, the Board shall issue an order that states, "The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination." An order affirming without opinion shall not include further explanation or reasoning. An order affirming without opinion approves the result reached in the decision below; it does not necessarily imply approval of all of the reasoning of that decision, but does signify the Board's conclusion that the errors alleged to have been made below, if any, were harmless or nonmaterial.

(iv) If the Board Member determines that the decision is not appropriate for

affirmance without opinion, the case will be assigned to a three-Member panel for review and decision. The panel to which the case is assigned also has the authority to determine that a case should be affirmed without opinion.

* * * * *

(d) *Powers of the Board*—(1) * * *

(2) *Summary dismissal of appeals.* (i) *Standards.* * * *

(F) The appeal does not fall within the Board's jurisdiction, or lies with the Immigration Judge rather than the Board;

(G) The appeal is untimely, or it is clear on the record that the right of appeal was affirmatively waived; or

(H) * * *

(ii) *Action by the Board.* The Chairman may provide for the exercise of the appropriate authority of the Board to dismiss an appeal pursuant to paragraph (d)(2) of this section by a three-Member panel, or by a single Board Member or the Chief Attorney Examiner. The Chairman may determine who from among the Board Members or the Chief Attorney Examiner is authorized to exercise the authority under this paragraph and the designation may be changed by the Chairman as he deems appropriate. Except as provided in this part for review by the Board en banc or by the Attorney General, or for consideration of motions to reconsider or reopen, an order dismissing any appeal pursuant to paragraph (d)(2) shall constitute the final decision of the Board. If the single Board Member or the Chief Attorney Examiner to whom the case is assigned determines that the case is not appropriate for summary dismissal, the case will be assigned for review and decision pursuant to paragraph (a) of this section.

* * * * *

3. Section 3.2 is amended by adding a new paragraph (b)(3) to read as follows:

§ 3.2 Reopening or reconsideration before the Board of Immigration Appeals

* * * * *

(b) * * *

(3) A motion to reconsider based solely on the argument that the case should not have been affirmed without opinion by a single Board Member, or by a three-Member panel, is barred.

* * * * *

Dated: September 8, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–24571 Filed 9–11–98; 8:45 am]

BILLING CODE 4410–30–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG02

Elimination of Reporting Requirement and 30-Day Hold in Loading Spent Fuel After Preoperational Testing of Independent Spent Fuel Storage or Monitored Retrievable Storage Installations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to eliminate the requirement that a report of the preoperational testing of an independent spent fuel storage installation or monitored retrievable storage installation be submitted to the NRC at least 30 days before the receipt of spent fuel or high-level radioactive waste. Experience has shown that the NRC staff does not need the report or the holding period because the NRC staff is on site and evaluates preoperational testing as it occurs. This amendment will eliminate an unnecessary regulatory impact on licensees.

DATES: The comment period expires November 30, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6195, e-mail geg1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Part 72 requires that the Safety Analysis Report (SAR) accompanying an application for a site-specific license (§ 72.24(g)) and the application for the approval of a spent fuel storage cask (§ 72.236(l)) contain information on the performance of preoperational testing by the site-specific licensee or the general licensee, respectively. The licensee is required to complete the preoperational testing program described in the applicable SAR before spent fuel is loaded into an independent spent fuel storage installation (ISFSI) or before spent fuel or high-level radioactive waste (HLW) is loaded into a monitored retrievable storage installation (MRS).

10 CFR 72.82(e) requires licensees to submit to the NRC a report of the preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel or HLW for loading into an ISFSI or MRS. However, the licensee is not required to submit test procedures, but only a report of the test results. A copy of this report is subsequently placed in the NRC Public Document Room (PDR). The purpose of the 30-day period is to establish a hold point to allow NRC to review a new licensee's preparations and, if necessary, exercise its regulatory authority before spent fuel is received at an ISFSI or spent fuel and HLW at an MRS. The licensee is not required to obtain NRC approval of the report before commencing loading operations.

Discussion

The requirement for a preoperational test report and 30-day hold period was added to the part 72 regulations governing licensing requirements for ISFSIs and an MRS at the time they became effective on November 28, 1980 (45 FR 74693), and before the NRC staff had any practical experience in licensing such facilities. However, in the intervening period, the Commission's practice has been for NRC staff to maintain an extensive oversight presence during the preoperational testing phase of ISFSIs, reviewing the acceptance criteria, preoperational test, and test results as they occur. Thus, NRC staff has had immediate access to the licensee's procedures and test results and has not needed either a preoperational test report or a 30-day hold period in order to complete its

inspection activities and determine whether any further regulatory action is needed before the licensee begins to load spent fuel or HLW.

The NRC inspection program now in place (i.e., Inspection Manual Chapter 2690 and Inspection Procedures 60854 and 60855) ensures that the NRC staff will review the licensee's normal, abnormal, and emergency operating procedures, (including loading and unloading procedures), as well as observe implementation of those procedures during preoperational testing. Consequently, NRC staff is in a position to ensure that the licensee has resolved any problems before loading spent fuel into the ISFSI. NRC staff documents the results of the inspection of the preoperational test program in a written inspection report, which is placed in the PDR . This report contains conclusions on whether the licensee has adequately completed the preoperational test program, an assessment of the licensee's performance in completing the preoperational test program, and an assessment of the licensee's readiness to begin loading spent fuel or HLW.

Notwithstanding that this regulation ensures that the NRC will be notified by the licensee before it begins loading spent fuel, other regulations and processes provide adequate assurance that the NRC will be aware of a licensee's anticipated loading activities. For ISFSIs at operating reactor sites, the Commission expects that on-site NRC resident inspector staff would be aware of any potential fuel loading activities. Additionally, general licensees are required by § 72.212(b)(1)(I) to notify the NRC at least 90 days before spent fuel loading begins. For site-specific licensees, the fact that a license has been issued serves as adequate notice to the NRC that spent fuel loading activities are planned. Further, site-specific licensees are also required by § 72.70(a) to submit a final safety analysis report to the Commission at least 90 days before spent fuel loading begins.

The public will retain the ability to review a description of the preoperational tests and their acceptance criteria because such information is contained in the SAR, which is available for review in the NRC PDR. Relevant information on the preoperational test program and the results of the preoperational test program both will remain available for public review in the SAR and the inspection report, respectively.

The NRC staff's experience has also been that the 30-day hold established by § 72.82(e) creates a potentially significant financial burden for licensees because, during the 30-day period, the licensee can perform no loading activities even though the licensee is ready to load spent fuel or HLW. This has resulted in several requests for exemptions by licensees and the need for the NRC staff to expend time processing these requests. The elimination of this regulation would preclude the need for exemption requests and would enable the licensee to use the crew assembled for fuel transfer while the lessons of preoperational testing are fresh in their minds and will contribute to the efficiency of operations by avoiding unnecessary idle time. The NRC staff observers of spent fuel loading will similarly benefit.

Therefore, the Commission proposes to remove 10 CFR 72.82(e) from NRC's regulations because it believes neither the report nor the 30-day hold period are needed for regulatory purposes and taking this action will relieve licensees from an unnecessary regulatory burden. While elimination of this reporting requirement will also remove a piece of information which was available to the public, the alternative sources of information available to the public on preoperational test activities adequately recount the licensee's performance of preoperational testing.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule decreases the burden on licensees by eliminating the requirement that a report of the preoperational testing of an independent spent fuel storage installation or monitored retrievable storage installation be submitted to the NRC at least 30 days before receipt of spent fuel or high-level radioactive waste, 10 CFR 72.82(e). The public burden reduction for this information collection is estimated to average 40 hours per response. Because the burden for this information collection is insignificant, Office of Management and Budget clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The proposed amendment would eliminate the requirement that 10 CFR part 72 licensees submit a report of the preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel or HLW on the grounds that NRC's inspection program ensures that the NRC staff will be present for observance of preoperational testing and will be in a position to ensure that a licensee is prepared to safely load spent fuel or HLW. Thus, the report and the 30-day hold period are not needed for NRC's regulatory activities.

The benefit of the proposed rule is that elimination of a report and 30-day hold period not needed by the NRC would reduce an unnecessary regulatory impact on licensees resulting from the 30-day waiting period following submittal of a report of the preoperational test criteria and test results to the NRC. During this period, the licensees can perform no loading activities even though the licensee is ready to load spent fuel or HLW. This could impose a potentially significant financial burden on licensees. The rule would also relieve both licensees and the NRC staff from the need to process exemption requests. The Commission has received and approved several requests for exemption from § 72.82(e) and envisions that most future part 72 licensees would also apply for exemption from this regulation. An impact of the proposed rule would be that a report of the preoperational test criteria and test results will no longer be available. However, NRC inspection reports will contain NRC findings on the preoperational testing and assessments on the licensee's readiness to commence loading spent fuel. These inspection reports will be available in the NRC Public Document Room system. The NRC also considered the alternative of shortening rather than eliminating the hold period but rejected this alternative because it would still retain a requirement not needed for regulatory purposes and thus, would still impose an unnecessary regulatory burden on licensees.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 as amended 5 U.S.C. 605(b), the Commission certifies

that this proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities. This proposed rule would affect only the operators of ISFSIs. These companies do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 72.62, does not apply to this rule, because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR 72.62(a). Therefore, a backfit analysis is not required for this proposed rule.

Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the proposed rule to amend 10 CFR 72.82, under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of this rule would be subject to criminal enforcement.

Compatibility of Agreement State Regulations

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs," approved by the Commission on June 30, 1997, and published in the Federal Register (62 FR 46517, September 3, 1997), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements, via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendment to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); secs. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92, Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under sec. 142 (b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162 (b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), Stat. 2252 (42 U.S.C. 10198).

§ 72.82 [Amended]

2. Section 72.82 is amended by removing paragraph (e).

Dated at Rockville, MD, this 25th day of August, 1998.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 98–24567 Filed 9–11–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–137–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier-Werke G.m.b.H. Model Do 27 Q–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Dornier-Werke G.m.b.H. (Dornier) Model Do 27 Q–6 airplanes. The proposed AD would require repetitively inspecting the rivets that attach the forward stabilizer attach fitting to the airplane fuselage for looseness, and replacing any loose rivets. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent the stabilizer from detaching at the forward stabilizer attach flanges because of loose rivets, which could result in reduced or loss of control of the airplane.

DATES: Comments must be received on or before October 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–137–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

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 should 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 notice may be changed in light of the comments received.

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 that summarizes 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–137–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, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–137–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Do 27 Q–6 airplanes. The LBA reports that loose rivets were found during a routine maintenance inspection on one of the above-referenced airplanes. The rivets attach the forward stabilizer attach fitting to the airplane fuselage.

This condition, if not detected and corrected in a timely manner, could result in the stabilizer detaching at the forward stabilizer attach flanges with consequent reduced or loss of control of the airplane.

Relevant Service Information

Dornier has issued Service Bulletin No. 1140–0000, Date of Issue: September 29, 1995, which specifies procedures for inspecting the rivets that attach the forward stabilizer attach fitting to the airplane fuselage for looseness, and replacing any loose rivets.

The LBA classified this service bulletin as mandatory and issued German AD 96–271 Daimler-Benz Aerospace/Dornier, Effective Date: October 10, 1996, in order to assure the continued airworthiness of these airplanes in Germany.

The FAA's Determination

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Dornier Do 27 Q–6 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively inspecting the rivets that attach the forward stabilizer attach fitting to the airplane fuselage for looseness, and replacing any loose rivets. Accomplishment of the proposed actions would be in accordance with Dornier Service Bulletin No. 1140–0000, Date of Issue: September 29, 1995.

Compliance Time of the Proposed AD

The initial compliance time of the proposed AD is presented in calendar time in order to assure that any rivets that are already loose are detected and corrected in a timely manner. The FAA has determined that 3 calendar months is a reasonable time for all owners/operators of the affected airplanes to comply with the initial inspection and possible replacement specified in the proposed AD.

The repetitive inspection interval is at 100 hours time-in-service (TIS). After examining the information related to this subject, the FAA has determined that the rivets should not become loose within 100 hours TIS if they were not found loose or replaced during the last inspection. This would not put an undue burden on low usage airplanes of having to repetitively inspect every 3 calendar months if the airplanes had been rarely or never utilized.

Cost Impact

The FAA estimates that 13 airplanes in the U.S. registry would be affected by the proposed initial inspection, that it would take approximately 1 workhour per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed initial inspection on U.S. operators is estimated to be $780, or $60 per airplane. These figures only take into account the costs of the initial inspection and do not take into account the costs of any repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator would incur over the life of the affected airplanes.

If loose rivets are found and replacement is necessary, the FAA estimates that it would take approximately 8 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Replacement rivets will be supplied by Dornier at no cost to the owners/operators of the affected airplanes. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $480 per airplane where loose rivets are found.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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) 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 has been placed 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 a new airworthiness directive (AD) to read as follows:

Dornier-Werke G.M.B.H.: Docket No. 97–CE–137–AD.

Applicability: Model Do 27 Q–6 airplanes, all serial numbers, 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 (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 in the body of this AD, unless already accomplished.

To prevent the stabilizer from detaching at the forward stabilizer attach flanges because of loose rivets, which could result in reduced or loss of control of the airplane, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, and thereafter at intervals not to exceed 100 hours time-in-service (TIS), inspect the rivets that attach the forward stabilizer attach fitting to the airplane fuselage for looseness. Accomplish these inspections in accordance with the PROCEDURE section of Dornier Service Bulletin (SB) No. 1140–0000, Date of Issue: September 29, 1995.

(b) If loose rivets are found during any inspection required in paragraph (a) of this AD, prior to further flight, replace any loose rivets in accordance with the PROCEDURE section of Dornier SB No. 1140–0000, Date of Issue: September 29, 1995.

(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.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to Dornier Service Bulletin No. 1140–0000, Date of Issue: September 29, 1995, should be directed to Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 96–271 Daimler-Benz Aerospace/Dornier, Effective Date: October 10, 1996.

Issued in Kansas City, Missouri, on September 4, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–24523 Filed 9–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–122–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Operations) Limited Model B.121 Series 1, 2, and 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace (Operations) Limited (British Aerospace) Model B.121 Series 1, 2, and 3 airplanes. The proposed AD would require repetitively inspecting (using visual methods) the internal and external surfaces of the brake torque tube assemblies in the cockpit area for cracks. The proposed AD would also require obtaining and incorporating repair procedures for any brake torque tube assembly found cracked. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to detect and correct cracks in the brake torque tube assemblies, which could result in reduced brake efficiency with possible reduced and/or loss of airplane control.

DATES: Comments must be received on or before October 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–122–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace (Operations) Limited, British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Chudy, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

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 should 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 notice may be changed in light of the comments received.

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 that summarizes 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–122–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, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–122–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model B.121 Series 1, 2, and 3 airplanes. The CAA reports that cracks have been found in the brake torque tube assemblies on airplanes that have similar design assemblies to that of these Model B.121 Series 1, 2, and 3 airplanes.

This condition, if not detected and corrected, could result in reduced brake efficiency with possible reduced and/or loss of airplane control.

Relevant Service Information

British Aerospace (Operations) Limited has issued PUP Service Bulletin No. B121/103, ORIGINAL ISSUE: October 26, 1995, which specifies procedures for visually inspecting the internal and external surfaces of the brake torque tube assemblies in the cockpit area for cracks. This service bulletin also specifies obtaining repair procedures from the manufacturer if any brake torque tube assembly is found cracked.

The CAA classified this service bulletin as mandatory and issued British AD 003–10–95, not dated, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace Model B.121 Series 1, 2, and 3 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively inspecting (using visual methods) the internal and external surfaces of the brake torque tube assemblies in the cockpit area for cracks. The proposed AD would also require obtaining and incorporating repair procedures for any brake torque tube assembly found cracked. Accomplishment of the proposed inspection would be in accordance with Jetstream PUP Service Bulletin No. B121/103, ORIGINAL ISSUE: October 26, 1995. Accomplishment of the proposed repair, if necessary, would be required in accordance with procedures obtained from the manufacturer through the FAA, Small Airplane Directorate.

Cost Impact

The FAA estimates that 2 airplanes in the U.S. registry would be affected by the proposed inspection, that it would take approximately 5 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $600, or $300 per airplane. These figures only take into account the costs of the initial inspection and do not take into account the costs for any repetitive inspections or the costs associated with repairing or replacing any cracked torque tube assemblies found during the proposed inspection. The FAA has no way of determining how many torque tube assemblies would be found cracked or how many repetitive inspections each owner/operator would incur over the life of the affected airplanes.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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) 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 has been placed 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 a new airworthiness directive (AD) to read as follows:

British Aerospace (Operations) Limited: Docket No. 97–CE–122–AD.

Applicability: Model B.121 Series 1, 2, and 3 airplanes, all serial numbers, 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 (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 in the body of this AD, unless already accomplished.

To detect and correct cracks in the brake torque tube assemblies, which could result in reduced brake efficiency with possible reduced and/or loss of airplane control, accomplish the following:

(a) Upon accumulating 3,300 hours time-in-service (TIS) on each brake torque tube assembly or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 600 hours TIS, visually inspect each brake torque tube assembly for cracks. Accomplish this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream PUP Service Bulletin No. B121/103, ORIGINAL ISSUE: October 26, 1995.

(b) If a crack(s) is found during any inspection required by paragraphs (a) or (b)(2) of this AD, prior to further flight, accomplish the following:

(1) Obtain repair instructions from the manufacturer through the FAA, Small Airplane Directorate, at the address specified in paragraph (d) of this AD; and

(2) Incorporate these repair instructions, and continue to reinspect at intervals not to exceed 600 hours TIS.

(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.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to Jetstream Aircraft Ltd. PUP Service Bulletin No. B121/103, ORIGINAL ISSUE: October 26, 1995, should be directed to British Aerospace (Operations) Limited, British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British AD 003–10–95, not dated.

Issued in Kansas City, Missouri, on September 4, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–24522 Filed 9–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–17]

Proposed revision of Class E airspace; Grant Junction, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would amend the class E airspace at Grant Junction, CO to provide additional controlled airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the Walker Field Airport. This new SIAP requires modification of airspace extending upward from 700 feet above the surface in order to contain Instrument Flight Rules (IFR) procedures.

DATES: Comments must be received on or before October 29, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 98–ANM–17, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–17, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ANM–17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availablity of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to revise Class E airspace at Grant Junction, CO. This amendment would provide additional airspace necessary to fully encompass the GPS Runway 11 and the GPS Runway 29 SIAPs to the Walker Field Airport, Grand Junction, CO. This amendment proposes to add small Class E area extensions to the present airspace in order to accommodate a slightly larger flying area for the SIAPs. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is

designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Walker Field Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E. Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ANM CO ES Grand Junction, CO [Revised]

Grand Junction, Walker Field, CO
(Lat. 39°07'21" N, long. 108°31'36" W)
Grand Junction VORTAC
(Lat. 39°03'34" N, long. 108°47'33" W)

That airspace extending upward from 700 feet above the surface within 7 miles northwest and 4.3 miles southeast of the Grand Junction VORTAC 247° and 067° radials extending from 11.4 miles southwest to 12.3 miles northeast of the VORTAC, and within 1.8 miles south and 9.2 miles north of the Grand Junction VORTAC 110° radial extending from the VORTAC to 19.2 miles southeast; that airspace extending upward from 1,200 feet above the surface within a 30.5 mile radius of the Grand Junction VORTAC, within 4.3 miles each side of the Grand Junction VORTAC 166° radial extending from the 30.5-mile radius to 33.1 miles south of the VORTAC, and within 4.3 miles northeast and 4.9 miles southwest of the Grand Junction ILS localizer northwest course extending from the 30.5-mile radius to the intersection of the localizer northwest course extending from the 30.5-mile radius to the intersection of the localizer northwest course and the Grand Junction VORTAC 318° radial.

* * * * *

Issued in Seattle, Washington, on August 31, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–24613 Filed 9–11–98; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 169–0097; FRL–6160–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) for ozone. These revisions concern the control of oxides of nitrogen (NO_x) from internal combustion engines; stationary gas turbines; and from boilers, steam generators, and process heaters. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on these proposed rules will incorporate these rules into the Federally approved SIP. EPA has evaluated these rules and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority. These revisions, while strengthening the SIP, do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments on this proposed action must be received in writing on or before October 14, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

San Joaquin Valley Unified Air Pollution Control District, Tuolumne Street, Suite #200, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for limited approval and limited disapproval into the SIP are San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4305—Boilers, Steam Generators, and Process Heaters; Rule 4351—Boilers, Steam Generators, and

Process Heaters—Reasonably Available Control Technology; Rule 4701 Internal Combustion Engines; and Rule 4703 Stationary Gas Turbines. Rules 4305 and 4351 were submitted by the State of California to EPA on March 3, 1997, and March 26, 1996, respectively. Rules 4701 and 4703 were both submitted on March 10, 1998.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The SJVUAPCD is classified as serious;[1] therefore this area was subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_x) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_x CTGs issued before enactment and EPA has not issued a CTG document for any NO_x sources since enactment of the CAA. The RACT rules covering NO_x sources and submitted as SIP revisions are expected to require final installation of the actual NO_x controls as expeditiously as practicable, but no later than May 31, 1995.

[1] SJVUAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

This document addresses EPA's proposed action for San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4305—Boilers, Steam Generators, and Process Heaters; Rule 4351—Boilers, Steam Generators, and Process Heaters—Reasonably Available Control Technology; Rule 4701 Internal Combustion Engines; and Rule 4703 Stationary Gas Turbines. Rule 4305 was adopted by the SJVUAPCD on December 19, 1996, and was submitted by the State of California to EPA on March 3, 1997. Rule 4351 was adopted on October 19, 1995, and was submitted to EPA on March 26, 1996. Rules 4701 and 4703 were adopted on December 19, 1996, and October 16, 1997, respectively, and were both submitted on March 10, 1998. Rule 4305 was found to be complete on August 12, 1997; Rule 4351 on May 15, 1996; and Rules 4701 and 4703 were found to be complete on May 21, 1998; all pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V.[2].

NO_x emissions contribute to the production of ground level ozone and smog. SJVUAPCD Rules 4305, 4351, 4701 and 4703 specify exhaust emission standards for NO_x and carbon monoxide (CO). The rules were adopted as part of SJVUAPCD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The California Air Resources Board (CARB) has developed a guidance document entitled Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (July 18, 1991). EPA has used this CARB guidance document in evaluating Rules 4305 and 4351 for consistency with the CAA's RACT requirements. The CARB also developed a Proposed Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Internal Combustion Engines (December 3, 1997). EPA has used this CARB guidance document in evaluating Rule 4701 for consistency with the CAA's RACT requirements. Finally, the CARB developed a Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines (May 18, 1992). EPA has used this CARB guidance document in evaluating Rule 4703 for consistency with the CAA's RACT requirements.

There are currently no versions of any of the four rules which are the subject of this proposed action in the SIP. The

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

submitted rules include the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X) and carbon monoxide (CO).
- Administrative and monitoring requirements including compliance schedule, reporting requirements, monitoring and recordkeeping, and test methods.

In evaluating the rules, EPA must determine whether approving the rules as SIP revisions would interfere with any applicable requirement of the CAA. The SJVUAPCD is classified as a serious nonattainment area for PM–10. On the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas (including the SJVUAPCD) meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law. In accordance with section 188(a) of the Act, at the time of designation all PM–10 nonattainment areas were initially classified as moderate. Effective February 8, 1993, EPA reclassified the SJVUAPCD as serious under section 188(b)(1) of the Act (see 58 FR 3334).

Section 189(a)(1)(C) of the Act requires that Reasonably Available Control Measures (RACM) for the control of PM–10 be implemented in moderate nonattainment areas (including the SJVUAPCD) by December 10, 1993. Section 189(b)(1)(B) of the Act requires that Best Available Control Measures (BACM) for the control of PM–10 be implemented in serious nonattainment areas (including the SJVUAPCD) by February 8, 1997.

These control requirements also apply to major stationary sources of PM–10 precursors (including NO_X) under section 189(e) of the Act, unless the EPA determines that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. EPA has concluded that the PM–10 attainment strategy for the SJVUAPCD will rely heavily on the control of precursors to PM–10, including nitrogen dioxide (see 58 FR 3337).

Section 172(c)(1) provides that RACM shall include, at a minimum, those reductions in emissions from existing sources as may be obtained through the adoption of Reasonably Available Control Technology (RACT). The four subject NO_X control rules have been adopted by the SJVUAPCD, and the control requirements contained therein are applicable under state law to facilities throughout the District. EPA therefore concludes that these control technologies are reasonably available.

The rules contain provisions waiving RACT requirements for facilities located west of Interstate Highway 5 in Fresno, Kern, and King counties (the West Side exemption). This exemption constitutes a failure to implement RACM at these facilities as required under section 189(a)(1)(C) of the Act. Section 110(l) of the Act forbids EPA from approving SIP revisions which would interfere with any applicable requirement of the Act, including section 189(a)(1)(C). For this reason EPA cannot grant full approval of these rules. (Because EPA finds that the West Side exemption is inconsistent with section 189(a)(1)(C) of the Act, EPA is not making a determination at this time regarding the West Side exemption's consistency with section 182(f).)

Although the emission limits, monitoring, and recordkeeping provisions of SJVUAPCD Rules 4305, 4351, 4701, and 4703 will strengthen the SIP, these rules contain deficiencies related to the West Side exemption, as well as other deficiencies. A more detailed discussion of the sources controlled, the controls required, explanation of why these controls fail to completely implement RACT and other requirements of the CAA, and a description of other rule deficiencies can be found in the Technical Support Documents (TSD's) prepared by EPA for each rule. All four of these TSD's are dated July 31, 1998.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SJVUAPCD's submitted Rules 4305, 4351, 4701, and 4703 under sections 110(k)(3) and 301(a) of the CAA as meeting the requirements of section 110(a) and part D. At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), and part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this document have been adopted and are currently in effect in the SJVUAPCD. EPA's final limited disapproval action will not prevent the SJVUAPCD or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The proposed rules are not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because they are not "economically significant" actions under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant

impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 2, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–24609 Filed 9–11–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 162–0098; FRL–6160–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) for ozone. This revision concerns the control of oxides of nitrogen (NOx) from boilers, steam generators, and process heaters. The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NOx in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the Federally approved SIP. EPA has evaluated this rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority. This revision, while strengthening the SIP, does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments on this proposed action must be received in writing on or before October 14, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for limited approval and limited disapproval into the SIP is Ventura County Air Pollution Control District (VCAPCD) Rule 74.15.1, Boilers, Steam Generators, and Process Heaters. Rule 74.15.1 was submitted by the State of California to EPA on October 13, 1995.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the Clean Air Act.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. VCAPCD is classified as serious;[1] therefore this area is subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre- or post-enactment control technologies guidelines (CTG) document) by November 15, 1992. There are no pre- or post-enactment NO_X CTG documents. RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for Ventura County Air Pollution Control District (VCAPCD) Rule 74.15.1, Boilers, Steam Generators, and Process Heaters. VCAPCD adopted Rule 74.15.1 on June 13, 1995. The State of California submitted Rule 74.15.1 on October 13, 1995. The rule was found to be complete on November 28, 1995, pursuant to EPA's completeness criteria

[1] VCAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

that are set forth in 40 CFR Part 51 Appendix V.[2]

NO_X emissions contribute to the production of ground level ozone and smog. VCAPCD Rule 74.15.1 specifies exhaust emission standards for NO_X and carbon monoxide (CO). The rule was adopted as part of VCAPCD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purpose of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The California Air Resources Board (CARB), developed a guidance document entitled Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. EPA has used CARB's guidance document, dated July 18, 1991, in evaluating Rule 74.15.1 for consistency with the CAA's RACT requirements.

There is currently no version of Ventura County Air Pollution Control District (VCAPCD) Rule 74.15.1, Boilers, Steam Generators, and Process Heaters in the SIP. The submitted rule includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X) and carbon monoxide (CO).
- Administrative and monitoring requirements including compliance schedule, reporting requirements, monitoring and recordkeeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP, and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits. Rule 74.15.1 strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing. Because there is no existing SIP rule, the incorporation of Rule 74.15.1 into the SIP would decrease the NO_X emissions allowed by the SIP. However, VCAPCD Rule 74.15.1 provides an automatic exemption from compliance for emissions that occur during start-up, shutdown, or under breakdown conditions. These conditions are not defined in the rule. Such automatic exemptions are not allowed under EPA policy as contained in the EPA policy memorandum signed by Kathleen M. Bennett, "Policy on Excess Emissions During Startup, Shutdown, Maintenance and Malfunctions", dated February 15, 1983. In order to be consistent with EPA policy, Rule 74.15.1 must be modified to either eliminate this exemption, or to define the conditions of its applicability to conform with the February 15, 1983 memorandum. A more detailed discussion of EPA's evaluation of VCAPCD Rule 74.15.1 can be found in the Technical Support Document, dated August 18, 1998, prepared by EPA for this rule.

Although the emission limits, monitoring, and recordkeeping provisions of VCAPCD Rule 74.15.1 will strengthen the SIP, this rule is deficient with respect to the automatic exemption from compliance for emissions that occur during start-up, shutdown, or under breakdown conditions. Because of this deficiency, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of VCAPCD's submitted Rule 74.15.1 under sections 110(k)(3) and 301(a) of the CAA as meeting the requirements of section 110(a) and part D. At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), and part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

under section 110(c). It should be noted that the rule covered by this document has been adopted and is currently in effect in Ventura County. EPA's final limited disapproval action will not prevent the VCAPCD or EPA from enforcing this rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 2, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–24608 Filed 9–11–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–047–1 9825b; FRL 6156–8]

Approval and Promulgation of Implementation Plans Alabama: Revisions to Several Chapters of the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Alabama through the Department of Environmental Management. On March 5, 1998, the State of Alabama through the Department of Environmental Management (ADEM) submitted a SIP submittal to revise the ADEM Administrative Code for the Air Pollution Control Program. Revisions were made to Chapters 335–3–1, 335–3–12, 335–3–14, and Appendix F. In the final rules section of this **Federal Register**, the EPA is approving Alabama's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: To be considered, comments must be received by October 14, 1998.

ADDRESSES: Written comments should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

U.S. Environmental Protection Agency, Atlanta Federal Center, Region 4, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: August 24, 1998.

A. Stan Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–24606 Filed 9–11–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 98–143; FCC 98–183]

Amateur Service Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule amendments would phase out the Novice Class operator license (current licensees grandfathered) and the Technician Plus operator license. In addition, the proposed amendments would authorize Advanced Class operators to prepare and administer examinations for the General Class operator license, and would sunset RACES station licenses by not issuing any license renewals. Comments are invited from the amateur community on improvement of amateur enforcement processes, on the specific telegraphy speeds requirement for the various license classes, and on ways to streamline and improve the operator written examinations.

DATES: Comments are due on or before December 1, 1998, and reply comments are due on or before January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, D.C. 20554, (202) 418–0690.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* (NPRM), adopted July 29, 1998, and released August 10, 1998. The complete text of this Commission action, including the proposed rules, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, N.W., Washington, D.C. The complete text of this *Notice of Proposed Rule Making* may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, Telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. The proposed rule amendments would reduce the number of amateur operator license classes from six to four by phasing out the Novice Class and Technician Class operator licenses. Current Novice Class licensees would be grandfathered. The four remaining classes would be the Amateur Extra, Advanced, General and Technician. Pursuant to the proposal, Advanced Class operators could prepare and administer examinations for a General Class license.

2. The proposed rule amendments also would eliminate Radio Amateur Civil Emergency Service (RACES) licenses because the emergency communications that routinely are transmitted by RACES stations can be transmitted by primary, club or military recreation stations. It is proposed that current RACES licenses would not be renewed.

3. Comments are sought on ideas for improving the amateur enforcement processes. One possibility, for example, would be to encourage or require persons bringing complaints of interference to the Commission to include a draft order to show cause to initiate a revocation or cease and desist hearing proceeding. In addition, comments are sought on how to better utilize the services of the Amateur Auxiliary, consistent with its statutory basis.

4. Interested persons were also invited to submit comments about the current telegraphy speeds and to indicate whether the three levels of 5, 13, and 20 words per minute should be retained or reduced to two or one speed requirement. Comments were also invited concerning the written examinations and whether the current list of topics used in the written examinations adequately covers current technology and contemporary operating practices.

5. Finally, various routine and repetitive petitions concerning licensing requirements, frequency privileges, or restructuring of the various amateur license classes were dismissed.

6. In accordance with provisions of the Regulatory Flexibility Act, the Commission certifies that the amended rules will not have a significant economic impact on a substantial number of small entities because the amateur stations that are the subject of this proceeding are not authorized to transmit communications for a pecuniary interest.

7. Comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to<http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

8. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St., N.W., Room 222, Washington, D.C. 20554.

9. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: MJDePont, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Room 8332, 2025 M Street, N.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case, WT Docket No. 98–143), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the

Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

10. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov. This NPRM can also be downloaded at: http://www.fcc.gov/dtf/.

11. Authority for this action is contained in sections 4 (i) and (j), 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i) and (j), 303(r) and 403.

12. A copy of the Regulatory Flexibility Act certification will be provided to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Amateur radio, Examinations, Radio, Volunteer examiners.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 97—AMATEUR RADIO SERVICE

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

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609, unless otherwise noted.

2. Section 97.9 is revised to read as follows:

§ 97.9 Operator license.

(a) The classes of amateur operator licenses are: Novice, Technician, General, Advanced and Amateur Extra. A person who has been granted an operator license is authorized to be the control operator of an amateur station with the privileges of the operator class specified on the license.

(b) A person who has been granted an operator license of Novice, Technician, General or Advanced Class and who has properly submitted to the administering VEs an application document, FCC Form 610, for an operator license of a higher class, and who holds a CSCE indicating that the person has completed the necessary examinations within the previous 365 days, is authorized to exercise the rights and privileges of the higher operator class until final disposition of the application or until 365 days following the passing of the examination, whichever comes first.

3. Section 97.13 is amended by revising paragraph (b) to read as follows:

§ 97.13 Restrictions on station location.

* * * * *

(b) A station within 1600 m (1 mile) of an FCC monitoring facility must protect that facility from harmful interference. Failure to do so could result in imposition of operating restrictions upon the amateur station by a District Director pursuant to § 97.121 of this part. Geographical coordinates of the facilities that require protection are listed in § 0.121(c) of this chapter.

* * * * *

4. Section 97.17 is amended by revising paragraph (b)(1), redesignating paragraphs (c), (d), (e), (f) and (g) as paragraphs (d), (e), (f), (g), and (h), adding new paragraph (c) and revising newly redesignated paragraph (e) (4) to read as follows:

§ 97.17 Application for new license or reciprocal permit for alien amateur licensee.

* * * * *

(b) * * *

(1) FCC Form 610 for a new Technician, General, Advanced or Amateur Extra Class operator/primary station license;

* * * * *

(c) No application for a new Novice or Technician Plus Class operator/primary station license will be accepted for filing.

* * * * *

(e) * * *

(4) No person who has been granted by the FCC an amateur operator/primary station license is eligible for a *reciprocal permit for alien amateur licensee.*

* * * * *

5. Section 97.21 is amended by revising paragraph (a)(3) and paragraph (b) to read as follows:

§ 97.21 Application for a modified or renewed license.

(a) * * *

(3) May apply for renewal of the license for a new term. Application for renewal of a Technician Plus Class operator/primary station license will be processed as an application for renewal of a Technician Class operator/primary station license.

(i) When the license does not show a call sign selected by the vanity call sign system, the application must be made on FCC Form 610. For a club or military recreation station license, the application must be made on FCC Form 610-B. The application must be submitted no more than 90 days prior to its expiration to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the application for renewal of the license has been received by the FCC at 1270 Fairfield Road, Gettysburg, PA 17325-7245 on or before the license expiration date, the license operating authority is continued until the final disposition of the application. No application for renewal of a RACES station license will be granted.

(ii) When the license shows a call sign selected by the vanity call sign system, the application must be filed as specified in Section 97.19(b). When the application has been received at the proper address specified in the Wireless Telecommunications Bureau Fee Filing Guide on or before the license expiration date, the license operating authority is continued until final disposition of the application.

(b) A person who had been granted an amateur primary, club or military recreation station license, but the license has expired, may apply for renewal of the license for another term during a 2 year filing grace period. The application document must be received by the FCC at 1270 Fairfield Road, Gettysburg, PA 17325–7245 prior to the end of the grace period. For an operator/primary station license, the application must be made on FCC Form 610. For a club or military recreation station license, the application must be made on FCC Form 610-B. Unless and until the license is renewed, no privileges in this part are conferred.

* * * * *

6. Section 97.301 is amended by revising the paragraph (a) introductory text, by revising paragraph (e) and removing paragraph (f) to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(a) For a station having a control operator who has been granted an operator license of Technician, General, Advanced or Amateur Extra Class:

* * * * *

(e) For a station having a control operator who has been granted an operator license of Novice Class or Technician Class and who has received credit for proficiency in telegraphy in accordance with the international requirements (Element 1(A), 1(B) or 1(C)):

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements See § 97.303 (paragraph)
HF		MHz		
80 m	3.675–3.725	3.675–3.725	3.675–3.725	(a)
40 m	7.050–7.075	7.10–7.15	7.050–7.075	(a)
15 m	21.10–21.20	21.10–21.20	21.10–21.20.	
10 m	28.10–28.50	28.10–28.50	28.10–28.50.	
VHF	MHz	MHZ	MHz	
1.25 m		222–225		(a)
UHF	MHz	MHz	MHz	
23 cm	1270–1295	1270–1295	1270–1295	(h)(i)

7. Section 97.313 is amended by revising paragraph (f) to read as follows:

§ 97.313 Transmitter power standards.

* * * * *

(f) No station may transmit with a transmitter power exceeding 50 W PEP on the UHF 70 cm band from an area specified in footnote US7 to § 2.106 of this Part, unless expressly authorized by the FCC after mutual agreement, on a case-by-case basis, between the District Director of the applicable field facility and the military area frequency coordinator at the applicable military base. An Earth station or telecommand station, however, may transmit on the 435–438 MHz segment with a maximum of 611 W effective radiated power (1 kW equivalent isotropically radiated power) without the authorization otherwise required. The transmitting antenna elevation angle between the lower half-power (-3 dB relative to the peak or antenna bore sight) point and the horizon must always be greater than 10°.

* * * * *

8. Section 97.407 is amended by revising paragraph (b) introductory text to read as follows:

§ 97.407 Radio Amateur Civil Emergency Service (RACES).

* * * * *

(b) The frequency bands and segments and emissions authorized to the control operator are available to stations transmitting communications in RACES on a shared basis with the amateur service. In the event of an emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of Section 706 of the Communications Act of 1934, as amended, 47 U.S.C. 606, RACES stations and amateur stations participating in RACES may only transmit on the following frequency segments:

* * * * *

9. Section 97.501 is revised to read as follows:

§ 97.501 Qualifying for an amateur operator license.

An applicant must pass an examination for a new amateur operator license grant and for each change in operator class. Each applicant for the class of operator license grant specified below must pass, or otherwise receive examination credit for, the following examination elements:

(a) Amateur Extra Class operator: Elements 1(C), 3(A), 3(B), 4(A) and 4(B);

(b) Advanced Class operator: Elements 1(B) or 1(C), 3(A), 3(B) and 4(A).

(c) General Class operator: Elements 1(B) or 1(C), 3(A) and 3(B);

(d) Technician Class operator: Element 3(A).

10. Section 97.503 is amended by removing paragraphs (b)(1) and (b)(2); redesignating paragraphs (b)(3), (b)(4), and (b)(5) as (b)(2), (b)(3) and (b)(4); adding a new paragraph(b)(1); and revising paragraph (c) to read as follows:

§ 97.503 Element standards.

* * * * *

(b) * * *

(1) Element 3(A): 65 questions concerning the privileges of a Technician Class operator license. The minimum passing score is 48 questions answered correctly.

(2) Element 3(B): 30 questions concerning the privileges of a General Class operator license. The minimum passing score is 22 questions answered correctly.

(3) Element 4(A): 50 questions concerning the privileges of an Advanced Class operator license. The minimum passing score is 37 questions answered correctly.

(4) Element 4(B): 40 questions concerning the privileges of an Amateur Extra Class operator license. The minimum passing score is 30 questions answered correctly.

(c) The topics and number of questions that should be included in each written examination question set are listed below:

Topics	Element			
	3(A)	3(B)	4(A)	4(B)
(1) FCC rules for the amateur radio services	15	4	6	8
(2) Amateur station operating procedures	5	3	1	4
(3) Radio wave propagation characteristics of amateur service frequency bands	4	3	2	2
(4) Amateur radio practices	8	5	4	4
(5) Electrical principles as applied to amateur station equipment	6	2	10	6
(6) Amateur station equipment circuit components	4	1	6	4
(7) Practical circuits employed in amateur station equipment	3	1	10	4
(8) Signals and emissions transmitted by amateur stations	4	2	6	4
(9) Amateur station antennas and feed lines	6	4	5	4
(10) Radiofrequency environmental safety practices at an amateur station	10	5	0	0

11. Section 97.505 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(8) and (a)(9) to read as follows:

§ 97.505 Element credit.

(a) The administering VEs must give credit as specified below to an examinee holding any of the following licenses and documents:

(1) An unexpired (or expired but within the grace period for renewal) Advanced Class operator license: Elements 1(B), 3(A), 3(B) and 4(A).

(2) An unexpired (or expired but within the grace period for renewal) General Class operator license: Elements 1(B), 3(A) and 3(B).

(3) An unexpired (or expired but within the grace period for renewal) Technician Plus Class operator license (including a Technician Class operator license granted before February 14, 1991): Elements 1(A) and 3(A).

(4) An unexpired (or expired but within the grace period for renewal) Technician Class operator license: Element 3(A).

(5) An unexpired (or expired but within the grace period for renewal) Novice Class operator license: Element 1(A).

* * * * *

(8) An expired FCC-issued Technician Class operator license document (or proof of having held the document) granted before March 21, 1987: Element 3(B).

(9) An expired, or unexpired, FCC-issued Technician Class operator license document (or proof of having held the document) granted before February 14, 1991: Element 1(A).

* * * * *

12. Section 97.507 is amended by revising paragraph (a) introductory text (a)(1), and (a)(2) to read as follows:

§ 97.507 Preparing an examination.

(a) Each telegraphy message and each written question set administered to an examinee must be prepared by a VE holding an Amateur Extra Class operator license. A telegraphy message or written question set may also be prepared for the following elements by a VE holding an operator license of the class indicated:

(1) Elements 1(B) and 3(B): Advanced Class operator.

(2) Elements 1(A) and 3(A): Advanced or General Class operator.

* * * * *

13. Section 97.509 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 97.509 Administering VE requirements.

(a) Each examination for an amateur operator license must be administered by a team of at least 3 VEs at an examination session coordinated by a VEC. Before the session, the administering VEs or the VE session manager must ensure that a public announcement is made giving the location and time of the session. The number of examinees at the session may be limited.

(b) * * *

(3) Be a person who holds an amateur operator license of the class specified below:

(i) Amateur Extra, Advanced or General Class in order to administer a Technician Class operator license examination;

(ii) Amateur Extra or Advanced Class in order to administer a General Class operator license examination;

(iii) Amateur Extra Class in order to administer an Advanced or Amateur Extra Class operator license examination.

* * * * *

[FR Doc. 98–24115 Filed 9–11–98; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List the Rio Grande Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*) as endangered under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial information indicating that listing this subspecies may be warranted.

DATES: The finding announced in this document was made on August 22, 1998.

ADDRESSES: You may submit any data, information, comments, or questions concerning this finding to the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico 87113. Members of the public may review the petition finding, supporting data, and comments, by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, Field Supervisor, New Mexico Ecological Services Field Office, at the above address (505/761–4525).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. The Service is required to base the finding on all information available at the time the finding is made. To the maximum extent practicable, the Service must make this finding within 90 days of the date the petition was received, and promptly publish a notice in the **Federal Register**. If the Service finds that substantial information was presented, the Service also is required to promptly commence a review of the status of the species involved if one has not already been initiated under the Service's internal candidate assessment process.

The Service has made a 90-day finding on a petition to list the Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*) as endangered. Kieran Suckling, Director of the Southwest Center for Biological Diversity, submitted the petition, dated February 17, 1998. The Service received the petition on February 25, 1998. Additional petitioners included the Biodiversity Legal Foundation, Carson Forest Watch, Ancient Forest Rescue, and Southwest Trout.

The petitioners state that habitat destruction and degradation have reduced the current distribution of the subspecies to approximately 5% of its historical range; existing populations are small and isolated; habitat destruction and degradation from livestock grazing, logging, road construction, and mining continue to threaten the subspecies; and stocking of nonnative, closely related species such as the rainbow trout (*Oncorhynchus mykiss*) has replaced many of the historical populations of the native species with hybrids. The petition further states that these factors continue to threaten the stability and existence of the Rio Grande cutthroat trout.

The Service has reviewed the petition and other literature and information available in the Service's files, and

consulted with species experts concerning the current status of the Rio Grande cutthroat trout. Much of the information that the Service reviewed updated and corrected information which had been provided in the petition. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information that listing this subspecies may be warranted.

Approximately 200 populations of Rio Grande cutthroat trout inhabit cold headwater streams in the Rio Grande, Pecos River, and Canadian River drainages in Colorado and New Mexico (Alves 1998, Stumpff 1998). The petitioners cited only 92 extant populations. The New Mexico Department of Game and Fish and Colorado Division of Wildlife both prohibit stocking of nonnatives within the range of the Rio Grande cutthroat trout. In addition, all three national forests (Rio Grande, Santa Fe, and Carson) on which the subspecies occurs, have incorporated the State management plans into their forest plans. The States and national forests are implementing programs of stream inventory, protection of the Rio Grande cutthroat trout through removal of nonnatives, and repatriation of the native subspecies into historical waters. These actions are effectively addressing the protection of the subspecies from potential hybridization with rainbow trout.

Although habitat degradation has reduced the range of this once widely distributed subspecies, an adequate amount of habitat (4,500 to 5,000 miles (mi) of streams still capable of supporting trout) remains and can be included in management for the Rio Grande cutthroat trout. Of these stream miles, the subspecies currently occupies 480 mi of stream and 1,120 acres (ac) of lake habitats in Colorado; and 260 mi of stream habitat in New Mexico. Not all of the habitats potentially inhabited by the Rio Grande cutthroat trout have been surveyed; thus, the total number of existing known populations is considered to be a minimum.

Activities such as livestock grazing, road construction, and logging were primary factors in the constriction of the Rio Grande cutthroat trout's historical range and continue to impact streams and riparian habitats where measures to limit those impacts are lacking. However, the New Mexico Department of Game and Fish has found that the watersheds surveyed are in fair to good condition. Many watersheds have not been analyzed but are scheduled for such work by the State in cooperation with the U.S. Forest Service. In Colorado, 82 populations of the Rio Grande cutthroat trout occupy streams in watersheds that have been classified as either relatively pristine (Class I), or exhibiting only a minor degree of impact (Class II). These conditions do not support a contention that the existing populations of the subspecies are vulnerable to extirpation based on watershed or habitat quality.

In summary, the management objectives of both States, set forth in the respective management plans formulated for the Rio Grande cutthroat, indicate that continued management and conservation emphasis will be placed on the habitat and population stability of the subspecies. The Service believes that the current population is secure and likely to improve with active management. Thus, the Service has determined that the petition to list the Rio Grande cutthroat trout did not present substantial information indicating that the petitioned action may be warranted.

References Cited

Alves, J. 1998. Status of Rio Grande Cutthroat Trout in Colorado. Colorado Division of Wildlife. Denver, Co. 10 pp.

Stumpff, W. K. 1998. Rio Grande Cutthroat Trout Management. Final Report. Federal Aid Grant F–60-M. Project No. 11. 14 pp.

Author: The primary author of this document is Jennifer Fowler-Propst, New Mexico Ecological Services Field Office (see ADDRESSES section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1532 *et seq.*).

Dated: August 22, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–24504 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD34

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List Johnston's Rock-Cress (Arabis johnstonii) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposal to list Johnston's rock-cress (*Arabis johnstonii*) as a threatened species under the Endangered Species Act of 1973, as amended (Act). The Service finds that insufficient information is available to substantiate the threats previously identified to the species. Although this species has a restricted range and threats can be identified to a portion of one of its two major population centers, the Service believes these threats are being minimized by the actions of the San Bernardino National Forest in managing grazing activities. Also, the lack of progress on proposed development in the Pine Meadow area diminishes threats to that population. If future development and grazing threats re-occur, the Service may revisit the need to list this species and repropose *Arabis johnstonii*, if necessary. Based on the lack of such evidence the Service concludes that listing of this species is not warranted.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California, 92008.

FOR FURTHER INFORMATION CONTACT: Gary D. Wallace, Ph.D., Botanist, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, at the above address (760/431–9440).

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1995, the Service published in the **Federal Register** (60 FR 39337) a proposal to list seven plant species from the mountains of southern California as endangered or threatened. Included among these seven taxa was *Arabis johnstonii* (Johnston's rock-cress), the subject taxon of this withdrawal. *Arabis johnstonii* was proposed as a threatened species in the 1995 proposal. *Arabis johnstonii* is a member of the mustard family (Brassicaceae) and was described by Philip A. Munz (1932) based on a collection made in May 1922 by Munz and Ivan M. Johnston at Kenworthy, San Jacinto Mountains, Riverside County, California. This plant is a herbaceous perennial with a basal rosette of linear-oblanceolate, entire, densely pubescent leaves from which the flower stalk arises. The petals are purple and 8 to 10 millimeters (mm) (0.32 to 0.4 inches (in)) long. The elongate fruits (siliques) are erect to spreading, 3 to 5 centimeters (cm) (1 to 2 in) long. This species

flowers f rom February to June. *Arabis johnstonii* is distinguished from other members of the genus in the area by its long, narrow fruits, and narrow, linear-oblanceolate, densely gray-hairy leaves (Rollins 1993).

Arabis johnstonii is found in chaparral and pine forest habitats from 1,400 to 2,150 meters (m) (4,500 to 7,050 feet (ft)) in the southern San Jacinto Mountains. Two distinct population centers are known, one in the vicinity of Garner Valley and the other approximately 6.5 kilometers (km) (4 miles (mi)) to the east along the Desert Divide. This species occurs on private lands and lands administered by the U.S. Forest Service (FS).

Summary of Comments and Recommendations

In the August 2, 1995, proposed rule (60 FR 39337) and associated notifications, all interested parties were requested to submit factual reports or information to be considered in making a final listing determination. The comment period closed on October 9, 1995. Appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties were contacted and requested to comment. Individual newspaper notices of the proposed rule were published in the *San Diego Union-Tribune* and *The Press-Enterprise* on August 10, 1995. No request for a public hearing was received.

During the comment period, the Service received two written comments, both of which opposed the proposed listing. Both comments related only to the taxa that occur in the Big Bear Valley region of the San Bernardino Mountains, California. No comments specific to the *Arabis johnstonii* were submitted. Specific comments on the other species proposed with *Arabis johnstonii* and general comments relevant to the proposed rule are discussed in a separate Federal Register final rule, which is published concurrently with this withdrawal. The Service solicited peer review of the proposed rule from three independent reviewers, however, no responses were received.

Summary of Factors Affecting the Species

The Service must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their application to the Service's decision to withdraw the proposal to list *Arabis johnstonii* (Munz) (Johnston's rock-cress), are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The proposed rule (60 FR 39337) identified residential and recreational development, and destruction and degradation of its habitat by livestock in the Lake Hemet and Garner Valley areas as threats to *Arabis johnstonii*. The Service is aware, however, of only two reports to substantiate these claims. One of these reports (Cole 1979) identifies development as a threat at only one of four localities, the other three of which are in, or adjacent to, the San Bernardino National Forest. Furthermore, this report identifies a need for more field work to determine the present range and endangerment of *Arabis johnstonii* (Cole 1979).

Berg and Krantz (1982) conducted surveys a few years later on the San Bernardino National Forest and lumped the four localities of Cole (1979) into two, one in Garner Valley and the second along the ridgeline known as Desert Divide several kilometers to the east. At the time, it was noted that residential development in Pine Meadow was likely to extirpate that portion of the Garner Valley population. However, the proposed development in Pine Meadow has not occurred and the Service (B. McMillan, USFWS, pers. comm. 1997) is not aware of any progress toward development in this area. Berg and Krantz (1982) also noted that intensive grazing by cattle would have an adverse impact on this species due to increased competition from weedy species as a result of trampling of its clay substrate, which is particularly vulnerable when it is saturated. This is apparently the only available documentation on the significance of cattle grazing as a potential threat to *Arabis johnstonii*. Berg and Krantz (1982) also reported, however, that both populations were relatively stable at the time. Based on their reported mean population densities and total area, a population of over 500,000 plants were in existence. Moreover, in a response to a request for information, one of the authors indicated that he had not visited the area since 1982, and stated only that "an endangerment status of threatened may be supported by this [1982] evidence" (Tim Krantz, *in litt.*, 1993). Based on further evaluation and clarification of the information, the threats are not as significant as previously believed. For example, the intensive grazing, noted by Berg and Krantz (1982) as a potential threat, has not taken place; the development in Pine Meadow, which was anticipated in the proposed rule, has not materialized; and finally, the lack of corroborative evidence of these threats over the last 15 years has led the Service to determine that the threats do not warrant listing. The threat of trampling individual plants, as stated in the proposed rule, is not widespread. Cattle are generally present in meadow areas, whereas this species tends to occur at dryer sites outside of the meadow proper.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* Efforts by the San Bernardino National Forest to manage the grazing allotments are minimizing the threats to *Arabis johnstonii*. The Service anticipates the cooperation of the FS if adjustments to their management practices prove necessary.

E. *Other natural or manmade factors affecting its continued existence.* Not applicable.

Finding and Withdrawal

After a thorough review and consideration of all information available the Service has determined that listing of *Arabis johnstonii* as threatened is not warranted at this time. The Service has carefully assessed the best scientific and commercial information available in the development of this withdrawal notice. Residential and recreational development appear limited to one portion of the Garner Valley and, therefore, unlikely to have a significant impact on the species. All other populations, when last visited, were described as stable. While excessive trampling by cattle may pose a potential threat in some areas, there is no evidence that this threat has been realized, or that it is likely to have a significant impact. The threat from livestock trampling stated in the proposed rule is not widespread. Cattle generally graze in meadow sites, whereas *Arabis* tends to occur at dryer sites out of the meadow proper. The FS has proposed reducing grazing impacts when they are in evidence by altering management practices. In addition, the threat of proposed development noted in the proposed rule has not occurred. The current level of threats to this species do not warrant listing. The Service finds, therefore, that there is no substantial evidence available to indicate that *Arabis johnstonii* is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The

other six plant taxa included in the proposed rule with *A. johnstonii* are discussed in a separate Federal Register final rule published concurrently with this withdrawal.

References Cited

A list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service Carlsbad Fish and Wildlife Office (see ADDRESSES section).

Author: The primary author of this withdrawal notice is Gary Wallace, Carlsbad Field Office (see ADDRESSES section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 1, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–24503 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC99

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Listing of Two Plants as Endangered, and Four Plants as Threatened From the Foothills of the Sierra Nevada Mountains in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposal to list *Lupinus citrinus* var. *deflexus* (Mariposa lupine) and *Mimulus shevockii* (Kelso Creek monkeyflower) as endangered species, and *Allium tuolumnense* (Rawhide Hill onion), *Carpenteria californica* (carpenteria), *Fritillaria striata* (Greenhorn adobe lily), and *Navarretia setiloba* (Piute Mountains navarretia) as threatened species under the Endangered Species Act of 1973, as amended (Act). The Service finds that available information does not support the listing of these species as endangered or threatened. While current and future urbanization, off-highway vehicle (OHV) use, agricultural land conversion, potential overgrazing, and/or trampling variously threaten some populations of these six taxa, there is not substantive evidence that these threats are sufficiently widespread to pose a significant threat. Some of these plants are vulnerable to extirpation from random events due to their small population size, small numbers of populations, and/or small range but this vulnerability, in and of itself, is not sufficient justification to warrant their listing. Therefore, the Service finds that the six plant species are not threatened with extinction throughout all or a significant portion of their ranges in the foreseeable future and do not meet the definition of threatened or endangered species.

DATES: This withdrawal is made on September 14, 1998.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340.

FOR FURTHER INFORMATION CONTACT: Diane Elam, Kenneth Fuller, or Dwight Harvey at the above address or by telephone (916) 979–2120.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1994, the U.S. Fish and Wildlife Service (Service) published in the Federal Register (59 FR 50540) a proposal to list as endangered or threatened 10 plant species from the foothills of the Sierra Nevada Mountains in California. Included among these 10 taxa were the six subject taxa of this notice, *Allium tuolumnense* (Rawhide Hill onion), *Carpenteria californica* (carpenteria), *Fritillaria striata* (Greenhorn adobe lily), *Lupinus citrinus* var. *deflexus* (Mariposa lupine), *Mimulus shevockii* (Kelso Creek monkeyflower), and *Navarretia setiloba* (Piute Mountains navarretia). The remaining four taxa, *Brodiaea pallida* (Chinese Camp brodiaea), *Calyptridium pulchellum* (Mariposa pussypaws), *Clarkia springvillensis* (Springville clarkia), and *Verbena californica* (Red Hills vervain), are addressed separately in a final rule published concurrently with this notice.

Allium tuolumnense was first recognized as distinct by Marion Ownbey (Munz and Keck 1959), who referred to it as *Allium sanbornii* var. *tuolumnense*, although the first valid published description of the plant was by Hamilton P. Traub (1972). Stella Dension and Dale McNeal (1989) revised the *A. sanbornii* qcomplex and elevated the variety to a species based upon the position of stamens and styles and the length and shape of perianth segments (sepals and petals).

Allium tuolumnense is an erect, herbaceous perennial of the lily family (Liliaceae) that grows from underground bulbs. This species has fleshy, green entire leaves that reach a height of 25 to 50 centimeters (cm) (10 to 20 inches (in)). The loose, 20 to 60 flowered, white- or pink-flushed inflorescence appears in late March to early May. *Allium tuolumnense* differs from *A. sanbornii* and *A. jepsonii* in its entire, spreading perianth segments, fringed ovarian bumps (processes), and early blooming period that does not overlap with any other *Allium* species within its range. Although this plant can reproduce from seed, *A. tuolumnense* tends to reproduce asexually from its underground bulb, forming small colonies of usually fewer than 100 plants per colony (BioSystems Analysis 1984). *Allium tuolumnense* is a highly restricted endemic that grows only on serpentine soils in the foothills of the Sierra Nevada Mountains in southwestern Tuolumne County between 400 and 600 meters (m) (1,310 to 1,970 feet (ft)) in elevation. *Allium tuolumnense* is known from four localities— Table Mountain, Quartz Mountain, the Red Hills, and the Moccasin area. The entire range of the species comprises a 342 square kilometer (sq km) (132 square mile (sq mi)) area. Occupied habitat within the range of the species is estimated to be approximately 388 hectares (ha) (960 acres (ac)) (California Natural Diversity Database (CNDDB) 1997). Approximately 25 percent of *A. tuolumnense* occupied habitat is found on private lands and 75 percent on lands administered by the Bureau of Land Management (BLM). At the time of the proposed rule, populations of *A. tuolumnense* were thought to be variously threatened by placer mining, urbanization, and potentially by overgrazing.

John C. Fremont collected *Carpenteria californica* from an area in the Kings River watershed on his third expedition to California in 1846. John Torrey (1852) first described *C. californica* from specimens sent to him by John Fremont. The species is the only member of the genus *Carpenteria*, one of California's many endemic genera that are relicts without close relatives. The genus probably had a wider range in early Tertiary time (Barbour and Major 1988). An estimated one-third of the total distribution of species has been lost to habitat loss and/or alteration since the species was discovered in the 1840's

(California Department Fish and Game (CDFG) 1989). Although land and road development appear to have been major causes of past habitat losses and fragmentation, pending development proposals are insufficient to pose a substantial threat of further losses and degradation of occupied habitat.

Carpenteria californica belongs to the mock orange family (Philadelphaceae). The species is an erect to spreading evergreen shrub, growing to 1 to 2 m (3 to 6.5 ft) in height. Some individuals grow to 4 m (13 ft) tall. Plants have glossy green, opposing leaves, and smooth pale bark that peels in large sheets in the late summer. Terminal, white, showy flowers appear in May or June and last through July at higher elevations. *Carpenteria californica* requires fire for seed germination and reduction of competition, and rest from grazing for three years after germination to facilitate longterm survival. *Carpenteria californica* is found along drainages and mesic areas on mostly granitic soils from 460 to 1,220 m (1,500 to 4,000 ft) within the chaparral and woodland communities of the western foothills of the Sierra Nevada Mountains primarily in eastern Fresno County. A newly discovered occurrence of about 40 individuals was found in 1997 in Madera County just to the north of Fresno County (Joanna Clines et al., United States Forest Service, Sierra National Forest, *in litt.* 1997).

At the time of the proposed rule, *Carpenteria californica* was known from six occurrences distributed over a 583 sq km (225 sq mi) area in Fresno County. One of these occurrences is on private land, four are on lands administered by the U.S. Forest Service, Sierra National Forest, and one is on both private and Forest Service lands. The Madera County population is on the Sierra National Forest (J. Clines *et al., in litt.* 1997). The total number of individual plants among these seven occurrences is estimated to be 8,000 (J. Clines, *in litt.* 1997), and the estimated habitat area is approximately 7,117 ha (17,587 ac) (CNDDB 1997). Approximately 30 percent of *C. californica* individuals occur on private lands, and most of the remaining 70 percent occur on Federal lands (James Boynton, Sierra National Forest, *in litt.* 1993). The Sierra National Forest has established a 101-ha (250-ac) Carpenteria Botanical Reserve to protect one part of an occurrence of this species. Individual plants also occur within the Sierra National Forest's Backbone Natural Research Area. A portion of one occurrence of *C. californica* is protected on a 121-ha (300-ac) private preserve owned by The Nature Conservancy (TNC). At the time of the proposed rule, *C. californica* was thought to be variously threatened by urbanization, fire management, overgrazing and/or trampling by cattle, and inadequate State regulatory mechanisms, and to be potentially threatened by illegal dumping, highway construction, maintenance of road rights-of-way activities, and competition from native brush species.

Alice Eastwood (1931) described *Fritillaria striata* from specimens collected by Roy Weston on the Rattlesnake Grade in the Greenhorn Mountains of Kern County. *Fritillaria* is a genus of slender, herbaceous, bulb-forming perennials in the lily family (Liliaceae). An unbranched stem grows 5 to 10 cm (2 to 4 in) above the surface of the ground from an underground bulb. The underground, spherical bulb is found 20 to 35 cm (8 to 13 in) deep underground and is 15 to 20 millimeters (mm) (0.6 to 0.8 in) in diameter. The predominantly basal, alternate to opposite leaves are oblong to lance-shaped, 1 to 2 cm (0.4 to 0.8 in) wide and 6 to 10 cm (2 to 4 in) long. The upper leaves are narrower and undulate. One to four fragrant, bell-shaped flowers appear from February through April. *Fritillaria striata* differs from the related *F. pluriflora* (adobe lily), which occurs in the northern Sacramento Valley foothills, in the shape, size, and coloring of the flowers, the conspicuous nectaries, and the converging stigmas (Stebbins 1989, Eastwood 1931).

Fritillaria striata is found on heavy, usually red, clay soils in the annual grasslands and in the blue oak (*Quercus dougaslii*) woodlands of the southeastern San Joaquin Valley and western Sierra Nevada foothills and the northern foothills of the Tehachapi Mountains. At the time the proposed rule was published, 14 occurrences of *F. striata* were known in Kern County, and 3 occurrences were known from Tulare County (CNDDB 1997). During the fourth comment period for the proposed rule, six additional occurrences of *F. striata* in Kern County were reported (Dennis Mullins, Tejon Ranch, *in litt.* 1997). Occurrences of *F. striata* are scattered discontinuously over a 7,250 sq km (2,800 sq mi) area; however, the estimated occupied area of the occurrences is less than 202 ha (500 ac) (CNDDB 1997). The 23 occurrences range in elevation from 300 to 1,430 m (1,000 to 4,800 ft). All occurrences occur on private land. Although no occurrences are protected in public ownership, *F. striata* appear to be actively managed for the protection of the plants at two locations (CNDDB 1997). At the time of the proposed rule, *F. striata* was thought to be variously threatened by urbanization, agricultural land conversion, road widening, emergency road maintenance, inadequate State regulatory mechanisms, livestock use, competition from non-native grasses, and OHV use.

Joseph Congdon (1904) described *Lupinus deflexus* from specimens that he collected near Mariposa Creek in Mariposa County in 1903. Willis Jepson (1936) revised the treatment of this species and reduced the plant to varietal status, *Lupinus citrinus* var. *deflexus*. *Lupinus citrinus* var. *deflexus* is an erect, diffusely-branched annual herb belonging to the pea family (Fabaceae). The 3 to 5 decimeter (dm) (12 to 20 in) high plants are short, hairy to hairless, and have palmately compound leaves that are 15 to 25 mm (0.5 to 1.0 in) long. The six to nine leaflets are about one-third as wide as they are long and are linear or spatulate in shape with rounded or obtuse tips. White flowers that may have pink or lavender tips appear from April through May.

Lupinus citrinus var. *deflexus* grows on decomposed granitic sands on ridgetops and hillsides in openings in the foothill woodlands from 475 to 580 m (1,400 to 1,900 ft) in elevation. The six occurrences of this plant occur on private lands in Mariposa County over a 40 sq km (15 sq mi) area. Two of the six occurrences grow with *Calyptridium pulchellum*, a species the Service is listing as threatened in the final rule being published concurrently with this withdrawal. At the time of the proposed rule, *L. c.* var. *deflexus* was thought to be threatened by urbanization, inadequate State regulatory mechanisms, and potentially by overgrazing.

Lawrence Heckard and Rimo Bacigalupi (1986) first described *Mimulus shevockii* from specimens collected by James Shevock around the Kelso Creek area near the east base of the Piute Mountains in Kern County. *Mimulus shevockii* is an erect, desert annual in the snapdragon family (Scrophulariaceae). This plant grows to 1 dm (4 in) in height and has opposite, sessile, somewhat fleshy leaves along reddish stems. Asymmetric flowers appear from late March to May. The corolla is two-lipped. The upper flower lip has two short, entire, lateral maroon-purple lobes. The lower flower lip is similar but larger in size and has an additional large, partially divided yellow lobe with red mottling. *Mimulus androsaceus* (rockjasmine monkeyflower) and *M. fremontii* (Fremont's monkeyflower) grow with *M. shevockii* and have some similar vegetative features but differ in flower

color. *Mimulus androsaceus* has a red-purple flower and *M. fremontii* has a rose-purple flower.

Mimulus shevockii occurs predominately in loamy, coarse sands on alluvial fans and deposits of granitic origin within the Joshua tree (*Yucca brevifolia*) or California juniper (*Juniperus californica*) xeric woodlands in Kern County. *Mimulus shevockii* is found within an elevational range of 975 to 1,250 m (3,200 to 4,100 ft). Seven of the eight known occurrences of *M. shevockii* are within a 31 sq km (12 sq mi) area, with the remaining occurrence 14 km (9 mi) to the northwest. Four occurrences of M. shevockii are found on BLM land, one is on private land, and three occur partially on BLM land and partially on private land (CNDDB 1997). Approximately 400 occupied ha (990 ac) of *M. shevockii* occur on BLM land, and approximately 408 occupied ha (1,000 ac) occur on private land (Susan Carter, BLM, pers. comm. 1997a). Since the proposed rule was published, three new occurrences have been found (S. Carter, *in litt.* 1995a, 1995b; CNDDB 1997), and approximately 645 ha (1,600 ac) of potential, unsurveyed habitat on BLM land have been identified (S. Carter, *in litt.* 1996). At the time of the proposed rule, *M. shevockii* was thought to be threatened by urbanization, OHV use, and agricultural land conversion.

Frederick Coville (1893) described *Navarretia setiloba* from plants that he collected from a ridge between Kernville and Havilah in Kern County. *Navarretia setiloba* is an erect annual plant in the phlox family (Polemoniaceae). The species grows 8 to 20 cm (3 to 8 in) tall and has a few branches. The linear, pinnately-lobed leaves have rigid, spinose lobes. The terminal lobe is broadly lanceolate and often purplish. The inflorescence is about 10 mm (0.4 in) long, has 20 to 30 purple flowers, and appears from April through June. The flowers are subtended by spiny bracts that are constricted in the middle. *Navarretia setiloba* is distinguished from closely related species (sympatric congeners) in the same locations by the broad terminal lobe on each leaf and by its purple flowers.

Navarretia setiloba grows on heavy, often red-colored, clay soils within blue oak (*Quercus douglasii*), foothill pine (*Pinus sabbiniana*), or juniper (*Juniperus californica*) woodlands between 300 and 960 m (1,000 to 3,200 ft). Six small occurrences of *N. setiloba* are known from Kern County and are scattered over a 4,000 sq km (1,560 sq mi) area. The known occupied habitat of N. setiloba is less than 6.5 ha (16 ac) (CNDDB 1997). One occurrence is found on land administered by the BLM, and five occurrences are found on private lands (CNDDB 1997). At the time of the proposed rule, *N. setiloba* was thought to be threatened by urbanization and OHV use.

Finding and Withdrawal

The Service finds that the various threats to all or most of the populations within the ranges of *Allium tuolumnense*, *Carpenteria californica*, *Fritillaria striata*, *Lupinus citrinus* var. *deflexus*, *Mimulus shevockii*, and *Navarretia setiloba* are insufficient to warrant listing these species.

Summary of Comments and Recommendations

In the October 4, 1994, proposed rule (59 FR 50540) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Appropriate Federal agencies, State agencies, County and City governments, scientific organizations, and other interested parties were contacted and requested to provide comments. Newspaper notices inviting public comment were published in the *Bakersfield Californian and Porterville Recorder* on October 10, 1994, and the *Fresno Bee* and *Tuolumne Union Democrat* on October 25, 1994. The comment period closed on December 5, 1994.

As a result of receiving seven requests for one or more public hearings, the Service reopened and extended the comment period until February 13, 1995 (59 FR 67268). The Service held informational meetings with interested parties about the proposed rule in Fresno on January 25, 1995, in Visalia on January 26, 1995, and in Bakersfield on January 27, 1995. On January 31, 1995, the Service conducted a public hearing in Bakersfield. The Service received three requests to postpone or delay the hearing and three additional requests to extend the comment period beyond February 13, 1995. Responding to these requests, the Service extended the comment period until June 4, 1995 (60 FR 8342). The Service reopened the comment period on February 4, 1997 (62 FR 5199), and again on June 30, 1997 (62 FR 35116), to update and clarify information received during the two prior comment periods.

The Service received 314 comments (i.e., letters, phone calls, facsimiles, and oral testimony) from 96 individuals or agency or group representatives concerning the proposed rule to list the six species which are now part of the withdrawal notice. Twenty-six people provided 60 comments supporting the proposed listing of the species in this withdrawal notice, 28 people opposed the proposed listing and provided 162 comments, and 42 people provided 92 informational comments. Several commenters provided additional information that, along with other clarifications, has been incorporated into the "Background" or "Summary of Factors Affecting the Species" sections of this withdrawal. Opposing and technical comments have been organized into eight specific issues. These issues and the Service's response to each, are summarized below.

Issue 1—Sufficiency and Admissibility of Data

Comment: Several commenters stated that data used in the proposed rule to list these six plants in this withdrawal notice were either incomplete, inaccurate, insufficient, erroneous, unsubstantiated, inadequate, unscientific, subjective, unsupported, or based only on biased opinions in favor of listing the species, or required additional research.

Service Response: Information used by the Service in proposing to list and withdraw the species was gathered from a variety of sources, including Federal and State agencies, local governments, and private individuals, including species experts and scientists. Information received during public comment periods, including peer reviewer comments and comments made at public hearings, provide the foundation for determining the withdrawal of the six taxa in this notice. All information received was carefully evaluated in accordance with the interagency policy on information standards under the Act, published on July 1, 1994 (59 FR 34271). Criteria for what information may be considered are discussed in the "Summary of Factors Affecting the Species" section of this rule.

Comment: Several commenters stated that data were or may have been collected by trespass and questioned the legality and admissibility of the data under those circumstances.

Service Response: Among the information sources used by the Service is information from Natural Diversity Database (CNDDB), a part of the Natural Heritage Program of the California Department of Fish and Game (CDFG). The data are submitted to CNDDB on a standardized form and carefully reviewed by the staff at CNDDB. However, the form does not ask if written or verbal permission was requested to access any lands, including private lands. Many of the older observations may predate the more

recent heightened sensitivity of landowners to individuals searching for rare plants on private lands. Neither the Service nor the CDFG condone trespassing.

Comment: Several commenters stated that the information was accurate, and that the Service would not have proposed these species if the data did not support the proposed listing.

Service Response: The Service gathered the best available information in order to make an accurate determination related to these plant species. The Service received additional information on the status, distribution, and threats to the six taxa in this withdrawal notice over the course of four comment periods; October 10, 1994 to December 5, 1994, December 29, 1994 to June 4, 1995, February 4, 1997 to March 6, 1997, and June 30, 1997 to August 30, 1997. Based upon all the comments received, the Service determined that the six taxa in this notice did not meet the definitions of either endangered or threatened as stated in the Act and implementing regulations (50 CFR 424 subpart A).

Issue 2—Species are or are not Threatened or Threats are not Substantiated

Comment: Several commenters stated that some of the species were more common than indicated in the proposed rule, or some, if not all, of the species were not threatened by one or more factors across the range of the species.

Service Response: The Service concurs with the comment. Additional information regarding the status of the six taxa in this notice is discussed in the "Summary of Factors Affecting the Species" section of this withdrawal. The Service has determined that none of these six plant taxa meet the definition of a threatened or endangered species under the Act. A list of all references used to formulate this withdrawal notice is available at the Sacramento Fish and Wildlife Office upon written request (see **ADDRESSES** section).

Issue 3—Fire Management

Comment: The U.S. Forest Service can use controlled fires to improve *Carpenteria californica habitat.* California Department of Forestry and Fire Protection (CDFFP) vegetation management practices such as fire suppression and controlled burns could and should be used to benefit *C. californica* on private lands.

Service Response: The Service agrees that vegetation management through controlled burning may have some benefits for selected plant species. To illustrate, controlled burning can promote the needed sexual reproduction of *Carpenteria californica* by reducing the competition of native brush species and allowing for seeds of *C. californica* to germinate and grow. The U.S. Forest Service started to construct firebreaks on lands administered by the Sierra National Forest in 1997 as part of a five year program of controlled burning to promote the sexual reproduction of *C. californica* (J. Clines, *in litt.* 1997) (discussed in detail in Factor E, below). However, in regards to private lands, please see the next comment and response.

Comment: Firebreaks are used as one means to control wildfires and can minimize severe impacts of fire to vegetation, and should facilitate the burning of native brush and grasses, and thus promote the propagation of *Carpenteria californica.* The U.S. Forest Service and CDFFP have a new fire suppression facility that will reduce response time for initial attacks on wildfires and thus reduce the effects of wildfires, and the urban interface issue with *C. californica.* The CDFFP promotes the use of prescribed burns to control native and non-native vegetation without which *C. californica* may decline.

Service Response: The Service agrees that controlled burning on private lands may promote the longterm reproduction of some selected plant species. However, the CDFFP has not conducted any controlled or prescribed burns in *C. californica* habitat to facilitate the needed seed germination and seedling establishment of *C. californica* on private lands in the last five years. Furthermore, controlled burning alone is insufficient to insure that seedlings of *C. californica* will survive any subsequent cattle trampling or grazing. Please see Factor E of the "Summary of Factors Affecting the Species" section for further discussion.

Issue 4—Cultivation and Horticulture

Comment: Several commenters stated that *Carpenteria californica* should not be listed because it can be commercially produced in California from nursery (non-wild) stock. Populations of *C. californica* are expanding throughout its range and in England from the nursery trade. Successful cultivation guarantees that the plant is not threatened or endangered under intent of the ESA.

Service Response: One of the purposes of the Act is to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved. Successful cultivation of a species such as *Carpenteria californica* for the nursery trade does not meet the purposes of the Act. Nursery cultivation and sales of *C. californica* do not constitute a native population or range expansion or extension of a wild ecosystem nor do those activities by themselves ensure the conservation or protection of a wild ecosystem. Although reintroduction into potential suitable habitat may be an important recovery tool, such reintroduction of *C. californica* does not necessarily ensure the long-term survival of the species.

Issue 5—Range and Distribution

Comment: The Service received comments regarding the incomplete data addressing the range and distribution of *Allium tuolumnense, Fritillaria striata,* and *Mimulus shevockii.*

Service Response: Some commenters provided no additional specific information regarding the range and distribution of *Allium tuolumnense, Fritillaria striata,* and *Mimulus shevockii* that could be used in this withdrawal notice. Other commenters provided specific information regarding *Fritillaria striata* and *Mimulus shevockii* that was used in the development of this withdrawal notice. Please see the "Background" and "Summary of Factors Affecting the Species" sections for further discussion.

Issue 6—Existing Regulatory Mechanisms

Comment: Several commenters stated that the existing regulatory measures available through State, Federal and local laws, rules and regulations provide adequate protection for the six species in this notice. Other commenters stated that the existing regulatory mechanisms were not sufficient to protect the species included in this notice of withdrawal, and therefore the listing should go forward to provide the protection necessary for the continued existence of these species.

Service Response: Because the Service has not found evidence of sufficient threats to any of these species to warrant listing, the question as to whether existing regulatory measures are adequate to protect them is irrelevant. See the discussion under Factor D of the "Summary of Factors Affecting the Species" section for further detail.

Issue 7—Grazing

Comment: One commenter stated that *Fritillaria striata* is not adversely impacted by cattle grazing and trampling because no scientifically documented studies exist to demonstrate the speculation of adverse impacts, nor is it threatened at the five sites which are noted in the proposed

rule to have heavy grazing or overgrazing as a threat because the visits were done by people who had no range management knowledge or training and were done at the wrong times of year, nor is it threatened by competition from non-native plants. The same commenter stated *F. striata* has no habitat at the Element Occurrence 2, and, therefore, has not been extirpated due to heavy grazing as was stated in the proposed rule.

Service Response: The Service received no data to support the contention that grazing did not have adverse impacts to any occurrences of *Fritillaria striata* as stated in the proposed rule. Virtually all the information regarding adverse impacts to occurrences of *F. striata* that the Service received was anecdotal information. No special training in range management or other science is needed to observe that individual plants of *F. striata* are consumed and flowers are trampled across a small area that contains a few hundred individual plants. The timing of observations of cattle consuming and trampling flowers has varied. The Service also received plant count data for a single year on 10 previously unknown sites of *F. striata* which have been historically grazed at various seasons of use. Although other extirpations have occurred to populations of *F. striata*, reports to the CDFG's Natural Heritage Program indicate that the Natural Diversity Data Base Element Occurrence Number 2 had experienced heavy grazing in 1990, but is still extant (CNDDB 1997). Anecdotal observations of adverse or neutral impacts to occurrences *F. striata* are part of the public record. Please see Factor C in the "Summary of Factors Affecting the Species" section for further discussion of grazing as it relates to these species.

Comment: One commenter stated that cattle do not eat *Carpenteria californica* flowers. Another commenter stated that grazing reduces the competition to *C. californica* from grasses and other species. Another commenter stated that *Carpenteria californica* is only grazed and trampled for about three years after a burn. Lastly, one commenter stated that grazing does not affect the *C. californica* occurrence located next to Highway 168.

Service Response: In the proposed rule, the Service stated that overgrazing was adversely affecting portions of two populations of *Carpenteria californica* in Fresno County. The Service has not ever stated that cattle eat the flowers of *C. californica* or that cattle were adversely affecting that portion of a population of *C. californica* at California State Highway 168. As a mature plant, *Carpenteria californica* is not readily grazed by livestock. However, in a three-year study of the effects of cattle grazing and trampling, over 90 percent of 400 marked seedlings were killed by grazing and trampling (Clines 1994).

Comment: One commenter stated that grazing reduces competition to *Carpenteria californica* from grasses and other species. Another commenter stated that competition from native brush species may adversely affect *C. californica*.

Service Response: Neither commenter provided the Service with any information nor data to support their respective contentions. Scientific literature on the effects of grazing or competition from native brush species to *C. californica* is lacking. The Service is not aware of any data that supports or refutes that competition from other plant species affects *C. californica*, or that livestock grazing reduces competition between other species and *C. californica*. For more discussion on the effects of livestock grazing, please see Factor C in the "Summary of Factors Affecting the Species" section.

Comment: Navarretia setiloba only occurs on one section of public lands in the Piute Mountains and grazing is not likely to adversely affect this species.

Service Response: With the exception of the two occurrences of *Navarretia setiloba* that occur within an urban setting (e.g., inside an existing mobile home park in one case), all known occurrences of *N. setiloba*, including the one on public lands in the Piute Mountains, are found on open rangelands that are likely grazed by livestock. At the time of the proposed rule, the Service did not state that livestock grazing was adversely affecting any of the populations of *N. setiloba* and is not aware currently that any one of the occurrences is adversely affected by livestock grazing.

Comment: Some occurrences of *Mimulus shevockii* receive some grazing but it does not significantly impact them.

Service Response: At the time of the proposed rule, the Service did not state that livestock grazing adversely affected or threatened any of the known populations of *Mimulus shevockii*.

Comment: Several commenters stated that grazing and/or trampling is good for the six species in this withdrawal notice by promoting plant vigor, or creates a better seedbed. One commenter stated that the Service holds the position that all grazing is overgrazing. One commenter stated that other environmental factors (e.g., rainfall) are more of an issue for these species than grazing.

Service Response: The Service is unable to support the general position that grazing is either beneficial or detrimental for the six species in this withdrawal notice. Many factors involved in livestock management and grazing practices, such as season of use, intensity, duration, and stocking levels, as well as varying climatic conditions may contribute to beneficial, neutral, or negative impacts to individual plant species and the ecosystem these species inhabit. Life and growth stages of individual plant species may also enter into accounting of any effects from livestock grazing and are often coupled with complex interactions of competition with other plant species and other indirect effects. This lack of available scientific literature, along with site specific observations and local extirpations of some taxa, fails to support a position that grazing is always beneficial to the six taxa in this withdrawal notice. The Service does not maintain, however, that all grazing is overgrazing or that all populations are threatened by overgrazing, but rather that grazing at some locations has been observed to have adverse impacts on *Carpenteria californica* and *Fritillaria striata*.

Virtually all the information that the Service collected regarding adverse, beneficial, and neutral livestock grazing effects on the six taxa is anecdotal. However, repeated observations over time coupled with knowledge of historical land uses suggests some levels of grazing may adversely affect *Carpenteria californica, Fritillaria striata*, and *Lupinus citrinus* var. *deflexus*. However, information that was provided for some of locations of some of the taxa in this withdrawal notice indicates that some levels of livestock grazing may be a compatible land use with *Allium tuolumnense, Mimulus shevockii*, and *Navarretia setiloba*. The effects of herbivory by any animal, including livestock, is addressed under Factor C, "Disease and Predation" section of this withdrawal notice.

Comment: Several commenters stated that threats associated with livestock grazing were either false, or purely speculative, or lacked any scientific credence.

Service Response: In order to make a final determination whether to list 10 plant species, the Service evaluated site specific observations of known plant occurrences and reviewed an extensive body of literature on the impacts of non-native mammals to plant species. The Service also reviewed some data regarding plant counts of *Fritillaria*

striata at 13 sites, 10 of which were unknown before the proposed listing. Please refer to Factor C in the "Summary of Factors Affecting the Species" section of this rule for further discussion of grazing.

Issue 8—Alternative Status

Comment: Several commenters requested that the species considered in this notice should either not be listed at this time, be listed, be listed with an alternate status, or retain current status indefinitely.

Service Response: Substantive information provided by commenters in support of arguments for alternative listing status, including delay or withdrawal, has been incorporated into the final rule and this withdrawal notice. Please refer to the "Summary of Factors Affecting the Species" section for further discussion.

Peer Review

In accordance with the interagency policy published on July 1, 1994 (59 FR 34270), the Service solicited the expert opinions of seven independent and appropriate specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and biological and ecological information of the 10 proposed plants. Five of the seven requested reviewers provided comments. It is important to note that the peer reviewers were not aware that many of the threats to these six taxa had been reduced or removed since the proposal in 1994 and that additional occurrences (populations and additional plants had been located. Not all reviewers commented on all of the taxa that were proposed for listing. One reviewer supported the listing of the species addressed in this withdrawal, noted that each species is taxonomically distinct, and commented that the low numbers of individuals in populations make them especially susceptible to genetically based and detrimental phenomena. These phenomena include inbreeding depression and loss of genetic variability. The reviewer characterized population sizes of *Lupinus citrinus* var. *deflexus* and *Mimulus shevockii* as "perilously low" and the populations of *Allium tuolumnense, Carpenteria californica, Fritillaria striata,* and *Navarretia setiloba* as approaching that condition. A second reviewer also supported the listing of the species addressed in this withdrawal and commented specifically on *C. californica, F. striata, L. c.* var. *deflexus, M. shevockii,* and *N. setiloba.* The reviewer noted that the absence of sexual reproduction in *C. californica* and *F. striata* augments the argument that the species are endangered. Further, the reviewer noted because we do not understand why the species fail to reproduce sexually or how to remedy it, the long-term prospects for these species are "exceedingly dubious." The same reviewer also commented that further reductions in populations of *L. c.* var. *deflexus, M. shevockii,* and *N. setiloba* may place them in danger of extinction by random natural events. A third reviewer addressed *C. californica, F. striata,* and *L. c.* var. *deflexus.* The reviewer noted that the primary threat to *C. californica* from grazing and trampling is immediately following a fire, that fire suppression is a potential threat to *C. californica,* that alteration of fire frequency may effect the long-term viability of *F. striata* populations, and that the limited number of populations and known distribution of *L. c.* var. *deflexus* suggest that protection is needed. A fourth reviewer provided information on the taxonomic distinctiveness, ecology, and non-native competitors of *N. setiloba.* The fourth reviewer emphasized the importance of conserving the species. The fifth reviewer provided no specific comments but supported the listing of the six taxa addressed in this withdrawal.

The Service has reviewed all the comments received during the four comment periods. Only comments specific to the six taxa that are the subject of this notice are addressed herein. General comments received on all ten taxa and specific comments that were received pertaining to the four taxa that the Service is listing as threatened *Brodiaea pallida* (Chinese Camp brodiaea), *Calyptridium pulchellum* (Mariposa pussypaws), *Clarkia springvillensis* (Springville clarkia), and *Verbena californica* (Red Hills vervain) are addressed in a separate **Federal Register** final rule published concurrently with this withdrawal.

Summary of Factors Affecting the Species

The Service must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their application to the Service's decision to withdraw the proposal to list *Allium tuolumnense* (Traub) Denison and McNeal (Rawhide Hill onion), *Carpenteria californica* Torr. (carpenteria), *Fritillaria striata* Eastw. (Greenhorn adobe lily), *Lupinus citrinus* Kell. var. *deflexus* (Congd.) Jeps. (Mariposa lupine), *Mimulus shevockii* Heckard and Bacig. (Kelso Creek monkeyflower), and *Navarretia setiloba* Cov. (Piute Mountains navarretia) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

One occurrence of *Allium tuolumnense* is threatened by a subdivision at the Rawhide Hill locality. This occurrence is the type locality that once covered several hundred hectares but has now been reduced to 14 ha (35 ac) as a result of land clearing activities to build houses (CNDDB 1997). Another occurrence of *A. tuolumnense* is threatened by development of a subdivision near Chinese Camp at the Jamestown locality (Brad Michalk and Robin Wood, Tuolumne County Planning Department, pers. comm. 1997; CNDDB 1997). Land clearing activities for the subdivision near the Chinese Camp involved the construction of roads, fences, and house locations, which reduced colonies numbering from 10,000 plants to just a few individual plants (Pat Stone, California Native Plant Society, *in litt.* 1997; Rich Hunter, Central Sierra Environmental Resources Center, pers. comm. 1997). An additional occurrence of *A. tuolumnense* occurs in the open spaces of a recently approved subdivision; however, the occurrence is not directly threatened by the construction of houses (Robert Preston, LSA Consultants, Inc., *in litt.* 1994). Urbanization has destroyed one occurrence of *A. tuolumnense* and firebreak construction and road construction have destroyed another portion of another occurrence (Blaine Rogers, botanist, *in litt.* 1983, 1990; CNDDB 1997). An estimated 75 percent of the occupied habitat of *A. tuolumnense,* however, occurs on lands administered by the BLM and is not threatened by urbanization. Another occurrence of *A. tuolumnense* on land owned by the Tuolumne County Irrigation District has been irrigated through the spring, summer, and fall with reclaimed wastewater from Quartz in 1996 and 1997 (P. Stone, pers comm. 1997). Effects of irrigation to this occurrence are unknown. Four occurrences that were reported as being threatened by commercial placer gold mining at the time of the proposed rule are no longer threatened as the mining company has gone out of business (R. Wood, pers comm. 1997).

Threats to two occurrences of *Carpenteria californica* by development that were cited at the time of the proposed rule have not been substantiated by construction of any specific proposed subdivisions or specific development proposals

(CNDDB 1997). Future subdivisions still could threaten some of the habitat of the estimated 30 percent of the plants that occur on private lands. However, urbanization does not threaten the remaining 70 percent of the range of *C. californica* that occurs on lands managed by the Sierra National Forest. The construction of a new University of California campus that could have potentially threatened one occurrence of *C. californica* in western Fresno County is no longer a threat because a Merced County site was selected for the new campus location. Although illegal dumping has been reported to occur at two occurrences of *C. californica* on the Sierra National Forest, no further impacts to these occurrences have been reported since 1987 (CNDDB 1997). The Service considers illegal dumping to be a minor, localized threat of little significance to the overall status of the species. The continued grading of access roads underneath powerlines and around power towers continues to pose a potential threat to part of one occurrence of *C. californica* on the Sierra National Forest. The Service also considers this to be a minor threat. The small-scale logging impacts to *C. californica* on the Sierra National Forest reported in the proposed rule have not occurred and are not anticipated to occur at a significant enough level to warrant continued consideration as a threat at this time. The proposed realignment and expansion of a portion of California State Highway 168 into a four-lane freeway that was reported to potentially threaten portions of two occurrences of *C. californica* in the proposed rule will most likely not be constructed within the next 20 years (Dana York, California Department of Transportation, pers. comm. 1997), and, therefore, is not currently a threat to the species.

Prior to the publication of the proposed rule, three occurrences of *Fritillaria striata* in Tulare County and one occurrence in Kern County had been extirpated as a result of urbanization and agricultural land conversion (CDFG 1991; CNDDB 1997). Agricultural land conversion threatens two extant occurrences of *F. striata* in Tulare County (CNDDB 1997). A firebreak bisects part of one occurrence of *F. striata* in Kern County (CNDDB 1997). Road maintenance threatens another occurrence of *F. striata* in Kern County (CNDDB 1997). No specific threats have been identified to the remaining 20 or more sites of *F. striata*. Moreover, the Service received two reports regarding a total of at least ten and as many as sixteen previously unknown populations of *F. striata* (Ralph L. Phillips, University of California Cooperative Extension, *in litt.* 1997; Mark Mebane, Kern County Cattlemen's Association, *in litt.* 1995). The Service is unable to identify any threats to these previously unknown populations of *F. striata*.

Two occurrences of *Lupinus citrinus* var. *deflexus* may be threatened directly or indirectly by urbanization. Disturbance associated with suburban foothill development damaged one occurrence of *L. c.* var. *deflexus* in the early 1980s. Since then, this occurrence appears to be recovering (CDFG 1989). *Lupinus citrinus* var. *deflexus* plants at this site comprise approximately 14 percent of the occupied acreage (CNDDB 1997). A pad for a house was prepared approximately 12 m (40 ft) up slope from the plants (CDFG 1992b; Michael Ross, Yosemite Institute, *in litt.* 1992), and a garage, driveway, domestic trees and a drip system have also impacted the area of this occurrence (Lynn Lozier and Rich Reiner, The Nature Conservancy, *in litt.* 1990). The plants may be indirectly impacted by overwatering and use of herbicides or pesticides (M. Ross, *in litt.* 1992). A second occurrence of *L. c.* var. *deflexus*, including approximately 57 percent of the known acreage, occurs on a ranch that has been for sale (Ann Mendershausen, Mariposa Resource Conservation District, pers. comm. 1993, 1997; CNDDB 1997). The four remaining occurrences of *L. c.* var. *deflexus* are not threatened by specific development proposals at this time.

At the time of the proposed rule, six occurrences of *Mimulus shevockii* were thought to be threatened by mobile home development and associated road construction. The Service has been able to verify that development on private land may directly impact two of these six occurrences. Development on private land may directly impact *M. shevockii* at two occurrences that are each a mixture of private and BLM lands (S. Carter, *in litt.* 1995c, 1996; CNDDB 1997). At two of the new *M. shevockii* occurrences, house construction was occurring on land where *M. shevockii* grows (S. Carter, *in litt.* 1996). The private land at the second site is subdivided (S. Carter, *in litt.* 1995c), but the Service is unaware of specific development plans for the site. Additionally, at two occurrences managed by BLM, development of adjacent private lands may indirectly impact *M. shevockii* growing on the BLM lands (S. Carter, *in litt.* 1995b; CNDDB 1997). Agricultural land conversion may also threaten the species at one of these same sites (CNDDB 1997). The remaining occurrences representing BLM, private, and a mixture of private and BLM lands are not known to be threatened by urbanization at this time.

One occurrence of *Navarretia setiloba* is threatened by urbanization where activities such as construction of a housing pad and parking area have impacted the species (Lynn Overtree, The Nature Conservancy, *in litt.* 1993, 1994, 1995; CNDDB 1997). At the time of the proposed rule, two additional occurrences of *N. setiloga* were reportedly threatened by urbanization, one in the Lake Isabella area and one near Grapevine Peak (Diane Mitchell, botanist, pers. comm. 1992). The Service has been unable to verify specific threats to these two occurrences and to the occurrence of *N. setiloga* in the Caliente area. Additionally, recent survey information is lacking for the southernmost occurrence of *N. setiloga* near Grapevine Peak and for the two westernmost occurrences of *N. setiloga* in the Greenhorn Mountains. Although threats from urbanization to one of the six occurrences of *N. setiloga* have been verified, the Service is unaware of specific development proposals that would affect the other five occurrences of *N. setiloga*. Therefore, the Service finds that *N. setiloga* is not imminently threatened due to these activities at this time.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a factor affecting the taxa considered in this withdrawal.

C. Disease or Predation

In the proposed rule (59 FR 50545), livestock grazing was identified as a potential threat to eight occurrences of *Allium tuolumnense* on BLM lands in the Red Hills Area of Critical Environmental Concern (ACEC). Although the BLM authorized livestock grazing in the Red Hills in 1995 through 1997, no impacts to *A. tuolumnense* from livestock grazing have been reported.

Two occurrences of *Carpenteria californica* on Sierra National Forest lands were cited in the proposed rule (59 FR 50546) as threatened by overgrazing. It is now known that cattle do not readily consume mature plants (J. Clines, *in litt.* 1997), and the Service no longer believes livestock grazing to be a threat to mature individuals. However, livestock grazing and trampling destroys seedlings of *C. californica*. In a three-year study of seedling establishment after a wildfire, less than 10 percent of

C. californica seedlings survived and most of them were destroyed by livestock grazing and trampling (Clines 1994). Livestock, however, do not graze all populations of *Carpenteria*. For example, several square miles of occupied *Carpenteria* habitat occur within the Carpenteria Botanical Area, an area not grazed by livestock because it is not in an allotment and not subject to trespass grazing because of impassable terrain (J. Clines, *in litt.* 1997). In addition, successful sexual reproduction does occur in areas accessible to livestock, such as a cohort that established after a 1989 wildlife and have now reached heights of up to 240 cm (94 in) (J. Clines, *in litt.* 1997).

Livestock grazing occurs at most of the occurrences of *Fritillaria striata*. Seven observers have reported a variety of livestock grazing impacts to many of the occurrences of *F. striata* (CNDDB 1997). These seven observers were not trained in range management nor did they have knowledge of grazing history at some locations of *F. striata*. Based upon visual observations regarding the amount and severity of impacts to individual plants and the habitat of *F. striata*,, the reports have ranged from light grazing pressure on three occurrences of *F. striata* in Kern County to overgrazing and/or trampling as serious threats to the species at three other locations of *F. striata* in Kern County (CNDDB 1997). The latter reports have led to the interpretation that such observations of grazing impacts to *F. striata* were general descriptions of rangeland conditions reflecting poorly on good land stewardship and/or grazing practices, or that livestock must be excluded to ensure the survival of the species. Some of the same observers, however, have reported that low levels of livestock grazing with avoidance during the flowering season may benefit the species (CDFG 1992c). The long term effects of grazing and/or trampling to *F. striata* are currently unknown. The Service concludes that direct consumption of the plant and/or destruction caused by trampling of the flowers has been repeatedly and independently observed. The Service finds, therefore, that not all livestock grazing threatens the species, but under some circumstances, livestock overgrazing and/or trampling may threaten three occurrences of *F. striata* in Kern County (CNDDB 1997).

In the proposed rule, overgrazing by cattle was also identified as a potential threat to *Lupinus citrinus* var. *deflexus* (59 FR 50540), but this threat has not been substantiated. Since grazing was identified as a threat in the early 1980's, the plants are now apparently recovering in the two occurrences where grazing and trampling were reported to have damaged populations of *L. c.* var. *deflexus* (CDFG 1989; CNPS 1990; CDFG 1992b). At least one occurrence of *L. c.* var. *deflexus* is currently grazed by livestock, but it is not thought to be a threat to the population (CDFG 1989, CNDDB 1997, A. Mendershausen, pers. comm. 1997). The long-term effects of light grazing or trampling on the plants are currently unknown (CDFG 1989, CNDDB 1997).

D. The Inadequacy of Existing Regulatory Mechanisms

The State of California Fish and Game Commission has listed *Carpenteria californica*, *Fritillaria striata*, and *Lupinus deflexus* (now known as *Lupinus citrinus* var. *deflexus*) as threatened species (Chapter 1.5 § 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). Although the "take" of State-listed plants is prohibited (California Native Plant Protection Act, Chapter 10 § 1908 and California Endangered Species Act, Chapter 1.5 § 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law only requires that the land owner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (Native Plant Protection Act, Chapter 10 § 1913).

On September 29, 1997, legislation was approved for the California Fish and Game Code that "declares that if any provision of this chapter requires a person to provide mitigation measures or alternatives to address a particular impact on a candidate species, threatened species, or endangered species, the measures or alternatives required shall be roughly proportional in extent to any impact on those species that is caused by that person. Where various measures or alternatives are available to meet this obligation, the measures or alternatives required shall maintain the person's objectives to the greatest extent possible with this section" (Johnston and Machado 1997). California Senate Bill 879, passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from CDFG to take a listed species incidental to otherwise lawful activities, and requires that all impacts be fully mitigated and all measures be capable of successful implementation. These requirements have not been tested and several years will be required to evaluate their effectiveness for conservation of species.

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is therefore dependent upon the discretion of the agency involved. In addition, CEQA guidelines recently have been revised in ways which, if made final, may weaken protections for threatened, endangered, and other sensitive species.

Despite the potential inadequacies in existing regulatory mechanisms, the Service has found insufficient substantive evidence of threats to the six plant taxa in this notice of withdrawal to warrant their listing as threatened or endangered species under the Act. In the absence of such threats, the potential inadequacies of these regulatory mechanisms are irrelevant.

E. Other Natural or Manmade Factors Affecting its Continued Existence

OHV use has been reported as a threat to *Allium tuolumnense*, *Lupinus citrinus* var. *deflexus*, *Mimulus shevockii*, and *Navarretia setiloba*. However, only one occurrence of *A. tuolumnense* inside the BLM Red Hills ACEC is threatened by OHV use (CNDDB 1997). Historic damages to two other occurrences of *A. tuolumnense* have been reported from OHV use, but no recent impacts have been noted at those locations (CNDDB 1997). OHV use was reported as a threat to parts of four occurrences of *Carpenteria californica*. Because no further impacts to these occurrences have been reported since

1987, the Service considers that there are no threats to these four occurrences. Previously, OHV use destroyed some plants at one occurrence of *L. c.* var. *deflexus* (CDFG 1989). However, the Service has not received information regarding any further OHV use or recent damage at this site. An OHV road bisects one occurrence of *M. shevockii* and a gravel road bisects another occurrence (CNDDB 1997). Ongoing OHV activity could threaten this plant at this one location. Currently, off-highway vehicle use has been observed at four sites where *M. shevockii* occurs (S. Carter, *in litt.* 1995b, 1995c, 1995d, 1996; CNDDB 1997), but the Service has not received information indicating that the magnitude of the impacts to *M. shevockii* are likely to threaten the continued existence of the species. One occurrence of *N. setiloba* has been disturbed by OHV use in the past (CNDDB 1997), but the Service has not received further information indicating that this activity continues to be a threat at the site.

Fire suppression activities and development took place in the northerly occurrence of *Mimulus shevockii* in 1997. A bulldozer was driven through part of the occurrence and a log deck built on top of another part of the occurrence. *Mimulus shevockii* plants and habitat were directly impacted by these activities (S. Carter, pers. comm. 1997b). Events like these are considered by the Service to be localized and do not pose a significant threat to the survival of the species.

Since the time of the proposed rule, the need for fire management for the successful sexual reproduction of *Carpenteria californica* on the Sierra National Forest was recognized, and work is underway in the Kings River and Pineridge ranger districts constructing a network of the necessary fuelbreaks prior to commencement of a five-year controlled burning program (*J. Clines, in litt.* 1997). The first area scheduled to be burned is the Carpenteria Botanical Area because the area is not in a cattle allotment. Trespass cattle will not be a problem due to the rocky terrain, eliminating the conflict with cattle grazing after prescribed burns (J. Clines, *in litt.* 1997). Although the Sierra National Forest has taken some necessary steps to proactively conserve the species on Federal lands, the difficulties in conducting necessary prescribed burns with multiple private land owners may pose a threat to *C. californica* on private lands which contain the remaining 30 percent of the species. To date, no prescribed burns of *C. californica* on private forest lands have been conducted with the assistance of the California Department of Forestry and Fire under its Vegetation Management Program, the enhancement of sexual reproduction of the species (Bill Richards, California Department of Forestry and Fire Protection, pers comm. 1997). Therefore, the Service considers the lack of necessary fire management of *C. californica* on private lands to be a potential threat to the species.

Although *Fritillaria striata* may be threatened by competition from non-native grasses such as *Avena* (wild oat) and *Bromus* (brome) as mentioned in the proposed rule, the Service has received no credible scientific data to suggest that any populations of *F. striata* have been adversely affected or losses of populations have occurred as a result of such competition.

Small population size or fluctuations to small size increase the susceptibility of a population to extirpation from random demographic, environmental and/or genetic events (Shaffer 1981, 1987; Lande 1988; Meffe and Carroll 1994). Population sizes of 100 or fewer are known for one or more populations of *Allium tuolumnense, Fritillaria striata, Lupinus citrinus* var. *deflexus,* and *Navarretia setiloba* (CNDDB 1997). Because of the clonal nature of *A. tuolumnense* (BioSystems Analysis 1984), actual numbers of genetic individuals in populations of this species may be even smaller than reported. Demographic events that may put small populations of these four species at risk involve random fluctuations in survival and reproduction of individuals (Shaffer 1981, 1987; Lande 1988; Meffe and Carroll 1994). Environmental events that may put small populations at risk include random or unpredictable fluctuations in the physical environment such as changes in the weather (Shaffer 1981, 1987; Primack 1993; Meffe and Carroll 1994). These species may be subject to increased genetic drift and inbreeding as a consequence of their small population sizes (Menges 1991, Ellstrand and Elam 1993). Populations that are continually small in size are particularly susceptible to genetic changes due to drift. However, drift may also cause genetic changes in populations that occasionally fluctuate to small sizes (e.g. undergo population bottlenecks). Increased homozygosity resulting from genetic drift and inbreeding may lead to a loss of the ability of individuals to survive and reproduce (genetic fitness) in small populations. In addition, reduced genetic variation in small populations may make any species less able to successfully adapt to future environmental changes (Ellstrand and Elam 1993). Thus, portions of four of the six species are threatened by potential loss of genetic fitness and/or genetic variability as well as by demographic and environmental uncertainty associated with small population sizes.

Five of the six species addressed in this rule are known from few populations and/or from very small ranges. *Carpenteria californica, Lupinus citrinus* var. *deflexus, Mimulus shevockii,* and *Navarretia setiloba* are each known from eight or fewer occurrences (CNDDB 1997). Although *Allium tuolumnense* is known from more than eight occurrences, the species is known only from four general localities comprising a 342 sq km (132 sq mi) area. The distribution in each locality is much smaller than the overall range indicates, approximately 90 sq km (35 sq mi) in the Red Hills, 23 sq km (9 sq mi) at Quartz Mountain, 10 sq km (4 sq mi) at Table Mountain, and less than 3 sq km (1 sq mi) in the Moccasin area (CNDDB 1997). Similarly, *N. setiloba* is composed of a few small, widely scattered populations within a larger 4,000 sq km (1,560 sq mi) range. Currently, known occupied habitat of *N. setiloba* consists of less than 6.5 ha (16 ac) (CNDDB 1997). *Lupinus citrinus* var. *deflexus* and *M. shevockii* are known from very small ranges. The range of *L. c. var.* deflexus is only 40 sq km (15 sq mi) (CNDDB 1997). *Mimulus shevockii* grows within two general areas, the larger southern portion comprising about 31 sq km (12 sq mi) (CNDDB 1997). Few populations, small range, and/or restricted habitat make these five species highly susceptible to extinction or extirpation from a significant portion of their ranges due to random events, such as flood, drought, disease, or other occurrences (Shaffer 1981, 1987; Meffe and Carroll 1994). Such events are not usually a concern until the number of populations or geographic distribution become severely limited, as is the case with the species discussed here. Once the number of populations, the range, or the plant population size is reduced, the remnant populations, or portions of populations, have a higher probability of extinction from random events.

Finding and Withdrawal

After a thorough review and consideration of all information available the Service has determined that listing of *Allium tuolumnense, Carpenteria californica, Fritillaria striata, Lupinus citrinus* var. *deflexus, Mimulus shevockii,* and *Navarretia setiloba* is not needed at this time. The Service has carefully assessed the best

scientific and commercial information available in the determination of whether to list these species.

At the time of the proposed rule, *Allium tuolumnense* was thought to be threatened by urbanization, overgrazing, mining, and OHV use on 25 percent of its range on private lands. The remaining 75 percent of the population on public lands was potentially threatened by grazing. Subsequently, the Service has not been able to verify that overgrazing occurs at the grazed sites on public or private lands. The threats posed by commercial placer mining no longer exist because the mining company is no longer in business. The development of three subdivisions has impacted several occurrences of *A. tuolumnense* on private lands. However, because 75 percent of the occurrences of *A. tuolumnense* are on public lands, urbanization is not and will not be a major threat to the species over most of its range. Although historic damage from OHV use has been reported on two occurrences of *A. tuolumnense*, only one occurrence is considered currently threatened by OHV use. Two occurrences of *A. tuolumnense* are threatened by road maintenance. Thus, collectively, the Service has been able to verify threats to 6 of the 21 occurrences of *A. tuolumnense*. The small range, its restricted serpentine habitat, and clonal distribution of A. tuolumnense make this species susceptible to local extirpation from portions of its range due to random environmental events, but this threat, in the absence of other significant threats to the species, is insufficient to warrant listing under the Act. Therefore, the Service finds that *A. tuolumnense* is not threatened with extinction throughout all or a significant portion of its range nor is it likely to become an endangered species within the foreseeable future and does not meet the definition of a threatened or endangered species.

At the time of the proposed rule, *Carpenteria californica* was thought to be threatened by urbanization, highway construction, maintenance of roads and rights-of-way in connection with hydroelectrical operations, competition from native brush species, logging, illegal dumping, incompatible fire management activities, overgrazing, inadequate regulatory mechanisms, and OHV use over one third of its range on private lands. *Carpenteria californica* was thought to be threatened by alteration of natural fire cycles, OHV use, and maintenance of roads and rights-of-way on the remaining two-thirds of its range on public lands. Historic impacts from urbanization, illegal dumping, logging, OHV use, and road maintenance have occurred on a small-scale basis and constitute low magnitude, imminence, and frequency impacts to *C. californica*. Although 30 percent of the range of *C. californica* has been lost, a low likelihood exists that a significant portion of the remaining individual plants or habitat will be lost in the foreseeable future because 70 percent of the remaining plants exist on the Sierra National Forest which has started a program to enhance the sexual reproduction of the species using prescribed fire. Fire management for the successful reproduction of the species followed by three years rest from livestock grazing needed for the longterm survival of the species is not occurring on private lands. Consequently, the Service considers that continued fire suppression and non-management of *C. californica* on private lands threatens the species across the 30 percent of its range on private lands. Highway construction will not take place for at least another 20 years and would impact one portion of one occurrence of *C. californica*. Although the Service has information regarding the adverse impacts of overgrazing and trampling to seedlings of *C. californica*, no information has been presented to verify any adverse effects of grazing on mature plants on private or public lands over the range of the species. Further, no scientific information has been presented to suggest that competition from native brush species has any adverse impact to *C. californica*. Although *C. californica* is known from seven localities, including a new occurrence since the publication of the proposed rule, over a relatively large range, the species has few occurrences and is susceptible to extirpations from random environmental events. Therefore, the Service concludes that *C. californica* is not threatened with extinction throughout all or significant portion of its range nor is it likely to become an endangered species within the foreseeable future and does not meet the definition of threatened or endangered.

Prior to the proposed rule, agricultural land conversion extirpated three occurrences of *Fritillaria striata* in Tulare County and one in Kern County and continues to threaten two occurrences in Tulare County. Road maintenance threatens one occurrence and livestock grazing may threaten three occurrences of *F. striata* in Kern County. Five occurrences of *F. striata* have populations numbers of less than 100 individuals each and are susceptible to extirpation from random demographic, environmental and/or genetic events. The collective threats to 11 of the 23 known occurrences, including six new occurrences since the proposed rule was published, and the lack of specific threats to the numerous unverified occurrences of *F. striata* ,are insufficient across the range of the species to warrant listing the species at this time. Therefore, the Service finds that *F. striata* is not threatened with extinction throughout all or a significant portion of its range in the foreseeable future and does not meet the definition of a threatened or endangered species.

At the time of the proposed rule, *Lupinus citrinus* var. *deflexus* was thought to be threatened by urbanization and inadequate State regulatory mechanisms, and potentially by overgrazing. Subsequently, the Service has not been able to verify that overgrazing occurs at the grazed sites where *L. c.* var. *deflexus* is found. Continued or future urbanization may threaten at least two occurrences of *L. c.* var. *deflexus*. Inadequate State regulatory mechanisms and extirpation from random events due to small population sizes, small number of populations, and the restricted range of the species may threaten all occurrences of *L. c.* var. *deflexus*. However, the Service has been unable to verify imminent threats to four of the six occurrences of *L. c.* var. *deflexus*. Therefore, the Service finds that *L. c.* var. *deflexus* is not threatened with extinction throughout all or significant portion of its range nor is it likely to become an endangered species within the foreseeable future and does not meet the definition of threatened or endangered.

At the time of the proposed rule, occurrences of *Mimulus shevockii* were threatened by urbanization, OHV use, and agricultural land conversion. Currently, development on-site or on adjacent private land and OHV use have been observed at four occurrences (S. Carter, *in litt.* 1995b, 1995c, 1995d, 1996; CNDDB 1997). During the comment periods, the Service received information that the range of the species may be greater than understood at the time of the proposed rule and that potential additional habitat requires surveying. Agricultural land conversion may also threaten one of these same occurrences (CNDDB 1997). The most threatened portion of the range may be the private lands in the disjunct northwest occurrence. Reported threats to this occurrence include development, OHV use, agricultural land conversion, and fire suppression actions (S. Carter, *in litt.* 1995c, 1996; S. Carter, pers. comm. 1997b; CNDDB 1997). Because this portion of the range is both the most

northerly and disjunct, any activities that threaten its continued existence may constitute a threat to the species as a whole. Although urbanization, OHV use, agriculture land conversion, and random extirpation from the small number of populations and the restricted range of the species continue to put *M. shevockii* at risk, current threats that warrant listing of the species have not been identified and three additional occurrences have been discovered. Therefore, the Service finds that *M. shevockii* is not threatened with extinction throughout all or a significant portion of its range in the foreseeable future and does not meet the definition of a threatened or endangered species.

At the time of the proposed rule, *Navarretia setiloba* was thought to be threatened by urbanization and OHV use. Current and future urbanization and OHV use potentially threaten the two occurrences in the Lake Isabella area (L. Overtree, *in litt.* 1993, 1994, 1995; CNDDB 1997). Future urbanization may threaten at least one other occurrence of *N. setiloba* but no specific development proposals are known. This species is at risk from random extirpation due to small population sizes, small numbers of populations, and the restricted range of the species. The Service lacks the specific information indicating that listing is warranted for *N. setiloba* at this time. Based on all of this information, the Service finds that *N. setiloba* is not threatened with extinction throughout all or a significant portion of its range, and it is not likely to become an endangered species within the foreseeable future and does not meet the definition of a threatened or endangered species.

References Cited

A list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service Sacramento Fish and Wildlife Office (see ADDRESSES section).

Author. The primary authors of this withdrawal notice are Diane Elam, Kenneth Fuller, and Dwight Harvey, Sacramento Fish and Wildlife Office Field Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 1, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–24501 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 177
Monday, September 14, 1998

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.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting

TIME: 2:30–5:30 p.m.

PLACE: ADF Headquarters.

DATE: Tuesday, 15 September 1998.

STATUS: Open.

Agenda

2:30 p.m.—Chairman's Report
3:00 p.m.—President's Report
- Legislative Update
- FY 1998 Program Highlight
- Budget Request

5:30 p.m.—Adjournment

If you have any questions or comments, please direct them to Paul Magid, General Counsel, who can be reached at (202) 673–3916.

William R. Ford,

President.

[FR Doc. 98–24639 Filed 9–9–98; 4:47 pm]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Control of Noxious Weeds on Remote Sites, Wallowa-Whitman National Forest and Umatilla National Forest; Columbia and Asotin Counties, Washington; Union, Baker, and Wallowa Counties, OR; Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on control of noxious weeds on remote sites on two National Forests including aerial application of herbicides as a treatment on specific sites and under specific constraints. These sites are generally unroaded, back-country sites with difficult access. National Forest System lands within the Umatilla and Wallowa-Whitman National Forests, including lands within the Helis Canyon National Recreation Area (NRA) and Hells Canyon Wilderness, will be considered in the proposal. Management actions are planned to be implemented beginning in 2000. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis should be received in writing by October 31, 1998.

ADDRESSES: Send written comments and suggestions concerning this proposal to Karyn L. Wood, Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, OR 97814.

FOR FURTHER INFORMATION: Direct questions about the proposed action and EIS to Chuck Quimby, Interdisciplinary Team Leader, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, OR 97814, phone (541) 523–6391.

SUPPLEMENTARY INFORMATION: The proposed action is designed to treat existing populations of weeds to promote native and/or desirable plants, and treat existing populations of weeds to reduce weed seed sources. Projects will also evaluate means of avoiding the potential for spread of the existing infestations off-site. The action is needed to respond to the increased incidence, extent, and spread of unwanted nonnative noxious weeds in remote sites where access is difficult and hazardous, and where management of these infestations for control, containment, and reduction is consequently limited in effectiveness. These kinds of unwanted vegetation are legally designated as noxious weeds by State and Federal laws because they are generally unsuited as forage for either wildlife or livestock, may be hazardous if ingested, are often nonnative intrusions, compete with native plants, impact recreation and aesthetic values, and negatively impact wildlife habitat.

Treatment sites included in this proposal are scattered across uplands on the Wallowa-Whitman and Umatilla National Forests in northeastern Oregon. The primary management areas from the Forest Plans affected by this proposal include general forest, big game winter range, HCNRA dispersed recreation/native vegetation, and wilderness. The primary targeted weed species for aerial application of herbicide is yellow starthistle *(Centaurea solstitalis),* although other noxious weeds will be included. All of the proposed treatment sites are being negatively impacted by the invading noxious weeds. For some of the sites, past impacts to the plant community may have contributed to the susceptibility of invasion by the noxious weeds through a reduction in native plant cover and vigor. Of the 14 sites to be considered in this analysis, six are within allotments where grazing by domestic livestock may occur, while the remainder are in areas either closed to domestic livestock or where no livestock have grazed for a number of years. All of the lands are used by big game, including elk and deer. Some of the sites are used by backcountry recreationists, while others are seldom used. All sites are upland sites located away from perennial water. These sites range in size from approximately 10 acres to 500 acres net, but cover several thousand gross acres because the weeds are scattered and do not necessarily fill all growing space. Estimated gross acreage covered for the 14 sites ranges from 4000 to 5000 acres with weed spread increasing this number each year.

The proposed action is intended to implement the Wallowa-Whitman Forest-wide integrated noxious weed environment (EA) and management plan, including supplemental decisions to incorporate additional sites, and the Umatilla integrated noxious weed EA. Both documents provide for management of noxious weeds throughout the Forests but have proven most effective on the more accessible sites (for example, along roads). The affected Forests are adjacent and share common habitats, noxious weed species, and problems associated with management of these infestations. These current environmental analyses and decisions for integrated noxious weed management on the two Forests provide for treatments described in an integrated weed management program. These include chemical, biological, manual, mechanical, and cultural. The treatment methods include backpack sprayer, wick application, and boom sprayer application of herbicides; release of approved biological agents; hand

pulling; lopping seed heads; discing or tilling; prescribed fire; revegetation; etc. However, aerial application of herbicide was not considered in prior analyses. This analysis will include aerial application as a possible treatment of the selected sites using an integrated weed management program.

The Regional EIS for Managing Competing and Unwanted Vegetation (1998) and its associated mediated agreement, along with the Forest-wide environmental assessments, the biological assessments, and concurrence documents from the United States Fish and Wildlife Service and National Marine Fisheries Service, all provide a strong background for controlling or mitigating the effects of treatment actions. Sites will be surveyed for the presence of threatened, endangered, proposed or sensitive species, and any necessary protective measures will be developed through the consultation process with the regulatory agencies.

This decision is needed due to the increasing incidence and spread of noxious weeds into back-country areas. These sites are remote and difficult to access with equipment and supplies used for treatment measures. In addition, they are difficult to treat effectively due to the hazardous conditions for on-the-ground workers and the difficulty in covering the site thoroughly enough to ensure that no plants are missed and allowed to go to seed. For these reasons, treatments allowed under the existing decisions have been shown to be inadequate, have caused individual hazards to applicators, and have been expensive to use on these less accessible sites.

This proposal tiers to the Regional FEIS for Managing Competing and Unwanted Vegetation and to the EIS for each Forest's Land and Resources Management Plan (Forest Plan), as amended through completion of the integrated noxious weed plans for the Umatilla and Wallowa-Whitman National Forests. This project will also be consistent with all pertinent Forest Plan amendments, including; (1) Interim Strategies for Managing Anadromous Fish-Producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (commonly referred to as PACFISH) and (2) Inland Native Strategies for Managing Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, Western Montana, and Portions of Nevada (commonly referred to as INFISH). The project also evaluates and incorporates scientific findings from the Interior Columbia Basin Ecosystem Management Program.

Public involvement will be especially important at several points during the analysis, beginning with the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposals. The scoping process includes:

1. Identifying and clarifying issues.
2. Identifying key issues to be analyzed in depth.
3. Exploring alternatives based on themes which will be derived from issues recognized during scoping activities.
4. Identifying potential environmental effects of the proposals and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.
6. Developing a list of interested people to keep apprised of opportunities to participate through meetings, personal contacts, or written comments.
7. Developing a means of informing the public through the media and/or written material (e.g., newsletters, correspondence, etc.).

Preliminary public issues identified during scoping to date include: risks to applicators while working on steep remote sites; treatment effectiveness and cost effectiveness; and risks of nontarget effects relative to the use of aerial application of herbicides as a treatment method.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be completed about February 1999. The final EIS is scheduled for completion about June 1999. The comment period on the draft EIS will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel,* 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritage, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Officials are Karyn L. Wood, Forest Supervisor for the Wallowa-Whitman National Forest, and Jeff D. Blackwood, Forest Supervisor for the Umatilla National Forest. The inclusion of management activities in Congressionally designated areas (such as wilderness) may require a different signing authority depending on the final decision. The responsible officials will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 215.

Dated: August 28, 1998.

Karyn L. Wood,

Forest Supervisor, Wallowa-Whitman NF.

Dated: September 3, 1998.

Jeff D. Blackwood,

Forest Supervisor, Umatilla NF.

[FR Doc. 98–24550 Filed 9–11–98; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Amendment to Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on September 16, 1998, has a location change. The new location is the Indiana Government Center South, Conference Room 5, 402 W. Washington Street, Indianapolis, Indiana. This notice originally published in the **Federal Register** on September 2, 1998, vol. 63, no. 170, FR 46751. This notice is change of meeting location only.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Paul Chase, 317–920–3190, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 2, 1998.

Stephanie Y. Moore,

Acting Solicitor.

[FR Doc. 98–24577 Filed 9–9–98; 3:27 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 32–98]

Proposed Foreign-Trade Zones—Lancaster, CA; Extension of Public Comment Period

The comment period for the above case, submitted by the City of Lancaster, California, requesting authority for a new general-purpose zone in the Lancaster (Antelope Valley) area is extended to October 20, 1998, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include (Original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: September 4, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–24602 Filed 9–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822]

Notice of Court Decision: Certain Corrosion-Resistant Carbon Steel Flat Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of court decision

SUMMARY: On July 23, 1998, the United States Court of International Trade ("CIT") affirmed the determination made by the Department of Commerce ("the Department") pursuant to a remand of the final results of administrative review in the case of certain corrosion-resistant carbon steel flat products from Canada. *AK Steel Corp. et al.* v. *United States,* Slip Op. 98–106 (CIT, July 23, 1998) ("*AK Steel*"). In its remand determination, the Department corrected ministerial errors in the calculation of Stelco Inc.'s ("Stelco") margin, eliminated the credit for partial reversal of prior period charges from Dofasco Inc.'s/Sorevco's ("Dofasco") cost calculation, and determined that Continuous Colour Coat's ("CCC") post-invoicing price adjustment methodology for credit and debit notes allocated to multiple sales was acceptable.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski (Dofasco), Carrie Blozy (CCC), N. Gerard Zapiain (Stelco) or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230; telephone: (202) 482–1385, 482–0165, 482–1395, or 482–3818, respectively.

SUPPLEMENTARY INFORMATION: On March 28, 1996, the Department published its final results of administrative review of the antidumping order on corrosion-resistant steel from Canada. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 13815 (March 28, 1996) ("*Final Results*"). The review covered three manufacturers/exporters, CCC, Dofasco, and Stelco, of the subject merchandise for the period February 4, 1993, through July 31, 1994.

On November 14, 1997, in its Memorandum Opinion in the case of *AK Steel Corp. et. al.* v. *United States,* Slip Op 97–152 (CIT, November 14, 1997) ("Memorandum Opinion"), the CIT remanded three issues to the Department. For CCC, the Department was ordered to reconsider post-invoicing adjustments to price and indicate where on the record the adjustments in question are shown to be properly related, either directly or through allocation, to specific sales transactions. Memorandum Opinion at 58. For Dofasco, the Department was ordered to reconsider Dofasco's partial reversal of restructuring charges. The CIT determined that the Department must "eliminate the credit for the reversals unless it can articulate a rational reason for abandoning its past practice." Memorandum Opinion at 32. Finally, for Stelco, the Department requested, and was granted, a remand to correct ministerial errors in Stelco's final margin calculation.

I. CCC

A. Background

In its final results of administrative review, the Department determined that CCC's price adjustment methodology regarding credit or debit notes for sales in both the home market and United States was acceptable. Specifically, the Department determined that the allocation of a credit or debit note over multiple invoices was reasonable and accepted these notes as direct adjustments. *Final Results* at 13822.

B. Post-Invoicing Price Adjustments

Through an examination of the record, the Department determined that of the twenty home market and U.S. sales examined during verification, only four home market and zero U.S. sales involved post-invoicing adjustments. For the first two home market sales, the Department found an acceptable level of price specificity in CCC's price adjustment methodology. The third home market sale involved a credit note which referenced one work-order. The work-order contained multiple invoices and CCC allocated the credit note to all transactions made pursuant to the work-order on a weighted average basis. Because of CCC's inability to match the returned merchandise to the coil identified on the internal complaint

form, the Department determined that CCC's allocation of the credit note across sales made pursuant to the work-order identified on the internal complaint form was sufficiently specific. Finally, the fourth home market sale involved a debit note issued to a customer that did not reference a specific invoice or work-order. The Department concluded that a more specific allocation was not feasible, and that CCC's methodology does not distort the normal value and in turn the dumping margin.

Therefore, the Department determined that CCC's post-invoicing price adjustment methodology for credit and debit notes allocated to multiple sales was acceptable.

II. Dofasco

A. Background

In calculating Dofasco's Cost of Production ("COP") and Constructed Value ("CV") during the less-than-fair value ("LTFV") investigation, the Department included in their entirety certain estimated expenditures related to restructuring of the corporation. *Final Results*, 61 FR at 13825 *(citing Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 58 FR 37099, 37108 (July 9, 1993)). The Department determined that estimated expenditures related to restructuring should be included in their entirety as part of Dofasco's COP and CV, because these expenditures were on Dofasco's financial statements and were considered ordinary expenses that Dofasco charged against its 1992 income.

In the final results of this administrative review, the Department determined that Dofasco's prior period reversal of a portion of restructuring estimates should be allowed because Dofasco's financial statements include certain partial reversals of those earlier restructuring estimates (the reductions were included in Dofasco's financial statements in 1993 and 1994 as a credit to costs).

B. Prior Period Reversal Credit

In defendant's memorandum dated April 15, 1997, the Department requested a remand to clarify its policy with respect to the reversal charges and to determine if the adjustments made for Dofasco were consistent with that practice and policy. The court did not grant immediate remand, but ordered the Department to explain and describe its policy and past practice. As articulated before the court, the Department's past practice regarding reversal of charges for a prior period has two components. As a first step, the Department will rely upon a respondent's books and records prepared in accordance with the home country's Generally Accepted Accounting Principles ("GAAP") unless those accounting principles do not reasonably reflect the costs of producing the merchandise. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review*, 61 FR 13834, 13837 (March 28, 1996), in which the Department did not allow a reversal of prior period costs because to do so would be to distort the costs in the subsequent period; *see also Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy*, 60 FR 31981, 31991 (June 19, 1995), in which the Department noted that reducing a subsequent year's costs because of the reversal in that year of a prior year's estimate would mean distorting the actual production costs incurred in a subsequent year.

As a second step in the analysis, the Department may recognize an exception to its general rule in cases such as this one. The Department stated that the matching principle of accounting may be superseded by the concept of conservatism (the concept that certain expenses relating to liabilities for current and future periods be accrued in the first accounting period in which they can be estimated) in certain situations such as this one. Because in the LTFV investigation the Department included, in its entirety, the amount of estimated expenditures in the COP/CV calculation and because implementation of the multi-year restructuring plan was still in progress during the review, the Department determined that it was reasonable to allow Dofasco to include in its COP/CV calculation certain adjustments or reversals to the estimated expenditures accrued in 1992.

In response, the court stated that first, the concept of conservatism does not supersede the concept of matching, but should be incorporated into it. Secondly, the court stated that corrections to the financial records in one period should be made only in that same period; it is respondent's responsibility to correct estimates promptly and in the same proceeding to which they are applicable. Third, the court said that although it may not have been appropriate for the Department to include all costs for a multi-year restructuring in the LTFV investigation cost calculation, that proceeding is not before the court. Finally, the court stated that allowing a credit against costs accounted for years earlier when they were estimated but not incurred may result in a double distortion and may impact the company in the current period. The court also said that the Department's rationalization, that it "must abide by its long standing policy" (see Final Results, 61 FR 13825), does not stand scrutiny because its practice is the opposite of what it did in the instant case. As such, the Court remanded this issue to the Department with the instruction that the Department was to eliminate the credit for the reversals unless it could articulate a rational reason for abandoning its past practice.

In its redetermination on remand, the Department eliminated the credit for the partial reversal of a prior period charge from the calculation of Dofasco's costs, as instructed by the Court. In addition, in reviewing the margin calculation, the Department identified and corrected ministerial errors in the calculation of interest expenses, general and administrative expenses, and variable and total cost of manufacturing for model match purposes. See Analysis Memorandum dated January 28, 1998, for more information concerning this issue.

III. Stelco

A. Background

In its final results, the Department calculated a margin for Stelco's imports of corrosion resistant product using our standard calculation programs. On April 19, 1996, petitioners alleged that there were three ministerial errors in the Department's margin calculation program for this product. The Department agreed with petitioners but was unable to correct these errors prior to jurisdiction vesting with the CIT.

B. Ministerial Errors

The ministerial errors at issue consist of the following:

1. In the *Final Results*, 61 FR 13816, the Department stated that it intended to follow the "Zenith footnote 4" methodology for adjusting United States Price ("USP") for home market consumption taxes. Pursuant to this methodology, when merchandise exported to the United States is exempt from home market consumption taxes, the Department adds to USP the absolute amount of such taxes charged on comparison sales in the home market. Inadvertently, the Department

failed to calculate USP in accordance with this methodology.

2. The Department intended to correct an adjustment to certain sales that resulted in double counting. *Final Results* at 13832. However, the Department failed to recalculate USP in accordance with this methodology.

3. In the *Final Results* at 13832, the Department stated that it intended to treat Stelco's slitting expenses as further manufacturing costs for purposes of calculating exporter's sales price. Nevertheless, the Department neglected to make these adjustments in the calculations for the final results.

In its redetermination on remand, the Department corrected these ministerial errors in Stelco's margin calculation.

Results of Redetermination on Remand: The Department filed its redetermination with the CIT on January 28, 1998. *See Final Results of Redetermination on Remand, AK Steel Corp. et al.* v. *United States, Court No. 96–05–01312.* On July 23, 1998, the CIT affirmed the Department's remand determination.

As a result of the remand determination, the Department re-calculated the weighted average margins for Dofasco and Stelco. The final dumping margins for the period February 4, 1993, through July 31, 1994 are as follows:

Manufacturer/exporter	Margin (percent)
CCC	1.96
Dofasco	1.72
Stelco	5.62

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. section 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's July 23, 1998 decision in *AK Steel* constitutes a decision not in harmony with the Department's final results of review. Publication of this notice fulfills the *Timken* requirement. Accordingly, the Department will continue to suspend liquidation pending the expiration of the period of appeal, or, if appealed, until a "conclusive" court decision.

Dated: September 4, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–24599 Filed 9–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 11, 1998, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy. This review covers one producer/exporter of subject merchandise. The period of review is August 1, 1996, through July 31, 1997. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the section "Final Results of Review."

EFFECTIVE DATE: September 14, 1998.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Kris Campbell, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4162 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations are to the regulations provided in 19 CFR Part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Background

This review covers sales of granular polytetrafluoroethylene resin (PTFE resin) made during the period of review (POR) by Ausimont SpA/Ausimont USA (Ausimont). On May 11, 1998, the Department published the preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Polytetrafluoroethylene Resin from Italy*, 63 FR 25826 (Preliminary Results). On June 10, 1998, we received a case brief from Ausimont. On June 17, 1998, we received a rebuttal brief from the petitioner, E.I. DuPont de Nemours & Company.

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Granular Polytetrafluoroethylene Resin from Italy; Final Determination of Circumvention of Antidumping Duty Order*, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTS). We are providing this HTS number for convenience and Customs purposes only. The written description of the scope remains dispositive.

Fair Value Comparisons

We calculated constructed export price (CEP) and normal value (NV) based on the same methodology used in the preliminary results, except as follows.

1. We made a correction to the calculation of CEP profit. *See* our response to Comment 3, below.

2. We corrected clerical errors regarding home market selling expenses, as detailed in the *Memorandum from Analyst to File: Final Results Analysis Memorandum* (September 8, 1998) (Final Results Analysis Memorandum).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received comments from Ausimont and rebuttal comments from the petitioner.

Comment 1: Ordinary Course of Trade

Ausimont argues that its sales of PTFE wet reactor bead in the home market should not be used for comparison to U.S. sales of the subject merchandise because such sales were not made in the ordinary course of trade. Ausimont argues that the factors the Department considered relevant in determining whether a sale is outside the ordinary course of trade in *Thai Pineapple Public Co.* v. *U.S.*, 946 F. Supp. 11, 16 (CIT 1996) (Thai Pineapple), are also relevant

to sales of wet reactor bead. These factors include differences in customers, terms of sales, volume of sales, frequency of sales, sales quantity, sales price, profitability, and market demand. Ausimont maintains that all of these factors are present in the instant review, except that the customer that purchased the PTFE wet reactor bead also purchased granular PTFE resin from Ausimont during the POR. According to Ausimont, the above factors applied to this case establish the non-ordinary-course-of-trade nature of home market reactor bead because: (1) The volume of wet reactor bead sales, in terms of number of transactions, was very low compared with total PTFE resin sales; (2) the profits for the wet reactor bead sales were abnormally high when compared with the average profit for PTFE resin sales; (3) there is virtually no market demand for wet reactor bead (in this respect Ausimont notes that no such sales occurred in the prior review period); (4) sales of wet reactor bead were made at prices that differ significantly from the average gross unit price of granular PTFE resin; (5) the terms of sale differed as well, as evidenced by documents the Department collected during verification; and (6) the mean average quantity of PTFE wet reactor sales is unusual in that it is significantly higher than that of granular PTFE resin sales (Ausimont claims in addition that this fact would permit the exclusion of such sales under the "usual commercial quantities" provision of the Act at section 773(a)(1)(B)(i)).

The petitioner responds that the Department should continue to include home market sales of wet reactor bead for the following reasons: (1) The Act contains a clear preference for price-to-price comparisons; (2) Ausimont provided information on such sales throughout the information-gathering stage of this review and at verification without indicating that it believed such sales were made outside the ordinary course of trade; (3) the evidence to which Ausimont cites in its case brief does not meet the burden of proof for disregarding such sales, as set forth in *Koyo Seiko Co., Ltd.* v. *United States*, 932 F. Supp. 1488, 1497–1498 (CIT 1996) (Koyo); and (4) the record shows that Ausimont's home market wet reactor bead sales are in fact similar in many respects to other home market sales, based on the factors cited in Ausimont's case brief (*e.g.*, market demand and customers).

DOC Position: The information on the record before us does not provide a sufficient basis to exclude Ausimont's home market sales of wet reactor bead as outside the ordinary course of trade. While we have given full consideration to the arguments made in Ausimont's case brief, these arguments concern a case record that was compiled in the absence of any claim by Ausimont, prior to the filing of its case brief, that the wet reactor bead sales that it reported in its home market database were made outside the ordinary course of trade. In considering Ausimont's claim in light of this record evidence, we find that the respondent has not met its burden of establishing that such sales are inappropriate for use in our analysis.

Our general preference in determining normal value is to rely upon home market sales of the foreign like product prior to resorting to constructed value. *See* section 773(a)(1)(A) of the Act. While we do not include in our analysis home market sales made outside the ordinary course of trade (per section 773(a)(1)(B)(i) of the Act), the evidentiary burden of establishing the non-ordinary-course-of-trade nature of home market sales is on the party making such a claim. *See, e.g., Murata Mfg. Co.* v. *United States*, 820 F. Supp 603 (CIT 1993) (Murata).[1] With respect to comparisons to merchandise that is further manufactured after importation into the United States, the relevant home market sales to be considered for price-based matches are those of products identical or similar to the subject merchandise as imported into the United States. In this case, U.S. further-manufactured sales involved imported wet reactor bead that was further processed into finished PTFE resin; as such, the relevant home market sales for purposes of price-based matches are those of wet reactor bead.

Ausimont reported such sales in its initial home market sales listing specifically for the purpose of matching them to sales of wet reactor bead imported into the United States. *See* Ausimont section A–D questionnaire response, Exhibit B–2 (November 6, 1997). In doing so, Ausimont did not claim that such sales were inappropriate for any reason. Subsequently, in addressing the general matching methodology in our supplemental questionnaire, we indicated our intent to use the reported home market sales of wet reactor bead in our analysis, providing additional matching instructions regarding sales of wet reactor bead as follows:

> Please note that the above-referenced data [concerning general product matching variables] is also required in the U.S. and comparison market sales listings for wet reactor bead products in both markets. Ensure that you have provided home market sales of all products that can be matched to reactor bead that is further manufactured in the United States and provide a complete description of the home market products and sales that you believe are the most appropriate comparisons to wet reactor bead imported into the United States.

See section A–C supplemental questionnaire at 3–4 (February 23, 1998) (emphasis added).

In response, Ausimont stated that it had "provided home market sales of all products that can be matched to the reactor bead that is further-manufactured in the United States. * * * The appropriate home market reactor bead code is provided with each individual further-manufactured sales transaction in Ausimont's U.S. sales listing." *See* Ausimont section A–D supplemental response at 9–10 (March 16, 1998) (emphasis added). As in its initial response, Ausimont made no claim that such home market sales were inappropriate for use in our analysis for any reason, much less that such sales were inappropriate specifically because they were made outside the ordinary course of trade. In fact, the plain language of Ausimont's response to our supplemental questionnaire clearly indicated the company's expectation that such sales would be used, and were appropriate for use, as price-based matches for U.S. further-processed sales of imported wet reactor bead. Thus, at no time during the information-gathering stage of this review did Ausimont provide any evidence, or make any claim, regarding the exclusion of such sales as outside the ordinary course of trade.

Prior to and during verification, we again indicated our intent to use home market sales of wet reactor bead in our analysis, selecting certain such sales for detailed examination. *See* DOC verification outline, Appendix 1 (March 25, 1998). At verification, Ausimont officials discussed these sales in depth without making any claim that they were made outside the ordinary course of trade.

Accordingly, given the statutory preference for price-to-price matches, and in the absence of information indicating that the relevant home market sales were inappropriate for use in our analysis, we determined in the preliminary results that home market sales of wet reactor bead are the most appropriate basis for establishing normal value with respect to U.S. sales

[1] In this case, the CIT stated that "Plaintiff must bear its burden by proving that the sales used in Commerce's calculation are outside the ordinary course of trade and it must satisfy this burden by providing the information to Commerce in a timely fashion in accordance with 19 CFR 353.31(a)(1)(ii) (1992)." Murata at 607.

involving imported wet reactor bead that was further processed prior to sale.

For these final results, we have given full consideration to the record evidence that Ausimont cites in support of its contention that home market sales of wet reactor bead were made outside the ordinary course of trade. However, as shown below, this evidence is insufficient to establish a basis for the respondent's claim. While we agree with certain of the facts presented by Ausimont (*e.g.*, that the number of sales transactions involving wet reactor bead is low relative to the total number of transactions involving finished PTFE resin), on balance we find that the facts surrounding these sales do not establish that they were made outside the ordinary course of trade. *See* Koyo at 1497–1498 ("Commerce cannot exclude sales allegedly outside the ordinary course of trade unless there is a complete explanation of the facts which establish the extraordinary circumstances rendering particular sales outside the ordinary course of trade."). Our examination of the record evidence as it applies to the ordinary-course-of-trade issue is detailed below.

We agree with Ausimont that the frequency of wet reactor bead sales, in terms of the number of transactions, and the volume of such sales, in terms of total quantity sold, represent small percentages of total home market sales. However, while sales of PTFE wet reactor bead may represent a small portion of the overall sales, the absolute amount of such sales is not insignificant. As Ausimont itself has noted, and as further discussed below, the quantities involved in these sales are in fact larger on average than for other sales. Further, we note that the number of sales or volume sold are not in and of themselves definitive factors in determining whether the sales in question are in the ordinary course of trade. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes from India*, 56 FR 64,753 (1991), and *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31,411, 31,423 (June 9, 1998).

Regarding Ausimont's claim that the average quantity of such sales is higher than that of other sales, we agree that the average quantity sold of wet reactor bead is generally higher than the average quantity sold of granular PTFE resin. However, the information on the record provides an insufficient basis for determining whether this difference in the average quantity between the sales of PTFE wet reactor bead and granular PTFE resin is in fact attributable to circumstances rendering the sales in question extraordinary or unrepresentative of normal sales. Further, while the average quantity of wet reactor bead sales is generally higher than that of finished PTFE resin, our examination of the range of quantities involved in individual sales of both wet reactor bead and finished PTFE resin does not indicate that the quantities involved in wet reactor bead sales were so unusual as to render such sales inappropriate for our analysis. Finally, the fact that home market sales of wet reactor bead were made in quantities higher than average does not support a conclusion that a normal value based on the price of such sales would be unreasonably high. For these reasons, we also reject Ausimont's claim that its home market wet reactor bead may be excluded pursuant to the "usual commercial quantities" provision of the Act. *See* section 773(a)(1)(B)(i) of the Act and *Nachi-Fujikoshi Corp.* v. *United States*, 798 F. Supp. 716, 718 (CIT 1992) (as with the "ordinary course of trade" provision, the party seeking exclusion of sales based on the "usual commercial quantities" provision has the burden of proving such exclusion is warranted, and the Department's inclusion of a home market sample sale was appropriate where the respondent did not demonstrate that the quantity involved in this sale was unusual).

We also disagree with Ausimont that the remaining factors we considered in Thai Pineapple are supported by the information on the record of this review with respect to home market sales of wet reactor bead. Ausimont's contention that PTFE wet reactor bead was sold at aberrational prices is not persuasive because the comparison it makes—the average selling price of wet reactor bead versus that of finished PTFE resin—does not take into account the fact that these are different products for which there is no reasonable expectation of similar selling prices; wet reactor bead is sold as an intermediate product, at prices that we would expect to differ from those of finished PTFE resin.

With respect to the profit earned on wet reactor bead sales, Ausimont's comparison of the profit related to wet reactor bead sales and that for granular PTFE resin sales does not take into account the fact that profits made on the sales of certain models of resin were in fact higher than that of the wet reactor bead sales. Further, the identification of sales as having high profits does not necessarily render such sales outside the ordinary course of trade. *See Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 62 FR 54043, 54066 (October 17, 1997).

With respect to market demand, Ausimont's claim regarding the absence of past home market sales of this merchandise focuses entirely on the immediately prior review, without addressing the fact that the respondent has in fact sold wet reactor bead in the home market in previous segments of this proceeding. *See, e.g.*, public version of Ausimont's February 13, 1995 questionnaire response (submitted in conjunction with the 1993–94 review and included in relevant part as Attachment 2 to the Final Results Analysis Memorandum in this review) at A–5 ("Ausimont SpA produces and sells PTFE wet reactor bead to home-market customers in Italy") and at B–3 (indicating that Ausimont's response contained a sale-by-sale listing of "all virgin granular and filled PTFE resin and wet reactor bead sold in Italy").

Regarding terms of sale, while we agree with Ausimont that selected verification exhibits we collected during our verification show that the terms of certain wet reactor bead sales were different from those of certain sales of finished PTFE resin, we did not examine or collect these exhibits for this purpose and Ausimont officials did not discuss such differences at verification. As such, we are unable to conclude from these documents that the terms of sale involving wet reactor bead generally differed significantly from those of other sales of finished PTFE resin products or that different terms of sale are not generally applicable to all sales.

Finally, as Ausimont notes, Ausimont's sales of PTFE wet reactor bead were made to the same customer who also purchased finished PTFE resin products.

As shown above, Ausimont has failed to explain the facts that establish the extraordinary circumstances rendering the claimed sales outside the ordinary course of trade, as required by Koyo. *Compare Granular Polytetrafluoroethylene Resin From Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 50343, 50345 (September 27, 1993) (where home market sales were excluded as outside the course of trade where such sales involved sample merchandise sold to testing labs in "extremely small quantities" at "prices substantially higher than the prices of the vast majority of the sales reported," and where such sales were not for consumption but for evaluation and were not made to the respondent's

ordinary customers). In light of this analysis, we find that the circumstances that would render home market wet reactor bead sales outside the ordinary course of trade are not present in this review. Therefore, we have continued to use these sales as a basis for comparison with U.S. sales for purposes of these final results.

Comment 2: Level-of-Trade Adjustment

Ausimont argues that, if the Department determines that sales of PTFE wet reactor bead in the home market are made in the ordinary course of trade and in the usual commercial quantities, it should make a level-of-trade adjustment for comparisons involving such sales. First, Ausimont contends that its home market sales of wet reactor bead are made at a more advanced level of trade than that involved in sales of this product to its U.S. affiliate, noting the following selling activities and expenses involved in home market sales but not on sales to Ausimont USA: rebates, early payment discounts, inventory maintenance, warranty expenses, and technical service expenses. With respect to the calculation of the proposed adjustment, Ausimont acknowledges that it does not sell to unaffiliated home market customers at two levels of trade, but claims that it technically sells in Italy at two levels: (1) sales of wet reactor bead to unaffiliated home market customers, and (2) sales to Ausimont USA, which Ausimont claims are made in Italy based on the terms of sale involved. Ausimont requests that the Department make a level-of-trade adjustment based on the price differences at these two levels; for the prices charged at level 2, Ausimont suggests that the Department use the transfer price charged to Ausimont USA. In the alternative, Ausimont proposes that the Department calculate a level-of-trade adjustment based on the difference between the prices charged at level 1 and the constructed value of wet reactor bead. Finally, Ausimont requests a CEP-offset adjustment to normal value in the event that no level-of-trade adjustment is made.

The petitioner responds that: (1) Ausimont's level-of-trade adjustment claim was not made at any point prior to the filing of its case brief; (2) Ausimont's response clearly indicates that there is a single level of trade in each of the home and U.S. markets; (3) Ausimont's proposed calculations are incorrect because they rely on transfer prices and constructed value, neither of which the Department takes into account in the level-of-trade analysis; and (4) Ausimont's request for a CEP offset in the event that no level-of-trade adjustment is made ignores the fact that the Department did in fact calculate such an offset for the preliminary results.

DOC Position: As in the preliminary results, we find that there is no basis for calculating a level-of-trade adjustment and that a CEP offset is appropriate for all sales comparisons, including those involving wet reactor bead. While we agree with Ausimont that its home market sales of wet reactor bead (and all other reported home market sales) are made at a more advanced level of trade than that involved in the sale from Ausimont to Ausimont USA, we disagree that a level-of-trade adjustment may be calculated based on the difference between home market sales prices and either: (1) the transfer price involved in the sale to Ausimont USA, or (2) the constructed value of wet reactor bead. Both the Act and the Department's regulations (at sections 773(a)(7) and 19 CFR 351.412, respectively) require that any such adjustment be based on the price differences between different levels of trade in the country in which normal value is determined. It would be inappropriate to use transfer price or constructed value in lieu of home market sales prices where there is no home market level of trade that is equivalent to the CEP level of trade. Under these circumstances, our practice is to make a CEP-offset adjustment when comparisons are made to home market sales at a level of trade more advanced than that of the CEP. *See* Preliminary Results, 63 FR 25826, 25827; *see also* 19 CFR 351.412(f). We have followed that practice and have granted a CEP offset for all comparisons.

Comment 3: CEP Profit

Ausimont argues that the Department erred in calculating CEP profit because it improperly included imputed credit and inventory carrying expenses in the pool of U.S. selling expenses to which the CEP-profit rate was applied. According to Ausimont, in order to make a fair allocation of profits to U.S. sales, the Department must either exclude imputed credit and inventory carrying expenses from the pool of U.S. selling expenses to which the CEP-profit rate is applied or include such expenses in the total selling expenses it uses to calculate the CEP-profit rate.

The petitioner did not comment on this issue.

DOC Position: Ausimont's claim involves two aspects of the CEP-profit calculation: (1) whether to include imputed expenses in the total expenses we use to calculate the CEP-profit rate, and (2) whether to include imputed expenses in the pool of U.S. selling expenses to which we apply this rate. As explained below, our established practice, in accordance with sections 772(d) and 772(f) of the Act, is to calculate the profit rate based on actual costs (without regard to imputed expenses) and to apply this rate to U.S. selling expenses inclusive of imputed expenses.

The preamble to *Antidumping Duties; Countervailing Duties; Final rule, 19 CFR Part 351*, published at 62 FR 27295 (May 19, 1997) (Preamble), address the first issue (the calculation of the CEP-profit rate based on actual costs, without regard to imputed expenses) directly. In response to a comment that we should include imputed expenses in the total selling expenses used to derive total profit, we stated: "We have not adopted this suggestion, because the Department does not take imputed expenses into account in calculating cost. Moreover, normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit." Preamble at 27354. This policy is also described in a recent policy bulletin. *See* Import Administration Policy Bulletin number 97/1, issued on September 4, 1997, concerning the *Calculation of Profit for Constructed Export Price Transactions*, at 3 and note 5.

Our practice of excluding imputed expenses from the CEP-profit rate calculation is explained further in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2127 (January 15, 1997) (AFBs):

> Sections 772(f)(1) and 772(f)(2)(D) of the Tariff Act state that the per-unit profit amount shall be an amount determined by multiplying the total actual profit by the applicable percentage (ratio of total U.S. expenses to total expenses) and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In accordance with the statute, we base the calculation of the total actual profit used in calculating the per-unit profit amount for CEP sales on actual revenues and expenses recognized by the company. In calculating the per-unit cost of the U.S. sales, we have included net interest expense. Therefore, we do not need to include imputed interest expenses in the "total actual profit" calculation since we have already accounted for actual interest in computing this amount under section 772(f)(1).

Regarding the second issue (the inclusion of imputed expenses in the U.S. selling expense pool to which the

profit rate is applied), as we explained in AFBs:

> When we allocated a portion of the actual profit to each CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expense allocation factor. This methodology is consistent with section 772(f)(1) of the statute which defines "total United States Expense" as the total expenses described under section 772(d)(1) and (2). Such expenses included both imputed credit and inventory carrying costs.

Id. See also Canned Pineapple Fruit from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 7392, 7395 (February 13, 1998).

Accordingly, we have followed this practice in these final results by calculating a CEP-profit rate based on actual costs (without regard to imputed expenses) and applying this rate to a U.S. selling expense pool inclusive of such expenses. We note that, while Ausimont's comment suggests that we followed this practice in the preliminary results, we in fact calculated the CEP-profit rate incorrectly by including imputed credit expenses in the total expenses we used to calculate this rate. We have corrected this error for these final results.

Comment 4: Rebates

Ausimont argues that the Department erred in excluding from its margin calculation all rebate expenses reported for one of its home market customers. Ausimont maintains that the Department's verification report states incorrectly that the rebates for that customer were reported erroneously based on a finding that the customer did not meet the minimum purchasing requirements to qualify for rebates during the POR. According to Ausimont, the sales transactions selected for examination by the Department during verification show that the customer in question qualified for two types of rebates: one that is based on purchasing a certain quantity on a quarterly basis, and another that is based on purchasing a certain quantity on a yearly basis. Ausimont states that the verification documentation collected by the Department at verification includes the quarterly and yearly rebate agreements for that customer, as well as internally generated documents showing that the customer met the quarterly and yearly minimum purchasing requirements reflected in the rebate agreements. Ausimont maintains that the verification documents accepted by the Department are proof of the legitimacy of the rebates reported for the customer. Therefore, Ausimont argues that the Department's deletion in the database of all rebates reported for that customer is an error that should be corrected. Ausimont acknowledges, however, that it was unable to locate the quarterly rebate agreement for one of the sales transactions the Department examined during verification. According to Ausimont, the Department could consider this particular rebate as unverified.

The petitioner responds that Ausimont's claim conflicts with the Department's verification report, which states explicitly that this customer did not qualify for the rebate. Petitioner also states that, while the verification exhibits to which Ausimont referred in support of its claim contain copies of rebate agreements, such agreements do not show that the customer qualified for the rebates under the agreement or that the rebates were actually paid.

DOC Position: We agree with Ausimont that certain exhibits we collected at verification contain rebate agreements for the customer in question, as well as internally generated documents indicating that the customer qualified for the rebates. However, during the Department's verification, Ausimont was unable to provide any evidence showing that the customer in fact received rebate payments for meeting the minimum quantity stipulated in the quarterly and/or yearly rebate agreements.[2] The only information we have on the record with respect to the quantity sold to that customer is Ausimont's reported home market sales database, which does not support Ausimont's contention that the customer met the minimum purchasing requirements to qualify for either the quarterly or yearly rebates. Therefore, we have continued to exclude Ausimont's reported rebates for that customer from the margin calculation for purposes of these final results.

Final Results of Review

As a result of our review, we determine that the following percentage weighted-average margin exists for the period August 1, 1996, through July 31, 1997:

Manufacturer/exporter	Period	Margin (percent)
Ausimont S.p.A	8/1/96–7/31/97	45.72

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. We will direct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For Ausimont, the cash deposit rate will be the rate listed above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 46.46 percent, the "all others" rate established in the less-than-fair-value investigation (50 FR 26019, June 24, 1985). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance

[2] *See Memorandum to Office Director from Case Analysts: Verification of the Responses of Ausimont SpA and Ausimont U.S.A. in the 1996/97 Administrative Review of Polytetrafluoroethylene (PTFE) Resin from Italy* at 8–9 (May 4, 1998).

with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 4, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–24601 Filed 9–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–009]

Industrial Nitrocellulose From France: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 11, 1998, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers Bergerac, N.C. (formerly identified by the name of its parent company, Societe Nationale des Poudres et Explosifs), and its affiliates for the period August 1, 1996, through July 31, 1997.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, we have made a change in the margin calculations and corrected a ministerial error. Therefore, the final results differ from the preliminary results.

EFFECTIVE DATE: September 14, 1998.

FOR FURTHER INFORMATION CONTACT: William Zapf or Lyn Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (62 FR 27295 (May 19, 1997)).

Background

On May 11, 1998, the Department of Commerce (the Department) published in the **Federal Register** (63 FR 25828) the preliminary results of review of the antidumping duty order on industrial nitrocellulose (INC) from France. The period of review (the POR) is August 1, 1996, through July 31, 1997. We invited parties to comment on our preliminary results of review. On June 10, 1998, and June 15, 1998, we received case and rebuttal briefs from the respondent, Bergerac, N.C. (Bergerac), and the petitioner, Hercules Incorporated (Hercules). A public hearing was held on June 18, 1998. Subsequently, we requested that Bergerac revise its case brief which contained new and untimely information. We also requested that Bergerac provide additional information. Bergerac filed responses to our requests on July 13, 1998, and July 20, 1998, respectively. The Department has conducted this administrative review in accordance with Section 751 of the Tariff Act.

Scope of Review

The product covered by this review is INC containing between 10.8 and 12.2 percent nitrogen. INC is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. Imports of this product are classified under the HTS subheadings 3912.20.00 and 3912.90.00. The HTS item numbers are provided for convenience and customs purposes. The written descriptions of the scope of this proceeding remain dispositive.

Analysis of Comments Received

Comment 1: Bergerac argues that, in applying the "special rule" for merchandise with value added after importation under Section 772(e) of the Tariff Act, the Department should use as a proxy for these sales the margin calculated for sales to an unaffiliated customer which purchased identical merchandise, rather than the margin the Department calculated on all sales of subject merchandise. To support its argument, Bergerac cites Section 772(e) of the Tariff Act which provides that, for further-manufactured merchandise in which the value added in the United States is likely to exceed substantially the value of the subject merchandise, the Department shall use either the price of identical merchandise sold to an unaffiliated person or the price of other subject merchandise sold to an unaffiliated person to determine constructed export price (CEP). While recognizing that the statute does not express a clear preference for either of these options, Bergerac notes that, in the preamble to the new regulations, the Department has stated "whether merchandise is identical may be a factor to consider in selecting the sales to be substituted for the value added sales," citing Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27296 (May 19, 1997) (*Final Rule*). Bergerac also cites to 19 CFR 351.402 which states that, for the purposes of determining dumping margins under the special rule above, "the Secretary may use the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons."

Furthermore, Bergerac insists, the use of the term "unaffiliated person" in the statute requires the use of a margin calculated on sales to the first purchaser of subject merchandise in the United States. However, Bergerac contends, by including the margin calculated for its sales through SNPE N.A., an affiliated company, in its calculation of the proxy margin, the Department is using a margin calculated on resales by an affiliated distributor. To interpret "unaffiliated person" to mean unaffiliated customers of SNPE, Bergerac continues, would render the term "unaffiliated person" superfluous in the statute since all margins are based on sales to unaffiliated persons.

Hercules responds that, in the preamble to the Department's new regulations to which Bergerac refers, the Department merely restates the content of Section 772(e) of the Tariff Act, citing *Final Rule* at 27353. Hercules notes that, in this same discussion, the Department stated that it had little experience with this new statutory provision and, therefore, was not in a position to provide a great deal of guidance at that time. Nevertheless, Hercules notes that the Department subsequently enunciated a preference for using both identical and other merchandise in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, Preliminary Results of Antidumping Duty Administrative Reviews, 62 FR 47452 (September 9, 1997).

Moreover, Hercules argues that, had the Department looked only to sales to one unaffiliated customer, as suggested by Bergerac, the Department would have

taken into account only a small fraction of respondent's U.S. sales and ignored the majority of Bergerac's U.S. sales. Therefore, Hercules concludes that the Department's use of the weighted-average margin for all other U.S. sales as a proxy margin for sales of merchandise with value added was reasonable and proper under the statute and regulations.

Department's Position: The purpose of the special rule is to reduce the Department's administrative burden. *See* the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 316, Vol. 1, 103d Congress (1994) (SAA) at 826. Moreover, the statute does not specify a hierarchy between the alternative methods of using identical or other subject merchandise to establish export price (EP). *Id.* Therefore, it is within the Department's discretion to select an appropriate method to determine the assessment rate for merchandise the Department has not examined under the special rule.

After reviewing Bergerac's submitted data, we have determined that the use of both identical and other subject merchandise is an appropriate basis for determining the dumping margins for Bergerac's sales subject to the special rule. If we were to use only the margin we calculated on sales to one unaffiliated customer of merchandise identical to the value-added merchandise, as suggested by Bergerac, we would ignore the majority of U.S. sales and the pricing practices that these sales entail. This is consistent with the statutory language and legislative history which explicitly permit the Department to reject a particular alternative when there is not a sufficient quantity of sales to provide a reasonable basis for comparison. *See* Section 772(e) of the Tariff Act and the SAA at 826.

We also disagree with Bergerac's argument that we should not use sales in the United States made by its U.S. affiliate. In accordance with Section 772(b) of the Act, such sales are used as the basis for establishing U.S. price. Therefore, it is appropriate to include such sales in the alternative methodology. *See* also 19 CFR 351.402(c).

Comment 2: Bergerac argues that the Department should include the sales value of the imported subject merchandise which was further-manufactured and the estimated duties on those entries in the weighted-average margin calculations. As support for its argument, Bergerac points to the Department's analysis memorandum dated April 17, 1998, which states that the Department calculated the weighted-average margin based on the total value of sales in the United States and their total antidumping duties; however, Bergerac argues that, contrary to the statement in the April 17, 1998, memorandum, the calculations do not include the value of sales of imported merchandise with value added or the estimated duties attributed to these sales. Bergerac requests that the Department revise its weighted-average margin to include such sales value and duties.

Hercules asserts that the Department was correct in not including the sales value of imported merchandise with value added or the amount of the antidumping duty margin attributed to the sales of these products in the weighted-average margin calculations. In this case, Hercules contends, the sales of merchandise with value added are, by definition, calculated on a surrogate basis under the "special rule" provisions of Section 772(e) in order to save the Department the administrative burden of factoring out an exact margin on INC subject to the special rule.

Department's Position: We disagree with Bergerac that we should change our methodology for calculating its weighted-average margin. Based on our methodology, adding surrogate numbers to the numerator and denominator in our margin calculations would not change the results. As explained in our response to Comment 1, we are using the margin calculated on all of Bergerac's other sales as the surrogate for Bergerac's further-manufactured sales subject to the special rule. Consequently, any figures added to both the numerator and denominator of the margin calculation would only ensure the same result. Also, we disagree with Bergerac's comment that our analysis memorandum misleadingly refers to the use of total value of U.S. sales and their total duties. We stated clearly in a footnote on page 1 of that memorandum that "the total dumping margin and U.S. value are based solely on products sold as entered into the United States." It is clear that this statement excludes further-manufactured merchandise since such merchandise was not "sold as entered."

Comment 3: Bergerac argues that the Department should use sales to distributors in France, who in turn sold the foreign like product to third countries, to calculate a level-of-trade adjustment instead of making a CEP-offset adjustment to normal value. Bergerac claims that the Department should not reject such sales on the grounds that Bergerac had knowledge of the ultimate destination. Bergerac notes that one of the statutory requirements for making a CEP-offset adjustment, instead of a level-of-trade adjustment, is that the data available do not provide an appropriate basis to determine whether the difference in levels of trade affects price comparability, citing 19 CFR 351.412(d). Bergerac argues that, since information is available, the application of a CEP offset is inappropriate and that a level-of-trade adjustment is required.

Bergerac argues that, unless it can be proven that there is a reason to believe that sales to distributors in France are not representative, such sales should be used for the purpose of determining a level-of-trade adjustment. Bergerac insists that the use of the term "sold for consumption" in the definition of normal value should not lead to the conclusion that such sales cannot be used for quantifying a level-of-trade adjustment. Bergerac also argues that, in a future administrative review, the ultimate destination of these sales may be unknown since there is no restriction on distributors to prevent them from selling the merchandise in France.

Bergerac points out that the SAA (at 830) gives the Department considerable discretion in determining levels of trade. Similarly, Bergerac notes that, in situations in which there may be no usable sales of the foreign like product at a level of trade comparable to the EP or CEP level of trade, the preamble to the new regulations states: "...the Department will examine price differences in the home market either for sales of broader or different product lines or for sales made by other companies" (*Final Rule* at 27372). Bergerac argues that, if the Department may use sales of other producers, or other products in different time periods, then the Department should be able to use sales of the same product by the same producer, despite the fact that sales in the home market are later sold for export. Bergerac concludes by urging the Department to exercise its considerable discretion in this new area of the law so that a fair comparison can be achieved for Bergerac's U.S. distributor sales.

Hercules responds that the Department denied a level-of-trade adjustment to Bergerac properly. Citing Section 773(a)(7)(A) of the Tariff Act, Hercules argues that the amount of a level-of-trade adjustment should be based on the price difference "between the two levels of trade in the country in which normal value is determined." Hercules points out that the additional distributor sales that Bergerac reported belatedly in a supplemental response do not constitute a second level of trade. These sales, Hercules contends, are clearly export sales and Hercules points

out that Bergerac acknowledged this fact in statements throughout its original questionnaire.

Department's Position: We agree with Hercules that Bergerac's sales to distributors in France for export should not be used as a basis for determining a level-of-trade adjustment. As we noted on page 3 of our analysis memorandum dated April 17, 1998, Section 773(a)(7)(A)(ii) of the Tariff Act requires us to evaluate the basis for a level-of-trade adjustment based on sales at different levels of trade in the country in which normal value is determined. According to Section 773(a)(1)(B)(i), the sales at issue could not be used to calculate normal value since Bergerac knew that the products were sold for export; *i.e.*, they were not sold for consumption in the exporting country. Moreover, it would be inappropriate to compare prices to two or more different markets (Bergerac's home-market sales with its export sales) to calculate a level-of-trade adjustment since it would not be possible to distinguish the price differences due to the different markets from the price differences due to any level-of-trade differences. For these reasons, we have not made any changes to our level-of-trade determination for these final results of review.

Comment 4: Bergerac contends that the Department included certain sample and trial sales in its home-market database improperly. The Department should exclude these sample and trial sales from its calculation of normal value, Bergerac argues, because respondent has provided sufficient evidence that such sales are outside the ordinary course of trade. Regarding sample transactions, Bergerac asserts that, while the Department excluded free samples from its calculations properly, it should also have eliminated samples which were sold for monetary consideration (priced samples). As evidence to support its argument, Bergerac points out that the product code included on the invoices for these sales contains a suffix which demonstrates that they are samples. Furthermore, Bergerac states the price for these samples was high to cover the relatively high cost of shipping and packaging small quantities.

In addition, Bergerac asserts that its trial sales were outside the ordinary course of trade. Bergerac argues that, in a supplemental response, it submitted letters from the customers which demonstrate that each transaction was for testing purposes only. Bergerac also contends that the grade of nitrocellulose sold in these cases is a grade that normally is not sold in France.

While recognizing that the Department determined properly that its priced samples and trial sales were "sales" because they did not lack consideration in accordance with *NSK Ltd.* v. *United States*, 115 F. 3d 965, 975 (CAFC 1997) (NSK), Bergerac contends that, in its determination to retain these transactions, the Department relied improperly on this qualification alone and did not determine whether the sales were outside the ordinary course of trade. Bergerac asserts that NSK is inapplicable to this situation because it dealt with certain transactions which were not sales and did not address whether certain sales were outside the ordinary course of trade.

Bergerac asserts that, in determining whether these sales are outside the ordinary course of trade, the Department must consider all of the circumstances surrounding the sales in question, citing 19 C.F.R. 351.102(b), *Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 606–7 (Court of International Trade (C.I.T.) 1993) (Murata), and *Laclede Steel Co.* v. *United States*, 18 C.I.T. 965, 1994 WL 591949 (C.I.T. 1994). Bergerac explains that "the purpose of the ordinary course of trade provision is to prevent dumping margins from being based on sales which are not representative," citing *Monsanto Co.* v. *United States*, 698 F. Supp. 275, 278 (C.I.T. 1988). Furthermore, Bergerac argues that the Department has recognized that trial and sample sales must be excluded from normal value, citing Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) from the Federal Republic of Germany, 54 FR 18992, 19087 (May 3, 1989), and Antidumping Manual, Import Administration, revised February 10, 1998, Chapter 8, pages 9–10.

Hercules disagrees with Bergerac, arguing that the Department included priced samples and trial sales in its analysis properly. Hercules contends that the burden of proof to demonstrate that these sales are outside the ordinary course of trade rests clearly on Bergerac, citing Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less In Outside Diameter, and Components thereof, From Japan, Final Results of Antidumping Duty Administrative Reviews, 63 FR 2558 (January 15, 1998) (Tapered Roller Bearings).

Citing Murata, Hercules contends that the C.I.T. has found that a respondent did not meet its burden of proof merely by claiming that the relevant sales were in smaller quantities and at higher prices than sales of a different model. Hercules argues that Bergerac did not provide certain information regarding these sample and trial transactions which the Department requested in a supplemental questionnaire. Finally, citing Tapered Roller Bearings, Hercules argues that the Department has previously disallowed the requested exclusion of sample sales where the respondent has merely stated that the product is coded as a sample and that the sample prices are generally higher than for larger-volume shipments. Hercules asserts that this is a similar situation and that Bergerac has also failed to meet its burden of proof in this regard.

Department's Position: We disagree with Bergerac that we should exclude certain home-market sales because they are outside the ordinary course of trade. Regarding priced samples, while it is clear that the invoices for these sales indicated that they were sample sales, such indication is not sufficient to demonstrate that the sale is unique or unusual or otherwise outside the ordinary course of trade. *See* Antifriction Bearings (Other Than Tapered Roller Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom, Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081 (January 15, 1997) (where, although we verified that certain sales were designated as samples in a respondent's records, we determined this was insufficient to find them outside the ordinary course of trade since such evidence "merely proves that respondent identified sales recorded as samples in its own records"). Such evidence does not indicate that the sales were made outside the ordinary course of trade for purposes of calculating normal value in this review. Bergerac's argument that these sales were at a high price to cover the high cost of shipping small packages does not address the Department's "unique or unusual" standard concerning ordinary course of trade. *See* Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany (61 FR 38166, July 23, 1996) as discussed in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et. al.; Final Results of Antidumping Duty Administrative Reviews (62 FR 54043, at 54065–54066, October 17, 1997).

Regarding trial sales which Bergerac claims are outside the ordinary course of trade, the respondent has not met its burden to demonstrate that these sales are unique or unusual or otherwise outside the ordinary course of trade.

First, while Bergerac claims that it does not usually sell this grade of INC in France, it sells this product to the U.S. market frequently as indicated by its sales database. Furthermore, although Bergerac argues that it submitted letters from each of the trial-sale customers demonstrating that, in each case, the product was used for testing purposes only, the letters it provided are not convincing. One of the letters appears to be from Bergerac to the customer, rather than from the customer to Bergerac (as the respondent claims), and does not indicate that any testing was conducted (or was to be conducted) by the customer. Also, while Bergerac claimed in its January 20, 1998, supplemental response that this trial was unsuccessful, it did not submit any evidence to establish this fact. Regarding other trial sales, another letter from the customer to Bergerac does discuss testing, but this letter is dated after our request for documentation of the trial sales and not at the time of the sales. (Because of the proprietary nature of the contents of these letters, please see the August 31, 1998, analysis memorandum for a more detailed discussion of this matter.) Finally, we found that these trial sales were made in quantities similar to other sales, supporting the possibility that the product was used for production purposes.

Regarding both priced samples and trial transactions, Bergerac failed to provide certain information which we requested in a supplemental questionnaire specifically in order to determine whether these transactions were outside the ordinary course of trade. For example, regarding both types of sales at issue, Bergerac did not respond as to whether the customer had purchased these particular items previously. For these reasons, the record is incomplete as to whether sales of these products were made to these customers prior to the dates of the claimed sample and trial transactions and we have retained them for use in our calculation of normal value.

We also disagree with Bergerac's assertion that we relied on an incorrect standard for determining whether to include claimed sample and trial sales in our calculation of normal value. We first evaluated, under the NSK standard, whether these transactions were in fact "sales" involving monetary consideration. Where we determined that the transactions involved monetary consideration, we then examined, based upon information in Bergerac's response, whether these sales were within the ordinary course of trade according to Section 771(a)(1)(B) of the Tariff Act. (*See* page 5 of April 17, 1998, Analysis Memo.) According to this standard and for reasons discussed above, we find that Bergerac has not met its burden of proof in demonstrating that the sales in question are outside the ordinary course of trade.

Comment 5: Hercules argues that, although Bergerac denied that it sold any subject merchandise which was below specification, its responses demonstrate that Bergerac did not account properly for the production of below-specification INC in its sales databases. Hercules contends that the Department should instruct Bergerac to submit supportive data regarding the production and sale of "off-spec" merchandise in order to determine whether there were any sales of such merchandise in the home market. This additional request for information after the preliminary results is necessary, Hercules asserts, because the Department must not compare sales of off-spec or less-than-prime merchandise to U.S. sales of prime merchandise.

Bergerac rebuts Hercules' comment by denying that a request for supplemental information is necessary, stating that it reexamined its quality-control records in response to Hercules' comment. As a result of this search, Bergerac identified in its rebuttal brief where it had sold off-spec merchandise in the home market. In addition, Bergerac contends that it submitted information regarding the production and sale of off-spec merchandise, including the proportion of off-spec merchandise which it produced and, of that amount, what proportion was sold at reduced prices and what proportion was recycled into the manufacturing process.

Department's Position: We agree with Hercules and have obtained additional information regarding Bergerac's production and sale of off-spec merchandise. Based on this information and because there were no sales of off-spec merchandise in the United States, we eliminated such sales from the calculation of normal value. Consistent with our practice, we have changed our methodology to ensure that we did not compare home-market sales of off-spec merchandise to U.S. sales of prime merchandise. *See* Steel Wire Rod From Canada; Final Determination of Sales at Less Than Fair Value, 63 FR 9182, 9183 (February 24, 1998); *see also* Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 61 FR 48465, 48466 (September 13, 1996).

Comment 6: Bergerac argues that the Department should not have considered a certain home-market customer to be an affiliated party for purposes of its analysis and, therefore, should not have included its sales to this customer in its arm's-length test. Bergerac contends that, although technically affiliated to Bergerac under Section 771(33) of the Tariff Act through a common board member, this company cannot influence the prices it pays because there is no link between the board member's membership on Bergerac's board and his membership on the customer's board. Therefore, Bergerac asserts, the prices paid were at arm's length and were not affected by the existence of a common board member.

Hercules argues that the Department was correct in performing the arm's-length test on Bergerac's sales to the home-market customer in question and that, under section 771(33) of the Tariff Act, a common officer or director is sufficient to consider two firms to be affiliated. Hercules argues further that, given that the sales failed the arm's-length test, the Department excluded them from the calculation of normal value properly.

Department's Position: We disagree with Bergerac that it was inappropriate to treat one of its home-market customers as affiliated and, therefore, include all sales to that customer in our arm's-length test. In its January 20, 1998, supplemental questionnaire response, Bergerac reported that, because the chairman of its board of directors is also a member of the board of directors of the customer in question, the respondent is "affiliated" to the customer in question as the term is used by the Department. Although it stated that it does not consider the customer to be affiliated because the relationship is maintained on an arm's-length basis, Bergerac did not raise this issue until late in the proceeding and did not provide sufficient information to allow the Department to analyze the affiliation issue. Thus, as facts available, we are relying on the respondents' statement that the customer is affiliated under our standards. Because the customer is being treated as affiliated, it was appropriate to include all sales to the customer in question in our arm's-length test.

After conducting the arm's-length test, which is how we determine whether an affiliation affects prices in such a way that they should be excluded from the calculation of normal values, we found that Bergerac's transactions with the customer in question failed the test and, thus, it was appropriate to exclude these transactions from our calculations.

Final Results of Review

As a result of our review, we determine the final weighted-average dumping margin for the period August 1, 1996, through July 31, 1997 to be as follows:

Company	Margin (percent)
Bergerac	13.35

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, for CEP sales we have calculated an *ad valorem* duty-assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP or CEP, by the total statutory EP or CEP value of the sales compared and adjusting the result by the average difference between EP or CEP and customs value for all merchandise examined during the POR.) For EP sales, Bergerac could not identify the importer(s) of record for sales to unaffiliated customers. Therefore, we have calculated a single, per-unit duty assessment rate by dividing the total dumping margins by the total quantity sold to these customers.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash-deposit rate for Bergerac will be 13.35 percent; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation (LTFV), but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will be 1.38 percent. This is the "all others" rate from the LTFV investigation which we are reinstating in accordance with the decisions of the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79 (May 25, 1993), and *Federal-Mogul Corporation and The Torrington Company* v. *United States*, Slip Op. 93–83 (May 25, 1993).

This notice serves as a final reminder to importers of their responsibility under 19 C.F.R. 351.402(f) of the *Final Rule* to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: September 4, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–24598 Filed 9–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–810]

Oil Country Tubular Goods From Argentina; Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On September 25, 1997, the Department of Commerce (the Department) published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Argentina. This review covers the period August 1, 1996 through July 31, 1997. Based on information on the record of this review, all subject merchandise exported by Siderca to the United States during the period of review (POR) was entered into a foreign trade zone (FTZ) or under a temporary importation bond (TIB) and, therefore, was not subject to dumping duties. This review has now been rescinded as a result of our determination that there were no consumption entries into the United States during the POR.

EFFECTIVE DATE: September 14, 1998.

FOR FURTHER INFORMATION CONTACT: Heather Osborne or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue. NW., Washington, DC 20230; telephone (202) 482–3019 or (202) 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments regulations are references to the provisions codified at 19 CFR part 351 (62 FR 27296, may 19, 1997).

Scope of the Review

Oil country tubular goods are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this review are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.80, 7304.39.00, 7304.51.50, 7304.20.70, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50, 7306.50.50, 7306.60.70, and 7306.90.10. The HTS subheadings are provided for convenience and Customs purposes.

The written description remains dispositive.

Background

We received requests for an administrative review of Siderca S.A.I.C., an Argentine producer and exporter of OCTG, and Siderca Corporation, an affiliated U.S. importer and reseller of such merchandise (collectively, Siderca). Petitions Lone Star Steel and IPSCO Tubulars, Inc. submitted a request for review on August 29, 1997, of the anitdumping duty order published in the Federal Register on August 11, 1995 (60 FR 41055). Petitioner North Star Steel of Ohio submitted a separate request for review on September 2, 1997. We initiated this review on September 25, 1997 (62 FR 50292). We received comments from Siderca and petitioners concerning whether Siderca made entries from consumption in the United States during the POR. Petitioners filed duty absorption requests on October 23, 1997 and October 26, 1997, respectively.

SUPPLEMENTARY INFORMATION: In its original submission Siderca claimed that "it did not export, directly or indirectly, subject merchandise that was entered for consumption into the United States during the period of review." Siderca also claims that its U.S.A. affiliate, Siderca Corporation, did not import for consumption any subject merchandise during the POR.

Petitioners subsequently claimed that publicly available import data from the Department's IM–145 database contradicted Siderca's claims that no subject merchandise was entered for consumption during the POR. Petitioners asserted that Siderca was the only exporter of Argentine OCTG to the United States, and in fact entered a substantial quantity of OCTG during the POR. Specifically, petitioners claimed that 949.909 metric tons of Argentine OCTG were entered for consumption during the POR, and filed an affidavit claiming a sale was made from an FTZ to a U.S. company during the POR. Petitioners asked the Department to investigate these sales and to require Siderca to report all U.S. and home market sales of OCTG made during the POR.

In response, Siderca indicated that it made no U.S. sales or consumption entries during the POR. Siderca claimed that all of its shipments to the United States were FTZ or TIB entries, and were destined for re-export. Siderca indicated it had no knowledge of its customers having entered covered merchandise into the United States for consumption. Siderca argued that if any such entries occurred, they could not be the basis for a review of Siderca. Siderca emphasized that all customers are aware of Siderca's policy prohibiting entry of subject merchandise into the United States. Siderca asserted that entries appearing on the IM–145 were in error, and were most likely TIB entries mistakenly classified as consumption entries. Siderca also indicated that the entries in question could have been classified under the wrong HTS number. For several of the entries listed by petitioners, Siderca claimed that due to grade specification or dimensions, the merchandise was incapable of being produced in Argentina. (*See* November 12, 1997 submission at 9.)

On December 22, 1997, petitioners disputed Siderca's claim that it was unaware of any consumption entries of OCTG from Argentina, and that, regardless of Siderca's policy, as the sole producer of OCTG in Argentina, Siderca was responsible for any U.S. shipments entered for consumption during the POR.

The Department issued a supplemental questionnaire on March 18, 1998, requesting additional information on Siderca's FTZ or TIB shipments during the period.

Siderca provided sales documentation for all transactions during the POR indicating that all of its sales were either sold directly to a third country, were TIB entries for re-export to a third country, were FTZ entries for re-export to a third country, or were transportation and exportation (T&E) entries for re-export to a third country. As a condition of these types of entries Siderca is required to document to U.S. Customs the final disposition of the merchandise, and to confirm that all shipments are in fact re-exported.

On March 20, 1998, the Department forwarded a no-shipment inquiry to the U.S. Customs Service (Customs) for circulation to all Customs ports. Customs did not indicate to the Department that there was any record of consumption entries of OCTG by Siderca during the POR. On April 23, 1998, the Department requested additional information from Customs regarding one Siderca entry appearing in the Department's IM–115 database. Customs subsequently confirmed that the entry was in fact a TIB entry and one that had been misclassified as subject merchandise. (*See* memorandum to the file, Customs Confirmation of Siderca Entry, August 24, 1998.) Given Customs' confirmation that there were no consumption entries of Argentine OCTG, and documentation provided by Siderca (purchase orders and invoices) that all of its sales of OCTG during the POR were either TIB entries, FTZ entries for re-export to third countries, or direct sales to third countries, there is no evidence on the record of this review of any consumption entries of Argentine OCTG during the POR. In conclusion, the Department determines that none of Siderca's sales of subject merchandise were entered into the United States for consumption during the POR and, thus, there are no entries to review.

Because Siderca was the only firm for which a review was requested and it had no U.S. entries for consumption of covered merchandise during the POR, there is no basis for continuing this administrative review. We therefore are rescinding this review in accordance with section 351.213(d)(3) of the Department's regulations.

The issue of whether couplings and coupling stock are included within the scope of the antidumping duty order on OCTG from Argentina was originally raised by the petitioners in the context of this administrative review. Because we have determined pursuant to section 351.225(d) of the Department's regulations that the section 351.225(k)(1) analysis is dispositive that couplings and coupling stock are outside the scope of the order, we have issued separately a final scope ruling to that effect. (*See* Final Scope Ruling–– Antidumping Duty Order on Oil Country Tubular Goods from Argentina, August 28, 1998.)

Finally, our decision to rescind this review renders moot the petitioners' request for a duty absorption inquiry.

The cash deposit rate for all firms will continue to be the rate established in the most recently completed segment of this proceeding (*i.e.*, 1.36 percent).

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: August 28, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–24600 Filed 9–11–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke Export Trade Certificate of Review No. 92–00004.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to J.J. Wheeling (d/b/a Aidex). Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to J.J. Wheeling (d/b/a Aidex).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") [15 U.S.C. 4011–21] authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on May 13, 1992 to J.J. Wheeling (d/b/a Aidex).

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to J.J. Wheeling (d/b/a Aidex), on May 3, 1998, a letter containing annual report questions with a reminder that its annual report was due on June 27, 1998. Additional reminders were sent on July 1, 1998, and on July 27, 1998. The Department has received no written response to any of these letters.

On August 27, 1998, and in accordance with Section 325.10 (c)[1] of the Regulations, a letter was sent by certified mail to notify J.J. Wheeling (d/b/a Aidex) that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)[2] of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)[2] of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice will, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)[3] of the Regulations).

The Department will publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)[4] of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: September 3, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–24559 Filed 9–11–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, US Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold a plenary meeting from 8:30 AM until 11:30 PM on September 17, 1998. The ETTAC was created on May 31, 1994, to advise the U.S. government on policies and programs to expand U.S. exports of environmental products and services.

DATE AND PLACE: September 17, 1998; Room 3407 of the Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The plenary meeting will review the objectives and agendas of its five subcommittee working groups: Market Access, Trade Impediments, Government Resources, Finance, and Outreach. There will also be an update on the APEC trade liberalization process, and updates from Environmental Trade Working Group members.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sage Chandler, Department of Commerce, Office of Environmental Technologies Exports. Phone: 202–482–1500

Dated: September 4, 1998.

Carlos Montoulieu,

Acting Deputy Assistant Secretary, Office of Environmental Technologies Exports.

[FR Doc. 98–24620 Filed 9–11–98; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 970725180–8168–02]

RIN 0693–ZA16

Request for Comments on Candidate Algorithms for the Advanced Encryption Standard (AES)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: A process to develop a Federal Information Processing Standard (FIPS) for Advanced Encryption Standard (AES) specifying an Advanced Encryption Algorithm (AEA) has been initiated by the National Institute of Standards and Technology (NIST). Earlier this year, candidate algorithms were nominated to NIST for consideration for inclusion in the AES. Those candidate algorithms meeting the minimum acceptability criteria have been announced by NIST and are available electronically at the address listed below.

This notice solicits comments on the candidate algorithms from the public, and academic and research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations. These comments will

assist NIST in narrowing the field of AES candidates to five or fewer for more detailed examination.

It is intended that the AES will specify an unclassified, publicly disclosed encryption algorithm available royalty-free worldwide that is capable of protecting sensitive government information well into the next century.

DATES: Public comments are due April 15, 1999.

Authors who wish to be considered to be invited to brief their papers at the Second AES Candidate Conference must submit their papers by February 1, 1999.

ADDRESSES: Comments on the candidate algorithms should be sent to Information Technology Laboratory, Attn: AES Candidate Comments, Building 820, Room 562, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Comments may also be sent electronically to AESFIRSTROUND@NIST.GOV

Specifications of the candidate algorithms are available electronically at <http://csrc.nist.gov/encryption/aes/aes_home.htm> as if information on how to obtain software implementations of the candidate algorithms (for evaluation and analysis purposes) and information on the Second AES Candidate Conference.

Comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Records and Reference Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC, 20230.

Electronic comments received by NIST will be made available electronically at <http://csrc.nist.gov/encryption/aes/aes_home.htm>

FOR FURTHER INFORMATION CONTACT: For general information, contact: Edward Roback, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899; telephone 301–975–3696 or va fax at 301–948–1233.

Technical questions may be made by contacting either Miles Smid at (301) 975–2938, or Jim Foti at (301) 975–5237.

SUPPLEMENTARY INFORMATION:

I. Availability of AES Candidate Algorithm Specifications/ Implementations

Specifications of the candidate algorithms are available electronically at <http://csrc.nist.gov/encryption/aes/aes_home.htm>. That site also contains information on ordering two CDROMs containing the AES candidate-related information. The first CDROM contains the same descriptions of the algorighm candidates available on the web site. The second CDROM contains the ANSI C and Java™ referenced and optimized implementations which are available for algorithm testing purposes.

The second CDROM (candidate algorithm implementations) is subject to U.S. export controls for destinations outside the U.S. and Canada. Information is available on the web site regarding how interested parties outside the U.S. and Canada can obtain a copy of the second CDROM.

Note that, with a few exceptions, the submitters of candidate algorithms have only made their candidate algorithms publicly available for AES testing and evaluation purposes. Unless otherwise specified by the submitter, these algorithms are protected and may not be otherwise used (e.g., in commercial or non-commercial products).

II. Comments Solicited on AES Candiate Algorithms

Written comments on the candidate algorithms are solicited by NIST in this "Round 1" technical evaluation in order to help NIST reduce the field of AES candidates to five or fewer for the "Round 2" technical analysis. It is envisioned that this narrowing will primarily be based on security, efficiency, and intellectual property considerations. Comments are specifically sought on: (1) specific security, efficiency, intellectual property, and other aspects of individual AES candidate algorithms; and, (2) cross-cutting analyses of all candidates. As discussed below, NIST particularly would appreciate receiving recommendations (with supporting justification) for the specific five (or fewer) algorithms which should be considered for Round 2 analysis. To facilitate review of the comments, it would be useful if those submitting comments would clearly indicate the particular algorithm(s) to which their comments apply.

NIST will accept both: 1) general comments; and, 2) formal analysis/ papers which will be considered for presentation at the "Second AES Candidate Conference."

Since comments submitted will be made available to the public, they must not contain proprietary information.

Comments and analysis are sought on any aspect of the candidate algorithms, including, but not limited to:

1. Comments on Candidate Algorithms Based Upon AES Evaluation Criteria

In the call for AES candidate algorithms (Federal Register, September 12, 1997 [Volume 62, Number 177], pages 48051–48058), NIST published evaluation criteria for use in reviewing candidate algorithms. For reference purposes, these are reproduced below. Comments are sought on the candidate algorithms and all aspects of the evaluation criteria.

Evaluation Criteria (as published September 12, 1997).

Security (i.e., the effort required to cryptanalyze):

The security provided by an algorithm is the most important factor in the evaluation.

Algorithms will be judged on the following factors:

i. Actual security of the algorithm compared to other submitted algorithms (at the same key and block size).

ii. The extent to which the algorithm output is indistinguishable from a random permutation on the input block.

iii. Soundness of the mathematical basis for the algorithm's security.

iv. Other security factors raised by the public during the evaluation process, including any attacks which demonstrate that the actual security of the algorithm is less than the strength claimed by the submitter.

Claimed attacks will be evaluated for practicality.

Cost

i. Licensing requirements: NIST intends that when the AES is issued, the algorithm(s) specified in the AES shall be available on a worldwide, non-exclusive, royalty-free basis.

ii. Computational efficiency: The evaluation of computational efficiency will be applicable to both hardware and software implementations. Round 1 analysis by NIST will focus primarily on software implementations and specifically on one key-block size combination (128–128); more attention will be paid to hardware implementations and other supported key-block size combinations (particularly those required in the Minimum Acceptability Requirement section) during Round 2 analysis.

Computational efficiency essentially refers to the speed of the algorithm. NIST's analysis of computational efficiency will be made using each submission's mathematically optimized implementations on the platform specified under Round 1 Technical Evaluation below. Public comments on each algorithm's efficiency (particularly for various platforms and applications) will also be taken into consideration by NIST.

iii. Memory requirements: The memory required to implement a candidate algorithm—for both hardware and software implementations of the algorithm—will also be considered during the evaluation process. Round 1 analysis by NIST will focus primarily on software implementations; more attention will be paid to hardware implementations during Round 2.

Memory requirements will include such factors as gate counts for hardware

implementations, and code size and RAM requirements for software implementations.

Testing will be performed by NIST using the mathematically optimized implementations provided in the submission package. Memory requirement estimates (for different platforms and environments) that are included in the submission package will also be taken into consideration by NIST. Input from public evaluations of each algorithm's memory requirements (particularly for various platforms and applications) will also be taken into consideration by NIST.

Algorithm and Implementation Characteristics

i. Flexibility: Candidate algorithms with greater flexibility will meet the needs of more users than less flexible ones, and therefore, inter alia, are preferable. However, some extremes of functionality are of little practical application (e.g., extremely short key lengths)—for the cases, preference will not be given.

Some examples of "flexibility" may include (but are not limited to) the following:

a. The algorithm can accommodate additional key- and block-sizes (e.g., 64-bit block sizes, key sizes other than those specified in the Minimum Acceptability Requirements section, [e.g., keys between 128 and 256 that are multiples of 32 bits, etc.])

b. The algorithm can be implemented securely and efficiently in a wide variety of platforms and applications (e.g., 8-bit processors, ATM networks, voice & satellite communications, HDTV, B–ISDN, etc.).

c. The algorithm can be implemented as a stream cipher, Message Authentication Code (MAC) generator, pseudo-random number generator, hashing algorithm, etc.

ii. Hardware and software suitability: A candidate algorithm shall not be restrictive in the sense that it can only be implemented in hardware. If one can also implement the algorithm efficiently in firmware, then this will be an advantage in the area of flexibility.

iii. Simplicity: A candidate algorithm shall be judged according to relative simplicity of design.

2. Intellectual Property

Comments are also sought specifically regarding any patents (particularly any not otherwise identified by the submitter of each candidate) that may be infringed by the practice of each nominated candidate algorithm.

3. Cross-Cutting Analyses

Analysis comparing the entire field of candidates in a consistent manner for particular characteristics would be useful. Example of this type of analysis might include: (1) Comparisons of implementations of all algorithms written in the same programming language for memory use, timings for encryption/decryption/key setup/key change, and so forth; (2) comparisons of all algorithms against a particular cryptologic attack; or (3) comparison of all algorithms for infringement against a particular patent.

4. Overall Recommendations

When all factors are considered, which candidate algorithms should be selected for the next round of evaluation and why? (Since NIST intends to select five or few algorithms for Round 2, it would be useful to identify five or fewer in this regard.) Also, conversely, identification and justification of which algorithms should NOT be selected for the next round of evaluation. Such comments (with supporting justifications) will be of great use to NIST and help assure timely progress of the AES selection process.

III. Initial Planning for the Second AES Candidate Conference

An open public conference is being planned for the spring of 1999 to discuss analyses of the candidate algorithms. Those individuals who have submitted particularly insightful and useful comments may be invited by NIST to present their papers at the conference. Panels may also be organized around individual algorithms or cross-cutting analysis topics. Also, submitters of candidate algorithms will be invited to attend and engage in discussions responding to comments regarding their candidates. Because of the anticipated volume of comments, not all authors of comments can be invited to participate on the official program. At the conference, NIST intends to provide a briefing of the results of its efficiency testing of the candidate algorithm implementations, along with any other testing it may have completed.

In order to allow for timely conference preparation, authors who wish to be considered on the official program of the Second AES Candidate Conference must have their papers submitted to NIST by February 1, 1999. (They are to be sent to the same address as the general comments but should also be annotated as "conference paper candidate." They will automatically be entered into the public record of AES candidate comments.)

As details and registration procedures are finalized, they will be posted to <http://csrc.nist.gov/encryption/aes/aes_home.htm>.

IV. General AES Development Information

For information regarding NIST's plans to test the candidate algorithms, the overall AES selection process, and the call for candidate algorithms, see NIST's notice in the **Federal Register**, September 12, 1997 (Volume 62, Number 177), pages 48051–48058, "Announcing Request for Candidate Algorithm Nominations for the Advanced Encryption Standard (AES)."

Appreciation

NIST extends its appreciation to all submitters and those parties providing public comments during the AES development process.

Dated: September 4, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–24560 Filed 9–11–98; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Modernization Transition Committee (MTC) Meeting

ACTION: Notice of public meeting.

TIME AND DATE: September 30, 1998, beginning at 8 a.m.

PLACE: This meeting will take place at the Silver Spring Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland.

STATUS: The meeting will be open to the public. The time between 11 a.m. and 12 noon will be set aside for public comments. Approximately 50 seats will be available to the public on a first-come first-served basis.

MATTERS TO BE CONSIDERED: This meeting will include MTC consultation on the proposed Consolidation, Automation and Closure Certifications for Charlotte, North Carolina, Fort Wayne and South Bend, Indiana, and Victoria, Texas; presentation on NWS Severe Weather Performance in 1998; a status update on Evansville; and a report on the National Weather Service Modernization status.

FOR FURTHER INFORMATION CONTACT:

Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Dated: September 4, 1998.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 98–24610 Filed 9–11–98; 8:45 am]

BILLING CODE 3510–12–M

COMMODITY FUTURES TRADING COMMISSION

Petition of the London Clearing House Limited for Exemption Pursuant to Section 4(c) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on petition for exemption.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission (Commission) published for comment on July 7, 1998 (63 FR 36657), a petition submitted by the London Clearing House Limited (LCH) requesting an exemption, pursuant to Section 4(c) of the Commodity Exchange Act, in connection with LCH's proposed provision of clearing services for certain swap agreements. Comments on LCH's petition were due by September 8, 1998. In response to a request by the International Swaps and Derivatives Association, Inc., the Commission has determined to extend the comment period for an additional 15 days. The extended deadline for comments on the LCH petition is September 23, 1998. The Commission believes that this extension should give all parties sufficient time to consider and comment upon the LCH petition and will look with disfavor upon any further requests for an extension of the comment period.

Any person interested in submitting comments on the LCH petition should submit them by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*.

Copies of the LCH petition are available for inspection at the Office of the Secretariat at the above address. Copies also may be obtained through the Office of the Secretariat at the above address or by telephone at (202) 418–5100 or on the Commission's Internet web site *(http://www.cftc.gov)*.

DATES: Comments must be received on or before September 23, 1998.

FOR FURTHER INFORMATION: Thomas E. Joseph, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5430.

Issued in Washington, DC on *September 8, 1998* by the Commodity Futures Trading Commission.

Jean Webb,

Secretary of the Commission.

[FR Doc. 98–24574 Filed 9–11–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Reinstatement of Small Business Set-asides for Certain Acquisitions Under the Small Business Competitiveness Demonstration Program

AGENCY: Department of Defense (DoD).

ACTION: Notice of reinstatement of small business set-asides under the Small Business Competitiveness Demonstration Program.

SUMMARY: The Director of Defense Procurement has reinstated the use of small business set-aside procedures for certain non-nuclear ship repair and construction acquisitions conducted by the Departments of the Navy and Army. Included in the reinstatement are solicitations issued under Standard Industrial Classification (SIC) Code 3731 (Service Codes J998 and J999) (Navy only), SIC Code 1791 (Navy only), and SIC Code 1629 (Army only; note, however, that use of small business set-asides in this SIC Code was previously reinstated for the Navy and that reinstatement remains in effect).

EFFECTIVE DATE: September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Sipple, OUSD (A&T), Director of Defense Procurement, Contract Policy and Administration, Room 3C838, 3060 Defense Pentagon, Washington, DC 20301–3060, telephone (703) 695–8567.

SUPPLEMENTARY INFORMATION: The Office of Federal Procurement Policy (OFPP) implemented Title VII of Pub. L. 100–656 (15 U.S.C. 644 note) by issuance of the "Small Business Competitiveness Demonstration Program Test Plan" on August 31, 1989, amended April 16, 1993. The program was further implemented in Subpart 19.10 of the Federal Acquisition Regulation (FAR) and Subpart 219.10 of the Defense FAR Supplement (DFARS).

Under the program, small business set-asides were initially suspended for certain designated industry groups. Agencies are required by paragraphs III.D.2.a. and IV.A.4. of the OFPP test plan to reinstate the use of small business set-asides whenever the small business awards under any designated industry group falls below 40 percent or whenever small business awards under an individual SIC Code or Service Code within the designated industry group falls below 35 percent. Reinstatement is to be limited to the organizational elements (in the case of DoD, the individual military departments or other components) that failed to meet the small business participation goals.

For the 12 months ending June 1998, DoD awards in the industries shown below fell below the 40 percent (SIC Code 3731 (Service Codes J998 and J999)) or 35 percent (SIC Codes 1629 and 1791) thresholds. Accordingly, pursuant to DFARs 219.1006(b)(2), the Director of Defense Procurement has directed reinstatement of small business set-aside procedures for solicitations that involve the industry categories shown below. The reinstatement applies to solicitations issued by the applicable buying activities on or after September 2, 1998, or as soon thereafter as practicable:

Industry	Applicable to
Non-Nuclear Ship Repair, SIC Code 3731 (Service Codes J998 and J999).	All Navy Activities.
Construction, Major Group 17—SIC Code 1791 only.	All Navy Activities.
Construction Major Group 16—SIC Code 1629 only.	All Army Activities.

Consistent with the OFPP test plan, this reinstatement of set-asides will be periodically reviewed for continuation. The reinstatement of small business set-aside procedures for Construction Major Group 15 for all Army and Navy contracting activities and SIC Code 1629 for all Navy contracting activities remains in effect (memorandum dated June 17, 1998; 63 FR 37096, July 9, 1998). Also, the departmentwide reinstatement of small business set-aside procedures for the designated industry group titled "Architectural and Engineering Services" remains in effect (memorandum dated September 30, 1991).

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council

[FR Doc. 98–24507 Filed 9–11–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) for the Proposed Upgrade of Training Areas and Facilities, Camp Atterbury, Indiana, by the Indiana Army National Guard (INARNG)

AGENCY: National Guard Bureau, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The purpose of the project is to maximize training opportunities for military units that use Camp Atterbury. Military units need to be able to maintain a high level of training and state of readiness to support national defense and state mission in times of natural disaster, civil unrest, and other emergencies. Adequate training opportunities, with up-to-date equipment, must be available to allow them to train for their assigned mission.

DATES: The public review period for this FEIS ends 30 days after the date of publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**.

ADDRESSES: A copy of the FEIS can be obtained by writing to Major Rick Jones, EIS Project Officer, Indiana Army National Guard, 2002 S. Holt Road, Indianapolis, Indiana 46241–4839.

FOR FURTHER INFORMATION CONTACT: Major Rick Jones at (317) 247–3105, facsimile extension 3414.

SUPPLEMENTARY INFORMATION: The INARNG proposes to upgrade training areas and facilities at Camp Atterbury, Indiana. The proposed action includes the construction of a Multi-Purpose Training Range (MPTR). The proposed action does not include development of maneuver corridors. These corridors, if proposed for addition in the future, will be the subject of a supplemental National Environmental Policy Act document. The MPTR will be located in the southwest sector of the installation and will be used for training by armor, attack helicopter, Infantry Fighting Vehicles, and dismounted infantry units. The MPTR would include a support area, firing area and a target area. The firing area would include stationary, moving and defilade firing positions. The target area would contain stationary and moving targets. Firing points would be oriented to provide northeasterly trajectories into the existing impact area. The MPTR itself would occupy approximately 80 hectares (200 acres) and, including the safety fan, the area involved would total about, 4,550 hectares (11,250 acres).

Three alternatives in addition to the proposed action were considered—the first (Alternative 2A) includes the construction of the MPTR and two maneuver corridors, another alternative with less development (Alternative 2B), and the no action alternative. Alternative 2B involves the MPTR being located in the northwest sector of Camp Atterbury, with firing points oriented to provide south-easterly trajectories into the impact area, and would involve the development of only the eastern maneuver corridor. The no action alternative considers the continued use of Camp Atterbury without the proposed upgrade.

A 45-day public review and comment period was provided for the Draft Environmental Impact Statement (DEIS). Two public meetings were conducted near Camp Atterbury, Indiana, on the DEIS after the Notice of Availability was published. After all the comments were compiled and reviewed, responses were prepared to all relevant environmental issues that were raised. These responses to comments and/or any new pertinent information were incorporated into the DEIS to constitute the FEIS.

After the 30-day review period on the FEIS has ended, a Record of Decision will be published.

Copies of the FEIS will be mailed to individuals who participated in the public scoping process. Copies will also be sent to Federal, state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy by request.

Dated: September 4, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 98–24552 Filed 9–11–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment identifies, with greater specificity, those uniformed service personnel or their survivors covered by the system.

DATES: The amendment will be effective on October 14, 1998, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment identifies, with greater specificity, those uniformed service personnel or their survivors covered by the system. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: September 8, 1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base *(July 30, 1998, 63 FR 40792).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the first paragraph and replace with 'All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine

eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.'

Add the following to the end of paragraph five 'survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration who are eligible for or are currently receiving Federal payments due to the death of the retiree.'

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location - W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93943–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972.

All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub.L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support

personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606 – Selected Reserve and Title 38 U.S.C., Chapter 30 – Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub.L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical

positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of the active duty and veteran population.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

b. To the Bureau of Supplemental Security Income to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub.L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub.L. 97–365) and the Debt Collection Improvement Act of 1996 (Pub.L. 104–134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of the active duty and veteran population. DMDC will disclose information from this system of records for research purposes when DMDC:

a. has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 3: Data obtained from such organizations and used by DoD does not contain any information which identifies the individual about whom the data pertains.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

Note 4: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DLA's 'Blanket Routine Uses' *do not* apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

W.R. Church Computer Center - Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location - Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains

information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–24548 Filed 9–14–98; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 14, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 9, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Early Childhood Longitudinal Study (ECLS) First Grade Fall 1998 Pilot Study, Fall 1999 and Spring 2000 Full Scale.

Frequency: Fall 1998, Fall 1999, and Spring 2000.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 600
Burden Hours: 313

Abstract: The ECLS begins in Fall 1998–1999 with a kindergarten cohort. This clearance is for follow up activities with this cohort of students one year later, when they are typically in first grade. There will be a pilot of the first grade fall survey in Fall 1998, and the full scale surveys will take place in Fall of 1999 and Spring of 2000. The ECLS looks at the crucial first years of school from the perspective of the students, teachers, parents, and school administrators. There are assessments of the students. The survey is intended to provide information about early childhood preschool learning experiences, from birth to age 8, preparation for formal schools, first school experiences, and progress made over the first years of school.

Office of Educational Research and Improvement

Type of Review: Extension.

Title: Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI)—Phase 1.

Frequency: Annually.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1
Burden Hours: 1

Abstract: OERI was required by its authorizing statute to establish standards for the processes it uses to evaluate applications for grants and cooperative agreements and proposals for contracts. These established standards (34 CFR 700) allow OERI to tailor selection criteria to individual programs by selecting from the menu of selection criteria contained in this regulation. This regulation has also

eliminated the need for separate programs within OERI to establish individual program regulations to create specific evaluation criteria.

Office of Postsecondary Education.

Type of Review: Extension.
Title: Guaranty Agency Monthly Claims and Collection Report.
Frequency: Monthly.
Affected Public: Businesses or other for-profits; State, local or Tribal Gov't; SEAs or LEAs. *Reporting and Recordkeeping Hour Burden:*

Responses: 37 Burden Hours: 2,220

Abstract: The ED Form 1189 is used by a guaranty agency to request payments of reinsurance for default, bankruptcy, death, disability claims paid to lenders and costs incurred for SPA, closed school, false certification, lender of last resort and lender referral fee payments. Agencies use the form to make payments owed to ED for collections on defaulted loans.

[FR Doc. 98–24575 Filed 9–11–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement: Advanced Mixed Waste Treatment Project at the Idaho National Engineering and Environmental Laboratory, Idaho Falls, ID; Public Comment Period Extension

AGENCY: Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: To accomodate requests from the public, the U. S. Department of Energy (DOE) has decided to extend the public comment period on the Draft Environmental Impact Statement (DEIS) for the Advanced Mixed Waste Treatment Project (AMWTP) at the Idaho National Engineering and Environmental Laboratory (INEEL) from September 12, 1998 to September 26, 1998.

DATES: Comments on the DEIS should be postmarked by September 26, 1998, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: To request information about this EIS, or to be placed on the EIS distribution list, please call the 24-hour toll-free information line at 1–800–320–4549. Written comments on this DEIS should be sent to: John Medema, Project Manager, Advanced Mixed Waste Treatment Project EIS, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1117, Idaho Falls, Idaho 83402, Fax: (208) 526–0598.

FOR FURTHER INFORMATION: For further information on the AMWTP, contact John Medema at the above address. For further information on DOE's procedures for implementing the National Environmental Policy Act (NEPA), contact: 5Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington D.C. 20585–0119, Phone: (202) 586–4600, Messages: (800) 472–2756, Facsimile: (202) 586–7031.

SUPPLEMENTARY INFORMATION: On July 24, 1998, DOE published a notice in the **Federal Register** (63 FR 39836) announcing the availability of and public meetings on the subject DEIS. DOE received requests from several parties to extend the comment period. In response to these requests, and to ensure that all interested parties have time to comment, the comment period has been extended to September 26, 1998. Comments should be postmarked by September 26, 1998, to ensure consideration.

Mark W. Frei,

Acting Deputy Assistant Secretary for Waste Management Environmental Management.

[FR Doc. 98–24561 Filed 9–11–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Electric System Reliability Task Force

DATES AND TIMES: Tuesday, September 29, 1998, 8:30 AM–4:00 PM.

ADDRESSES: Georgetown University Conference Center, Salon H, 3800 Reservoir Road, NW, Washington DC 20057.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Background

The electric power industry is in the midst of a complex transition to competition, which will induce many far-reaching changes in the structure of the industry and the institutions which regulate it. This transition raises many reliability issues, as new entities emerge in the power markets and as generation becomes less integrated with transmission.

Purpose of the Task Force

The purpose of the Electric System Reliability Task Force is to provide advice and recommendations to the Secretary of Energy Advisory Board regarding the critical institutional, technical, and policy issues that need to be addressed in order to maintain the reliability of the nation's bulk electric system in the context of a more competitive industry.

Tentative Agenda

Tuesday, September 29, 1998

8:30–8:45 AM—Opening Remarks & Objectives—Philip Sharp, Task Force Chairman
8:45–10:15 AM—Working Session: Discussion of Draft Report—Facilitated by Philip Sharp
10:15–10:30 AM—Break
10:30–11:45 AM—Working Session: Discussion of Draft Report—Facilitated by Philip Sharp
11:45–12:00 PM—Public Comment Period
12:00–1:30 PM—Lunch
1:30–2:30 PM—Working Session: Approval of Final Report—Facilitated by Philip Sharp
2:30–3:30 PM—Closing Comments by Task Force Members
3:30–3:45 PM—Closing Comments by DOE Representatives
3:45–4:00 PM—Public Comment Period
4:00 PM–Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington DC, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000

Independence Avenue, SW, Washington, DC 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Electric System Reliability Task Force and the Task Force's interim report may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on September 8, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–24570 Filed 9–11–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–80–001 FERC Form 80]

Information Collection Submitted for Review and Request for Comments

September 8, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission did not receive any comments in response to an earlier notice issued May 20, 1998, and published in the **Federal Register** on May 27, 1998 (63 FR 29000).

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, N.W. Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form 80 "Licensed Hydropower Development Recreation Report."

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0106. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement.

4. Necessity of Collection of Information: Submission of the information is necessary to fulfill the requirements of Sections 4(a), 10(a), 301(a), 304 and 309 of the Federal Power Act (FPA). FERC Form 80 is a report on the use and development of recreational facilities at FERC-licensed hydropower projects and is filed on April 1 of every sixth year.

Section 10(a) of the FPA requires the Commission to ensure that any hydropower project it approves is best adapted to a comprehensive plan for developing a waterway for the benefit of interstate of interstate and foreign commerce and for improving or utilizing waterpower development, including recreation and other beneficial public uses. To further these objectives, the Commission requires licensees to take reasonable efforts to inform the public of the availability of project lands and waters for recreational purposes and the license conditions of interest to members of the public concerned with recreational aspects of the project.

5. Respondent Description: The respondent universe currently comprises on average, 400 respondents subject to the Commission's jurisdiction.

6. Estimated Burden: Because FERC Form-80 is collected every six years, the Commission has requested that OMB place this collection of information on "standby" status and place 1 hour in their inventory to hold its place. Information to be collected on FERC Form 80 will not be collected again until 2003, beyond the requested expiration date.

7. Estimated Cost Burden to Respondents: See item no. 6. There is no cost to the respondents.

Statutory Authority: Sections 4(a), 10(a), 301(a), 304 and 309 of the Federal Power Act (FPA), 16 U.S.C. 797, 803, 825, 825(c) and 825(h).

David P. Boergers,

Secretary.

[FR Doc. 98–24512 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–550–001 FERC–550]

Information Collection Submitted for Review and Request for Comments

September 8, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission did not receive any comments in response to an earlier notice issued June 19, 1998, and published in the **Federal Register** on June 25, 1998 (63 FR 34641).

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before October 14, 1998.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW. Washington, DC. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief

Information Officer, Attention: Michael Miller, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC–550 "Oil Pipeline rates: Tariff Filings".

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0089. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement.

4. Necessity of Collection of Information: The filing requirement provides the basis for analysis of all rates, fares, or charges whatsoever demanded, charged or collected by any common carrier or carriers in connection with the transportation of crude oil and petroleum products and are used by the Commission to establish a basis for determining the just and reasonable rates that should be charged by the regulated pipeline company. Based on this analysis, a recommendation is made to the Commission to take action whether to suspend, accept or reject the proposed rate. The data required to be filed for pipeline rates and tariff filings is specified by 18 Code of Federal Regulations (CFR) Chapter I Parts 340–348.

Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline or the establishment or valuations for pipelines, was transferred from the Interstate Commerce Commission to the Commission, pursuant to Section 306 and 402 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. Sections 7155 and 7172, and Executive Order No. 12009, 42 FR 12009, 43 FR 46267 (September 15, 1977).

5. Respondent Description: The respondent universe currently comprises on average, 170 respondents subject to the Commission's jurisdiction.

6. Estimated Burden: 5,668 total burden hours, 170 respondents, 3.06 responses annually, 10.9 hours per response (average).

7. Estimated Cost Burden to Respondents: 5,668 hours ÷ 2,088 hours per year × $109,889 per year = $298,300, average cost per respondent = $1,755.

Statutory Authority: Part I, Sections 1, 6, and 15, of the Interstate Commerce Act (ICA), (Pub. L. No. 337, 34 Stat. 384).

David P. Boergers,

Secretary.

[FR Doc. 98–24513 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–574–001 FERC–574]

Information Collection Submitted for Review and Request for Comments

September 8, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the information collected listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission did not receive any comments in response to an earlier notice issued June 19, 1998, 63 FR 34640, June 25, 1998.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before October 14, 1998.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Michael Miller, 888 First Street NE Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC–574 "Gas Pipeline Certificates: Hinshaw Exemption".

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0116. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement.

4. Necessity of Collection of Information: Submission of the information is necessary to fulfill the requirements of Sections 1(c), 4, and 7 of the Natural Gas Act (NGA) (Pub. L. 78–688) (15 U.S.C. 717–717w). Natural gas pipeline companies file applications with the Commission furnishing information in order for a determination to be made as to whether the applicant qualifies for exemption from the provisions of the Natural Gas Act (Section 1(c)). If the exemption is granted, the pipeline is not required to file certificate applications, rate schedules, or any other applications or forms otherwise prescribed by the Commission.

The exemption applies to companies engaged in the transportation or sale for resale of natural gas in interstate commerce if: (a) it receives gas at or within the boundaries of the state from another person; (b) such gas is transported, sold, consumed within such state; and (c) the rates, service and facilities of such company are subject to regulation by a State Commission. The data required to be filed for an exemption is specified by 18 Code of Federal Regulations (CFR) Part 152.

5. Respondent Description: The respondent universe currently comprises on average, 1 respondent subject to the Commission's jurisdiction.

6. Estimated Burden: 245 total burden hours, 1 respondent, 1 response annually, 245 hours per response (average).

7. Estimated Cost Burden to Respondents: 245 hours ÷ 2,088 hours per year × $109,889 per year = $12,894.

Statutory Authority: Sections 1(c), 4 and 7 of the Natural Gas Act (NGA), 15 U.S.C. 717–717w.

David P. Boergers,

Secretary.

[FR Doc. 98–24514 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3934–000]

Clinton Energy Management Services, Inc; Notice of Issuance of Order

September 8, 1998.

Clinton Energy Management Services, Inc. (Clinton Energy) filed an application for Commission authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Clinton Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Clinton Energy. On September 4, 1998, the Commission issued an Order Accepting in Part and Rejecting Without Prejudice in Part Proposed Tariffs for Market-Based Power Sales and Accepting Proposed Tariff for Reassignment of Transmission Capacity (Order), in the above-docketed proceeding.

The Commission's September 4, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (I), (J), and (L):

(I) Within 0 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Clinton Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(J) Absent a request to be heard within the period set forth in Ordering paragraph (I) above, Clinton Energy is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Clinton Energy, compatible with the public interest and reasonably necessary or appropriate for such purposes.

(L) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Clinton Energy's issuances of securities or assumptions of liabilities* * * .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 5, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–24509 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2910–000, et al.]

Entergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 4, 1998.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket No. ER98–2910–000]

Take notice that on September 2, 1998, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing certain corrections to its 1998 annual rate redetermination.

Comment date: October 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER98–4433–000]

Take notice that on September 1, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Central Hudson Enterprises Corporation (CHEC). This Transmission Service Agreement specifies that CHEC has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and CHEC to enter into separately scheduled transactions under which NMPC will provide transmission service for CHEC as the parties may mutually agree.

NMPC requests an effective date of August 26, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and CHEC.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Kentucky Utilities Company

[Docket No. ER98–4434–000]

Take notice that on September 1, 1998, Kentucky Utilities Company (KU), tendered for filing an unexecuted Power Services Agreement between KU and Public Service Electric and Gas Company under KU's Power Services Tariff Rate Schedule.

KU Respectfully requests that the Commission waive its usual minimum notice requirements and any other requirements of its rules and regulations with which this filing may not comply and accept for filing the service agreement so that it can become effective 30 days prior to the date of filing.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Kentucky Utilities Company

[Docket No. ER98–4435–000]

Take notice that on September 1, 1998, Kentucky Utilities Company (KU), tendered for filing an unexecuted Power Services Agreement between KU and Proliance Energy, LLC under KU's Power Services Tariff Rate Schedule.

KU respectfully requests that the Commission waive its usual minimum notice requirements so that the Service Agreement can become effective 30 days prior to the date of filing.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ER98–4436–000]

Take notice that on September 1, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and six service agreements for six new customers, First Energy on behalf of the Cleveland Electric Illuminating Company; Ohio Edison Company; Pennsylvania Power Company; The Toledo Edison Company, Northern Indiana Public Service Co., PG&E Energy Trading-Power, L.P., Tenaska Power Services Co., Tennessee Valley Authority, WPS Energy Services, Inc.

CILCO requested an effective date of August 24, 1998, for the new Index and the new Service Agreement.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Light Company

[Docket No. ER98–4437–000]

Take notice that on September 1, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff deleting Intercoast Power Marketing Company and adding one service agreement for one renamed customer, PG&E Energy Trading-Power, L.P.

CILCO requested an effective date of August 24, 1998, for the new Index and the new Service Agreement.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Montaup Electric Company

[Docket No. ER98–4438–000]

Take notice that on September 1, 1998, Montaup Electric Company (Montaup), tendered for filing a Notice of Termination of Rate Schedules designated as FERC No. 94 and Supplement No. 9 to Rate Schedule FPC No. 15.

Montaup states that the purpose of this filing is to terminate a reciprocal sales arrangement with the Taunton [Massachusetts] Municipal Lighting Plant.

Copies of the filing were served upon Montaup's affected customers and state agencies.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Montaup Electric Company

[Docket No. ER98–4439–000]

Take notice that on September 1, 1998, Montaup Electric Company (Montaup), tendered for filing a Notice of Termination of Rate Schedule designated as FERC No. 87.

Montaup states that the purpose of this filing is to terminate a reciprocal sales arrangement with the Braintree [Massachusetts] Electric Light Department.

Copies of the filing were served upon Montaup's affected customers and state agencies.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Sierra Pacific Power Company

[Docket No. ER98–4442–000]

Take notice that on September 1, 1998, Sierra Pacific Power Company (Sierra), tendered for filing a request for approval of an Interim Billing Arrangement between Sierra and the Truckee Donner Public Utility District (Truckee Donner). The filing is being made in order to satisfy a requirement of the settlement agreement filed on June 4, 1998 in Docket Nos. ER97–3593 and ER97–4462. Truckee Donner concurs in the filing.

Sierra has requested waivers of the Commission's Regulations so that the filing may have an effective date of July 1, 1997.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–4443–000]

Take notice that on September 1, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Tennessee Valley Authority under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER98–4444–000]

Take notice that on September 1, 1998, Public Service Company of New Mexico (PNM), tendered for filing a mutual netting/close-out agreement between PNM and Cinergy Corporation (Cinergy).

PNM requested waiver of the Commission's notice requirement so that service under the PNM/netting agreement may be effective as of September 1, 1998.

Copies of the filing were served on Cinergy and the New Mexico Public Utility Commission.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Public Service Company

[Docket No. ER98–4445–000]

Take notice that on September 1, 1998, New Century Services, Inc. (NCS), on behalf of Southwestern Public Service Company (SPS), submitted an updated market analysis in compliance with the Commission's order in Docket No. ER95–1129–000, dated September 1, 1995, which authorized Southwestern to sell power at market-based rates under its FERC Electric Tariff, Volume No. 3. NCS further requested that this market analysis be deemed to satisfy the updating requirements applicable to e prime and Denver City Energy Associates, L.P., which are SPS's affiliates within the New Century Energies, Inc., registered holding company system market-based rate authority.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Great Bay Power Corporation

[Docket No. ER98–4446–000]

Take notice that on September 1, 1998, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Engage Energy US, L.P. and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreement is proposed to be effective August 21, 1998.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER98–4447–000]

Take notice that on September 1, 1998, Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E and KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E and KU and Statoil Energy Trading, Inc., under LG&E and KU's Open Access Transmission Tariff.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PP&L, Inc.

[Docket No. ER98–4448–000]

Take notice that on September 1, 1998, PP&L, Inc. (PP&L), filed with the Federal Energy Regulatory Commission a Notification of Change in Status and a Code of Conduct to govern the relationship between PP&L and its affiliates that engage in the sale and or transmission of electric energy.

PP&L states that a copy of this filing has been provided to the Pennsylvania Public Utility Commission and to each signatory of the "Joint Petition for Full Settlement of PP&L, Inc.'s Restructuring Plan and Related Court Proceedings" in Pennsylvania Public Utility Commission Docket No. R–00973954.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Tampa Electric Company

[Docket No. ER98–4449–000]

Take notice that on September 1, 1998, Tampa Electric Company (Tampa Electric), filed a Notice of Termination of the Agreement for Interchange Service between Tampa Electric and the City of Starke, Florida (Starke).

Tampa Electric requests that the termination be made effective on September 3, 1998, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Starke and the Florida Public Service Commission.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Electric Company, Cambridge Electric Light Company

[Docket No. ER98–4450–000]

Take notice that on September 1, 1998, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and Griffin Energy Marketing, L.L.C., the Market-Based Power Sales Customer (collectively referred to herein as the Customer),

These Service Agreements specify that the Customer has signed on to and has agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customer to enter into separately scheduled short-term transactions under which the Companies will sell to the Customer capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Washington Water Power Company

[Docket No. ER98–4451–000]

Take notice that on September 1, 1998, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, executed a Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with IGI Resources, Inc., which replaces an unexecuted service agreement previously filed with the Commission under Docket No. ER97–1252–000, Service Agreement No. 78, effective December 15, 1996.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Kentucky Utilities Company

[Docket No. ER98–4452–000]

Take notice that on September 1, 1998, Kentucky Utilities Company (KU), tendered for filing an unexecuted Power Services Agreement between KU and Statoil Energy Trading, Inc., under KU's Power Services Tariff, PS Rate Schedule.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Kentucky Utilities Company

[Docket No. ER98–4453–000]

Take notice that on September 1, 1998, Kentucky Utilities Company (KU), tendered for filing an unexecuted Power Services Agreement between KU and Energy Resources, Inc., under KU's Power Services Tariff, PS Rate Schedule.

KU respectfully requests that the Commission waive its notice requirements and accept this Service Agreement so that it can become effective 30 days prior to the date of this filing.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER98–4467–000]

Take notice that on September 1, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing a service agreement establishing Houston Lighting & Power Company (Houston) as a customer under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of August 3, 1998, for the agreement with Houston and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on Houston.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–24508 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–60–000, et al.]

Massachusetts Electric Company, et al., Electric Rate and Corporate Regulation Filings

September 3, 1998.

Take notice that the following filings have been made with the Commission:

1. Massachusetts Electric Company

[Docket No. DR98–60–000]

Take notice that on August 17, 1998, Massachusetts Electric Company (Mass Electric), filed an application for approval for accounting purposes of certain changes in depreciation rates pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure.

Mass Electric has requested March 1, 1998, as an effective date of for these changes.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Carr Street Generating Station, L.P.

[Docket No. EG98–101–000]

On August 10, 1998, Carr Street Generating Station, L.P. (Applicant), with its principal office at c/o Orion Power Holdings, Inc., 111 Market Place, Suite 520, Baltimore Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it will be engaged in owning the East Syracuse Station (the Facility) consisting of an approximately 101 MW natural gas-fired combined cycle cogeneration facility, located in East Syracuse, New York. The applicant also states that it will sell electric energy exclusively at wholesale. Electric energy produced by the Facility is sold exclusively at wholesale.

Comment date: September 17, 1998, 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. Coastal Power Khulna Ltd.

[Docket No. EG98–102–000]

On August 10, 1998, Coastal Power Khulna (Applicant), West Wind Building, P.O. Box 1111, Grand Cayman, Cayman Islands, B.W.I., filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, a Cayman Islands Corporation, intends to have an ownership interest in certain power generating facilities in Bangladesh. These facilities will consist of a 110 MW oil fired barge mounted power plant which is under construction in Khulna, Bangladesh.

Comment date: September 17, 1998, 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. Coastal Power Guatemala Ltd.

[Docket No. EG98–109–000]

On August 27, 1998, Coastal Power Guatemala Ltd. (Applicant), West Wind Building, P.O. Box 1111, Grand Cayman, Cayman Islands, B.W.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.

Applicant, a Cayman Islands Corporation intends to have an ownership interest in certain power generating facilities in Guatemala. These facilities will consist of a 120 MW pulverized coal fired power plant near Masagua, Guatemala.

Comment date: September 25, 1998, 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. Duke Energy Oakland, L.L.C., Duke Energy Morro Bay, L.L.C., Duke Energy Moss Landing, L.L.C.

[Docket No. ER98–3416–000; Docket No. ER98–3417–000; and Docket No. ER98–3418–000]

Take notice that on September 1, 1998, Duke Energy Oakland, L.L.C., Duke Energy Morro Bay L.L.C., and Duke Energy Moss Landing, L.L.C., (collectively Duke Energy), tendered for filing additional information in compliance with the Commission's August 17, 1998, Order issued in the above-referenced dockets.

Comment date: September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Western Resources, Inc.

[Docket No. ER98–4408–000]

Take notice that on August 31, 1998, Western Resources, Inc. (Western Resources), tendered for filing an agreement with Midwest Energy, Inc. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreement is proposed to become effective August 4, 1998.

Copies of the filing were served upon Midwest Energy, Inc., and the Kansas Corporation Commission.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Company

[Docket No. ER98–4409–000]

Take notice that on August 31, 1998, New England Power Company (NEP), tendered for filing (i) amendments to NEP's FERC Electric Tariff, Original Volume No. 9 (Tariff 9), to make available under that tariff NEP's share of the transmission facilities comprising the high voltage, direct current intertie between the electric systems of New England and Quebec; (ii) an amendment to the service agreement under which NEP obtains access to its transmission system under Tariff 9, for wholesale transactions; and (iii) a Quebec Interconnection Transfer Agreement between NEP and USGen New England, Inc., (USGenNE).

Copies of this filing have been served on USGenNE and all Tariff 9 customers, as well as regulatory agencies in Massachusetts, Rhode Island and New Hampshire.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER98–4410–000]

Take notice that on August 31, 1998, Entergy Services, Inc., on behalf of the Entergy Operating Companies, filed, pursuant to Section 205 of the Federal Power Act, an amendment to Attachment C, Methodology to Assess Available Transmission Capability, of the Entergy Open Access Transmission Tariff.

Entergy requests an effective date of October 30, 1998.

A copy of the amendment has been served upon the customers with executed service agreements under the Tariff and the state and local regulators of the Entergy operating companies.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER98–4411–000]

Take notice that on August 31, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Network Integration Transmission Service Agreement and an executed Network Operating Agreement between NMPC and Village of Skaneateles. The Network Integration Transmission Service Agreement and Network Operating Agreement specifies that Village of Skaneateles has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Village of Skaneateles to enter into separately scheduled transactions under which NMPC will provide network integration transmission service for Village of Skaneateles.

NMPC requests an effective date of July 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Village of Skaneateles.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. CET Marketing L.P.

[Docket No. ER98–4412–000]

Take notice that on August 31, 1998, CET Marketing L.P. (CET Marketing), tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting a rate schedule for power sales at market-based rates.

CET Marketing requests waiver of the 60-day filing requirements and requests that its FERC Electric Rate Schedule No. 1, become effective as of September 1, 1998.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Washington Water Power Company

[Docket No. ER98–4413–000]

Take notice that on August 31, 1998, Washington Water Power Company (WWP), tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, executed Mutual Netting Agreements for allowing arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with Northern/AES Energy, L.L.C., Chelan County PUD #1, Illinova Energy Partners, NorAm Energy Services, Inc., Pend Oreille County PUD #1, and ConAgra Energy Services, Inc.

WWP requests waiver of the prior notice requirement and requests an effective date of August 1, 1998.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ER98–4414–000]

Take notice that on August 31, 1998, UtiliCorp United Inc. (UtiliCorp), tendered for filing on behalf of its WestPlains Energy-Kansas operating division, an amendment to the Electric Interconnection and Interchange Agreement between WestPlains Energy-Kansas and Sunflower Electric Power Corporation. The purpose of the amendment is to add a new interconnection point.

UtiliCorp requests waiver of the Commission's Regulations to permit the amendment to become effective on September 1, 1998.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Pool Executive Committee

[Docket No. ER98–4415–000]

Take notice that on August 31, 1998, the New England Power Pool Executive Committee tendered for filing a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Griffin Energy Marketing, L.L.C. (Griffin). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Griffin's signature page would permit NEPOOL to expand its membership to include Griffin. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Griffin a member in NEPOOL.

NEPOOL requests an effective date of November 1, 1998, for commencement of participation in NEPOOL by Griffin.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool Executive Committee

[Docket No. ER98–4416–000]

Take notice that on August 31, 1998, the New England Power Pool Executive Committee (NEPOOL), tendered for filing a request for termination of membership in NEPOOL, with an effective date of September 1, 1998, of Global Petroleum Corp., (Global). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by Global. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of Global with an effective date of September 1, 1998, would relieve this entity, at its request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove Global from membership in the Pool.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool Executive Committee

[Docket No. ER98–4417–000]

Take notice that on August 31, 1998, the New England Power Pool Executive Committee tendered for filing a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by PEC Energy Marketing, Inc. (PEC). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of PEC's signature page would permit NEPOOL to expand its membership to include PEC. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make PEC a member in NEPOOL.

NEPOOL requests an effective date of September 1, 1998, for commencement of participation in NEPOOL by PEC.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Pool Executive Committee

[Docket No. ER98–4418–000]

Take notice that on August 31, 1998, the New England Power Pool Executive Committee tendered for filing a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Energy Atlantic, LLC (Energy Atlantic). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Energy Atlantic's signature page would permit NEPOOL to expand its membership to include Energy Atlantic. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Energy Atlantic a member in NEPOOL.

NEPOOL requests an effective date of November 1, 1998, for commencement of participation in NEPOOL by Energy Atlantic.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Pool Executive Committee

[Docket No. ER98–4419–000]

Take notice that on August 31, 1998, the New England Power Pool (NEPOOL), Executive Committee tendered for filing on behalf of its members in general (Participants) and Princeton Municipal Light Department (Princeton) a request for termination of membership in NEPOOL, with an effective date of September 1, 1998. Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by Princeton. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of Princeton with an effective date of September 1, 1998, would relieve this entity, at Princeton's request, of the obligations and responsibilities of Pool membership and

would not change the NEPOOL Agreement in any manner, other than to remove Princeton from membership in the Pool.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Tampa Electric Company

[Docket No. ER98–4420–000]

Take notice that on August 31, 1998, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its contract for the sale and purchase of capacity and energy with the Reedy Creek Improvement District (RCID).

Tampa Electric proposes that the amendment be made effective on October 1, 1998, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on RCID and the Florida Public Service Commission.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Energy Company

[Docket No. ER98–4421–000]

Take notice that on August 31, 1998, Consumers Energy Company (CECo), tendered for filing a market-based Power Sales Tariff to permit CECo to make wholesale sales to eligible customers of electric power at market-determined prices, including sales not involving Consumers Energy generation or transmission.

CECo requests that the Commission grant its waiver and accept it in its present form in order to allow this power sales tariff to be implemented in a timely fashion.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Niagara Mohawk Power Corporation

[Docket No. ER98–4422–000]

Take notice that on August 31, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Network Integration Transmission Service Agreement and an executed Network Operating Agreement between NMPC and Village of Frankfort. The Network Integration Transmission Service Agreement and Network Operating Agreement specifies that Village of Frankfort has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Village of Frankfort to enter into separately scheduled transactions under which NMPC will provide network integration transmission service for Village of Frankfort.

NMPC requests an effective date of July 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Village of Frankfort.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Cogen Energy Technologies, L.P.

[Docket No. ER98–4423–000]

Take notice that on August 31, 1998, Cogen Energy Technologies, L.P. (CETLP), tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting a rate schedule for power sales at market-based rates.

CETLP requests waiver of the 60-day filing requirements and requests that its FERC Electric Rate Schedule No. 1 be accepted as of September 1, 1998.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Tampa Electric Company

[Docket No. ER98–4424–000]

Take notice that on August 31, 1998, Tampa Electric Company (Tampa Electric), tendered for filing tariff sheets containing revisions to the fuel adjustment clause (FAC), provisions of Tampa Electric's FERC Electric Tariff, First Revised Volume No. 1. The revisions reflect a shift from a six-month cycle to an annual cycle for the FAC.

Tampa Electric proposes that the tariff sheets be made effective on October 1, 1998, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on the customers under the tariff and the Florida Public Service Commission.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Tampa Electric Company

[Docket No. ER98–4424–000]

Take notice that on September 1, 1998, Tampa Electric Company (Tampa Electric), tendered for filing revised tariff sheets to its August 31, 1998, filing in the above-referenced docket.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Minnesota Power, Inc.

[Docket No. ER98–4425–000]

Take notice that on August 31, 1998, Minnesota Power, Inc., (MP), tendered for filing a Short-Term Transaction Service Agreement which MP has signed with Associated Electric Cooperative, Inc., and Otter Tail Power Company under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

MP requests an effective date of August 1, 1998, and requests waiver of any Commission's regulations applicable.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Public Service Company of Colorado

[Docket No. ER98–4426–000]

Take notice that on August 31, 1998, Public Service Company of Colorado (PSCo), tendered for filing a Power Purchase Agreement with Holy Cross Electric Association, Inc., to sell wind energy.

PSCo requests waiver of the Commission's notice requirements and that the Agreement be allowed to become effective on May 14, 1998.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service Company

[Docket No. ER98–4427–000]

Take notice that on August 31, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing Service Agreements to provide Non-Firm Point-To-Point Transmission Service to Pinetree Power—Tamworth, Inc., under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO requests that the Service Agreement become effective September 8, 1998.

NUSCO states that a copy of this filing has been mailed to the Pinetree Power—Tamworth, Inc.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Northeast Utilities Service Company

[Docket No. ER98–4429–000]

Take notice that on August 31, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing on behalf of The Connecticut Light and Power Company (CL&P) and Holyoke Water Power Company, (including its wholly-owned subsidiary, Holyoke Power and Electric Company), a Power Supply

Agreement to provide firm requirements service to Massachusetts Electric Company, Nantucket Electric Company, Granite State Electric Company and Narragansett Electric Company, each operating subsidiaries of New England Electric System (the NEES Companies), pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations.

NUSCO requests that the rate schedule become effective on September 1, 1998.

NUSCO states that copies of the rate schedule have been mailed to the parties to the Agreement, and the affected state utility commission.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Northeast Utilities Service Company

[Docket No. ER98–4430–000]

Take notice that on August 31, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to the Waste Management of New Hampshire, Inc., under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO requests that the Service Agreement become effective September 8, 1998.

NUSCO states that a copy of this filing has been mailed to the Waste Management of New Hampshire, Inc.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–24511 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 271–AR]

Entergy Arkansas, Inc.; Notice of Scoping Meetings Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

September 8, 1998.

Pursuant to the Energy Policy Act of 1992, and as part of the license application, Entergy Arkansas, Inc., (Entergy) intends to prepare an Applicant Prepared Environmental Assessment (APEA) to file along with the license application, with the Federal Energy Regulatory Commission (Commission) for the Carpenter-Remmel Project, Project No. 271. The license for the project expires on February 28, 2003.

With the filing of its Notice of Intent (NOI) on January 29, 1998, Entergy notified the Commission of its intent to file an application for a new license. On February 16, 1998, Entergy issued its Initial consultation Document (ICD), which outlined the Commission's relicensing process, described project facilities and operation, and environmental resources, and listed preliminary issues and potential studies.

In March 1998, Entergy initiated the cooperative consultation process, and state and federal agencies, local interests, and nongovernmental organizations, (NGOs), undertook a cooperative effort for the relicensing of the Carpenter-Remmel Project. The process involved identification of environmental issues associated with the relicensing of the Carpenter-Remmel Project, including: a public information meeting on March 23, 1998, and on March 24, 1998, a project site visit for agencies/stakeholders, and a joint agency meeting to solicit comments on the ICD.

Entergy obtained support from the parties involved in the cooperative process to pursue the APEA process for the Carpenter-Remmel Project. On May 20, 1998, Entergy requested, and on July 24, 1998, obtained FERC's approval to enter the APEA process.

As part of the APEA process, Entergy with the Commission has prepared a Scoping Document I (SDI), which provides information on the scoping process, APEA schedule, background information, environmental issues, and proposed project alternatives. The issues contained in SDI are based on agency and public comments at the March 23–24 meetings as well as the APEA Team meetings held from April through July 1998.

The purpose of this notice is to: (1) advise all parties as to the proposed scope of the environmental analysis, including cumulative effects, and to seek information pertinent to this analysis; and (2) advise all parties of their opportunity for comment.

Scoping Process

The purpose of the scoping process is to identify issues related to the proposed action and to determine what issues should be addressed in the document prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The SDI will be circulated to enable appropriate federal, state, and local resource agencies, Indian tribes, NGOs, and other interested parties to participate in the scoping process. SDI provides a brief description of the proposed action, alternatives to the proposed action, the geographic and temporal scope of a cumulative effects analysis, and a list of issues.

Scoping Meetings and Site Visit

Entergy and FERC staff will conduct a site visit and a scoping meeting on September 22, 1998. All interested individuals, organizations, and agencies are invited to attend and assist in identifying the scope of environmental issues that should be analyzed.

The site visit will take place between 1 and 3 p.m. on September 22, 1998, at both the Carpenter and Remmel developments. The scoping meeting will be held on September 22, 1998, from 7:00 to 9:00 p.m. at the Clarion Resort, Hot Springs, AR. For more details, interested parties should contact Mr. Henry Jones, Entergy, (501) 844–2122, prior to the meeting date.

Objectives

At the scoping meetings, Entergy and Commission staff will: (1) summarize the environmental issues identified for analysis; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist in defining and clarifying the issues to be addressed.

Meeting Procedures

The meeting will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping

meeting the Commission will not conduct another scoping meeting when the application and APEA are filed with the Commission early in 2001.

The meetings will be recorded by a stenographer and become a part of the record of the Commission proceeding on the Carpenter-Remmel Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but everyone gets at least 5 minutes. Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the record no later than October 22, 1998.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page: Carpenter-Remmel Project, FERC No. 271. A copy of each filing should also be sent to Mr. Henry Jones, Entergy, P.O. Box 218, Jones Mill, AR 72105.

Based on all written comments, a Scoping Document II (SDII) may be issued. SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the APEA scoping process, please contact Mr. Chris Metcalf, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 at (202) 219–2810, or Mr. Henry Jones, Entergy, at (501) 844–2122.

David P. Boergers,

Secretary.

[FR Doc. 98–24510 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission

September 8, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* P–2737–002.

c. *Date Filed:* June 23, 1998.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Middlebury Lower Hydroelectric Project.

f. *Location:* On Otter Creek in the towns of Middlebury and Weybridge and in the county of Addison, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C 791(a)–825(r).

h. *Applicant Contact:*

Mr. Kent Brown, V.P., Central Vermont Public Service, Corporation, 77 Grove Street, Rutland, Vermont 05701, (802) 747–5326.

John C. Greenan, P.E., Central Vermont Public Service, Corporation, 77 Grove Street, Rutland, Vermont 05701, (802) 747–5707.

Timothy J. Oakes, Kleinschmidt Associates, 33 West Main Street, Strasburg, PA 17579, (717) 687–7211.

i. *FERC Contact:* Jack Duckworth (202) 219–2818.

j. *Comment Date:* November 10, 1998 Status of Environmental Analysis: This application has been accepted, but it is not ready for environmental analysis at this time.

k. Description of the Project: (1) a 30-foot-high, 478-foot-long concrete gravity dam consisting of two ogee spillway sections, a 123-foot-long western spillway section, and a 260-foot-long eastern spillway section; (2) a 1-mile-long, 16-acre impoundment with a normal water surface elevation of 314.5 feet mean sea level (msl); (3) a powerhouse integral with the dam containing three Francis turbine units for a total installed capacity of 2.25 megawatts (MW); (4) transmission facilities; and (5) appurtenant facilities.

l. Purpose of Project: The power generated by this project is used to assist the Central Vermont Public Service Corporation in meeting electrical load requirements of its power grid. Continued operation of this project would provide 2,250 kilowatts (kW) of generating capacity and average annual generation of 8,300 megawatt hours (MWH).

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426. A copy is also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, Vermont 05701.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, protests, or motions to intervene in accordance with the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to be taken, the Commission will consider all protests and comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

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. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any protest or motion to intervene must be specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 98–24515 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission

September 8, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* P–2731–020.

c. *Date Filed:* May 27, 1998.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Weybridge Hydroelectric Project.

f. *Location:* On Otter Creek in the towns of Weybridge and New Haven and in the county of Addison, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Kent Brown, V.P., Central Vermont Public Service Corporation, 77 Grove Street, Rutland, Vermont 05701, (802) 747–5326.

John C. Greenan, P.E., Central Vermont Public Service Corporation, 77 Grove Street, Rutland, Vermont 05701, (802) 747–5707.

Timothy J. Oakes, Kleinschmidt Associates, 33 West Main Street, Strasburg, PA 17579, (717) 687–7211.

i. *FERC Contact:* Jack Duckworth (202) 219–2818.

j. *Comment Date:* November 10, 1998.

k. *Status of Environmental Analysis:* This application has been accepted, but it is not ready for environmental analysis at this time.

l. *Description of the Project:* (1) a 30-foot-high, 302.6-foot-long concrete gravity dam consisting of two spillway sections, a 150-foot-long west spillway section, topped with a 6-foot-high hinged steel flashboard, and abutted by a 20-foot-wide and 10-foot-high Taintor gate, and a 116-foot-long east spillway section topped with an automatically inflated rubber weir; (2) a 1.5-mile-long, 62-acre impoundment with a normal water surface elevation of 174.3 feet mean sea level (msl); (3) a powerhouse integral with the dam containing a single turbine generator with an installed capacity of 3.0 megawatts (MW); (4) transmission facilities; and (5) appurtenant facilities.

m. *Purpose of Project:* The power generated by this project is used to assist the Central Vermont Public Service Corporation in meeting electrical load requirements of its power grid. Continued operation of this project would provide an average annual generation of 14,000 megawatt hours (MWH).

n. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426. A copy is also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, Vermont 05701.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, protests, or motions to intervene in accordance with the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to be taken, the Commission will consider all protests and comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

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 385.21001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any protest or motion to intervene must be specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 98–24516 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

September 8, 1998.

a. *Type of filing:* Notice of Intent to File an Application for a New License.

b. *Project No.:* 346.

c. *Date filed:* August 24, 1998.

d. *Submitted By:* Minnesota Power, Inc., current licensee.

e. *Name of Project:* Blanchard Project.

f. *Location:* On the Mississippi River, in Morrison County, Minnesota.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* May 1, 1980.

i. *Expiration date of current license:* August 24, 2003.

j. *The project consists of:* (1) a 750-foot-long, 45-foot-high concrete gravity dam with an intergral powerhouse, a 190-foot-long non-over-flow section, and a 437-foot-long gated spillway section; (2) 3,540-foot-long earth dikes; (3) a 1,152-acre reservoir at normal pond elevation of 1,081.7 feet msl; (4) three generating units with a total installed capacity of 18,000 kW; and (5) appurtenant facilities.

k. *Pursuant to 18 CFR 16.7, information on the project is available at:* Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802, Ms. Ingrid Kane, (218) 720–2534.

l. *FERC contact:* Tom Dean (202) 219–2778.

m. Pursuant to 18 CFR 16.9 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 24, 2001.

David P. Boergers,

Secretary.

[FR Doc. 98–24520 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Lease of Project Property

September 8, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License and Lease of Project Property.

b. *Project No:* 2669–017.

c. *Date Filed:* September 2, 1998.

d. *Applicant:* USGen New England, Inc.

e. *Name of Project:* Bear Swamp Project.

f. *Location:* Rowe, Massachusetts, in Franklin County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael D. Hornstein, Esq., Jana L. Gill, Esq., Orrick, Herrington, & Sutcliffe, 3050 K Street, N.W., Washington, D.C. 20007, (202) 339–8400.

i. *FERC Contact:* David Cagnon, (202) 219–2693.

j. *Comment Date:* OCTOBER 5, 1998.

k. *Description of Transfer:* USGen New England Inc., licensee, proposes to partially transfer the license for Project No. 2669 to include an owner lessor, a special purpose business trust created under the Delaware Business Trust Act. The owner lessor would be added as a licensee to facilitate permanent financing of the project through a sale and leaseback transaction.

l. *This notice also consists of the following standard paragraphs:* B, C2, and D2.

B. Comments, Protests, or Motions to Invervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Any motion to intervene must also be served upon each representative of the applicant specified in the particular notice.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of the agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–24521 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

September 9, 1998.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.

DATE AND TIME: SEPTEMBER 16, 1998 10:00 A.M.

PLACE: ROOM 2C, 888 FIRST STREET, N.E.. WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA.
* NOTE—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: DAVID P. BOERGERS, ACTING SECRETARY, TELEPHONE (202) 208–0400. FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

Consent Agenda—Hydro; 704th Meeting—September 16, 1998; Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–2587, 022, NORTHERN STATES POWER COMPANY

CAH–2.
DOCKET# P–3574, 005, CONTINENTAL HYDRO CORPORATION

CAH–3.
OMITTED

CAH–4.
DOCKET# P–9690, 025, ORANGE AND ROCKLAND UTILITIES, INC.

Consent Agenda—Electric

CAE–1.
DOCKET# ER98–3147, 000, ALLIANT SERVICES, INC.
OTHER#S ER98–3149, 000, ALLIANT SERVICES, INC.

CAE–2.
DOCKET# EC96–19, 039, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S ER96–1663, 040, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–3.
DOCKET# ER98–3888, 000, SOUTHWEST POWER POOL, INC.

CAE–4.
DOCKET# ER98–3932, 000, VIRGINIA ELECTRIC AND POWER COMPANY

CAE–5.
DOCKET# ER98–3506, 000, PJM INTERCONNECTION, L.L.C.

CAE–6.
DOCKET# ER98–3798, 000, DUKE POWER, A DIVISION OF DUKE ENERGY CORPORATION
OTHER#S ER96–110, 006, DUKE POWER, A DIVISION OF DUKE ENERGY CORPORATION
ER98–3813, 000, DUKE SOLUTIONS, INC.

CAE–7.
DOCKET# ER98–3921, 000, ROCHESTER GAS AND ELECTRIC CORPORATION
OTHER#S ER98–3922, 000, ROCHESTER GAS AND ELECTRIC CORPORATION

CAE–8.
DOCKET# ER98–3169, 000, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

CAE–9.
DOCKET# ER98–1019, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–10.
DOCKET# ER97–2099, 002, DUKE POWER COMPANY
OTHER#S EL95–31, 000, DUKE POWER COMPANY
ER97–2095, 001, DUKE POWER COMPANY
ER97–2099, 000, DUKE POWER COMPANY
ER97–2099, 001, DUKE POWER COMPANY
ER97–2100, 001, DUKE POWER COMPANY
ER97–2211, 001, DUKE POWER COMPANY

ER97–2212, 000, DUKE POWER COMPANY
ER97–2212, 001, DUKE POWER COMPANY
ER97–2212, 002, DUKE POWER COMPANY
ER97–2213, 001, DUKE POWER COMPANY
CAE–11.
DOCKET# OA96–138 004 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
CAE–12.
DOCKET# ER97–3189, 002, BALTIMORE GAS AND ELECTRIC COMPANY
OTHER#S ER97–3189, 006, POTOMAC ELECTRIC POWER COMPANY
ER97–3189, 008, PUBLIC SERVICE ELECTRIC AND GAS COMPANY
CAE–13.
DOCKET# ER96–8, 000, PACIFICORP
OTHER#S EL96–10, 000, PACIFICORP
EL96–11, 000, PACIFICORP
EL96–12, 000, PACIFICORP
EL96–14, 000, PACIFICORP
EL96–34, 000, PACIFICORP
CAE–14.
DOCKET# ER98–1776, 001, WESTERN RESOURCES, INC.
OTHER#S ER98–2107, 001, OKLAHOMA GAS AND ELECTRIC COMPANY
CAE–15.
DOCKET# ER98–2382, 001, MONTANA POWER COMPANY
OTHER#S OA96–199, 005, MONTANA POWER COMPANY
OA97–679, 001, MONTANA POWER COMPANY
CAE–16.
DOCKET# NJ98–5, 000, BIG RIVERS ELECTRIC CORPORATION
CAE–17.
DOCKET# OA98–16, 000, INLAND POWER & LIGHT COMPANY
CAE–18.
DOCKET# EL91–29, 000, SOUTHERN COMPANY SERVICES, INC.
OTHER#S EL94–85, 000, SOUTHERN COMPANY SERVICES, INC.
CAE–19.
DOCKET# EL98–10, 001, SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT V. PACIFIC GAS AND ELECTRIC COMPANY AND CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORP.
CAE–20.
DOCKET# EL98–44, 000, SOUTHWESTERN PUBLIC SERVICE COMPANY V. EL PASO ELECTRIC COMPANY
CAE–21.
DOCKET# ER97–3189, 018, PJM INTERCONNECTION, L.L.C.
CAE–22.
DOCKET# ER98–1209, 001, WISCONSIN POWER & LIGHT COMPANY
CAE–23.
DOCKET# ER98–2624, 001, DUKE ENERGY NEW SMYRNA BEACH POWER COMPANY LTD., L.L.P.
CAE–24.
DOCKET# NJ97–3, 004, UNITED STATES DEPARTMENT OF ENERGY—BONNEVILLE POWER ADMINISTRATION
CAE–25.
DOCKET# ER95–1269, 001, PUBLIC SERVICE COMPANY OF COLORADO AND E PRIME, INC.
CAE–26.
DOCKET# ER94–734, 004, NEW CHARLESTON POWER I, L.P.
CAE–27.
DOCKET# ER96–496, 003, NORTHEAST UTILITIES SERVICE COMPANY
CAE–28.
DOCKET# ER96–2495, 002, AEP POWER MARKETING, INC.
CAE–29.
DOCKET# ER97–3435, 002, CENTRAL VERMONT PUBLIC SERVICE CORPORATION
CAE–30.
DOCKET# TX96–7, 001, CITY OF PALM SPRINGS, CALIFORNIA
CAE–31.
DOCKET# EL98–66, 000, EAST TEXAS ELECTRIC COOPERATIVE, INC. V. CENTRAL AND SOUTHWEST SERVICES, INC. AND CENTRAL POWER AND LIGHT COMPANY, ET AL.
CAE–32.
DOCKET# EL98–68, 000, DUQUESNE LIGHT COMPANY
CAE–33.
DOCKET# EL94–38, 000, CITIES OF BATAVIA AND ST. CHARLES, ILLINOIS V. COMMONWEALTH EDISON COMPANY
OTHER#S ER94–913, 000, COMMONWEALTH EDISON COMPANY
CAE–34.
DOCKET# EL97–4, 000, FLORIDA MUNICIPAL POWER AGENCY V. FLORIDA POWER & LIGHT COMPANY
OTHER#S EL97–6, 000, FLORIDA MUNICIPAL POWER AGENCY
CAE–35.
DOCKET# EL98–38, 000, JACKSONVILLE ELECTRIC AUTHORITY, FLORIDA POWER & LIGHT COMPANY AND FLORIDA POWER CORPORATION V. SOUTHERN CO. SERVICES, INC., ET AL.
CAE–36.
DOCKET# EL98–48, 000, TURLOCK IRRIGATION DISTRICT V. PACIFIC GAS AND ELECTRIC COMPANY
CAE–37.
DOCKET# EL98–34, 000, SOUTHERN CALIFORNIA EDISON COMPANY
CAE–38.
DOCKET# EL98–50, 000, GRANITE STATE HYDROPOWER ASSOCIATION
OTHER#S QF85–230, 002, BRIAR HYDRO ASSOCIATES
QF85–619, 001, GREGG FALLS HYDROELECTRIC ASSOCIATES
QF85–620, 001, PEMBROKE HYDRO ASSOCIATES
QF85–659, 001, ERROL HYDROELECTRIC LIMITED PARTNERSHIP
QF86–713, 001, BRIAR HYDRO ASSOCIATES
CAE–39.
DOCKET# EL96–15, 000, JERSEY CENTRAL POWER & LIGHT COMPANY
CAE–40.
DOCKET# EL96–66, 000, GRAHAM COUNTY ELECTRIC COOPERATIVE, INC.
OTHER#S ER96–2314, 000, GRAHAM COUNTY ELECTRIC COOPERATIVE, INC.
CAE–41.
DOCKET# NJ98–4, 000, LONG ISLAND POWER AUTHORITY
CAE–42.
DOCKET# EL98–46, 000, LAGUNA IRRIGATION DISTRICT
CAE–43.
DOCKET# RM88–6, 000, ADMINISTRATIVE DETERMINATION OF FULL AVOIDED COSTS, SALES OF POWER TO QUALIFYING FACILITIES, AND INTERCONNECTION FACILITIES
CAE–44.
DOCKET# RM93–24, 000, REVISION OF FUEL COST ADJUSTMENT CLAUSE REGULATION RELATING TO FUEL PURCHASES FROM COMPANY-OWNED OR CONTROLLED SOURCE
CAE–45.
DOCKET# AC96–180, 002, IDAHO POWER COMPANY
CAE–46.
DOCKET# NJ97–7, 000, DEPARTMENT OF ENERGY—BONNEVILLE POWER ADMINISTRATION
OTHER#S NJ98–2, 001, DEPARTMENT OF ENERGY—SOUTHWESTERN POWER ADMINISTRATION
NJ98–3, 000, SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT
4J98–5, 000, BIG RIVERS ELECTRIC CORPORATION
CAE–47.
DOCKET# OA97–97, 001, ATLANTIC CITY ELECTRIC COMPANY
OTHER#S OA97–2, 001, NEVADA POWER COMPANY
OA97–121, 001, ORANGE & ROCKLAND UTILITIES, INC.
OA97–127, 001, NEW ENGLAND POWER COMPANY, MASSACHUSETTS ELECTRIC COMPANY, NANTUCKET ELECTRIC COMPANY AND THE NARRAGANSETT ELECTRIC COMPANY, ET AL.
OA97–181, 001, GREEN MOUNTAIN POWER CORPORATION
OA97–291, 001, PUBLIC SERVICE COMPANY OF COLORADO AND CHEYENNE LIGHT, FUEL & POWER COMPANY
OA97–419, 001, CINERGY CORP., CINCINNATI GAS & ELECTRIC COMPANY AND PSI ENERGY, INC.
OA97–444, 001, VERMONT ELECTRIC POWER COMPANY, INC
OA97–451, 001, CENTRAL ILLINOIS LIGHT COMPANY AND QST ENERGY TRADING, INC.
OA97–467, 001, DELMARVA POWER & LIGHT COMPANY
OA97–485, 001, UGI UTILITIES, INC.
OA97–596, 001, CENTRAL ILLINOIS LIGHT COMPANY AND QST ENERGY TRADING, INC.
CAE–48.
DOCKET# OA97–408, 004, AMERICAN ELECTRIC POWER SERVICE CORPORATION, APPALACHIAN POWER COMPANY AND COLUMBUS SOUTHERN POWER COMPANY, ET AL.
OTHER#S OA97–117, 004, ALLEGHENY POWER SERVICE CORPORATION,

MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OA97–125, 004, CENTRAL HUDSON GAS & ELECTRIC CORPORATION
OA97–126, 004, ILLINOIS POWER COMPANY
OA97–158, 004, NIAGARA MOHAWK POWER CORPORATION
OA97–216, 004, WISCONSIN ELECTRIC POWER COMPANY
OA97–278, 004, NEW YORK STATE ELECTRIC & GAS CORPORATION
OA97–279, 004, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OA97–284, 004, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.
OA97–313, 004, MIDAMERICAN ENERGY COMPANY
OA97–411, 004, PACIFICORP
OA97–430, 004, EL PASO ELECTRIC COMPANY
OA97–431, 004, BOSTON EDISON COMPANY
OA97–434, 004, CONSUMERS ENERGY COMPANY
OA97–439 003 VIRGINIA ELECTRIC AND POWER COMPANY
OA97–442 003 NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.
OA97–445, 004, SOUTHERN CALIFORNIA EDISON COMPANY
OA97–449, 004, PUGET SOUND ENERGY, INC.
OA97–459, 005, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA, INC.
OA97–630, 003, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.

CAE–49.
DOCKET# ER98–502, 000, MONTAUP ELECTRIC COMPANY

Consent Agenda—Gas and Oil

CAG–1.
OMITTED
CAG–2.
DOCKET# PR94–3, 011, KANSOK PARTNERSHIP
CAG–3.
DOCKET# RP98–140, 001, TENNESSEE GAS PIPELINE COMPANY
CAG–4.
DOCKET# RP98–212, 002, ANR PIPELINE COMPANY
CAG–5.
DOCKET# RP98–220, 000, ENRON ENERGY SERVICES, INC. AND ENRON CAPITAL AND TRADE RESOURCES CORPORATION
CAG–6.
DOCKET# TM98–2–21, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–7.
DOCKET# RP96–347, 013, NORTHERN NATURAL GAS COMPANY
CAG–8.
DOCKET# RP97–287, 019, EL PASO NATURAL GAS COMPANY
CAG–9.
DOCKET# RP98–25, 004, WEST TEXAS GAS, INC.
CAG–10.
DOCKET# RP98–104, 001, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
OTHER#S RP98–104, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
RP98–104, 002, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
RP98–104, 003, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–11.
DOCKET# RP98–218, 001, COLORADO INTERSTATE GAS COMPANY
OTHER#S RP98–218, 002, COLORADO INTERSTATE GAS COMPANY
CAG–12.
DOCKET# RP98–241, 000, TUSCARORA GAS TRANSMISSION COMPANY
CAG–13.
DOCKET# PR98–11, 000, PANENERGY LOUISIANA INTRASTATE COMPANY
OTHER#S PR98–11, 001, PANENERGY LOUISIANA INTRASTATE COMPANY
CAG–14.
DOCKET# IS98–3, 003, AMERADA HESS PIPELINE CORPORATION
OTHER#S IS98–4, 003, ARCO TRANSPORTATION ALASKA, INC.
IS98–5, 003, BP PIPELINES (ALASKA) INC.
IS98–6, 003, EXXON PIPELINE COMPANY
IS98–7, 003, MOBIL ALASK PIPELINE COMPANY
IS98–8, 003, PHILLIPS ALASKA PIPELINE CORPORATION
IS98–9, 003, UNOCAL PIPELINE COMPANY
CAG–15.
DOCKET# PR98–12, 000, ENOGEX INC.
CAG–16.
DOCKET# RP98–312, 003, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–17.
DOCKET# RP98–203, 002, NORTHERN NATURAL GAS COMPANY
CAG–18.
DOCKET# RP98–76, 001, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–19.
DOCKET# RP95–362, 000, KOCH GATEWAY PIPELINE COMPANY
CAG–20.
DOCKET# MG98–12, 000, GULF STATES TRANSMISSION CORPORATION
CAG–21.
DOCKET# CP96–610, 002, GRANITE STATE GAS TRANSMISSION COMPANY
CAG–22.
DOCKET# CP93–260, 001, SUNCOR INC., PANCANADIAN PETROLEUM COMPANY AND PETRO-CANADA HYDRO-CARBONS INC. V. PG&E GAS TRANSMISSION, NORTHWEST CORPORATION, ET AL.
CAG–23.
OMITTED
CAG–24.
OMITTED
CAG–25.
DOCKET# CP97–168, 001, ALLIANCE PIPELINE L.P.
OTHER#S CP97–168, 000, ALLIANCE PIPELINE L.P.
CP97–169, 000, ALLIANCE PIPELINE L.P.
CP97–169, 001, ALLIANCE PIPELINE L.P.
CP97–177, 000, ALLIANCE PIPELINE L.P.
CP97–177, 001, ALLIANCE PIPELINE L.P.
CP97–178, 000, ALLIANCE PIPELINE L.P.
CP97–178, 001, ALLIANCE PIPELINE L.P.
CAG–26.
DOCKET# CP93–685, 004, TUSCARORA GAS TRANSMISSION COMPANY
CAG–27.
DOCKET# CP98–399, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–28.
DOCKET# CP97–765, 000, ANR PIPELINE COMPANY
CAG–29.
DOCKET# CP96–771, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY V. NATURAL GAS PROCESSING COMPANY
CAG–30.
DOCKET# PR95–9, 000, THREE RIVERS PIPELINE COMPANY
OTHER#S PR95–9, 001, THREE RIVERS PIPELINE COMPANY
CAG–31.
DOCKET# IS98–284, 000, BP TRANSPORTATION (ALASKA) INC.
OTHER#S IS98–285, 000, BP TRANSPORTATION (ALASKA) INC.
CAG–32.
DOCKET# CP98–159, 000, PHELPS DODGE CORPORATION V. EL PASO NATURAL GAS COMPANY

Hydro Agenda

H–1.
DOCKET# P–2389, 030, EDWARDS MANUFACTURING COMPANY, INC. AND CITY OF AUGUSTA, MAINE
OTHER#S P–2322, 025, CENTRAL MAINE POWER COMPANY
P–2322, 026, CENTRAL MAINE POWER COMPANY
P–2325, 028, CENTRAL MAINE POWER COMPANY
P–2325, 029, CENTRAL MAINE POWER COMPANY
P–2389, 031, EDWARDS MANUFACTURING COMPANY, INC. AND CITY OF AUGUSTA, MAINE
P–2552, 032, CENTRAL MAINE POWER COMPANY
P–2552, 033, CENTRAL MAINE POWER COMPANY
P–2574, 024, MERIMIL LIMITED PARTNERSHIP
P–2574, 025, MERIMIL LIMITED PARTNERSHIP
P–2611, 033, UAH-HYDRO KENNEBEC LIMITED PARTNERSHIPS
P–2611, 034, UAH-HYDRO KENNEBEC LIMITED PARTNERSHIPS
P–5073, 054, BENTON FALLS ASSOCIATES
P–5073, 055,BENTON FALLS ASSOCIATES
P–11472, 003, RIDGEWOOD MAINE HYDRO PARTNERS

ORDER ON SETTLEMENT.
H–2.
DOCKET# P–2389, 034, EDWARDS MANUFACTURING COMPANY, INC. AND CITY OF AUGUSTA, MAINE
OTHER#S P–2389, 027, EDWARDS MANUFACTURING COMPANY, INC. AND CITY OF AUGUSTA, MAINE
ORDER ON MOTION TO VACATE.

Electric Agenda

E–1.
DOCKET# ER98–1438, 000, MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.
OTHER#S EC98–24, 000, THE CINCINNATI GAS & ELECTRIC COMPANY, COMMONWEALTH EDISON COMPANY, AND COMMONWEALTH EDISON COMPANY OF INDIANA, ET AL.
ORDER CONCERNING APPLICATION TO ESTABLISH THE MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR.
E–2.
DOCKET# EC97–46, 000, ALLEGHENY ENERGY, INC. AND DQE, INC.
OTHER#S ER97–4050, 000, ALLEGHENY ENERGY, INC. AND DQE, INC.
ER97–4051, 000, ALLEGHENY ENERGY, INC. AND DQE, INC.
ORDER ON PROPOSED MERGER, OPEN ACCESS TRANSMISSION TARIFF, AND JOINT DISPATCH AND POWER SALES AGREEMENT.
E–3.
DOCKET# ER90–54, 001, PEOPLE'S ELECTRIC COOPERATIVE
OTHER#S EL91–20, 000, PEOPLE'S ELECTRIC COOPERATIVE
ER91–221, 000, PEOPLE'S ELECTRIC COOPERATIVE
ORDER ON EXCEPTIONS FROM INITIAL DECISION.

Regular Agenda—Miscellaneous

M–1.
DOCKET# RM98–1, 000, REGULATIONS GOVERNING OFF-THE-RECORD COMMUNICATIONS
NOTICE OF PROPOSED RULEMAKING.

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

David P. Boergers,

Acting Secretary.

[FR Doc. 98–24648 Filed 9–10–98; 11:10 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11282–001 Rhode Island]

Summit Hydropower; Notice of Proposed Restricted Service List on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

September 8, 1998.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgement of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the Rhode Island State Historic Preservation Office (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to 36 CFR 800.13 of the Councils' regulations implementing Section 106 of the National Historic Preservation Act, *as amended*, (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties in or eligible for inclusion in the National Register of Historic Places at Project No. 11282.

The Programmatic Agreement, upon approval by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until the agreement expires or is terminated (36 CFR 800.13[e]).

Summit Hydropower as prospective licensee for the project, is being asked to participate in the consultation and is being invited to sign as a concurring party to the Programmatic Agreement.

For purposes of commenting on the Programmatic Agreement we proposes to restrict the service list for Project No. 11282 as follows:

Frederick C. Williamson, Rhode Island Historical Preservation Commission, Old State House, 150 Benefit St., Providence, RI 02903, Advisory Council on Historic Preservation, Eastern Office of Project Review, The Old Post Office Building, Suite 809, 1100 Pennsylvania Avenue, NW, Washington, DC 20004
Duncan S. Broatch, 92 Rocky Hill Rd., Woodstock, CT 06281.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, N.E., Washington, D.C. 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on the motion.

David P. Boergers,

Secretary.

[FR Doc. 98–24517 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.2010.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11162–002 Wisconsin]

Wisconsin Power and Light Company; Notice of Proposed Restricted Service List on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

September 8, 1998.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgement of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the Wisconsin State Historic Preservation Office (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to 36 CFR 800.13 of the Council's regulations implementing Section 106 of the National Historic Preservation Act, *as amended*, (16 U.S.C. 470f), to prepare a Programmatic

[1] 18 CFR 385.2010.

Agreement for managing properties in or eligible for inclusion in the National Register of Historic Places at Project No. 11282.

The Programmatic Agreement, upon approval by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until the agreement expires or is terminated (36 CFR 800.13[e]).

Wisconsin Power and Light Company as prospective licensee for the project, is being asked to participate in the consultation and is being invited to sign as a concurring party to the Programmatic Agreement.

For purposes of commenting on the Programmatic Agreement we propose to restrict the service list for Project No. 11162 as follows:

George L. Vogt, State Historical Society of Wisconsin, 816 State Street, Madison, WI 53706

Advisory Council on Historic Preservation, Eastern Office of Project Review, The Old Post Office Building, Suite 809, 1100 Pennsylvania Avenue, NW, Washington, DC 20004

Norman E. Boys, Wisconsin Power and Light Company, P.O. Box 192, 222 West Washington Avenue, Madison, Wisconsin 53701–0192

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, N.E., Washington, D.C. 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on the motion.

David P. Boergers,

Secretary.

[FR Doc. 98–24518 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11577–001]

Summit Hydropower, Inc.; Notice of Surrender of Preliminary Permit

September 8, 1998.

Take notice that Summit Hydropower, Inc., permittee for the proposed Windsor Locks Hyrdro Project, has requested that its preliminary permit be terminated. The permit was issued on August 20, 1996, and would have expired on July 31, 1999. The project would have been located on the Connecticut River, near Suffield, Enfield, and Windsor Locks, Connecticut. The permittee states that the proposed project is not economically feasible.

The permittee filed the request on August 7, 1998, and the preliminary permit for Project No. 11577 shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided under 18 CFR Part 4, may be filed on the next business day.

David P. Boergers,

Secretary.

[FR Doc. 98–24519 Filed 9–11–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140271; FRL–6029–6]

Research Triangle Institute, Incorporated; Access to Trade Secret Information

AGENCY: Environmental Protection Agency ([EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Research Triangle Institute, Incorporated (RTI), 3040 Cornwallis Road, Research Triangle Park, NC 27709–2194, for access to information which has been submitted to EPA under sections 303. 311, 312, and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Some of the information may be claimed or determined to be trade secret information.

DATES: Access to the trade secret information submitted to EPA pursuant to this Notice will be effective September 21, 1998.

FOR FURTHER INFORMATION CONTACT: Harry R. Lewis, Information Management Division (7407), Office of Pollution Prevention and Toxics, Northeast Mall Rm. G102, 401 M St., SW., Washington, DC 20460; Telephone: 202–260–4535.

SUPPLEMENTARY INFORMATION: Under EPCRA, industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA.

Under contract number 68–W7–0018, RTI will assist the Office of Pollution Prevention and Toxics, Information Management Division in performing economic assessment research incident to sufficiency determinations of trade secret claims made under EPCRA 313. RTI personnel will be given access to EPCRA section 303, 311, 312 and 313 submissions and related documents. Some of the information may be claimed or may be determined to be trade secret. Personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures.

EPA is issuing this notice to inform all submitters of information under sections 303, 311, 312, and 313 of EPCRA that EPA may provide RTI access to these trade secret materials on a need-to-know basis. All access to EPCRA trade secret information under this contract will take place at the EPA address listed above, or at the RTI offices in Research Triangle Park, NC. Upon termination of their contract or prior to termination of their contract at EPA's request, RTI will return all materials to EPA.

Clearance for access to EPCRA trade secret information under this contract is scheduled to expire on September 30, 2001.

List of Subjects

Environmental protection.

Dated: September 8, 1998.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–24591 Filed 9–11–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00553; FRL–6030–4]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with guidance for conducting small-scale prospective ground water monitoring studies and proposed revised guidance for conducting terrestrial field dissipation studies. A preliminary document was drafted in March 1998, and additional issues for clarification were identified. Following review by the FIFRA SAP, the guidance document will be forwarded to the Organization for Economic Cooperation and Development (OECD) as a proposed test guideline.

DATES: The meeting will be held on Wednesday, October 14 and Thursday, October 15, 1998, from 8:30 a.m. to 5:30 p.m.

Copies of the Panel's report of their recommendations will be available approximately 30 working days after the meeting.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 1300 Jefferson Davis Hwy., Arlington, VA. The telephone number for the hotel is (703) 979–9799.

By mail, submit (1 original and 30 copies) written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit II. of this notice. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential 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. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The Panel's agenda and report of their recommendations may be obtained from the Public Information and Records Integrity Branch or from the FIFRA SAP Website at http://www.epa.gov/pesticides/SAP/.

FOR FURTHER INFORMATION CONTACT: By mail: Larry C. Dorsey, Designated Federal Official (DFO), FIFRA Scientific Advisory Panel (7501), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Rm. 117S, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA; (703) 305–5369; e-mail: dorsey.larry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

At the meeting, the Agency will present its guidance document for small-scale prospective ground water monitoring studies for review. Data from these prospective studies may be used to evaluate the potential of a pesticide and its degradates to leach through the soil. The Agency will also present revised guidance for conducting terrestrial field dissipation studies. A joint U.S. EPA-Canada workgroup under the North Atlantic Free Trade Agreement (NAFTA) Technical Working Group on Pesticides is developing revised guidance for conducting terrestrial field dissipation studies in the United States and Canada. The terrestrial field dissipation studies should assess the most probable routes and rates of pesticide dissipation under actual use conditions at representative field sites.

Any member of the public wishing to submit written comments should contact the DFO at the address or the telephone number given in the "FOR FURTHER INFORMATION CONTACT" section of this notice to confirm that the meeting is still scheduled and that the agenda has not been modified or changed. Interested persons are encouraged to file written comments before the meeting. To the extent that time permits and upon advanced written request to the DFO, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on the length of written comments for consideration by the Panel, but oral presentations before the Panel are generally limited to approximately 5 minutes. Oral presentations will only be permitted as time permits, the Agency urges the public to submit written comments instead of oral presentations. Persons wishing to make oral comments and/or send written comments should notify the DFO and submit 1 original and 30 copies. Submit written comments as early as possible to ensure that the Panel will have the necessary time to consider and review the comments.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number OPP–00553 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in "ADDRESSES" at the beginning of this notice.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00553. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Pests and pesticides, Water pollution.

Dated: September 9, 1998.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc 98–24576 Filed 9–9–98; 3:27 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6155–8]

State of New Jersey; Final Program Determination of Adequacy of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of adequacy of New Jersey's municipal solid waste landfill permit program.

SUMMARY: On March 3, 1994, the State of New Jersey applied for a partial program determination of adequacy of its municipal solid waste landfill permit program under Section 4005 of the Resource Conservation and Recovery Act (RCRA). This section requires States to develop and implement permit programs that ensure that Municipal Solid Waste Landfills (MSWLF) which may receive hazardous household waste or small quantity generator waste are obligated to comply with the revised Federal MSWLF Criteria (40 CFR Part 258). New Jersey submitted relevant regulations that corresponded to all sections of 40 CFR Part 258 except for Subpart E—Groundwater and Corrective Action Regulations. On December 6, 1995, the State of New Jersey received final partial program determination of adequacy for all portions of their municipal solid waste landfill permit program with the exception of regulations corresponding to Subpart E (60 FR 62,439–41).

Subsequent to that date, EPA redrafted the State Implementation Rule (SIR) which provides procedures by which EPA will approve or partially approve State landfill permit programs. While approvals are not dependent upon final promulgation of the SIR, the States are encouraged to use this document as a guideline in interpreting requirements. Prior to final publication of the SIR, agency determinations are made based on statutory authorities.

Section 239.11(e) of the SIR states that "any partial approval adequacy determination made by the Regional Administrator pursuant to this section shall expire two years from the effective date of final partial program adequacy determination unless the Regional Administrator grants an extension". The Regional Administrator first granted the State of New Jersey a six month extension until June 7, 1998 to achieve full program approval for its MSWLF permit program, and has granted a further extension until December 7, 1998 to account for final processing of New Jersey's application. Copies of the letter from the Regional Administrator granting those extensions have been sent to parties that provided comments on the tentative partial program determination of adequacy.

On February 3, 1998, the New Jersey Department of Environmental Protection (NJDEP) submitted its revised New Jersey Pollutant Discharge Elimination System regulations for municipal solid waste landfills, *N.J.A.C. 7:14*, Subchapter 9: Ground Water Monitoring Requirements for Sanitary Landfills. EPA reviewed these regulations and found them to be consistent with the provisions of 40 CFR Part 258 Subpart E—Ground-Water Monitoring and Corrective Action. Accordingly, EPA has determined that the New Jersey solid waste landfill program is adequate in all respects to comply with 40 CFR Part 258. All of the requirements and obligations in the State's program are in effect as a matter of State law, and EPA's determination does not impose any new requirements with which the regulated community must begin to comply.

The full New Jersey application is on file and may be reviewed at the regional EPA office in New York or alternatively at the offices of NJDEP at 401 E. State St., Trenton, NJ. The contact for the State is John Castner at 609–984–5950.

This rule will become effective without further notice in 60 days unless the Agency receives relevant adverse comment or notice that someone intends to submit a relevant adverse comment within 30 days. Should the Agency receive such comments or notice, it will publish a timely notice informing the public that this rule has not taken effect.

FINAL ACTION: New Jersey is granted full program determination of adequacy for all areas of its municipal solid waste landfill permit program. By this action, EPA is granting New Jersey full program determination of adequacy for all parts of its municipal solid waste landfill permit program.

EFFECTIVE DATE: The determination of adequacy for New Jersey shall be November 13, 1998.

FOR FURTHER INFORMATION CONTACT: Lorraine Graves, U.S. EPA Region II (2DEPP–RPB), 290 Broadway, New York, New York 10007–1866. Phone 212–637–4099.

SUPPLEMENTARY INFORMATION:

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state or local governments in the aggregate, or to the private sector, of $100 million or more. The EPA has determined that the approval action being promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either state or local governments in the aggregate, or to the private sector. This federal action approves preexisting requirements under state law, and imposes no new requirements. Accordingly, no additional costs to State or local governments, or to the private sector, result from this action.

D. Executive Order 12875

E.O. 12875 is intended to develop an effective process to permit elected officials and other representatives of state or local governments to provide meaningful input in the development of regulatory proposals containing significant unfunded mandates. Since this final federal action approves preexisting requirements of state law, no new unfunded mandates result from this action. See also the discussion under C, above, Unfunded Mandates Act.

E. Executive Order 13045

E.O.13045, effective April 21, 1997, concerns protection of children from environmental health and safety risks, and applies to regulatory action that is "economically significant" in that such action may result in an annual effect on the economy of $100 million or more. The EPA has determined that the approval action being promulgated will not have a significant effect on the economy. This federal action approves preexisting requirements under state law, and imposes no new requirements. Accordingly, E.O. 13045 does not apply to this action.

F. Congressional Review Act

Under 5 U.S.C. Section 801(a)(1)(A), as added by the Small Business

Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this action in today's **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. Section 804(2).

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6946.

William J. Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 98–24607 Filed 9–11–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–40033; FRL–6027–8]

Modifications to Enforceable Testing Consent Agreements/Testing Consent Orders; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of letters regarding modifications to test schedules for chemical testing programs under section 4 of the Toxic Substances Control Act (TSCA). These modifications, requested by test sponsors and approved by EPA in 1997, have been incorporated into the enforceable testing consent agreements/testing consent orders (ECAs) to which they apply. EPA annually publishes a document in the **Federal Register** describing all of the modifications granted by letter for the previous year.

ADDRESSES: Copies of the applications for modifications and EPA letters granting approval of these requests are available for inspection. EPA has established a public record for this notice and supporting documentation under docket control number OPPTS–40033. Copies of each application and EPA's letter of approval can also be found under the individual docket file maintained for the ECA in question. The public record is available for inspection from 12:00 noon to 4:00 p.m., Monday through Friday, excluding legal holidays, in the TSCA Nonconfidential Information Center, U.S. EPA, Rm. NE-B607 Northeast Mall, 401 M St., SW., Washington, D.C. 20460 or fax: (202) 260-5069 or E-mail: oppt.ncic@epa.gov.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Office (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, 401 M St., SW., Washington, D.C. 20460, (202) 554–1404, TDD (202) 554–0551, Internet Address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Rules and Regulations" (http://www.epa.gov/fedrgstr/).

Fax on Demand

Using a fax phone call 202–401–0527, select item 4349 for a copy of the letters requesting modifications and the index.

I. Background

EPA's procedures for modifying test standards and schedules for ECAs under section 4 of TSCA are found at 40 CFR 790.68. These procedures allow EPA to approve requested modifications without asking for public comment if the modifications do not alter the scope of a test or significantly change the schedule for its completion. Because these modifications relate to insignificant (i.e., less than 12 months) extensions of test deadlines, EPA approved these modifications in writing without first seeking public notice and comment (40 CFR 790.68 (b)(iv)(D). These letters are placed in the public record and the modifications are published in the **Federal Register**. This notice announces modifications approved from January 1, 1997 through December 31, 1997. No modifications to final test rules were requested during this period. For a detailed description of the rationale for these modifications and for the correspondence relating to specific chemical test modifications, refer to the public record for the appropriate chemical substance or to the public record for this notice (OPPTS–40033).

II. Discussion of Modifications

Each chemical substance discussed in this notice is identified by a specific CAS number and docket control number. The following table lists all chemical-specific modifications approved from January 1, 1997 through December 31, 1997.

MODIFICATIONS TO TEST STANDARDS AND ENFORCEABLE TESTING CONSENT AGREEMENTS/TESTING CONSENT ORDERS

(January 1, 1997 through December 31, 1997)

Chemical Name/CAS No.	CFR Cite	Test	Modifications	Docket Control No.
Final Rules: None.				
Enforceable Testing Agreements/Orders:.				
Alkyl Glycidyl Ethers (AGEs):.				
Alkyl [C_{12} - C_{13}] Glycidyl Ether CAS #120547–52–6.	799.5000	Genetic Toxicity studies:		
		The *Salmonella typhimurium* reverse mutation assay.	5	40033/42185B
		Detection of gene mutations in somatic cells in culture.	5,5	
Tertiary Amyl Methyl Ether (TAME) CAS #994–05–8.	799.5000	Reproductive toxicity study	5	40033/42180A
		Inhalation toxicity/neurotoxicity study	5	
n-Amyl Acetate CAS #628–63–7	799.5000	Acute neurotoxicity-functional observational battery test.	5	40033/42134H

Modifications

1. Modify sampling schedule.
2. Change test substance (form/purity).
3. Change non-critical test procedure or condition.

4. Add satellite group for further testing.
5. Extend test or protocol deadline, delete test initiation date.
6. Clarify and/or add specific guideline requirement.
7. Alter specific guideline requirement approved for certain test(s).
8. Correct CAS No.
9. Amend test standard.
10. Neurotoxicity endpoint rule.
11. Revise protocol.

Note: Only modifications under number 5 in the above table were approved in 1997.

List of Subjects

Environmental protection, Chemicals, Exports, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 4,1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–24604 Filed 9–11–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 9, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (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 estimate; (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.

DATES: Persons wishing to comment on this information collection should submit comments November 13, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0411.
Title: Procedures for Formal Complaints Filed Against Common Carriers.
Form Number: FCC Form 485.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 5,645.
Estimated Time Per Response: 2.95 hours (average).
Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.
Total Annual Burden: 16,677 hours.
Estimated Cost to Respondents: $63,000.
Needs and Uses: In the Second Report and Order issued in CC Docket No. 96–238, the Commission made certain changes in the rules for formal complaints filed against common carriers to make them move more quickly. Information filed pursuant to 47 CFR 1.720 et seq. is provided either with or in response to a formal complaint to determine whether or not there has been a violation of the Communications Act of 1934, as amended, or the Commission's Rules or Orders. Affected respondents are complainants and potential defendant common carriers.

OMB Control Number: 3060–0785.
Title: Universal Service Worksheet.
Form Number: FCC Form 457.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for-profit entities.
Number of Respondents: 5,000.
Estimated Time Per Response: 13.69 hours (average).
Total Annual Burden: 68,450 hours.
Estimated Cost to Respondents: $4,903,000.
Frequency of Response: Recordkeeping; On occasion; monthly; and semi-annual reporting requirements.

Needs and Uses: Section 54.703 requires all telecommunications carriers providing interstate telecommunications services, providers of interstate telecommunications that offer services to others for a fee, and pay telephone providers to contribute to universal service support mechanisms. Contributors must file the Universal Service worksheet semi-annually. The Commission recently revised the worksheet to, among other things, make explicit that contributors must report revenues derived from presubscribed interexchange carrier charges. The information is used to calculate contributions to universal support mechanism.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–24554 Filed 9–11–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Submitted to OMB for Review and Approval

September 3, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (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 estimate; (c) ways to enhance the quality, utility, 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 information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 14, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form Number: FCC 349.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 875.

Estimated Time Per Response: 4 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 3,500 hours.

Cost to Respondents: $2,492,000.

Needs and Uses: FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations. This collection also includes the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for new or major change in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. The data are used by FCC staff to ensure that the applicant meets basic statutory requirements and will not cause interference to other licensed broadcast services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–24499 Filed 9–11–98; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

REQUEST FOR COMMENT ON INFORMATION COLLECTION PROPOSALS.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before [insert date 60 days from publication in the Federal Register].

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

1. Report title: Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H

OMB control number: 7100-0196

Frequency:

development of policy statement: one-time trust company report;

quarterly transactions recordkeeping: on occasion;

disclosure: on occasion;

Reporters: state member banks and trust companies

Annual reporting hours: 168,141

Estimated average hours per response:

development of policy statement: .50 hours;
trust company report: .25 hours;
transactions recordkeeping: .05 hours;
disclosure: .05 hours
Number of respondents:
development of policy statement: 77;
trust company report: 376;
transactions recordkeeping: 1,193;
disclosure: 1,193
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 325). If the records maintained by state member banks come into the possession of the Federal Reserve, they are given confidential treatment (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).

Abstract: State-chartered member banks and trust companies effecting securities transactions for customers must establish and maintain a system of records, furnish confirmations to customers, and establish written policies and procedures relating to securities trading. They are required to maintain records for three years following the transaction. These requirements are necessary for customer protection, to avoid or settle customer disputes, and to protect the bank against potential liability arising under the anti-fraud and insider trading provisions of the Securities Exchange Act of 1934.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

2. Report title: Application for Employment with the Board of Governors of the Federal Reserve System
Agency form number: FR 28
OMB control number: 7100-0181
Frequency: on occasion
Reporters: employment applicants
Annual reporting hours: 8,500 hours
Estimated average hours per response: 1 hour
Number of respondents: 8,500
Small businesses are not affected.

General description of report : This information collection is required to obtain a benefit (12 U.S.C. 244 and 248(1)). Individual respondent data are regarded as confidential and are given confidential treatment under (5 U.S.C. 552(b)(2) and (b)(6)).

Abstract: The Application collects information to determine the qualifications, suitability, and availability of applicants for employment with the Board. The Application asks about education, training, employment, and other information covering the period since the applicant left high school. Due to the nature of the Board's business the Board proposes to add a question on whether the applicant owns debt (bonds) or equity (stocks) interests in certain financial institutions, including banks and primary government securities dealers. This is to inform prospective employees that divestiture may be required upon employment with the Board. The Board also proposes to add a question regarding how the applicant learned about the position so that the staff can enhance the efficiency of its recruiting efforts.

Proposal to approve under OMB delegated authority the implementation of the following reports:

3. Report titles: Annual Salary Survey, ad hoc surveys, and Compensation Trend Survey
Agency form numbers: FR 29a, b, c
OMB control number: to be assigned
Frequency:
FR 29a - once each year;
FR 29b - on occasion;
FR 29c - once each year;
Reporters: employers who are competitors with the Federal Reserve
Annual reporting hours:
FR 29a - 280 hours;
FR 29b - 20 hours;
FR 29c - 1,000 hours
Estimated average hours per response:
FR 29a - 8 hours;
FR 29b - 1 hour;
FR 29c - 2 hours
Number of respondents:
FR 29a - 35 businesses;
FR 29b - 20 businesses;
FR 29c - 500 businesses;
Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 244 and 248(1)) and is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(6)).

Abstract: The surveys collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors for Federal Reserve employees. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Federal Reserve employees.

Board of Governors of the Federal Reserve System, September 8, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–24553 Filed 9–11–98; 8:45AM]

Billing Code 6210–01–F

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 September 29, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Marvin Dwight Schlegel, Swink, Colorado; to acquire voting shares of First Bankshares of Las Animas, Las Animas, Colorado, and thereby indirectly acquire voting shares of First National Bank of Las Animas, Las Animas, Colorado.

Board of Governors of the Federal Reserve System, September 9, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–24611 Filed 9–11–98; 8:45 am]

BILLING CODE 6210–01–F

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. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 October 9, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Southern Bancorp, Inc., Marietta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Southern National Bank, Marietta, Georgia (in organization).

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Petefish, Skiles Bancshares, Inc., Virginia, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Petefish, Skiles and Co., Virginia, Illinois.

Board of Governors of the Federal Reserve System, September 9, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–24612 Filed 9–11–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
03–AUG–98	19983902	G	Marshall S. Cogan.
		G	Foamex International Inc.
		G	Foamex International Inc.
	19983908	G	General Electric Company.
		G	Robert J. Gangi.
		G	Bomar Industries International, Inc.
	19983910	G	Zurich Insurance Company.
		G	Superior National Insurance Group, Inc.
		G	Superior National Insurance Group, Inc.
	19983912	G	Compaq Computer Corporation.
		G	Dana Corporation.
		G	CC Finance LLC.
	19983916	G	Nationwide Electric, Inc.
		G	Robert B. Allison.
		G	The Allison Company.
	19983917	G	Sun Microsystems, Inc.
		G	NetDynamics, Inc.
		G	NetDynamics, Inc.
	19983924	G	Fortune Brands, Inc.
		G	Victor S. Trione.
		G	Geyser Peak Partners.
	19983925	G	Fortune Brands, Inc.
		G	Mark H. Trione.
		G	Geyser Peak Partners.
	19983926	G	Fortune Brands, Inc.
		G	Trione Wines, Inc.
		G	Geyser Peak Partners.
	19983927	G	State Automobile Mutual Insurance Company.
		G	Farmers Casualty Company Mutual.
		G	Farmers Casualty Company Mutual.
	19983928	G	Group Maintenance America Corp.
		G	G. Bruce Duthie.
		G	Reliable Mechanical, Inc.
	19983934	G	Capricorn Investors II, L.P.
		G	President and Fellows of Harvard College.
		G	CCC Information Services Group, Inc.
	19983938	G	KKR 1996 Fund (Overseas), Limited Partnership.
		G	Willis Corroon Group plc.
		G	Willis Corroon Group plc.
	19983943	G	Berkshire Hathaway Inc.
		G	Richard T. Santulli.
		G	Executive Jet, Inc.
	19983944	G	Richard T. Santulli.
		G	Berkshire Hathaway Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Berkshire Hathaway Inc.
	19983946	G	Occidental Petroleum Corporation.
		G	N.V. Koninklije Nederlandsche Petroleum Maatschap.
		G	Compania Shell de Colombia Inc.
	19983947	G	ConAgra, Inc.
		G	RJR Nabisco Holdings Corp.
		G	Nabisco, Inc.
	19983949	G	Schneider National, Inc. Voting Trust.
		G	Landstar System, Inc.
		G	Landstar Poole, Inc.
	19983950	G	Superior Services, Inc.
		G	GeoWaste Incorporated.
		G	GeoWaste Incorporated.
	19983955	G	Alpine Equity Partners L.P.
		G	PRIMEDIA Inc.
		G	Daily Racing Form, Inc.
	19983958	G	Interlaken Investment Partners, L.P.
		G	Pratt Family Holdings Trust.
		G	Visy Paper (IN), Inc.
	19983964	G	Madison Dearborn Capital Partners II, L.P.
		G	Code, Hennessy & Simmons Limited Partnership.
		G	Woods Equipment Company.
	19983967	G	Blackstone Capital Partners II Merchant Banking Fun L.P.
		G	RES Holding Corporation.
		G	RES Holding Corporation.
04–AUG–98	19983756	G	Sommer Allibert, S.A.
		G	Buddy E. Williams.
		G	Stuart Flooring Corp.
	19983952	G	Allied Waste Industries, Inc.
		G	Frank Ward Sr.
		G	Illinois Recycling Services, Inc., et al.
06–AUG–98	19983858	G	Cabletron Systems, Inc.
		G	NetVanage, Inc.
		G	NetVanage, Inc.
	19983866	G	Crescent Operating, Inc.
		G	Ronald C. Carlston as Co-Trustee for Carlston Famil Trust.
		G	Western Traction Company.
	19983868	G	Summit Ventures III, L.P.
		G	Reckitt & Coleman plc.
		G	Reckitt & Coleman Inc.
	19983869	G	BellSouth Corporation.
		G	American Telecasting, Inc.
		G	American Telecasting of Central Florida, Inc. and American Telecasting of Fort Myers, Inc.
	19983874	G	Cort Business Services Corporation.
		G	Robert S. Baker.
		G	Instant Interiors Corporation.
	19983887	G	Telephone and Data Systems, Inc. Voting Trust.
		G	GTE Corporation.
		G	Eastern North Carolina Cellular Joint Venture.
	19983889	G	Prashant Fadia.
		G	Cotelligent Group, Inc.
		G	Cotelligent Group, Inc.
	19983897	G	Hellman & Friedman Capital Partners III, L.P.
		G	Carl Ruderman.
		G	Universal Media, Inc.
	19983913	G	J.M. Huber Corporation.
		G	Lhoist, SA (Belgium).
		G	Faxe Paper Pigments (Danmark).
	19983915	G	Adventist Health System Healthcare Corporation.
		G	Southwest Volusia Healthcare Corporation.
		G	Southwest Volusia Healthcare Corporation.
	19983921	G	The Walt Disney Company.
		G	Howard A. Kalmenson.
		G	Illinois Lotus Corp.
	19983922	G	The Walt Disney Company.
		G	Lilli K. Rosenbloom.
		G	Illinois Lotus Corp.
	19983930	G	N.R. Puri.
		G	Perry Judd's Holdings, Inc.
		G	Port City Press, Inc.
	19983935	G	CareMatrix Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Islandia Community for Seniors Operating Company, LLC.
		G	Islandia Community for Seniors Operating Company, LLC.
	19983951	G	Fresh America Corp.
		G	Joseph M. Cognetti.
		G	Jos. Natarianni & Co., Inc.
	19983959	G	Kjell Inge Rokke.
		G	Aker RGI ASA.
		G	Aker RGI ASA.
	19983962	G	DLJ Merchant Banking Partner II, L.P.
		G	DeCrane Holdings, Co.
		G	DeCrane Holdings Co.
	19983966	G	DLJ Merchant Banking Partner II, L.P.
		G	DeCrane Aircraft Holdings Inc.
		G	DeCrane Aircraft Holdings Inc.
	19983969	G	Weeks Marine, Inc.
		G	T.L. James & Company, Inc.
		G	T.L. James & Company, Inc.
	19983970	G	PrimeSource, Inc.
		G	Bell Industries, Inc.
		G	Bell Industries, Inc.
	19983978	G	Charles R. Wolf.
		G	Eastman Kodak Company.
		G	Fox Photo Inc.
	19983980	G	Home Products International, Inc.
		G	Albert B. Cheris.
		G	Tenex Corporation.
	19983984	G	Welsh, Carson, Anderson & Stowe VII, L.P.
		G	Alliance Data Systems Corporation.
		G	Alliance Data Systems Corporation.
	19983987	G	Joseph Littlejohn and Levy Fund II, L.P.
		G	Western Building Products, Inc.
		G	Western Building Products, Inc.
	19983991	G	Stitchting Dogwood, Curacao N.A.
		G	Ralph Manaker.
		G	BTIA Holdings, Inc.
	19983992	G	Gottschalks Inc.
		G	El corte Ingles, S.A.
		G	The Harris Company.
	19983993	G	El Corte Ingles, S.A.
		G	Gottschalks Inc.
		G	Gottschalks Inc.
	19983994	G	Mail-Well, Inc.
		G	Nicholas J. Kollman.
		G	Kollman Graphics, Inc.
07–AUG–98	19981179	G	Jacor Communications, Inc.
		G	Employers Insurance of Wausau A Mutual Company.
		G	Employers Insurance of Wausau A Mutual Company.
	19981180	G	Jacor Communications, Inc.
		G	Nationwide Mutual Insurance Company.
		G	Nationwide Communications, Inc.
	19983328	G	Affiliated Computer Services, Inc.
		G	Anacomp, Inc.
		G	Anacomp, Inc.
	19983971	G	Elan Corporation, plc.
		G	Cytel Corporation.
		G	Cytel Corporation.
	19983976	G	SunAmerica Inc.
		G	Stock Trust
		G	MBL Life Assurance Corporation.
	19983989	G	KTI, Inc.
		G	FCR, Inc.
		G	FCR, Inc.
	19983995	G	Warburg, Pincus Equity Partners, L.P.
		G	Pfizer Inc.
		G	American Medical Systems.
	19983996	G	Providence Equity Partners, L.P.
		G	Marks Group, Inc. (The).
		G	Cable Assets.
	19983999	G	Time Warner Inc.
		G	Time Warner Inc.
		G	Paragon Communications.
	19984000	G	General Parts, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Keystone Automotive Industries, Inc.
		G	Republic Automotive Parts Sales, Inc.
	19984001	G	United Rentals, Inc.
		G	John T. Boran, Sr.
		G	Rental Tools & Equipment Co. International, Inc.
		G	Doran Limited Partnership.
	19984007	G	McLeodUSA Incorporated.
		G	CILCORP Inc.
		G	QST Communications Inc.
	19984008	G	Scotsman Holdings, Inc.
		G	Raymond A. Woodridge.
		G	Space Master International, Inc.
	19984009	G	Samuel J. Heyman.
		G	Asbestos Settlement Trust.
		G	Celotex Corporation.
	19984014	G	United Rentals, Inc.
		G	Terrance J. and Nancy McClinch.
		G	McClinch Equipment Services, Inc., McClinch, Inc.
	19984016	G	Esterline Technologies Corporation.
		G	Kirkhill Rubber Company.
		G	Kirkhill Rubber Company.
	19984017	G	Hughes Supply, Inc.
		G	Irrevocable Gifting Trust Under Agreement Charles Caye.
		G	W.C. Caye & Company, Inc.
	19984019	G	The ServiceMaster Company.
		G	Craig A. Ruppert.
		G	Ruppert Landscape Company, Inc.
	19984020	G	Mr. Craig Ruppert.
		G	The ServiceMaster Company.
		G	The ServiceMaster Company.
	19984032	G	UPMC Health System.
		G	Horizon Health System, Inc.
		G	Horizon Health System, Inc.
	19984036	G	Mueller Industries, Inc.
		G	Richard A. Kuhlman.
		G	B&K Industries, Inc.
	19984037	G	Mueller Industries, Inc.
		G	Jeffrey A. Berman.
		G	B&K Industries, Inc.
	19984059	G	Hicks Muse, Tate & Furst Equity Fund III, L.P.
		G	Nestle' S.A.
		G	Nestle' USA, Inc.
	19984063	G	ProfitSource Corporation.
		G	Brite Voice Systems, Inc.
		G	TSL Services, Inc.
	19984065	G	Ivex Packaging Corporation.
		G	Gus R. Poulis.
		G	Bleyer Industries, Inc.
	19984066	G	Fleetwood Enterprises, Inc.
		G	Dennis Adams.
		G	Southerns Lifestyle Manufactured Housing, Inc.
	19984074	G	Koninklijke Philips Electronics N.V. ("Phillips").
		G	ATL Ultrasound, Inc.
		G	ATL Ultrasound, Inc.
10–Augu–98	19983906	G	Sanford R. Penn, Jr.
		G	Apple South, Inc.
		G	Apple South, Inc.
	19983981	G	Essex International Inc.
		G	N. Robert Hayes.
		G	Active Industries, Inc.
	19983988	G	HBO & Company.
		G	US Servis, Inc.
		G	US Servis, Inc.
	19984005	G	Regal Cinemas, Inc.
		G	Act III Cinemas, Inc.
		G	Act III Cinemas, Inc.
	19984025	G	EXOR Group S.A.
		G	Cortec Group Fund, L.P.
		G	Anaheim Manufacturing Company.
	19984033	G	Key Energy Group, Inc.
		G	John R. Stanley.
		G	TransTexas Gas Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
11–AUG–98	19981166	G	Dean Foods Company.
		G	George W. Barber, Jr.
		G	Barber Dairies, Inc.
	19983025	G	W.D. Company, Inc.
		G	Mercantile Stores Company.
		G	Mercantile Stores Company.
	19983894	G	Country Pure Foods, Inc.
		G	Quaker Oats Company (The).
		G	Ardmore Farms, Inc.
	19984018	G	Atlas Copco A.B..
		G	Clementina-Clemco Holdings, Inc.
		G	Clementina Equipment Company.
		G	Clementina Ltd.
		G	Wilkinson Equipment Corp.
		G	Clementina Refinery Services.
	19984049	G	Oglebay Norton Company.
		G	John H. Waters.
		G	Filler Products, Inc.
	19984054	G	Akzo Nobel NV.
		G	Elementis plc.
		G	Akcros Chemicals America.
	19984058	G	Vitran Corporation Inc.
		G	Randall R. Quast.
		G	Quast Transfer, Inc.
		G	Quast Realty, Inc.
12–AUG–98	19983758	G	TA/Advent VIII, L.P.
		G	New Holdings, Inc.
		G	New Holdings, Inc.
	19983901	G	B.J. McCombs.
		G	Minnesota Vikings Limited Liability Partnership.
		G	Minnesota Vikings Ventures, Inc.
	19983963	G	Gulfstream Aerospace Corporation.
		G	Kimberly-Clark Corporation.
		G	K–C Aviation Inc.
	19983973	G	Credit Suisse Group.
		G	National Heritage Life Insurance Company in Liquidation.
		G	Investors Insurance Corporation.
	19984050	G	John F. Allen.
		G	First Sierra Financial, Inc.
		G	First Sierra Financial, Inc.
	19984051	G	First Sierra Financial, Inc.
		G	John F. Allen.
		G	Oliver-Allen Corporation, Inc.
13–AUG–98	19984003	G	Randall L. Moffat.
		G	Randall L. Moffat.
		G	FSN Cable, Ltd.
	19984011	G	Interpool Inc.
		G	XTRA Corporation.
		G	XTRA Corporation.
	19984012	G	Apollo Investment Fund, IV.
		G	XTRA Corporation.
		G	XTRA Corporation.
	19984035	G	The Sisters of Mercy of the Americas.
		G	Saint Elizabeth Medical Center.
		G	Saint Elizabeth Medical Center.
	19984055	G	Miami Computer Supply Corporation.
		G	Consolidated Media Systems, Inc.
		G	Consolidated Media Systems, Inc.
	19984076	G	RMI Titanium Company.
		G	Richard R. Burhart.
		G	New Century Metals, Inc.
	19984077	G	Richard R. Burkhart.
		G	RMI Titanium Company.
		G	RMI Titanium Company.
	19984078	G	RMI Titanium Company.
		G	Joesph H. Rice.
		G	New Century Metals, Inc.
14–AUG–98	19983838	G	ABS Capital Partners II, L.P.
		G	Physicians Quality Care, Inc.
		G	Physicians Quality Care, Inc.
	19983845	G	Hannover Finanz W&G Berteligungsgesellschaft mb.
		G	Terrence J. Gooding.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Wavetek Corporation.
	19983929	G	David D. Smith.
		G	Herb Gordon Auto World, Inc.
		G	Herb Gordon Auto World, Inc.
	19983939	G	Advanced Digital Information Corporation.
		G	Raytheon Company.
		G	EMASS, Inc.
	19983979	G	Rental Service Corporation.
		G	APi Group, Inc.
		G	New Reach Company, Inc.
	19984040	G	Edison International.
		G	SECOM Co., Ltd.
		G	Westec Residential Security, Inc.,
		G	Valley Burglar & Fire Alarm Co., Inc.
	19984053	G	Chase Manhattan Corporation, (The).
		G	Spencer H. Kim.
		G	Pioneer Aluminum, Inc.
	19984061	G	Bruce Burrows.
		G	Untied States Filter Corporation.
		G	United States Filter Corporation.
	19984064	G	Maxxim Medical, Inc. a Texas Corporation.
		G	Allegiance Corporation.
		G	Allegiance Healthcare Corporation.
	19984075	G	Philip F. Anschutz.
		G	Jerry H. Buss.
		G	The Los Angeles Lakers, Inc.
	19984087	G	Northland Telecommunications Corporation.
		G	Northland Cable Properties Five Limited Partnership.
		G	Northland Cable Properties Five Limited Partnership.
		G	Corsicana Media, Inc.
	19984090	G	Marks Bros. Jewelers, Inc.
		G	Carlyle & Co. Jewelers.
		G	Carlyle & Co., of Montgomery, J.E. Caldwell Co.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–24595 Filed 9–11–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: IRS Project 1099.

OMB No.: New.

Description: This is a voluntary program which provides States' Child Support Enforcement agencies upon their request access to all of the earned and unearned income information reported to IRS by employers and financial institutions. The IRS 1099 information is used to locate noncustodial parents and to verify income and employment, which has proven essential to accurately establishing and enforcing child support obligations.

Respondents: General purpose statistics.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden hours
Project 1099	43	12	2	1032

Estimated Total Annual Burden: 1032.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families. Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenada, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: September 8, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–24556 Filed 9–11–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0389]

Agency Information Collection Activities: Proposed Collection; Comment Request; Notification of a Health Claim or a Nutrient Content Claim Based on an Authoritative Statement; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 13, 1998 (63 FR 43400). The document announced an opportunity for public comment on a proposed collection of information; specifically, comments on the submission of notifications of health claims or nutrient content claims based on authoritative statements of scientific bodies. The notice published with two errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In FR Doc. 98–21796, appearing on page 43400 in the **Federal Register** of Thursday, August 13, 1998, the following corrections are made:

1. On page 43400, in the third column, in the sixth line from the bottom "0910–0347—Extension)" is corrected to read "0910–0374—Extension)".

2. On page 43401, in the first column, beginning in the fourth line, "of a scientific body of the Federal Government or the National Academy of Sciences. Under these sections of the act, a food producer that intends to use such a claim must submit a notification of its intention to use the claim 120 days before it begins marketing" is corrected to read "of certain scientific bodies of the Federal Government or of the National Academy of Sciences or any of its subdivisions. Under these sections of the act, a food producer may use such a claim in the labeling of an appropriate product 120 days after a complete notification of the claim is submitted to FDA."

Dated: September 2, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–24498 Filed 9–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0373]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; FDA Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 14, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration,5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

FDA Recall Regulations—Part 7 (21 CFR Part 7), Subpart C—(OMB Control Number 0910–0249—Extension)

These regulations were established to provide guidance to manufacturers on recall responsibilities. These responsibilities include development of a recall strategy; providing complete details of the recall reason, risk evaluation, quantity produced, distribution information, firm's recall strategy and a contact official; notifying direct accounts of the recall and to provide recipients with a ready means of reporting to the recalling firm; provide periodic status reports so FDA can assess the progress of the recall. The recall provisions provide the information necessary for FDA to monitor recalls and assess the adequacy of a firm's efforts in a recall. It also permits FDA to evaluate whether a recall has been completed in a manner that assures that unreasonable risk of substantial harm to the public health has been eliminated. The guidelines apply to all regulated products (i.e., food, including animal feed; drugs, including animal drugs; medical devices, cosmetics; and biological products intended for human use.

In the **Federal Register** of June 9, 1998 (63 FR 31502), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—Estimated Annual Reporting Burden [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
7.42	1,712	1	1,712	1.8	3,082
7.46 and 7.49	1,712	1	1,712	4	6,848
7.53	1,712	1	1,712	36	61,632
7.55(b)	1,712	1	1,712	2	3,424
Totals					74,986

[1] There are no capital costs associated with this collection of information.

Due to a typographical error, the "Annual Frequency per Response" for 21 CFR 7.42, 7.46 and 7.49, 7.53, and 7.55(b) were reported as "4" in FDA's June 9, 1998, notice providing 60 days for public comment on this collection of information. Therefore, the totals for "Total Annual Responses" and "Total Hours" were reported incorrectly. Table 1 of this document reflects the correct annual frequency per response, total annual responses and total burden hours.

Dated: September 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–24496 Filed 9–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Cooperative Agreements With National HIV/AIDS Organizations

AGENCY: Health Resources and Services Administration.

ACTION: Notice of limited competition for cooperative agreements with national HIV/AIDS organizations.

SUMMARY: The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB) announces a limited competition to support the development and performance of specialized technical assistance activities for HRSA's HIV/AIDS Title IV grantees under Section 2671 of the Public Health Service Act, as amended by the Ryan White CARE Act Amendments of 1996, Public Law 104–146, dated May 20, 1996 (PHS Act), and to support the development of materials and training for AIDS Education and Training Centers under Section 2692 of the PHS Act.

HRSA is limiting competition to three national HIV/AIDS organizations: the National Alliance of State and Territorial AIDS Directors (NASTAD), the National Pediatric & Family HIV Resource Center (NPHRC), and AIDS Policy Center for Children, Youth and Families (APC). In cooperation with HRSA, these three organizations will engage in a number of activities that include technical assistance to Title IV grantees, policy analysis, materials development, and training for HRSA's Ryan White programs. Assistance will be provided only to these three organizations. No other applications are solicited, nor will they be accepted. These three organizations are the only qualified entities to provide the services specified under this cooperative agreement because:

1. NASTAD is the only officially established organization that represents the State and Territorial AIDS Directors in all 50 States and all U.S. Territories. As such, it represents the officials from throughout the U.S. who have responsibility for designing, implementing, and evaluating HIV/AIDS service programs for uninsured and underinsured populations. In addition, NASTAD has already established mechanisms for communicating HIV/AIDS information to States and the political subdivisions of the States that implement HRSA's CARE Act programs.

2. NPHRC is uniquely qualified to assure the provision of effective technical assistance through its clinical experience and capacity in promoting the organization and maintenance of comprehensive, coordinated care that is linked to research for children, youth, women and families affected by HIV/AIDS. As a HRSA supported national resource center, NPHRC and its clinical staff has unique access to providers throughout the U.S. to assure the needs of this population are addressed across all venues.

3. APC has extensive knowledge and experience in assessing adolescent AIDS comprehensive care policy. The organization has considerable credibility among existing adolescent clinical care providers, researchers and consumers and a demonstrated in-depth understanding of the Ryan White CARE Act.

Grants/Amounts

Approximately $600,000 is available in fiscal year (FY) 1998 for a 12-month budget period with a project period of 3 years for these three organizations. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained from Ms. Angela Powell-Young, Chief, Technical Assistance Branch, Division of Training and Technical Assistance, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–13, Rockville, Maryland 20857. The telephone number is (301) 443–9091 and the fax number is (301) 594–2835.

Dated: September 4, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–24557 Filed 9–11–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration (HRSA)

HRSA AIDS Advisory Committee Care Act Reauthorization Workgroup

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of public meeting and opportunity to provide written comments.

SUMMARY: On December 2, 1997, the HRSA AIDS Advisory Committee (HAAC) established the Ryan White CARE Act Reauthorization Workgroup. The workgroup is seeking public input about future HIV/AIDS care program directions including issues related to the second reauthorization of the Ryan White CARE Act. The HAAC will subsequently submit a set of formal recommendations relating to future program directions and reauthorization issues to the HRSA Administrator.

DATES: A public meeting will be held on October 9, 1998, from 8:30 a.m. to 5:00 p.m., to obtain public input into future program directions and issues related to the reauthorization of the Ryan White CARE Act of 1990 as amended by the Ryan White CARE Act Amendments of 1996 (Pub L. 104–146). To be assured of consideration for this public session, written comments should be postmarked no later than October 23, 1998, and should contain the name, address, telephone and fax numbers and any organizational affiliation of the persons requesting to provide a written statement. The public meeting will be held at the Crowne Plaza St. Anthony Hotel, 300 East Travis, San Antonio, Texas, 78205; phone (210) 227–4392; FAX (210) 227–0915.

ADDRESSES: Written comments should be sent to the HRSA AIDS Advisory Committee, c/o HRSA HIV/AIDS Bureau, Office of Policy and Program Development, Attention: Caitlin Ryan, Parklawn Building, 5600 Fishers Lane, Room 7–20, Rockville, Maryland 20857.

All requests for making oral comments will be made at the meeting on October 9, 1998. Depending on the number of requests to present oral comments, it may be necessary to limit the length of time for each presenter.

SUPPLEMENTARY INFORMATION: We are particularly interested in comments which address the following issues:

1. Extent to which CARE Act programs are enrolling underserved and vulnerable populations.
2. Extent to which CARE Act programs are providing clients with care whose quality meets or exceeds Public Health Service treatment guidelines and other care standards.
3. Extent to which CARE Act programs are providing services that remove barriers to primary care access so as to ensure clients enter into and remain in care.
4. Extent to which the CARE Act programs are reducing HIV-related mortality and morbidity.
5. Extent to which CARE Act programs are adapting to a changing service and cost environment.
6. Structure of the CARE Act.

FOR FURTHER INFORMATION CONTACT: Nancy Brady, HIV/AIDS Bureau, Division of Training and Technical Assistance, (301) 443–4156.

Dated: September 4, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–24558 Filed 9–11–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammals; Stock Assessment Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of revised marine mammal stock assessment reports for Pacific walrus and polar bear in Alaska.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), the Fish and Wildlife Service (FWS) has considered public comments and revised the marine mammal stock assessment reports for the Alaska Chukchi/Bering Seas polar bear stock, Alaska Beaufort Sea polar bear stock, and Alaska Pacific walrus stock. They are now complete and copies of the revised reports are available to the public. The results are summarized below.

STOCK ASSESSMENT SUMMARY TABLE

Species/stock	N_{EST}	N_{MIN}	R_{MAX}	F_R	PBR	Causes of mortality			Stock status
						Subsistence (5 year avg)	Fishery	Other	
Polar bear/Alaska Chukchi Bering Seas stock.	Not available	Not available	0	1	Unknown	45	0	<10	Nonstrategic.
Polar bear/Alaska Southern Beaufort Sea stock.	1,756	1,611	0	1	73	55	0	<1	Nonstrategic.
Pacific Walrus/ Alaska stock.	201,039	188,316	0	1	7,533	4,869	17	4	Nonstrategic.

* Probably similar to Alaska Southern Beaufort Sea Stock.

The sea otter stock assessments for Alaska are not final pending resolution of a request by the Alaska Sea Otter Commission for a proceeding on the record (pursuant to Section 117(b)(2) of the MMPA). This request is related to the Service's identification of three sea otter stocks in Alaska in the draft stock assessment reports published in March 1998 as opposed to the one stock identified in the 1995 report.

The sources of information or published reports upon which these assessments are available in the Reference section of each stock assessment report.

ADDRESSES: Copies of the revised stock assessment reports for polar bear and walrus and the draft stock assessment reports for sea otters in Alaska including a list of the sources of information or published reports on which these assessments were made are available from the (1) Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; or (2) Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Room 840–ARLSQ, 4401 N. Fairfax Drive, Arlington, Virginia 22203. Copies of the FWS's final stock assessment reports for the northern sea otter in Alaska, southern sea otter in California, the northern sea otter in Washington State, and the Florida and Antillean stocks of West Indian manatees from the southeastern United States and Puerto Rico, are available from address (2) above.

FOR FURTHER INFORMATION CONTACT: Jeff Horwath, in the FWS's Division of Fish and Wildlife Management Assistance, Arlington, Virginia at (703) 358–1718. For information specifically about polar bears, Pacific walrus, and northern sea otters in Alaska, contact the Supervisor at Marine Mammals Management at (907) 786–3800 or FAX: (907) 786–3816.

SUPPLEMENTARY INFORMATION: Section 117 of the MMPA (16 U.S.C. 1361–1407) required the FWS and the National Marine Fisheries Service to prepare stock assessment reports for each marine mammal stock that occurs in waters under the jurisdiction of the United States. In late 1995, the Service issued final stock assessment reports for polar bears and Pacific walrus in Alaska as required, and announced their completion and public availability in a **Federal Register** notice on October 4, 1995 (60 FR 52008). As required by the MMPA, these reports contained information regarding the distribution and abundance of the stocks, population growth rates and trends, estimates of human-caused mortality from all sources, descriptions of the fisheries with which the stocks interact, and the status of each stock.

Section 117 of the MMPA also requires the FWS and the NMFS, consistent with any new information that indicates that the status of a stock has changed or can be more accurately determined, to revise these reports annually for strategic stocks of marine mammals and every three years for stocks determined to be non-strategic. In accordance with these statutory provisions, the FWS prepared draft revised stock assessment reports for sea otters, polar bear and Pacific walrus in Alaska and made them available for public comment from March 5, 1998 to

June 2, 1998. During the public comment period and subsequent to it, the FWS consulted with the Alaska Scientific Review Group, established under the MMPA. Their comments and other public comments were reviewed and incorporated into these final reports, as appropriate. Although the FWS revised these reports based on additional information, the status of the stocks did not changed. The 1998 final stock assessment reports for Pacific walrus and polar bears in Alaska are now complete and available to the public. The finalization of the revisions on the Alaska sea otter stock assessment reports will not be completed until after a final action on the proceeding on the record requested by the Alaska Sea Otter Commission.

Dated: September 4, 1998.

Robyn Thorn,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 98–24562 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–033–98–1230–00]

Temporary Closure of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of certain public lands, Carson City Field Office, in Churchill, Lyon, and Mineral Counties on and adjacent to an Off-Highway Vehicle Race course: Best in the Desert Racing—Permit Number NV–055–99–01: Las Vegas to Reno Off-highway Vehicle Race occurring October 2 and 3, 1998.

PURPOSE: To provide for public safety.

EFFECTIVE DATES AND TIME: 6 am October 2 through 10 am October 3, 1998.

AFFECTED PUBLIC LANDS: Mineral County—R37E T4N; R36E T6N; R35E T6–11N; R34E T8–13N; R33–32E T13N. Affected Roads include: Dunlap Cnyn, Cinnabar Cnyn, Rhyolite Pass, Win Wan Flat, Ryan Cnyn Road, Wovoka, Wash.

Churchill County—R32E T14N; R31E T15N; R30E T15–16N; R29–24E T16N; R24E T15N; Affected roads include: Diamond Field Jack Wash, Wild Horse Basin Road.

Lyon County—R26E, R27E T16N; R24E, T17N; R24E T18N. Affected roads include: Wild Horse Basin, Hooten Well, Carson River Road, Churchill Butte Wash, Stockton Well.

SUPPLEMENTARY INFORMATION: A map of the closure may be obtained at the contact address. The permittee is required to clearly mark and monitor the event route during the closure period. Spectators are welcome at Pit Stops and shall remain in safe locations as directed by event officials and BLM personnel. Public lands affected by the temporary closure include commonly used dirt roads, utility right-of-way roads, jeep trails and dry washes identified on the ground by colorful flagging and paper arrows attached to wooden stakes designating the race route.

EXCLUSIONS: The above restrictions do not apply to agency, race officials, law enforcement, or emergency response personnel during the conduct of their official duties in relation to the race event.

Authority: 43 CFR 8364 and 43 CFR 8372.

PENALTY: Any person failing to comply with the closure order may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 USC 3571, or both.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City District, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone: (702) 885–6161.

Dated: September 4, 1998.

Charles P. Pope,

Acting Assistant Manager, Non-Renewable Resources.

[FR Doc. 98–24603 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–063–1010–00]

Intent To Amend the California Desert Conservation Area Plan, 1980, To Address Management of Three Grazing Allotments in the Eastern Mojave Desert, San Bernardino County, CA

AGENCY: Bureau of Land Management, California Desert District Office.

ACTION: Notice of Intent to Amend the California Desert Conservation Area Plan, 1980, to address management of Granite Mountain, Lanfair Valley, and Kessler Springs grazing allotments located in the eastern Mojave Desert in San Bernardino County, California.

SUMMARY: This Notice of Intent (NOI) amends an earlier NOI for preparation of an Environmental Impact Statement and Interagency Desert Management Plan for the Northern and Eastern Mojave Desert (60 FR 46132, September 5, 1995). The Interagency Plan will continue as described in the 1995 NOI. However, a separate plan amendment and environmental assessment is initiated for Granite Mountain, Lanfair Valley, and Kessler Springs grazing allotments to afford each lessee of record the opportunity to cancel domestic livestock use. This voluntary action by each lessee will occur simultaneously with similar action on other lands of the same grazing unit under National Park Service jurisdiction.

This plan amendment will evaluate economic and other constraints posed by reduction in area of use and increased cost of support facilities to support livestock grazing on the residual public lands of the subject allotments, and will consider permanent retirement of the allotments.

This notice does not reopen scoping. Grazing issues, including modification or cancellation of grazing use, were previously raised in connection with the Interagency Plan.

DATE COMMENTS MUST BE RECEIVED: Comments on this notice must be received by BLM at the following address on or before October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Morgan, Rangeland Management Specialist, U.S.D.I., Bureau of Land Management, California Desert District Office, 6221 Box Springs Blvd., Riverside, California 92507–0714 tel: (909) 687–5388.

Dated: September 3, 1998.

Tim Salt,

Acting District Manager.

[FR Doc. 98–24256 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Hot Springs National Park, Arkansas

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing the continued operation of a Physical Medicine Center within Hot Springs National Park. This center offers hydrotherapy, physical therapy, physical fitness, and a health spa.

EFFECTIVE DATE: September 18, 1998.

ADDRESSES: Interested parties should contact Assistant Superintendent Dale Moss at Hot Springs National Park, P. O. Box 1860, Hot Springs, Arkansas 71902, or telephone (501–624–3383, ext. 622)

to obtain a copy of the prospectus. This describes the requirements of the proposed contract to be awarded for a period of 10 years (from approximately January 1, 1999, through December 31, 2008).

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared. No right of preference in renewal is being exercised with this prospectus. The Secretary of the Interior will consider and evaluate all proposals received in response to this notice. Any proposal to be considered and evaluated must be received by the Superintendent, Hot Springs National Park, at the address given above, not later than close of business, CST (Central Standard Time) by November 17, 1998.

FOR ADDITIONAL INFORMATION CONTACT: George R. Frederick, Chief, Concessions Management, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, or at 402–221–3612.

Dated: September 3, 1998.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 98–24533 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ General Management Plan; Death Valley National Park; Inyo and San Bernardino Counties, CA; Nye and Esmeralda Counties, Nevada; Notice of Availability

Summary

Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service (NPS), Department of the Interior, has prepared a Draft Environmental Impact Statement (DEIS) identifying and evaluating potential impacts of a proposed General Management Plan (GMP) for Death Valley National Park. Death Valley is a unit of the National Park System, created by Congress on October 31, 1994, in the California Desert Protection Act (CDPA). The DEIS also includes a draft Land Protection Plan (LPP) that addresses management options for non-federal lands that exist inside the park boundary. This planning document and DEIS were initiated as a component of the Northern and Eastern Mojave Planning Project, a coordinated interagency effort involving the NPS, Bureau of Land Management, and U.S. Fish and Wildlife Service. The DEIS identifies and evaluates the environmental consequences of a proposed action and two alternatives; appropriate mitigations are addressed. No significant adverse environmental impacts are anticipated. The GMP will serve as the overall management strategy for the next 10–15 years under which more detailed activity or implementation plans are prepared.

Proposal

This DEIS presents the proposed management approach and two alternatives for park management. The Proposed Action (Alternative 1) seeks to extend existing management strategies that are in place for the original smaller area (proclaimed a national monument on February 11, 1933), to the management of the resources within the new lands added to the unit in 1994. It also strives to incorporate the NPS mission and policies, and respond to the designation of 95% of the park as Wilderness. This alternative addresses the removal of feral burros and horses from the park in order to achieve the NPS mission of managing the unit for native desert species. It also recognizes the need to work cooperatively with the Bureau of Land Management on adjacent land, where their mandate from Congress is to maintain viable herds of wild horses and burros. Furthermore, this alternative strives to balance the preservation of resources mission with specific mandates from Congress for Death Valley, such as continuation of grazing on the new lands. This alternative addresses grazing as a component of the management. This alternative also identifies a number of activity-level or site-specific issues, such as management of the Saline Valley Warm Springs area and a Backcountry and Wilderness Management Plan. This alternative seeks funding for purchase of private property from willing sellers, and/or mineral interests where proposed uses conflict with the primary mission of preserving resources and providing for visitor enjoyment.

Alternatives

In addition to the proposal, the alternatives described and analyzed are existing management (no action) and an optional management approach. The Existing Management alternative (Alternative 2) describes outcomes of continuing current management strategies. It is commonly referred to as the no-action or status quo alternative. Under this alternative, existing visitor and administrative support services and facilities would be maintained in their current locations. There would be no change in road maintenance, although some roads might be improved if funding became available. No changes in recreation use would occur. Land acquisition would focus on obtaining funds to acquire private property and mineral interests from willing sellers only where proposed uses conflict with the park mission. The Optional Management approach (Alternative 3) provides for approval of the use of airstrips at Saline Valley Warm Springs, designating campsites at the Warm Springs, specifies acquisition of private land or mineral interests only in sensitive habitats, and phases out the concession operation at Stovepipe Wells.

Comments

Printed or CD–ROM copies of the DEIS are available for public review at park headquarters, as well as at many public libraries and federal offices in southern California and southern Nevada. In addition, the document is posted on the internet at www.nps.gov/deva. Inquiries and comments on the DEIS should be directed to: Superintendent, Death Valley National Park, Furnace Creek, California 92328. The telephone number for the park is (760) 786–2331. All written comments must be postmarked not later than 90 days after publication of a notice of filing of the DEIS/GMP in the **Federal Register** by the Environmental Protection Agency.

Public Meetings

The NPS will host a series of open houses to provide interested individuals and organization representatives an opportunity to express concerns, ask questions, view large scale maps and engage in dialogue about the range or content of alternatives. Specific details will be available at the internet site identified above or by calling the park. This dialogue is intended to provide additional guidance to the NPS in preparing a final EIS and plan amending the GMP and LPP. Written comments will also be accepted at these workshops. All workshops are scheduled for 6:00–9:00 p.m., as follows:

Monday, Oct. 19, Doubletree Inn, 191 Los Robles, Pasadena, CA
Tuesday, Oct. 20, Harvey House (Santa Fe Depot), 685 First St., Barstow, CA
Wednesday, Oct. 21, Hilltop Hotel, 2000 Ostrems Way, San Bernardino, CA
Thursday, Oct. 22, Needles Community Senior Center, 1699 Bailey Ave., Needles, CA
Friday, Oct. 23, Enterprise Public Library, 25 E. Shelbourne Ave., Las Vegas, NV
Saturday, Oct. 24, Baker Senior Center, 73730C Baker Blvd., Baker, CA

Tuesday, Oct. 27, Death Valley Natl Park, Visitor Center Auditorium, Furnace Creek, CA
Wednesday, Oct. 28, Eastern Sierra Fairgrounds, Sierra St. & Fair Dr., Bishop, CA
Thursday, Oct. 29, Boulder Creek RV Park, Hwy 395 (5mi s. of Lone Pine), Lone Pine, CA
Friday, Oct. 30, Ridgecrest Public Library, 131 E. Las Flores, Ridgecrest, CA

Decision

Following the formal DEIS review period all written comments received will be considered in preparing a final plan. Currently the Final EIS and GMP/LPP are anticipated to be completed during spring 1999. Their availability will be similarly announced in the **Federal Register**. Subsequently a Record of Decision would be approved by the Regional Director, Pacific West Region, no sooner than 30 (thirty) days after release of the Final EIS. The responsible officials are the Regional Director, Pacific West Region, and the Superintendent, Death Valley National Park.

Dated: August 31, 1998.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 98–24597 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service Draft Environmental Impact Statement General Management Plan; Mojave National Preserve, San Bernardino County, CA; Notice of Availability

Summary

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended), the National Park Service (NPS), Department of the Interior, has prepared a Draft Environmental Impact Statement (DEIS) identifying and evaluating potential impacts of a proposed General Management Plan (GMP) for Mojave National Preserve. Mojave is a new unit of the National Park System, established by Congress on October 31, 1994, by the California Desert Protection Act. The DEIS also includes a draft Land Protection Plan (LPP) that addresses management options for non-federal lands that exist inside the preserve boundary. This planning document and DEIS were initiated as a component of the Northern and Eastern Mojave Planning Effort, a coordinated interagency project involving the NPS, Bureau of Land Management, and U.S. Fish and Wildlife Service. The DEIS identifies and evaluates potential environmental consequences of a proposed action and two alternatives; appropriate mitigations are addressed. No significant adverse environmental impacts are anticipated. The GMP will serve as the initial overall management strategy for the next 10–15 years under which more detailed activity or implementation plans are prepared.

Proposal

This DEIS presents the proposed management approach and two alternatives for the management of the 1.6 million-acre Mojave National Preserve (Preserve) in the northeastern Mojave Desert in California. The proposed action (Alternative 1) envisions the Preserve as a natural environment and a cultural landscape, where the protection of native desert ecosystems and processes is assured for future generations. The protection and perpetuation of native species in a self-sustaining environment is a primary long-term goal. The proposal seeks to manage the Preserve to perpetuate the sense of discovery and adventure that currently exists. This includes minimizing development inside the Preserve (including proliferation of signs, new campgrounds, and interpretive exhibits) and fulfilling wilderness stewardship obligations. The NPS would look to adjacent communities to provide most support services (food, gas, and lodging) for visitors. The proposal seeks to provide the public, consistent with the NPS mission, with maximum opportunities for roadside camping, backcountry camping and appropriate access via existing roads. The proposal would seek funding for the complete historic restoration of the Kelso Depot and its use as a museum and interpretive facility. A balance is struck between the NPS mission of resource preservation and other mandates from Congress, such as maintaining grazing, hunting, and mining under NPS regulations and continuing the existence of major utility corridors. The proposal would maintain the ability of private landowners inside the boundary of the Preserve to maintain their current way of life, while seeking funding to purchase property from willing sellers where proposed uses conflict with the primary mission of preserving resources. Nearly 230,000 acres within the Preserve are in nonfederal ownership.

Alternatives

In addition to the proposal, the two alternatives described and analyzed are existing management (no action) and an optional management approach. The existing management alternative (Alternative 2) describes the continuation of current management strategies. It is commonly referred to as the no-action or status quo alternative. Under this alternative, existing visitor and administrative support services and facilities would be maintained in their current locations. There would be few improvements in existing structures and there would be no change in road maintenance, although some roads might be improved if funding became available. No significant change in current accommodations to recreation use would occur. Protection of Kelso Depot from fire, earthquakes and vandalism would be provided if funding could be obtained, but it would not be restored. Land acquisition would focus on obtaining minimum funds to acquire property from willing sellers and properties where uses conflict with the Preserve mission. The optional approach (Alternative 3) provides for an increase in the facilities and services provided for public enjoyment. A small visitor contact building might be built at Kelso to provide information. Land would be acquired in sensitive areas and wilderness.

Comments

Printed or CD–ROM copies of the DEIS are available for public review at park headquarters, as well as at many public libraries in southern California and southern Nevada. In addition, the document is posted on the internet at www.nps.gov/moja. Inquiries and comments on the DEIS should be directed to: Superintendent, Mojave National Preserve, 222 E. Main St., Suite 202, Barstow, California 92311. The telephone number for the preserve is (760) 255–8800. All written comments must be postmarked not later than 90 days after publication of a notice of filing of the DEIS in the **Federal Register** by the Environmental Protection Agency.

Public Meetings

The NPS will host a series of open houses to provide interested individuals and organization representatives an opportunity to express concerns, ask questions, view large scale maps and engage in dialogue about the range or content of alternatives. Specific details will be available at the internet site identified above or by calling the Preserve. This dialogue is intended to provide additional guidance to the NPS in preparing the Final EIS and GMP/LPP. Written comments will also be accepted at these workshops. All

workshops are scheduled for 6:00–9:00 p.m., as follows:

Monday, Oct. 19, Doubletree Inn, 191 Los Robles, Pasadena, CA
Tuesday, Oct. 20, Harvey House (Santa Fe Depot), 685 First St., Barstow, CA
Wednesday, Oct. 21, Hilltop Hotel, 2000 Ostrems Way, San Bernardino, CA
Thursday, Oct. 22, Needles Community Senior Center, 1699 Bailey Ave., Needles, CA
Friday, Oct. 23, Enterprise Public Library, 25 E. Shelbourne Ave., Las Vegas, NV
Saturday, Oct. 24, Baker Senior Center, 73730C Baker Blvd., Baker, CA
Tuesday, Oct. 27, Death Valley Natl Park, Visitor Center Auditorium, Furnace Creek, CA
Wednesday, Oct. 28, Eastern Sierra Fairgrounds, Sierra St. & Fair Dr., Bishop, CA
Thursday, Oct. 29, Boulder Creek RV Park, Hwy 395 (5mi s. of Lone Pine), Lone Pine, CA
Friday, Oct. 30, Ridgecrest Public Library, 131 E. Las Flores, Ridgecrest, CA

Decision

Following the formal DEIS review period all written comments received will be considered in preparing a final plan. Currently the Final EIS and GMP/LPP are anticipated to be completed during spring 1999. Their availability will be similarly announced in the **Federal Register**. Subsequently a Record of Decision would be approved by the Regional Director, Pacific West Region, no sooner than 30 (thirty) days after release of the Final EIS. The responsible officials are the Regional Director, Pacific West Region and the Superintendent, Mojave National Preserve.

Dated: August 31, 1998.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 98–24596 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

Appalachian National Scenic Trail; Notice of Realty Action

AGENCY: National Park Service, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice announces a proposed exchange of federally-owned lands for privately-owned lands both of which are located at the intersection of Miller Hill Road with the Taconic Parkway in the Town of East Fishkill, Dutchess County, New York. The proposed exchange will provide a much safer crossing of the Taconic Parkway for hikers on the Appalachian Trail. It will also provide for the construction of a new interchange which will include an overpass for the Taconic Parkway.

I. The following described Federally-owned land which was acquired by the National Park Service, has been determined to be suitable for disposal by exchange. The selected Federal land is within the protective corridor for the Appalachian National Scenic Trail. The land has been surveyed for cultural resources and endangered and threatened species. These reports are available upon request.

Fee ownership of the following federally owned property is to be exchanged: Tract 727–34, is a 1.14 acre portion of the land acquired by the United States of America by three deeds, each recorded at the Orange County Clerk's Office in Book 1531, Page 710, Book 1528, Page 679, and Book 1960, Page 140. Conveyance of the land by the United States will be done by a Quitclaim Deed and will include a reservation for the footpath of the Appalachian National Scenic Trail.

II. In exchange for the land described in Paragraph I above, the State of New York will convey to the United States of America a 2.19 acre parcel of land and a right-of-way easement for pedestrian travel over a 0.08 of an acre parcel of land lying adjacent to federal lands for inclusion within the boundaries of the Appalachian National Scenic Trail. Acquisition of this property will provide permanent protection for the Appalachian Trail. There are no leases that affect the property. Both the surface and mineral estates are to be exchanged. Fee simple title, subject to a reservation for the Appalachian Trail, is to be conveyed by the United States in exchange for the conveyance of all right, title and interest of the State in the 2.19 acre parcel of land together with the pedestrian right-of way easement. This land will be administered by the National Park Service as a part of the Appalachian National Scenic Trail upon completion of the exchange.

The land and interest in land to be acquired by the United States of America are described as follows: Tract 272–35, being a portion the land acquired by the State of New York by deed recorded in the Dutchess County Deed Book 535, Page 25. Conveyances to the United States will be done by Letters Patent. The value of the properties exchanged shall be determined by current fair market value appraisals and if they are not appropriately equal, the values shall be equalized as circumstances require.

SUPPLEMENTARY INFORMATION: The authority for this exchange is Section 5(b) of the Land and Water Conservation Fund Act Amendments in Public Law 90–401, approved July 15, 1968, and Section 7(f) of the National Trails System Act, Public Law 90–543, as amended.

Detaild information concerning this exchange including precise legal descriptions, Land Protection Plan and cultural reports, are available at the Appalachian Trail Land Acquisition Field Office, at the address listed below.

For a period of 45 days from the date of this notice, interested parties may submit written comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION, CONTACT: Chief, Acquisition Division, National Park Service, AT/LAFO, P.O. Box 908, Martinsburg, WV 25402–0908, (304) 263–4943.

Dated: August 24, 1998.

Pamela Underhill,

Park Manager, Appalachian National Scenic Trail.

[FR Doc. 98–24532 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–70–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–117]

NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Propulsion Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Propulsion Systems Subcommittee meeting.

DATES: Tuesday, November 17, 1998, 8:00 a.m. to 4:30 p.m., Wednesday, November 18, 1998, 8:00 a.m. to 4:30 p.m., and Thursday, November 19, 1998, 8:00 a.m. to 3:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lewis Research Center, Building 3, Room 215, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Carol J. Russo, National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–2965.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview
—Propulsion Systems Program Base R&T Review
—Focus Program Review
—Roadmaps Review
—Strategic Management Issues

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: September 8, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–24563 Filed 9–11–98; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443–LA–2; ASLBP No. 98–751–07–LA]

North Atlantic Energy Service Corporation; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

North Atlantic Energy Service Corporation; Seabrook Station Unit No. 1

This Board is being established pursuant to the request for hearing submitted by Robert A. Backus on behalf of the Seacoast Anti-Pollution League and the New England Coalition on Nuclear Pollution. The petition opposes the issuance of a license amendment to North Atlantic Energy Service Corporation for Seabrook Station Unit No. 1 that would revise Technical Specifications on the frequency of surveillance requirements to accommodate 24-month fuel cycles that are currently performed at 18-month or other specified outage intervals.

A notice of the proposed amendment was published in the **Federal Register** at 63 Fed. Reg. 43200, 43205 (August 12, 1998).

The Board is comprised of the following administrative judges:

B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Linda W. Little, 5000 Hermitage Drive, Raleigh, NC 27612

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 C.F.R. § 2.701.

Issued at Rockville, Maryland, this 8th day of September 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–24564 Filed 9–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corporation; Wisconsin Power and Light Company; Madison Gas and Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–43 issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, Madison Gas and Electric Company (the licensee) for operation of the Kewaunee Nuclear Power Plant located in Kewaunee County, WI.

The proposed amendment would reduce the maximum allowable level of reactor coolant system (RCS) specific activity (dose equivalent Iodine-131). This change is based on Generic Letter 95–05, and, as described therein, provides a means of accepting higher projected leak rates for steam generator tubes while still meeting offsite and control room dose criteria. The proposed amendment also includes a change to the secondary coolant activity level for which an increased sampling frequency applies. The latter change is consistent with a previously approved amendment. These changes were previously noticed (63FR25119) and are being renoticed because the licensee has revised the application so as to further reduce the RCS specific activity limit.

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.

The Commission has made a proposed determination 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; (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:

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated.

The change implements a more restrictive reactor coolant system (RCS) activity limit. Specific RCS activity is an initial plant condition and, therefore, is not an accident initiator and can not cause the occurrence of or increase the probability of an accident. The change also lowers the curve of Figure TS 3.1–3 which restricts operation with high specific activity. The new value for specific activity is justified by the Westinghouse calculation which demonstrates acceptable offsite and control room doses following a main steam line break (MSLB) with a maximum allowable primary to secondary leak rate. By lowering the RCS specific activity and maintaining leakage within the projected maximum allowable, 10 CFR 100 and GDC 19 criteria are satisfied. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to the RCS specific activity limit will not significantly affect operation of the plant nor will it alter the configuration of the plant. There will be no additional challenges to the main steam system or the reactor coolant system pressure boundary and no new failure modes are introduced. Therefore, the proposed change will not create the possibility of a new or

different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety.

Reduction of the RCS specific activity limit allows an increase in the MSLB allowable primary to secondary leakage. The net effect is no reduction in the margin of safety provided by 10 CFR 100 and GDC 19 criteria. The maximum allowable leakage is the leakage limit for projected steam generator (SG) leakage following SG tube inspection and repair. Reducing specific activity to increase projected leak rate follows guidance given by GL 95–05 and effectively takes margin available in the specific activity limits and applies it to the projected SG leak rate. This has been determined to be an acceptable means for accepting higher projected leak rates while still meeting the applicable limits of 10 CFR 100 and GDC 19 criteria with respect to offsite and control room doses. Additionally, monitoring of the specific activity and compliance with the required actions remains unchanged. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

For consistency, the value of secondary coolant activity for which an increased sampling frequency applies, is being corrected from 1.0 microcurie/gram to 0.1 microcurie/gram. This is consistent with a previously submitted and approved amendment, therefore, no significant hazards exist for this change.

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 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 14, 1998, 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, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001. 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 party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.

Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 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 Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497, 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 April 8, 1998, as modified by letter dated August 27, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Dated at Rockville, Maryland, this 9th day of September 1998.

For the Nuclear Regulatory Commission.

William O. Long,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–24568 Filed 9–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation, et al.; Catawba Nuclear Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Energy Corporation, et al. (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend the Catawba Facility Operating Licenses (FOLs) for Units 1 and 2 and to revise the Catawba Technical Specifications (TSs) to be consistent with the Improved Standard Technical Specifications (ITS) conveyed by NUREG–1431 (April 1995).

The proposed action is in response to the licensee's application dated May 27, 1997, which was supplemented by letters dated March 9, March 20, April 20, June 3, June 24, July 7, July 21, and August 5, 1998.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of the TSs. The Commission's "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors" (52 FR 3788, February 6, 1987), and later the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors" (58 FR 39132, July 22, 1993), formalized this need. To facilitate the development of individual improved TSs, each reactor vendor owners group (OG) and the NRC staff developed standard TS (STS). For Westinghouse plants, the STS are published as NUREG–1431, and this document was the basis for the new Catawba Unit 1 and Unit 2 TSs. The NRC Committee to Review Generic Requirements reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion to the STS by operating plants.

Description of the Proposed Change

The proposed revision to the TSs is based on NUREG–1431 and on guidance provided in the Final Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TSs. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the existing TSs were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters with the OG.

The proposed changes from the existing TSs can be grouped into four general categories, as follows:

1. Nontechnical (administrative) changes, which were intended to make the ITS easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformatting of requirements without affecting technical content. Every section of the Catawba TSs has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG–1431 as guidance to reformat and make other administrative changes.

2. Relocation of requirements, which includes items that were in the existing Catawba TSs. The TSs that are being relocated to licensee-controlled documents are not required to be in the TSs under 10 CFR 50.36 and do not meet any of the four criteria in the Commission's Final Policy Statement for inclusion in the TSs. They are not needed to obviate the possibility that an abnormal situation or event will give rise to an immediate threat to public health and safety. The NRC staff has concluded that appropriate controls have been established for all of the current specifications, information, and requirements that are being moved to licensee-controlled documents. In general, the proposed relocation of items in the Catawba TSs to the Updated Final Safety Analysis Report, appropriate plant-specific programs, procedures, and ITS Bases follows the guidance of NUREG–1431. Once these items have been relocated by removing them from the TSs to licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms, which provide appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed Catawba ITS items that are either more conservative than corresponding requirements in the current Catawba TSs, or are additional restrictions that are not in the existing Catawba TSs but are contained in

NUREG–1431. Examples of more restrictive requirements include: placing a limiting condition for operation on plant equipment that is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing Catawba TSs that provide little or no safety benefit and place unnecessary burdens on the licensee. These relaxations were the result of generic NRC actions or other analyses. They have been justified on a case-by-case basis for Catawba and will be described in the staff's Safety Evaluation to be issued in support of the license amendments.

In addition to the changes previously described, the licensee proposed certain changes to the existing TSs that deviated from the STS in NUREG–1431. These additional proposed changes are described in the licensee's application and in the staff's Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing (63 FR 25106, 63 FR 27760, 63 FR 40553). Where these changes represent a change to the current licensing basis for Catawba, they have been justified on a case-by-case basis and will be described in the staff's Safety Evaluation to be issued in support of the license amendments.

Environmental impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.

Changes that are adminstrative in nature have been found to have no effect on the technical content of the TSs, and are acceptable. The increased clarity and understanding these changes bring to the TSs are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which ensures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1431 and the Final Policy Statement, and, therefore, are acceptable.

Changes involving more restrictive requirements have been found to be acceptable and are likely to enhance the safety of plant operations.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burdens on the licensee, their removal from the TSs was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for Catawba. Generic relaxations contained in NUREG–1431 as well as proposed deviations from NUREG–1431 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TSs was found to provide control of plant operations such that reasonable assurance will be provided so that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the request for the amendments. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of Catawba Nuclear Station, Unit 1 and Unit 2.

Agencies and Persons Consulted

In accordance with its stated policy, on August 25,1998, the staff consulted with the South Carolina State official, Mr. Virgil Autry, Director, Division of Radioactive Waste Management. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, pursuant to 10 CFR 51.31 and 51.32, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the licensee's letter dated May 27, 1997, which was supplemented by letters dated March 9, March 20, April 20, June 3, June 24, July 7, July 21, and August 5, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 8th day of September 1998.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–24566 Filed 9–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8912]

Grace Estate

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact and notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–1480 to authorize the licensee, the estate of Michael P. Grace (Grace Estate), to perform radiological cleanup and surface reclamation of three non-

operating uranium extraction sites in New Mexico. Site 1 is located approximately 20 miles northeast of Gallup, New Mexico. Site 2 is located near Bibo, New Mexico. Site 3 is located approximately 20 miles northwest of Magdalena, New Mexico. This license currently authorizes the Grace Estate to possess, at the three sites, byproduct material in the form of uranium waste tailings, as well as other radioactive wastes generated by past operations. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of the Grace Estate's license amendment request, in accordance with the requirements of Title 10, Code of Federal Regulations (10 CFR) Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Ken Hooks, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301/415–7777. E-mail: KRH1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

Three sites in New Mexico, which were once uranium extraction sites, and are no longer in operation, are now administered by the Estate of Michael P. Grace (licensee). The estate is represented by Jon J. Indall of Comeau, Maldegen, Templeman and Indall, LLP, in Santa Fe, New Mexico. Site 1, approximately 3 acres, was an in situ leach operation approximately 20 miles northeast of Gallup, New Mexico. Site 2, approximately 11 acres, was an in situ leach operation near Bibo, New Mexico. Site 3, approximately 160 acres, was a heap leach operation located approximately 20 miles northwest of Magdalen, New Mexico.

The licensee proposes to reclaim the sites by plugging or capping existing wells and removing the contaminated material at each of the three sites for disposal at an existing uranium mill and tailings site licensed by the NRC. The estimated amount of contaminated material to be removed during the radiological cleanup is 6 cubic yards at each of Sites 1 and 2, and 800 cubic yards at Site 3. The sites will be cleaned up to the extent necessary to comply with regulatory standards. Subsequent to verification of the radiological cleanup, excavated areas will be filled with local material, regraded to approximate original contours, and planted with native grasses. Wells on the three sites will be plugged or capped for future use for livestock watering in accordance with State of New Mexico requirements.

The Environmental Assessment

The NRC staff performed an assessment of the environmental impacts associated with the radiological cleanup of the three Grace Estate sites, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. In conducting its assessment, the NRC staff considered amending the license to allow radiological cleanup of the sites, and denying the amendment. The staff also consulted with the New Mexico Environment Department, the New Mexico State Historical Preservation Officer, and the U.S. Fish and Wildlife Service. The technical aspects of the reclamation plan are discussed separately in a Technical Evaluation Report (TER) that will accompany the final agency licensing action.

Environmental Assessment Conclusions

The results of the staff's assessment are documented in an Environmental Assessment placed in the docket file. Based on its review, the NRC staff determined that the proposed radiological cleanup of the three sites and disposal of the contaminated material at a licensed uranium mill and tailings site can be accomplished with no significant environmental impacts or effects on worker or public health and safety, and is consistent with Criterion 2 of 10 CFR 40, Appendix A.

Because the staff has determined that there will be no significant impacts associated with approval of the license amendment, there can be no disproportionally high and adverse effects or impacts on minority and low income populations. Consequently, further evaluation of Environmental Justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Revision 1, is not warranted.

Alternatives to the Proposed Action

Denial of the proposed action would result in the contaminated material remaining on the sites and the continued existence of whatever hazards may be due to the material, or the material being reclaimed in place. On-site reclamation would result in the sites being placed under State of New Mexico or U.S. Department of Energy control for long-term surveillance and monitoring, with possible future maintenance requirements, requiring continuing expenditure of funds and no significant reduction in effects on the environment or worker or public health and safety.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed amendment of NRC Source Material License SUA–1480. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant and, therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building (lower level), 2120 L Street NW., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served by delivering it personally, or by mail, to:

(1) The applicant, Estate of Michael P. Grace, in care of Jon J. Indall, Comeau, Maldegen, Templeman & Indall, LLP, Coronado Building, 141 E. Palace Avenue, Post Office Box 669, Santa Fe, New Mexico 87504–0669.

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays; or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing request that is granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 8th day of September 1998.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–24569 Filed 9–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Twenty-Sixth Water Reactor Safety Information Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Twenty-Sixth Water Reactor Safety Information Meeting will be held on October 26–28, 1998, 8:30 a.m. to 5:00 p.m. in the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland.

The Water Reactor Safety Information Meeting will be opened by NRC Chairman Shirley Ann Jackson as the keynote speaker for the plenary session on Monday, October 26, 1998 at 8:30 a.m. and Commissioner Diaz will speak at lunch. There will be a panel discussion on Tuesday morning, October 27, 1998 at 8:30 a.m. which will focus on the Future of Research. Carlos Vitanza will be Tuesday's luncheon speaker presenting an overview of the OECD Halden Reactor Project and main issues for the year 2000 and beyond.

This meeting is international in scope and includes presentations by personnel from the NRC, U.S. Government, laboratories, private contractors, universities, the Electric Power Research Institute, reactor vendors, and a number of foreign agencies. This meeting is sponsored by the NRC and conducted by the Brookhaven National Laboratory.

The preliminary agenda for this year's meeting includes 12 sessions, along with the panel discussions, on the following topics: Pressure Vessel Research, Severe Accidents Research and Fission Product Behavior, Nuclear Materials Issues and Health Effects Research, Materials Integrity Issues, Digital Instrumentation and Control, Structural Performance, The Halden Program, PRA Methods and Applications, Thermal Hydraulic Research, Plant Aging (2 sessions), and High Burn-up Fuel.

Those who wish to attend may register at the meeting or in advance by contacting Susan Monteleone, Brookhaven National Laboratory, Department of Nuclear Energy, Building 130, Upton, NY 11973, telephone (516) 344–7235; Sandra Nesmith (301) 415–6437, or Christine Bonsby (301) 415–5838, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 2nd Day of September, 1998.

For the Nuclear Regulatory Commission.

Alois J. Burda,

Deputy Director, Financial Management, Procurement and Administration Staff, Office of Nuclear Regulatory Research.

[FR Doc. 98–24565 Filed 9–11–98; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Procedures for Implementing the National Environmental Policy Act

AGENCY: The Presidio Trust.

ACTION: Interim policy statement and notice of availability.

SUMMARY: This notice announces the Presidio Trust's adoption of interim procedures and guidelines for implementing the National Environmental Policy Act of 1969 (NEPA).

The Presidio Trust assumed administrative jurisdiction of approximately 80% of the Presidio of San Francisco by transfer from the National Park Service on July 1, 1998. The National Park Service has adopted and ordinarily follows certain procedures and guidelines in fulfilling its obligations under NEPA, including the current versions of "Standard Operating Procedure 601" and "NPS–12: National Environmental Policy Act Guidelines." In consultation with the Council on Environmental Quality, the Presidio Trust has adopted these National Park Service procedures and guidelines as its own interim procedures and guidelines for implementing NEPA, to the extent that the National Park Service procedures and guidelines do not conflict with the Presidio Trust Act or regulations of the Presidio Trust. These interim procedures and guidelines will remain in effect until such time as the Presidio Trust adopts final procedures and guidelines implementing NEPA.

The Presidio Trust has adopted these interim procedures and guidelines pursuant to the Presidio Trust Act (Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note)), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and regulations of the Council on Environmental Quality (40 CFR 1507.3).

Copies of these procedures and guidelines, as well as the Presidio Trust's resolution adopting them, are available upon request to the Presidio Trust.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415/561–5300.

Dated: August 27, 1998.

Karen A. Cook,

General Counsel.

[FR Doc. 98–24495 Filed 9–11–98; 8:45 am]

BILLING CODE 4310–4R–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40407; File No. SR–CHX–98–19]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 and Amendment No. 2 to Proposed Rule Change Relating to the Qualification by Market Makers for Exempt Credit

September 4, 1998.

I. Introduction

On July 2, 1998, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange")

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 thereunder,[2] a proposed rule change to amend an interpretation to Article XXXIV, Rule 26 of the CHX Rules relating to registered market makers' eligibility to receive exempt credit. The proposed rule change was published for comment in the **Federal Register** on August 4, 1998.[3] On July 24, 1998, the Exchange filed Amendment No. 1.[4] On August 28, 1998, the Exchange filed Amendment No. 2.[5] The Commission received no comments on the proposal. This order approves the proposed rule change. Also Amendment Nos. 1 and 2 are approved on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to modify an interpretation regarding the use of exempt credit by market makers.[6] Interpretation .01 to Article XXXIV, Rule 16 sets forth certain requirements that must be met for market makers to be eligible to receive market maker exempt credit for financing their market maker transactions. Currently, one requirement for receiving market maker exempt credit for a particular issue is that 50% of the quarterly share volume in that issue recorded in a market maker account must result from transactions consummated on the Exchange or sent from the Exchange floor for execution in another market via the Intermarket Trading System.[7]

The proposed rule change will include in the Interpretation the consequences for failing to meet the 50% requirement. The proposed rule change would suspend a market maker's eligibility to receive market maker exempt credit in the calendar quarter immediately following the calendar quarter in which a violation occurred for all issues in which the 50% requirement was not meet (a "non-qualifying issue").[8]

At the beginning of every calendar quarter, the Exchange will notify market makers who failed to meet the 50% test for a particular issue or issues during the previous quarter. Market makers who are so notified by the Exchange must notify their lender in writing, with a copy of the Exchange, within three trading days of receiving such notification from the Exchange, that they are not entitled to market maker exempt credit for non-qualifying issues for remainder of the current quarter. If the lender is unable to distinguish between issues or is unable to verify that exempt credit is not being granted in non-qualifying issues, such market makers must transfer, within three tradings days of the date the lender receives notification, all non-qualifying issues in their V-account to an account not entitled to market maker exempt credit and confirm with the Exchange that such action has been taken. Members that are not using market maker exempt credit and confirm with the Exchange that such action has been taken. Members that are not using market maker exempt credit must notify the Exchange of such in writing within three tradings days of receiving notification and ask their lender to verify the same with the Exchange.

Once an issue becomes a non-qualifying issue for a market maker, the issue will remain a non-qualifying issue for one calendar quarter. At the end of that quarter, the market maker would be permitted to seek market maker exempt credit for the issue beginning the following quarter (assuming the market maker complies with all of the other requirements in Interpretation .01). If the market maker again fails to meet the 50% requirement for that issue, the issue will again become a non-qualifying issue.[9] A market maker that exhibits chronic non-compliance with the 50% threshold may be subject to disciplinary action by the Exchange.

III. Discussion

After careful review, 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. The Commission believes that the proposed rule change is consistent with Section 6 of the Act, in general,[10] and Section 6(b)(5),[11] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating and 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.[12]

The Commission believes that registered market makers on the Exchange serve an important function inasmuch as they add depth and liquidity to the market for CHX-traded securities. Pursuant to Article XXXIV of the CHX Rules, market makers are subject to both affirmative and negative obligations,[13] and, in return, are accorded certain privileges, including exempt credit financing.[14] Accordingly,

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40270 (July 28, 1998), 63 FR 41610.

[4] The substance of this amendment is incorporated into this order. *See* Letter from David T. Rusoff, Counsel, Foley & Lardner, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 23, 1998 ("Amendment No. 1").

[5] The substanco of this amendment is incorporated into this order. *See* Letter from Patricia L. Levy, Senior Vice President and General Counsel, CHX, to Karl Varner, Attorney, Division, Commission, dated August 27, 1998 ("Amendmant No. 2").

[6] In Amendment No. 2 tha Exchanga modified tha rule language to account for Regulation T and Exchanga rules. As previously drafted, the rule would have prohibited a market maker from utilizing exempt credit for all non-qualifying issues, even if exempt credit is otherwise available under Regulation T. Regulation T permits the use of exempt credit for certain broker-dealers irrespective of whether the broker-dealer is a market maker. Amendment No. 2 makes clear that once a market maker has been notified by the Exchanga that an issue is a non-qualifying issue the procedures prohibit tha market maker from receiving exempt credit in a markat making account, but the market maker remains eligible to receive exempt credit under non-markat maker accounts as provided by Regulation T and Exchange rules.

[7] Securities Exchange Act Release No. 40016 (May 20, 1998), 63 FR 29276 (May 28, 1998) and Sacurities Exchange Act Releasa No. 40152, (July 1, 1998), 63 FR 37159 (July 9, 1998) (clarifying the prior approval order).

[8] In the event that a member registers as a market maker at any time during a calendar quarter, the fifty percent requirement would apply from tha date of registration to the end of that quarter.

[9] In order to clarify the quarterly transition from a non-qualifying issue to a qualifying issua the Exchange offers tha following exampla in Amendment No. 1:

Suppose a market is eligibla to receiva market maker exempt credit in Stock A on January 1. Suppose further that on March 31, at the end of the quarter, the market maker has not met the 50% threshold. Then, Stock A will be a non-qualifying issue from the date upon which lender notification is required through June 30th. On July 1, tha member would onca again be eligible to receiva market maker exempt credit for Stock A (so long as other requirements of Interpretation .01 are met). If tha member is notified that he did not meet the 50% threshold for the quarter ending September 30th, the issue would then become a non-qualifying issue again from the date upon which lender notification is required until December 31st. On January 1 of the following yaar, the process would start all over again.

[10] 15 U.S.C. 78f.

[11] U.S.C. 78f(b)(5).

[12] In approving this rule, the Commission has considered tha proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] For example, under Articla XXXIV, a registered market maker on the Exchange has the duty to maintain fair and orderly markets in assigned issues (Rule 1); the duty to execute at least 50% of quarterly share volume in assigned issues (Rula 3); and tha duty to register separately for each security to be traded as a market maker (Rule 4).

[14] Under tha faderal securities laws and the Exchanga's Rules as set forth in Articla XXXIV,

Continued

the Commission believes it is appropriate for the Exchange to temporarily discontinue a privilege if the market maker fails to meet the minimum threshold of an affirmative obligation upon which the privilege is based.

The proposed rule change permits the Exchange to suspend a market maker's eligibility to receive market maker exempt credit in the calendar quarter immediately following the calendar quarter in which a violation occurred for all issues in which the 50% requirement was not met. The Exchange's ability to discipline market makers for failure to meet minimum quarterly share volume requirement should help ensure greater market maker compliance with the rule in the future. The Commission believes that greater compliance with the 50% minimum quarterly share volume should enhance the quality of the market for CHX-traded securities, and in turn foster investor confidence and participation in the market as well as protect investors and the public interest.

The Commission finds good cause for approving proposed Amendments Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 merely clarifies the quarterly transition from a qualifying to a non-qualifying issue by means of an example.[15] Amendment No. 2 clarifies that a market maker who does not achieve the 50% minimum quarterly share volume, while ineligible for market maker exempt credit, may still be eligible for other forms of exempt credit pursuant to Regulation T and Exchange Rules.[16] Amendment Nos. 1 and 2 have no substantive or procedural effect on the application of the proposed rule change, and serve to obviate potential confusion in the administration of the proposed rule change for Exchange officials, Exchange members and investors alike. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

Interested persons are invited to submit written data, views and arguments concerning Amendments Nos. 1 and 2, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–98–19 and should be submitted by October 5, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CHX–98–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–24524 Filed 9–11–98; 8:45 am]

BILLING CODE 8010–01–M

market makers are also granted special treatment and exemptions from requirements regarding net capital, position financing, and short sales for transaction effected during the course of bona fide market making.

[15] *Supra,* note 9.

[16] *Supra,* note 6.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40405; File No. SR–CHX–98–18]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Exchange's Withdrawal of Capital Provisions

September 4, 1998.

I. Introduction

On June 26, 1998, the Chicago Stock Exchange, Inc. ("CHX"or "Exchange") 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 thereunder,[2] a proposed rule change to amend Article II, Rule 6(b) of the Exchange's rules relating to the Exchange's Withdrawal of Capital provisions. The proposed rule change was published for comment in the **Federal Register.** on August 4, 1998.[3] The Commission received no comments on the proposal.

II. Description of the Proposal

The Exchange proposes to amend Article II, Rule 6(b) of the Exchange's rules in order to limit the applicability of the Exchange's Withdrawal of Capital provisions to member firms for which the Exchange is the Designated Examining Authority ("DEA"). The Exchange's Withdrawal of Capital provisions limit the ability of a partner in a member firm to withdraw capital from the firm. Currently, this requirement applies to both member firms for which the Exchange is the DEA as well as firms subject to examination by a self-regulatory organization ("SRO") other than the Exchange, if the member firm's DEA does not have a comparable rule. The proposed rule change would eliminate this requirement for all member firms for which the Exchange is not the DEA.

II. Discussion

After careful review, 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. The Commission believes that the proposed rule change is consistent with Section 6 of the Act, in general,[4] and Section 6(b)(5),[5] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating and 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.[6] The Commission believes that the proposed rule change will not disturb the financial protections the CHX has in place ensure investor protection, the public interest, or the integrity of the Exchange's markets. CHX member firms, for which the Exchange is the DEA, will still be required to maintain adequate capital reserves. Under the proposed rule change the partnership articles of each member firm for which the Exchange is the DEA will still be required to contain provision requiring written approval

[1] 15 U.S.C. 78s(b)(1)(1994).

[2] 17 CFR 240.19b–4 (1998).

[3] Securities Exchange Act Release No. 40271 (July 28, 1998), 63 FR 41609.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

from the Exchange for the capital contribution of any partner to be withdrawn on less than six months' written notice of withdrawal if the notice of withdrawal is given prior to six months after the capital contribution was first made. The Commission also notes that the amended CHX withdrawal of capital rule is identical or very similar to those of other SROs.[7]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–98–18) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–24526 Filed 9–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40404; File No. SR–NYSE–98–11]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change To Amend NYSE Rule 97, "Limitation on Members' Trading Because of Block Positioning," To Except Transactions To Facilitate Certain Customer Stock Transactions or to Rebalance a Member's Index Portfolio

September 4, 1998.

I. Introduction

On March 30, 1998, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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 that would amend Exchange Rule 97 to except transactions made to facilitate certain customer stock transactions or to rebalance a member firm's index portfolio. The proposed rule change was published for comment in the **Federal Register** on May 19, 1998.[3] The Commission received one comment on the proposal.[4] This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change would amend Exchange Rule 97, "Limitation on Members' Trading Because of Block Positioning," to except transactions that facilitate certain customer transactions in: (i) specific stocks within a basket of stocks; (ii) blocks of stock; and (iii) index component stocks. The proposal also would except a member firm's proprietary transactions made to rebalance the member firm's index portfolio.

Exchange Rule 97 currently prohibits a member firm that holds any part of a long stock position in its trading account, which position resulted from a block transaction it effected with a customer, from purchasing for an account in which the block positioning member firm has a direct or indirect interest, additional shares of such stock on a "plus" or "zero plus" tick under certain conditions for the remainder of the trading day on which the member firm acquired the long position. In particular, the member holding the long position cannot purchase on a "plus tick" if the purchase: (1) would result in a new daily high; (2) is within one half hour of the close; or (3) is at a price higher than the lowest price at which any block was acquired in a previous transaction on that day. Moreover, Exchange Rule 97 precludes the member holding the long position from acquiring a position if it entails a purchase on a zero plus tick of more than 50% of the stock offered at a price higher than the lowest price at which any block was acquired in a previous transaction on that day. Under Exchange Rule 97, the term "block" is defined as a quantity of stock having a market value of $500,000 or more that was acquired in a single transaction. Exchange Rule 97 was adopted to address concerns that a member firm might engage in manipulative practices by attempting to "mark-up" the price of a stock to enable the position acquired in the course of block positioning to be liquidated at a profit, or to maintain the market at the price at which the position was acquired.

The restrictions in Exchange Rule 97 presently do not apply to transactions that: (i) involve bona fide arbitrage or the purchase and sale (or sale and purchase) of securities of companies involved in a publicly announced merger, acquisition, consolidation or tender offer; (ii) offset transactions made in error; (iii) facilitate the conversion of options; (iv) are engaged in by specialists in their specialty stocks; or (v) facilitate the sale of a block of stock by a customer. The current exceptions under Exchange Rule 97 permit certain types of purchases that are effected for a permitted purpose, but do not include transactions solely effected to increase the block positioner's position.

The proposed rule change would provide additional exceptions that would apply to purchases made by a block positioning member firm that increase a position to facilitate: (i) the sale of a basket of stocks by a customer;[5] or (ii) an existing customer's order[6] for the purchase of a block of stock, a specific stock within a basket of stocks, or a stock being added to or reweighted in an index, at or after the close of trading on the Exchange. This second proposed provision (Exchange Rule 97(b)(6)) will permit a member organization to position stock to effect a cross with a customer at or after the close. The facilitating transactions effected under proposed Exchange Rule 97(b)(6) must be recorded as such and the transactions in the aggregate may not exceed the number of shares required to facilitate the customer's order for such stock. Finally, the proposal would except proprietary transactions made by a member firm due to a stock's addition to an index or an increase in a stock's weight in an index, provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the member firm's index portfolio.[7]

The Exchange has represented that a member firm's purchases exempted under proposed Exchange Rule 97(b)(6) would remain subject to the limitations on positioning to facilitate customer orders as discussed in Exchange Information Memorandum No. 95–28, "Positioning to Facilitate Customer Orders."[8] These limitations generally preclude a block positioner that has committed to sell securities after the

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[7] *See* American Stock Exchange Rule 300, and New York Stock Exchange Rule 313.

[6] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39981 (May 11, 1998), 63 FR 27609 (May 19, 1998).

[4] *See* Letter from Julius R. Leiman-Carbia, Goldman Sachs & Co., to Jonathan G. Katz, Secretary, Commission, dated June 5, 1998 ("Goldman Letter").

[5] This provision would extend the current exception that applies to a subsequent facilitation trade of block size (Exchange Rule 97(b)(5)) to a facilitation trade of less than block size provided that the stock was part of a basket of stocks being sold by a customer.

[6] The term "existing customer's order" refers to an already existing order of a customer. Thus, the proposal does not provide an exception for anticipatory hedging. Telephone conversation between Agnes Gautier, Vice President, Market Surveillance, Exchange; Richard Strasser, Assistant Director; and Michael Loftus, Attorney, Division of Market Regulation, Commission (June 25, 1998).

[7] Proposed Exchange Rule 97(b)(7).

[8] *See* Securities Exchange Act Release No. 35837 (June 12, 1995), 60 FR 31749 (June 16, 1995).

close to a customer at the closing price from being in the market on a proprietary basis after 3:40 P.M. when it has left a portion of its positioning to be executed at the close, and such at-the-close proprietary order can be reasonably expected to impact the closing price.

The Exchange believes the proposed exceptions to facilitate certain customer transactions are appropriate because these types of transactions are effected to accommodate a customer. The Exchange further believes the proposed exception for member firm proprietary transactions related to a stock's addition to, or increased weight in, an index is appropriate because such purchases are usually made at the close of trading to obtain the closing price of the index and therefore are indifferent to the price level so long as it represents the closing valuation.

The proposal also would expand the Rule's Supplementary Material, Section .10, "Definitions," to provide definitions for "basket" and "index." The term "basket" would be defined as a group of 15 or more stocks having a total market value of $1 million or more.

The Exchange represented that this definition is consistent with the use of "basket" in the definition of program trading that appears in Exchange Rule 80A. The proposal would define "index" as a publicly disseminated statistical composite measure based on the price or market value of the component stocks in a group of stocks. The Exchange believes this definition would preclude the possibility of a firm creating an "index" for the purpose of circumventing the restrictions of the Rule.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change.[9] The commenter supported the proposal. The commenter argued that the current restrictions prevent NYSE members from effectively accumulating principal positions necessary to facilitate a customer's buying interest in basket and index transactions. The commenter concluded that the proposal would enhance the ability of NYSE members to facilitate customers' basket and index transactions.

IV. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be 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.[11]

Exchange Rule 97 is an anti-manipulative rule designed to limit a member firm's trading for its own account for the remainder of a trading day during which it has positioned a block of stock. As the Exchange notes, Exchange Rule 97 was originally intended to prevent member firms from marking up the price of a stock to ensure that a block of such stock, which the member had acquired that day, could be sold at a profit. Exchange Rule 97 also was intended to prevent manipulative transactions by member firms designed to maintain the market at the price at which a block position was acquired.

Certain types of transactions were excepted from Exchange Rule 97's restrictions. The restrictions on Exchange Rule 97 currently do not extend to transactions that: (i) involve bona fide arbitrage or the purchase and sale (or sale and purchase) of securities of companies involved in a publicly announced merger, acquisition, consolidation or tender offer; (ii) offset transactions made in error; (iii) facilitate the conversion of options; (iv) are engaged in by specialists in their specialty stocks; or (v) facilitate the sale of a block of stock by a customer. These exceptions permit market participants to engage in legitimate business transactions, without raising concerns of abusive market practices that Exchange Rule 97 was intended to address.

The Commission believes the Exchange's proposed rule change likewise excepts certain transactions that will permit legitimate business practices without running afoul of the spirit of Exchange Rule 97. The proposal would except member firm transactions from the restrictions of Exchange Rule 97 if they were made to facilitate customers' transactions in: (i) specific stocks within a basket of stocks; (ii) blocks of stock; and (iii) index component stocks. The proposal also would except a member firm's proprietary transactions if they were made to rebalance the member firm's index portfolio. However, consistent with the current exceptions to Exchange Rule 97, the proposal does not include transactions solely effected to increase a member firm's position.

By recognizing the innovative trading strategies employed by member firms and the myriad of facilitation services provided to customers, the Commission believes the proposal will ensure that Exchange Rule 97 remains relevant and does not become unnecessarily restrictive. The Commission notes that the Exchange previously amended Exchange Rule 97 in 1991 to revise the definition of "block".[12] Prior to the amendment, the term block was applied to any single stock transaction valued at more than $200,000. The 1991 amendment revised the dollar threshold to $500,000. In approving the amendment, the Commission stated that the higher dollar threshold was more relevant and that the previous test was unnecessarily restrictive. The Commission believes the Exchange's current proposal is similar to the 1991 amendment in that it modifies Exchange Rule 97 to maintain its relevancy and prevent it from becoming overly restrictive over time while maintaining the important protections that the rule provides.

As the Exchange notes, notwithstanding the narrow exceptions to Exchange Rule 97 in the proposal, members' facilitation transactions continue to be subject to the limitations on positioning to facilitate customer orders as discussed in Exchange Information Memorandum No. 95–28.[13] In particular, member organizations are required to establish and maintain procedures reasonably designed to review facilitation activities for compliance with Exchange rules and federal securities laws. Moreover, it is incumbent on the Exchange in carrying out its regulatory responsibilities with respect to its members to ensure that proper procedures are in place and that they are being enforced in a manner designed to detect and punish violations of Exchange Rule 97, as well as other applicable Exchange rules and the federal securities laws generally.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–98–11) is approved.

[9] *See* Goldman Letter, *supra* note 3.

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See* Securities Exchange Act Release No. 29318 (June 17, 1991), 56 FR 28937 (June 25, 1991).

[13] *See supra* note 8.

[14] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–24525 Filed 9–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40406; File No. SR–Phlx–98–22]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc., Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Phlx Rule 931 Regarding Approved Lessors

September 4, 1998.

I. Introduction

On May 18, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 thereunder,[2] a proposed rule change to amend Phlx Rule 931, "Approved Lessor." On June 8, 1998, the Phlx filed an amendment to the proposal.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on July 15, 1998.[4] No comments were received regarding the proposal.

II. Description of the Proposal

The Phlx proposes to make several amendments to Phlx Rule 931. First, the Phlx proposes to amend Phlx Rule 931 to substitute the word "Exchange" for the word "corporation" throughout the rule. Second, the Phlx proposes to amend Phlx Rule 931(d) to require a lessor who is a natural person to file with the Exchange an attestation as to the source of funds used to purchase the membership. Under Phlx Rule 931(d), as amended, an approved lessor who is not a natural person must file with the Exchange a statement of assets, liabilities and net worth and (1) if a partnership, an executed partnership agreement along with executed Form U–4 for all partners who are natural persons; (2) if a limited liability entity other than a corporation, an executed copy of the operating agreement along with accompanying Form U–4 for all such members who are natural persons; or (3) if a corporation, the corporate articles of incorporation, corporate by-laws, a listing of all officers, directors and shareholders along with accompanying Form U–4s. Third, under new Phlx Rule 931(e) each lessor who is not a natural person is required to submit certain information to the Exchange, including: (1) as of the last business day of each calendar quarter, a list of all limited partners if the lessor is a limited partnership; a membership list if the lessor is a limited liability entity other than a corporation along with any new subscription agreement; and a shareholder list if the lessor is a corporation, and (2) any material change in the corporate or organization's structure within ten days of the change in the structure.

According to the Phlx, the amended rule codifies existing practices of the Exchange's Office of the Secretary and Examinations Department respecting processing of applications for approval as an approved lessor of the Phlx.[5] The proposal will allow the Exchange to monitor any changes in ownership interest respecting the membership or memberships held by approved lessors.[6] The proposal will also allow the Exchange to monitor for any potential statutory disqualifications respecting shareholders, partners and members of limited liability entities by requiring the filing of Form U–4 and amendments to Form U–4 for natural persons as well as various corporate, organizational agreements or partnership interest disclosures for other entities.

III. Discussion

After careful consideration the Commission has determined to approve the proposed rule change. For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(5) and 6(c)(3)(B) of the Act.[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. Section 6(c)(3)(B)[9] provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission believes that the amendments to Phlx Rule 931 will clarify, as well as codify, existing Exchange policy requiring the maintenance of current information for persons associated with member organizations. The proposed rule change should facilitate compliance with the Phlx's registration requirements and help ensure that all persons who are or will be affiliated with a member's securities business are registered with the Phlx. The Commission believes that the amendments to Phlx Rule 931, which should enable the Exchange to (1) monitor changes in ownership interest respecting the membership or memberships held by approved lessors, (2) monitor for any potential statutory disqualifications respecting shareholders, partners and members of limited liability entities, and (3) monitor the source of funds utilized to purchase ownership interests affiliated with the membership or memberships held by approved lessors, are appropriate means for the Exchange to ensure the high standard of competence and integrity required of a person affiliated with a national securities exchange. The

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Murray L. Ross, Esq., Vice President and Secretary, Phlx, to Michael Walinskas, Esq., Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated June 6, 1998 ("Amendment No. 1"). In Amendment No. 1, the Phlx consent to have the proposed rule change published for notice and comment and treated pursuant to Section 19(b)(2) of the Act. In addition, in Amendment No. 1 the Phlx proposes to adopt Commentary .01 to Phlx Rule 931 which will require approved lessors to update any Form U–4 (Uniform application for Securities Industry Registration or Transfer), submitted pursuant to Phlx Rule 931(d), within thirty days of learning that the information contained in Form U–4 has become incomplete or inaccurate. Where an amendment to Form U–4 involves a statutory disqualification as defined in Sections 3(a)(39) and 15(b)(4) of the Act, Commentary .01 will require that the amended Form U–4 be submitted not later than ten days after the statutory disqualification occurs.

[4] Securities Exchange Act Release No. 40180 (July 8, 1998), 63 FR 38223.

[5] Upon approval, an approved lessor of the Phlx must sign a pledge to abide by the constitution, bylaws and rules of the Exchange. Telephone conversation between Murray L. Ross, Esq., Vice President and Secretary, Phlx, and Marc McKayle, Attorney, Division, Commission (August 19, 1998).

[6] Pursuant to Phlx Rule 17, a lessor leases legal title of his membership to a lessee while retaining the equitable title.

[7] 15 U.S.C. 78f(b)(5) and (c)(3)(B).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(c)(3)(B).

Commission also believes that it is appropriate to permit the Exchange to formulate and administer standards of training, experience, competence, and such other membership qualifications as the Exchange may find necessary or appropriate in the public interest or for the protection of investors, subject to Commission oversight and review. Finally, the Commission notes that the requirements of new Phlx Rule 931 are consistent with the purpose of, and similar to, Rules 3.5, 3.6, and 3.9 of the Chicago Board of Options Exchange, and Paragraph 9174 of the American Stock Exchange ("Amex") Constitution and Amex Rules 310 and 311.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR-Phlx-98–22), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 98–24527 Filed 9–11–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2888]

Office of Foreign Missions; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Department of State.

ACTION: 60-Day Notice of Proposed Information Collections; DSP–100, Application for Registration (Mission Vehicle), DSP–101, Application for Registration (Personal Vehicle), DSP–102, Application for Title, DSP–104, Application for Replacement Plates.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collections described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement.

Originating Office: Office of Foreign Missions.

Title of Information Collection: Application for Registration (Mission Vehicle).

Frequency: On occasion.

Form Number: DSP–100.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 2,788.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 1,394.

Type of Request: Reinstatement.

Originating Office: Office of Foreign Missions.

Title of Information Collection: Application for Registration (Personal Vehicle).

Frequency: On occasion.

Form Number: DSP–101.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 9,700.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 4,850.

Type of Request: Reinstatement.

Originating Office: Office of Foreign Missions.

Title of Information Collection: Application for Title.

Frequency: On occasion.

Form Number: DSP–102.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,500.

Type of Request: Reinstatement.

Originating Office: Office of Foreign Missions.

Title of Information Collection: Application for Replacement Plates.

Frequency: On occasion.

Form Number: DSP–104.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 1,000.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 500.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: August 31, 1998.

Fernando Burbano,

Chief Information Officer.

[FR Doc. 98–24530 Filed 9–11–98; 8:45 am]

BILLING CODE 4710–44–M

DEPARTMENT OF STATE

[Public Notice 2886]

The Bureau of Personnel, Recruitment Office; Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Department of State.

ACTION: 30-Day Notice of information collection; Application for Federal employment.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Personnel, Recruitment Office.

Title of Information Collection: Application for Federal Employment.

Frequency: Yearly.

Form Number: DS–1950.

Respondents: Used by individuals to apply for certain excepted positions at the Department of State.

Estimated Number of Respondents: 25,000.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 12,500 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: June 18, 1998.

Fernando Burbano,

Chief Information Officer.

[FR Doc. 98–24528 Filed 9–11–98; 8:45 am]

BILLING CODE 4710–15–M

DEPARTMENT OF STATE

[Public Notice 2887]

Office of Foreign Missions; Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Department of State.

ACTION: Emergency Review of Information Collections; DSP–100, Application for Registration (Mission Vehicle), DSP–101, Application for Registration (Personal Vehicle), DSP–102, Application for Title, DSP–104, Application for Replacement Plates.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. Emergency review and approval of these collections has been requested from OMB by August 30, 1998. If granted, the emergency approval is only valid for 180 days.

The following summarizes the information collections proposal submitted to OMB:

Type of Request: Reinstatement.

Originating Office: Office of Foreign Missions.

Title of Information Collection: Application for Registration (Mission Vehicle).

Frequency: On occasion.

Form Number: DSP–100.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 2,788.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 1,394.

Type of Request: Reinstatement.

Originating Office: Office of Foreign Missions.

Title of Information Collection: Application for Registration (Personal Vehicle).

Frequency: On occasion.

Form Number: DSP–101.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 9,700.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 4,850.

Type of Request: Reinstatement.

Originating Office: Office of Foreign Missions.

Title of Information Collection: Application for Title.

Frequency: On occasion.

Form Number: DSP–102.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,500.

Type of Request: Reinstatement.

Originating Office: Office of Foreign Missions.

Title of Information Collection: Application for Replacement Plates.

Frequency: On occasion.

Form Number: DSP–104.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 1,000.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 500.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management, U.S. Department of State, Washington, DC 20520, (202) 647–0596. General comments and questions should be directed to Ms. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: August 31, 1998.

Fernando Burbano,

Chief Information Officer.

[FR Doc. 98–24529 Filed 9–11–98; 8:45 am]

BILLING CODE 4710–44–M

DEPARTMENT OF STATE

[Public Notice 2889]

The Office of Overseas Schools; Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; The FS–573 (Overseas Schools Questionnaire), FS–573A (Information Regarding Professional Staff Members of Overseas Schools), FS–573B (Overseas School Summary Budget Information), and the FS–574 (Request for Assistance).

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

Type of Request: Revision of a currently approved collection.

Originating Office: The Office of Overseas Schools of the Department of State (A/OPR/OS).

Title of Information Collection: Overseas Schools Questionnaire.

Frequency: Annually.

Form Number: FS–573.

Respondents: American sponsored schools overseas.

Estimated Number of Respondents: 199.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 50 hours.

Type of Request: Revision of a currently approved collection.

Orignating Office: The Office of Overseas Schools of the Department of State (A/OPR/OS).

Title of Information Collection: Information Regarding Professional Staff Members of Overseas Schools.

Frequency: Annually.
Form Number: FS–573A.
Respondents: American sponsored schools overseas.
Estimated Number of Respondents: 199.
Average Hours Per Response: 15 minutes.
Total Estimated Burden: 50 hours.
Type of Request: Revision of a currently approved collection.
Originating Office: The Office of Overseas Schools of the Department of State (A/OPR/OS).
Title of Information Collection: Overseas School Summary Budget Information.
Frequency: Annually.
Form Number: FS–573B.
Respondents: American sponsored schools overseas.
Estimated Number of Respondents: 199.
Average Hours Per Response: 15 minutes.
Total Estimated Burden: 50 hours.
Type of Request: Revision of a currently approved collection.
Originating Office: The Office of Overseas Schools of the Department of State (A/OPR/OS).
Title of Information Collection: Request for Assistance.
Frequency: Annually.
Form Number: FS–574.
Respondents: American sponsored schools overseas.
Estimated Number of Respondents: 199.
Average Hours Per Response: 15 minutes.
Total Estimated Burden: 50 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: June 29, 1998.

Fernando Burbano,

Chief Information Officer.

[FR Doc. 98–24531 Filed 9–11–98; 8:45 am]

BILLING CODE 4710–05–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–98–3713]

Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry

AGENCY: Office of the Secretary, DOT.

ACTION: Notice extending comment period.

SUMMARY: The Department (or DOT) published a proposed Statement of the Department of Transportation's Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry on April 10, 1998, and requested public comment (63 FR 17919). Subsequently, on May 21, 1998, the Department extended the due date for comments to July 24, 1998, from June 9, 1998, and the due date for reply comments to September 8, 1998, from July 9, 1998. By this notice, the Department is now further extending the due date for reply comments from September 8, 1998, to September 25, 1998.

DATES: Reply comments must be submitted on or before September 25, 1998.

ADDRESSES: To facilitate the consideration of comments, each commenter should file eight copies of each set of comments. Comments must be filed in Room PL–401, Docket OST–98–3713, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Late-filed comments will be considered to the extent possible.

FOR FURTHER INFORMATION CONTACT: Jim Craun, Director (202–366–1032) or Randy Bennett, Deputy Director (202–366–1053), Office of Aviation and International Economics, Office of the Assistant Secretary for Aviation and International Affairs, or Betsy Wolf (202–366–9349), Senior Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh St. SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: DOT published a proposed Statement of the Department of Transportation's Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry and requested comments on the proposed statement (63 FR 7919, April 10, 1998). The proposed policy statement was developed by the Department of Transportation in consultation with the Department of Justice and sets forth tentative findings and guidelines for use by DOT in evaluating whether major air carriers' competitive responses to new entry warrant enforcement action under 49 U.S.C. 41712. The due dates for comments and reply comments were June 9, 1998 and July 9, 1998, respectively.

Subsequently, in answer to an emergency petition from the Air Transport Association of America (ATA) to extend the comment period, the Department determined that it would be reasonable and in the public interest to give commenters more time for preparing their responses to the proposed statement. On May 21, 1998, we published a notice in the **Federal Register** (63 FR 28021) extending the due date for comments to July 24, 1998, from June 9, 1998, and the due date for reply comments to September 8, 1998, from July 9, 1998.

The Department has now decided, on its own initiative, to extend the period for reply comments from September 8, 1998 to September 25, 1998. In an effort to encourage a meaningful dialogue on the issues involved in the policy statement, the Department has conducted meetings with various air carrier parties and several additional meetings are scheduled for the near future. Since our regulations require that a written summary of the meetings be placed in the docket, we have decided to extend the due date for reply comments to more easily accommodate the submission of the written summaries and to give commenters an opportunity to file comments after reviewing the documents.

At the same time, the Department is co-sponsoring with the publishers of Aviation Week and Space Technology the "Deregulation 20 Summit" on September 23 and 24. Because the agenda for this meeting provides for the discussion of issues relevant to our proposed policy, and the panelists for that meeting have expertise on those issues, we anticipate that the summit will produce additional insights that should be included in the docket.

Issued in Washington, DC on September 8, 1998, under authority delegated by 49 CFR 1.56(a).

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–24592 Filed 9–11–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Organizations, Functions, And Authority Delegations: The Chief Counsel and Associate Chief Counsel/ Director of the Office of Dispute Resolution for Acquisition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of delegation of authority.

SUMMARY: The FAA is giving notice of specific delegations of authority from the Administrator to the Chief Counsel and Associate Chief Counsel/Director of the Office of Dispute Resolution for Acquisition regarding decision making authority in all dispute resolution actions involving solicitations issued and contracts entered into after April 1, 1996. The specific delegations are set forth in a memorandum signed by the Administrator on July 29, 1998, and supplement the general delegation of authority to the Office of Dispute Resolution for Acquisition contained in the FAA's Acquisition Management System. The FAA is publishing the text of the specific delegations so that it is available to interested parties.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Staff Attorney and Dispute Resolution Officer for the Office of Dispute Resolution for Acquisition (AGC–70), Federal Aviation Administration, 400 Seventh Street, SW, Room 8332, Washington, DC 20590; telephone (202) 366–6400; facsimile (202) 366–7400.

SUPPLEMENTARY INFORMATION: Under the Department of Transportation and Related Agencies Appropriations Act of 1996, Pub. L. No. 104–50, 109 Stat. 436 (1995) ("Appropriations Act"), Congress directed the FAA to develop an acquisition system that addresses the mission and unique needs of the Agency and at a minimum, provides for more timely and cost-effective acquisition of equipment and materials. In the Appropriations Act, Congress expressly directed the FAA to create of the new acquisition system without reference to existing procurement statutes and regulations. The result was the development of the FAA's Acquisition Management System ("AMS") and the establishment of the Office of Dispute Resolution for Acquisition ("ODRA"), which is independent of the FAA's procurement offices and counsel. The ODRA's mandate is to resolve bid protests and contract disputes in a timely and efficient manner, while emphasizing the use of alternative dispute resolution techniques to the maximum extent practicable.

On August 25, 1998, a Notice of Proposed Rulemaking ("NPRM") was published in the **Federal Register** proposing regulations for the conduct of protests and contract disputes under the AMS. The proposed regulation sets forth a general delegation of authority from the Administrator to the Director of the ODRA to conduct dispute resolution proceedings concerning acquisition matters. The specific delegations issued by the Administrator on July 29, 1998, are consistent with the general delegation of authority proposed in the NPRM. They enhance the ODRA's ability to operate efficiently and effectively in resolving bid protests or contract disputes by using Alternative Dispute Resolution ("ADR") techniques or a default adjudicative process. The specific delegations also confirm the ODRA's authority to issue interlocutory orders and decisions. For example, they eliminate the need for the Administrator to review and consider minor, procedural or uncontested matters such as dismissals arising from settlements or voluntary withdrawals.

The text of the specific delegations of authority signed by the Administrator, in pertinent part, states as follows: Under 49 U.S.C. § 106(f)(2), 49 U.S.C. §§ 46101, et seq., and Pub. L. No. 104–50, I delegate to the Chief Counsel and to the Associate Chief Counsel/Director of the ODRA the authority of the FAA decisionmaker in all dispute resolution actions involving solicitations issued and contracts entered into after April 1, 1996, as follows:

a. To administer individual protests and contract disputes and to appoint ODRA Dispute Resolution Officers and Special Masters to administer all or portions of individual protests and contract disputes;

b. To deny motions for dismissal or summary relief which have been submitted to the ODRA by parties to protests or contract disputes;

c. To grant or deny motions for partial dismissal or partial summary relief submitted to the ODRA by parties to protests or contract disputes, or to order such partial dismissals on its own initiative;

d. To stay an award or the performance of a contract temporarily, for no more than ten (10) business days, pending an Administrator's decision on a more permanent stay. (This delegation will only be used in cases where the ODRA takes into account the views of both a protester and Agency counsel regarding the possible impact of a stay, finds compelling reasons which would justify a stay, and recommends a stay to the Administrator.);

e. To dismiss protests or contract disputes, based on voluntary withdrawals by the parties which have instituted such proceedings;

f. To dismiss protest or contract disputes, where the parties to such proceedings have achieved a settlement;

g. To issue procedural and other interlocutory orders aimed a proper and efficient case management, including, without limitation, scheduling orders, subpoenas, sanctions orders for failure of discovery, and the like.

h. To issue protective orders aimed at prohibiting the public dissemination of certain information and materials provided to the ODRA and opposing parties during the course of protest or contract dispute proceedings, including, but not limited to, documents or other materials reflecting trade secrets, confidential financial information and other proprietary or competition-sensitive data, as well as confidential Agency source selection information the disclosure of which might jeopardize future Agency procurement activities;

i. To utilize ADR methods as the primary means of dispute resolution, in accordance with established Department of Transportation and FAA policies for using ADR to the maximum extent practicable;

j. To designate ODRA Dispute Resolution Officers to engage with Agency program offices and contractors in voluntary mutual agreeable ADR efforts aimed at resolving acquisition related disputes at the earliest possible stage, even before any formal protest or contract dispute is formally filed with the ODRA;

k. To take all other reasonable steps deemed necessary and proper for the management of the FAA Dispute Resolution System and for the resolution of protests or contract disputes, in accordance with the Acquisition Management System and applicable law. The Chief Counsel and Associate Chief Counsel/Director of the ODRA may redelegate the authority set forth above, in whole or in part, to an ODRA Dispute Resolution Officer or to a Special Master. The Federal Aviation Regulations shall be amended to incorporate this delegation of authority.

I am not delegating hereby final decision authority, other than for dismissals arising from settlements or voluntary withdrawals; nor final authority to stay awards or contract performance.

Issued in Washington, DC, on July 29, 1998.

Nicholas G. Garaufis,

Chief Counsel.

[FR Doc. 98–24618 Filed 9–11–98; 8:45 am]

BILLING CODE 4920–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Dallas-Fort Worth International Airport, DFW Airport, TX

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 use the revenue from a PFC at Dallas-Fort Worth 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 October 14, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeffrey P. Fegan, Executive Director, of Dallas-Fort Worth International Airport at the following address: Mr. Jeffrey P. Fegan, Executive Director, Dallas-Fort Worth International Airport, PO Drawer 610428, DFW Airport, TX 75261–9428.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTRY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Dallas-Fort Worth 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 September 1, 1998, the FAA determined that the application to use the revenue from a PFC submitted by the Airport 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 December 15, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Charge effective date: February 1, 1997

Proposed charge expiration date: December 1, 2001

Total estimated PFC revenue: $517,441,547

PFC application number: 98–04–U–00–DFW

Brief description of proposed projects: Projects to Use PFC's.

5. Runway 17C Extension and Associated Development Project, and

6. Runway 18L and 18R, Extensions and Associated Development Project.

Proposed class or classes of air carriers to be exempted from collecting PFC's: All air taxi/commercial operators operating under a certificate authorizing transport of passengers for hire under FAR 135 that file FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Dallas-Fort Worth International Airport.

Issued in Fort Worth, Texas on September 1, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–24614 Filed 9–11–98; 8:45 am]

BILLING CODE 4920–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3782; Notice 2]

Laforza Automobiles, Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice grants the application by Laforza Automobiles, Inc., of Escondido, California, ("Laforza") for a temporary exemption from the automatic restraint requirements of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection,* as described below. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

Notice of receipt of the application was published on May 20, 1998, and an opportunity afforded for comment (63 FR 27784).

Laforza is a Nevada corporation established in August 1997. To date it has produced no motor vehicles. It intends to purchase chassis from Magnum Industriales s.r.l., an Italian company, "where it will undergo the necessary modifications for the US market." A Ford engine, transmission, and associated emission control systems will be installed, and the end result will be a multipurpose passenger vehicle (sport utility) called the Prima 4X4. Laforza estimated that it will produce a total of 400 units between the date of the exemption and December 31, 2000. This is the date that its requested temporary exemption would expire.

Laforza seeks an exemption from S4.2.6.1.1 and S4.2.6.2 of Standard No. 208. Paragraph S4.2.6.1.1, in pertinent part, requires Laforza to provide a driver side air bag on not less than 80 percent of all Primas manufactured before September 1, 1998. Paragraph S4.2.6.2 requires all Primas manufactured on and after September 1, 1998, to be equipped with both driver and right front passenger airbags. Although the passenger side air bag is not required until September 1 of this year, "the airbag development program has to include both the passenger and driver side airbags since the development duration for a driver's side airbag would overlap the time when a passenger's side airbag will be required." Laforza continued, "If the development is not combined, many of these tests would have to be repeated with a significant increase in test and material costs."

In the first 6 months after its agreement with Magnum, Laforza spent

"an estimated total of 200 manhours and $15,000" on air bag compliance issues. Lacking the resources to independently develop an air bag system, it "has contacted airbag development companies in the US to assist with the project." Laforza concluded that it will take 2 years to develop and certify the system. If immediate compliance were required, the cost would be $4,000,000. An exemption would permit Laforza to generate revenues "to meet the costs mandated by the airbag development program" and spread these costs over a period of time. Because the company is less than a year old, it could not submit corporate balance sheets and income statements for the three years immediately preceding the filing of its application, as specified by NHTSA's regulation. Its stockholder equity is $900,000.

Laforza argued that "production of the Laforza Prima 4X4 is in the best interest of the public and the U.S. economy," pointing to the uniqueness of the vehicle, and the American components that it incorporates, the powertrain from Ford Motor Company and the purchase of "other parts * * * from approximately five different U.S. companies." The company currently employs 15 people full-time and three people part time, which will grow as production increases. Further, "in addition, * * * at least 50 employees from other companies are involved in the Laforza project." During the exemption period, the Prima will be "equipped with a conventional retractor type, three-point driver and passenger seatbelt system that meets all requirements of FMVSS No. 208." The vehicle otherwise complies with all Federal motor vehicle safety standards that apply to it.

No comments were received on the application.

Laforza began its efforts to comply with the automatic restraint requirements upon its agreement with Magnum Industriales to purchase chassis from it (the term seems to encompass a body without the engine, transmission, and emission control systems). Since taking this step towards becoming a vehicle manufacturer, Laforza spent the time between then and the filing of its application in beginning its efforts to comply with the standard. It believes that it can comply by the end of 2000. On the other hand, a crash program to comply would cost it $4,000,000. The company has not generated any income to establish a retained earnings account. Any significant up-front expenses to comply with Standard No. 208 would likely place it in a negative net worth position. Negative operating cash flows combined with the required debt load and resulting interest charges would probably be unsustainable, and the company would never become a going concern. The enterprise to produce the Laforza involves purchases from several different American companies. The company has requested exemption from only one Federal motor vehicle safety standard for a vehicle which will be equipped with a "conventional retractor type three-point driver and passenger seatbelt system that meets all requirements of FMVSS No. 208." It estimates that only 400 vehicles will be produced while the exemption is in effect.

These facts and arguments are similar to those offered in other instances in which NHTSA has granted temporary exemptions based upon a manufacturer's hardship. In consideration of the foregoing, it is hereby found that compliance with the automatic restraint requirements would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is further found that a temporary exemption from these requirements would be in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Laforza Automobiles, Inc., is hereby granted NHTSA Temporary Exemption No. 98–6 from paragraphs S4.2.6.1.1 and S4.2.6.2 of 49 CFR 571.208 Standard No. 208, Occupant Crash Protection, expiring January 1, 2001.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50)

Issued on: September 2, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–24593 Filed 9–11–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 33556]

Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of environmental review process schedule.

SUMMARY: On July 15, 1998, Canadian National Railway Company (CN) and Illinois Central Corporation (IC), along with their railroad affiliates, collectively referred to as CN/IC or Applicants, filed a joint application with the Surface Transportation Board (Board) seeking authority for CN to acquire control of IC. (This proposed transaction is subsequently referred to as the Acquisition or the CN/IC Acquisition.) The proposed CN/IC system would extend to both coasts of North America and the Gulf of Mexico. The Chicago area would serve as the hub of the combined system. This new system would cover approximately 18,670 miles of rail lines and related facilities, of which, approximately 4,520 miles would be in the United States. The Applicants state that integrating CN and IC operations would allow both rail systems to provide more reliable, efficient, and competitive service.

In Decision No. 6, served August 14, 1998, the Board accepted for consideration the proposed CN/IC Acquisition and issued a 300-day procedural schedule that will provide for the issuance of the Board's final written decision no later than May 11, 1999. The Board also announced that preparation of an Environmental Assessment is appropriate for this proceeding. The purpose of this notice is to advise that the Board's Section of Environmental Analysis (SEA) plans to issue a Draft Environmental Assessment (Draft EA) on the proposed CN/IC Acquisition for public review by November 1998. The public will then have 30 days to review and comment on the Draft EA. After reviewing all public comments on the Draft EA and conducting additional analyses, SEA will complete the Final Environmental Assessment (Final EA). SEA will issue the Final EA prior to the Board's Oral Argument which is currently scheduled for March 8, 1999. The Board will consider all public comments, the Draft EA and Final EA, and SEA's environmental mitigation recommendations in making its final decision on the proposed Acquisition. The Board plans to serve the final written decision on the proposed CN/IC Acquisition on May 11, 1999. Any party may file an administrative appeal within 20 days of the final written decision.

FOR FURTHER INFORMATION CONTACT: A Fact Sheet on the proposed Acquisition, which includes a general discussion on the environmental review process and schedule, is available by calling SEA's toll-free environmental hotline at 1–888–869–1997. For additional

information regarding environmental issues, or the environmental review schedule, contact SEA's Project Manager for the proposed CN/IC Acquisition, Michael Dalton, at (202) 565–1530.

By the Board, Elaine K. Kaiser, Chief of the Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 98–24572 Filed 9–11–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–317 (Sub–No. 5X)]

Indiana Harbor Belt Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Cook County, IL and Lake County, IN

On August 25, 1998, Indiana Harbor Belt Railroad Company (IHB) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the East Chicago Belt Branch, extending from railroad Valuation Station (–0+17) beginning at a point 168 feet west of the Illinois/Indiana State line in Burnham, IL, near Brainard Avenue, extending generally eastward through Hammond, IN, to and including a point 100 feet east of the east edge of Indianapolis Boulevard in East Chicago, IN, at railroad Valuation Station (140 + 00), a distance of 2.3 miles in Cook County, IL, and Lake County, IN. The line includes approximately 0.4 mile of track in Hammond, in the vicinity of Sohl Avenue and Hohman Avenue, owned by the Elgin, Joliet and Eastern Railway Company, over which IHB seeks to discontinue trackage rights. The line traverses U.S. Postal Service Zip Codes 60603, 46320, and 46312. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 11, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 5, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–317 (Sub-No. 5X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Roger A. Serpe, 175 West Jackson Boulevard, Suite 1460, Chicago, IL 60604–2704. Replies to the IHB petition are due on or before October 5, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: September 8, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–24573 Filed 9–11–98; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Notice of Receipt of Cultural Property Request From the Government of the Republic of Cyprus

AGENCY: United States Information Agency.

ACTION: Notice of receipt of cultural property request from the Government of the Republic of Cyprus.

The Government of the Republic of Cyprus made a cultural property request to the Government of the United States under Article 9 of the 1970 UNESCO Convention. The request was received on September 4, 1998, by the United States Information Agency. It seeks U.S. protection of certain categories of archaeological and/or ethnological material the pillage of which, it is alleged, jeopardizes the national cultural patrimony of Cyprus. In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603 *et seq.*) the request will be reviewed by the Cultural Property Advisory Committee which will develop recommendations before a determination is made.

Dated: September 8, 1998.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 98–24590 Filed 9–11–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Notice of Meeting of the Cultural Property Advisory Committee

AGENCY: United States Information Agency.

ACTION: Notice of meeting of the Cultural Property Advisory Committee.

The Cultural Property Advisory Committee will meet on Monday, September 28, 1998, from approximately 9:30 a.m. to approximately 5:00 p.m., at the U.S. Information Agency, Room 840, 301 4th St., S.W., Washington, D.C. to review a cultural property request from the Government of the Republic of Cyprus to the Government of the United States seeking protection of certain archaeological and/or ethnological materials. A portion of the meeting, from approximately 9:30 a.m. to approximately 10:30 a.m., will be open to interested parties wishing to provide comment to the Committee that may bear on this request. The Cyprus request, submitted under Article 9 of the

1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, will be considered in accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 et seq., Pub. L. 97–446). Since review of this matter by the Committee will involve information the premature disclosure of which would be likely to significantly frustrate implementation of proposed action, the meeting from approximately 10:30 a.m. to approximately 5:00 p.m. will be closed pursuant to 5 U.S.C. 552(c)(9)(B) and 19 U.S.C. 2605(h). The Committee will also meet in open session on Tuesday, September 29, 1998, from approximately 9:30 a.m. to 12:00 p.m., in the Board Room, 6th Floor, the Woodrow Wilson Center, Ronald Reagan Building, 1300 Pennsylvania Ave., N.W., Washington, D.C., to provide an opportunity for discussion with members of the public about U.S. implementation of the 1970 Convention. Seating is limited. Persons wishing to attend open portions of the meeting on September 28 and September 29, must notify cultural property staff at (202) 619–6612 no later than 5:00 p.m. (EDST) Thursday, September 24, 1998, to arrange for admission.

Dated: September 8, 1998.

Penn Kemble,

Deputy Director, United States Information Agency.

Determination To Close the Meeting of the Cultural Property Advisory Committee

September 28, 1998.

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that a portion of the Cultural Property Advisory Committee meeting on September 28, 1998, approximately 10:30 a.m. to approximately 5:00 p.m., at which there will be deliberation of information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions, will be closed.

Dated: September 8, 1998.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 98–24589 Filed 9–11–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0001]

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 revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's eligibility, dependency, and income, as appropriate, for compensation and/or pension benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 1998.

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. 2900–0001" 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 (Pub. L. 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: Veteran's Application for Compensation or Pension, VA Forms 21–526.

OMB Control Number: 2900–0001.

Type of Review: Revision of a currently approved collection.

Abstract: Title 38, U.S.C., Section 5101(a) provides that a specific claim in the form provided by the Secretary of Veterans Affairs must be filed in order for benefits to be paid to any individual under laws administered by the Secretary. VA Form 21–526 is the prescribed form for disability claims.

Affected Public: Individuals or households.

Estimated Annual Burden: 790,000 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: One-time.

Estimated Number of Respondents: 395,000.

Dated: August 14, 1998.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–24538 Filed 9–11–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0033]

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 reinstatement 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 for information needed to determine if the insured is

eligible for reinstatement of Government Life Insurance and/or Total Disability Income provision.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 1998.

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. 2900–0033" 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 (Pub. L. 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 and Form Numbers: Application for Reinstatement, VA Form 29–353.

OMB Control Number: 2900–0033.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to apply for reinstatement of Government Life Insurance and/or Total Disability Income Provision. The information is used by VA to establish eligibility of the applicant.

Affected Public: Individuals or households.

Estimated Annual Burden: 375 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,500.

Dated: August 14, 1998.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–24539 Filed 9–11–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0036]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine if a decision of presumptive death can be made for benefit payment purposes.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 1998.

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. 2900–0036" 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: Statement of Disappearance, VA Form 21–1775.

OMB Control Number: 2900–0036.

Type of Review: Extension of a currently approved.

Abstract: Title 38, U.S.C., Section 108, requires a formal presumption of death when a veteran has been missing for seven years. VA Form 21–1775 is used to gather the necessary information to determine if a decision of presumptive death can be made for benefit payment purposes.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,500 hours.

Estimated Average Burden Per Respondent: 2 hours and 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

Dated: August 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–24540 Filed 9–11–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0038]

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 the information needed to determine a child's pension eligibility and benefit rates.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 1998.

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. 2900–0038" 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: Information From Remarried Widow(er), VA Form 21–4103.

OMB Control Number: 2900–0038.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to determine if a child's income and net worth are within the limits imposed by law. This information is necessary to determine a child's pension eligibility and benefit rates once a surviving spouse remarries.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: August 5, 1998.

By direction of the Secretary,

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–24541 Filed 9–11–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0111]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to make determinations for release of liability and substitution of entitlement of veterans-sellers to the government on guaranteed, insured and direct loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 1998.

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. 2900–0111" 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 and Form Number: Statement of Purchaser or Owner Assuming Seller's Loan, VA Form 26–6382.

OMB Control Number: 2900–0111.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–6382 is completed by purchasers who are assuming veterans' guaranteed, insured, and direct home loans. The data furnished on the form is essential to determinations for release of liability and substitution of entitlement in accordance with Title 38, U.S.C., Sections 3713(a) (release of liability) and 3702(b)(2) (substitution of entitlement).

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: August 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–24542 Filed 9–11–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0148]

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 the information needed from veterans who have applied for National Service Life Insurance as a temporary measure to restore continuous protection until a final decision is made on his/her eligibility.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 1998.

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. 2900–0148" 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 and Form Numbers: Notice of Past Due Payment, VA Form 29–389e.

OMB Control Number: 2900–0148.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by veterans who have applied for National Service Life Insurance as a temporary measure to restore continuous protection until a final decision is made by VA to establish the insured's eligibility.

Affected Public: Individuals or households.

Estimated Annual Burden: 484 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,936.

Dated: August 14, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–24543 Filed 9–11–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0168]

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 audit accountings of fiduciaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 1998.

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. 2900–0168" 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: Request for Estate Information, VA Form Letter 21–439.

OMB Control Number: 2900–0168.

Type of Review: Extension of a currently approved.

Abstract: The form letter is used in VBA's Fiduciary and Field Examination Program, which is responsible for carrying out a Congressional mandate that VA maintain supervision of the distribution and use of VA benefits paid to a fiduciary on behalf of a beneficiary who is incompetent, a minor, or under legal disability. Title 38, U.S.C., Section 5503(b)(1)(A), requires discontinuance of benefits when an estate reaches a specific limit and other conditions exist. The information collected is used to determine whether an estate exceeds the limit and discontinuance is warranted.

Affected Public: Individuals or households—Business or other for-profit—Not-for-profit institutions.

Estimated Annual Burden: 2,300 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 13,800.

Dated: August 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–24544 Filed 9–11–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0500]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

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 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 the information needed to determine dependents continued entitlement to benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 1998.

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. 2900–0500" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 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: Status of Dependents Questionnaire, VA Form 21–0538.

OMB Control Number: 2900–0500.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to request certification of the status of dependents for whom additional compensation is being paid. Without the information, continued entitlement to the benefits for dependents could not be determined.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,083 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 84,500.

Dated: August 4, 1998.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–24545 Filed 9–11–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0342]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits 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 Benefits Administration (VBA), 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.

DATES: Comments must be submitted on or before October 14, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0342."

SUPPLEMENTARY INFORMATION:

Title and Form Numbers: Apprenticeship and On-the-Job Training Agreement and Standards, VA Form 22–8864 and Employer's Applications to Provide Training, VA Form 22–8865.

OMB Control Number: 2900–0342.

Type of Review: Extension of a currently approved collection.

Abstract: VA has used the information on the current VA Form 22–8864 to ensure that a trainee is entering an approved training program. VA has used the information on the current VA Form 22–8865 to ensure that training programs and agreements meet the statutory requirements for approval of an employer's job-training program.

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 February 11, 1998 at page 7051.

Affected Public: Business or other for-profit, non-for-profit institutions, farms, Federal, State, Local or Tribal Governments.

Estimated Annual Burden: 875 hours.

Estimated Average Burden Per Respondent: 120 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,050.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0342" in any correspondence.

Dated: August 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–24536 Filed 9–11–98; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0387]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits 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 Benefits

Administration (VBA), 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.

DATES: Comments must be submitted on or before October 14, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0387."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Request for Verification of Deposit, VA Form 26–8497a.

OMB Control Number: 2900–0387.

Type of Review: Extension of a currently approved collection.

Abstract: The form is primarily used by lenders making guaranteed and insured loans to verify deposits of applicants in banks and other savings institutions. It is also used in processing direct loans, offers on acquired properties, and release from liability/substitution of entitlement cases when needed. In these types of cases, part I of the form is completed by the lender and signed by the applicant then forwarded to the depository. The depository completes part II, verifying the applicant's deposits, providing information and payment experience on outstanding loans, and returns the form to the lender. The information is used by VA to determine the applicant's present and anticipated income and expenses and that the applicant is a satisfactory credit risk.

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 January 29, 1998 at page 4525.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 21,565 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 258,775.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Please refer to "OMB Control No. 2900–0387" in any correspondence.

Dated: August 4, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–24537 Filed 9–11–98; 8:45 am]

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Corrections

Federal Register
Vol. 63, No. 177
Monday, September 14, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

Correction

Notice document 98-23857 appearing on page 47314 in the issue of Friday, September 4, 1998 was withdrawn from publication by the Department of Interior. It should not have appeared in the Federal Register.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 249

[MARAD 98–4395]

RIN No. 2133–AB 36

Approval of Underwriters for Marine Hull Insurance

Correction

Proposed rule document 98–23908 appearing on pages 47217-47218 in the issue of Friday, September 4, 1998 was withdrawn by the Maritime Administration. It should not have appeared in the Federal Register.

BILLING CODE 1505–01–D

federal register

Monday
September 14, 1998

Part II

National Credit Union Administration

12 CFR Part 701
Organization and Operations of Federal Credit Unions; Proposed Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The recently enacted Credit Union Membership Access Act modified NCUA's chartering and field of membership authority. Accordingly, NCUA is proposing a number of amendments to its policies to update them consistent with the recent legislation. Additionally, this proposal revises and updates NCUA's chartering and field of membership policy to reflect the advances and changes in chartering requirements since the promulgation of IRPS 94–1. The majority of the revisions reflect NCUA's policy on the types of federal credit union charters and the criteria necessary to amend a credit union's field of membership. The legislation authorizes three types of credit union charters. These charter types include a single occupational or associational common bond, a multiple common bond, or a local community, neighborhood, or rural district serving a well defined area.

Along with a comprehensive update of chartering policy, the format of the chartering manual has been changed to make it more user-friendly. The proposal further clarifies multiple common bond policies, overlap issues, mergers, low-income policies regarding low income charters and service of low income areas, the definition of immediate family members, and the "once a member always a member" policy.

DATES: Comments must be postmarked or received by November 13, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-Mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Chairman, Field of Membership Task Force, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759, or telephone (512) 231–7900; Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540; Lynn K. McLaughlin, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia, or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION:

In 1982, the changing economic environment created safety and soundness concerns which prompted the NCUA Board to revise its chartering policy to permit membership in a federal credit union to consist of multiple groups, provided each group possessed a common bond. Such membership could be accomplished through the chartering process, through charter amendments, or by way of merger to form a single credit union. This policy change strengthened the federal credit union system by enabling NCUA to merge credit unions that otherwise would have failed because of loss of sponsor or other financial or operational downturns. The policy also enabled federal credit unions to diversify their membership and become less dependent on the financial success of one sponsoring company or group. An additional advantage of the policy change was to provide access to credit union service for small groups of people who did not have the resources to charter their own credit unions. The NCUA Board issued subsequent changes to chartering policy in 1984, 1989, 1994, 1996, and 1998, most of which addressed the multiple group policy.

In *First National Bank and Trust Co., et al.* v. *National Credit Union Administration*, 90 F.3d 525 (D.C. Cir. 1996), the U.S. Court of Appeals for the District of Columbia Circuit invalidated certain select group additions to the field of membership of a North Carolina credit union (the "Decision"). In that case, the Court ruled that groups with unlike common bonds could not be joined to form a single credit union. Furthermore, in the consolidated cases of *First National Bank and Trust Co., et al.* v. *NCUA* and the *American Bankers Association, et al.* v. *NCUA, et al.*, the U.S. District Court issued a nationwide injunction prohibiting federal credit unions from adding new select groups to their fields of membership that did not share a common bond (the "Order"). The Decision and Order affected the operations of approximately 3,600 multiple group federal credit unions serving approximately 158,000 select groups.

On February 25, 1998, the U.S. Supreme Court ruled that NCUA's multiple group policy was impermissible under the Federal Credit Union Act. *National Credit Union Administration* v. *First National Bank & Trust Co. et al.*, 118 S. Ct. 927 (1998). The Supreme Court stated that groups with unlike common bonds could not be joined to form a single occupational credit union. Congress addressed this issue and recently enacted legislation reinstating NCUA's multiple group policy with some modifications. This is the first time since 1934 that Congress has updated the statutory common bond rules. Accordingly, the NCUA Board is updating its chartering policies by proposing IRPS 98–3.

The purposes of this proposed rule are to:

- First, replace IRPS 94–1, as amended by IRPS 96–1 and 98–1, to bring NCUA's field of membership and chartering policy into compliance with the Credit Union Membership Access Act. Modifications are necessary regarding single occupational/associational common bonds, multiple common bonds, community charters, as well as policies regarding service to low-income areas.
- Second, update NCUA's field of membership and chartering policies since the issuance of IRPS 94–1, as amended by IRPS 96–1 and IRPS 98–1.
- Third, rewrite and reformat the chartering manual to make it more user-friendly.

The NCUA Board is proposing a number of changes to its chartering policies, but the following are the most significant:

- First, issuance of a new multiple group policy. This includes numerical limitations for a select group addition, five statutory criteria for adding a select group to a multiple common bond credit union, mergers of multiple group credit unions, and overlaps.
- Second, an update of the definition of single occupational and associational common bonds.
- Third, a revised policy on the requirements to charter, expand, or convert to a community charter.
- Fourth, a separate chapter on low-income credit unions which addresses the ability of a multiple group credit union to add an underserved area to its field of membership.
- Fifth, a definition of immediate family member for purposes of credit union eligibility.
- Sixth, a discussion of the statutory authorization for the "once a member, always a member" policy.

A. Chapter and Section Analysis

I. Chapter 1 of the Chartering Manual

This chapter sets forth the goals of NCUA's chartering policy, and the requirements and procedures for chartering a new federal credit union.

NCUA's definition of economic advisability is set forth in this chapter. The Board wishes to emphasize that when NCUA charters a new credit union, the Agency evaluates the economic advisability of the proposed institution as well as its effect on other credit unions. While NCUA has not set a minimum field of membership size for chartering a federal credit union, experience has suggested that a credit union with fewer than 3,000 primary potential members (e.g., employees of a corporation or members of an association) may not be economically advisable. Therefore, a charter applicant with a proposed field of membership of fewer than 3,000 primary potential members will have to provide significantly more support than a proposed credit union with a larger field of membership. This change not only more accurately reflects the economic reality necessitating increased numbers of primary potential members in order for most groups to meet the economic advisability requirement, but it also recognizes that some groups, even though less than 3,000, can be economically viable as a separate credit union. This modification also makes it operationally consistent with the multiple group expansion requirements. Comments are specifically requested on whether the economic advisability number should be set at a lower or higher level.

The chapter also addresses the issue of member support as well as the marketing plan and is generally directed to those groups wishing to charter a new credit union.

This chapter encourages the formation of newly chartered federal credit unions and the use of mentor relationships with existing, well-managed credit unions. NCUA believes that experienced credit unions are a valuable resource to newly chartered credit unions and can provide needed guidance and assistance.

Chapter 1 discusses the various field of membership designations available to prospective and existing credit unions. These designations include single occupational, single associational, multiple group, or community.

Finally, this chapter sets forth NCUA's long-standing policy prohibiting the establishment of a federal credit union for the primary purpose of serving the citizens of a foreign nation. As always, federal credit unions are permitted to serve foreign nationals within the field of membership when they reside or work in the United States. Foreign nationals may also be served if they reside in a foreign country, but only when the primary purpose of the credit union's foreign service facility is to serve United States citizens who are credit union members residing in the foreign country.

II. Chapter 2 of the Chartering Manual

Chapter 2 sets forth the field of membership requirements for a federal credit union. This chapter is divided into the following comprehensive sections: (1) single occupational charters, (2) single associational charters, (3) multiple group charters, and (4) community charters. Although some basic information applicable to all charters is repeated in the individual sections addressing each charter type, which increased the overall length of the chartering manual, the new format will be more user-friendly by making information easier to locate.

a. Single Occupational Common Bond Credit Union

The NCUA Board is proposing that a federal credit union may include in a single occupational common bond all persons and entities who share that common bond without regard to geographic location. The Board believes eligibility for membership in an occupational common bond can be established in four ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an occupational common bond of employees of the entity;
- Employment in a corporation or other legal entity with an ownership interest of not less than 10 percent in or by another legal entity makes that person part of an occupational common bond of employees of the two legal entities;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of an occupational common bond of employees of the two entities; or
- Employment or attendance at a school.

Occupational Common Bond Amendments

There are a number of ways an occupational credit union can amend its field of membership. The proposed rule sets forth when NCUA may approve an amendment to expand a credit union's field of membership.

One instance requiring an amendment is when the sponsor organization is involved in a corporate restructuring. A credit union can continue to provide service to a group that is spun-off only if it otherwise qualifies as part of the single occupational common bond, or if the credit union converts to a multiple group credit union.

A second instance requiring an amendment is when the entire field of membership is acquired by another corporation. The credit union can serve the employees of the new corporation, including any subsidiaries of the acquiring corporation, after receiving NCUA approval. In this instance the credit union remains a single common bond credit union.

Overlaps

As a general rule, NCUA will not charter two or more credit unions to serve the same single occupational group. Consequently, overlap protection is provided for single occupational credit unions. However, an overlap may be permitted when two or more credit unions are attempting to serve the same group if the overlap's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

The proposal sets forth when NCUA will permit an overlap of an occupational credit union and what NCUA considers in reviewing an overlap. However, an occupational credit union will rarely, if ever, be protected from overlap by a community charter. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from overlap protection.

b. Single Associational Common Bond Credit Union

The proposal sets forth the definition of associational common bond. An associational common bond consists of individuals (natural persons) and/or groups (non natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. This proposal permits an associational common bond to include members of the association, groups which are not comprised primarily of natural person members but are members of the association, and employees of the association, as well as the association. NCUA may grant an associational charter without regard to the geographic location of the association's members or headquarters. This means a credit union can serve a widely dispersed membership base if NCUA determines that it has the ability to serve the area.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. For example, members of an automobile club, such as the American Automobile Association, which primarily sells services, would not qualify as an associational common bond.

If an association subsequently changes its bylaws, the credit union cannot serve the new members of the association until the revised charter and bylaws are approved by NCUA through a field of membership amendment.

Overlaps

As a general rule, NCUA will not charter two or more credit unions to serve the same single associational group. Consequently, overlap protection is provided for single associational credit unions. However, an overlap may be permitted when two or more credit unions are attempting to serve the same group if the overlap's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

The proposal sets forth when NCUA will permit an overlap of an associational credit union and what NCUA considers in reviewing an overlap. An associational credit union will rarely, if ever, be protected from overlap by a community charter. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

c. Multiple Common Bond Credit Union

The Credit Union Membership Access Act reinstated NCUA's multiple common bond policy with some modifications. A multiple common bond credit union may serve a combination of distinct, definable, occupational and/or associational common bonds.

Multiple common bond credit unions can add groups with dissimilar common bonds, which are called select groups. These groups must be within reasonable proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a shared branch, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

Multiple Group Amendments

Before a credit union can add a new occupational or associational select group, NCUA must determine in writing that five statutory criteria have been met.

The first criteria is that the credit union did not engage in any unsafe or unsound practice which is material during the one year period preceding the filing of the application. The NCUA Board defines an unsafe or unsound practice for this criteria to mean any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the Naitonal Credit Union share Insurance Fund. The determination of an unsafe and unsound practice will be decided by the regional director.

The second criteria is that the credit union is adequately capitalized. NCUA defines adequately capitalized to mean the credit union has a net worth ratio of not less than 6 percent. NCUA is requesting comment on what criteria should be considered when defining "adequately capitalized" for newly chartered credit unions.

The third criteria is that the credit union has the administrative capability and the financial resources to serve the proposed group. To determine whether the credit union has met this criteria, NCUA will review the credit union's most recent examination report or, if necessary, contact the credit union directly.

The fourth criteria is that the credit union must demonstrate that any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. NCUA will perform an overlap analysis as set forth in Chapter 2, Section IV.E of NCUA's Chartering and Field of Membership Manual to determine whether this criteria has been met.

The fifth criteria is that NCUA must determine that the formation of a separate credit union is not practical or does not meet the economic advisability criteria set forth in Chapter 1 of NCUA's Chartering and Field of Membership Manual.

The proposal also sets forth the documentation requirements to add a select group and NCUA's procedures for amending the field of membership. This proposal does not include any provisions for the Streamlined Expansion Procedure because NCUA must make a written determination on all multiple group expansions.

Corporate Restructuring

Due to a corporate restructuring of a select group, a credit union may be required to request an amendment to its field of membership if it wishes to continue to provide service to that group. NCUA permits a multiple common bond credit union to retain in its field of membership a sold or spun-off group to which it has been providing service, without regard to location, if the original group is clearly identifiable and requests continued service. NCUA views this as a housekeeping amendment and not a field of membership expansion.

Mergers

The proposed rule sets forth the requirements for the merger into, and by, a multiple common bond credit union. Generally, the requirements applicable to field of membership expansions apply to a credit union merging into a multiple common bond credit union. If the continuing credit union in a proposed merger is federally chartered and the merging credit union has a select group of 3,000 or more persons (excluding family members), the merger can be approved if NCUA's expansion requirements are met. If the expansion requirements are not met, this may require a credit union to spin-off a select group of 3,000 or more persons from the merging credit union.

The proposal also clarifies requirements applicable to mergers of multiple group credit unions for safety and soundness reasons and emergency situations. The numerical limitation does not apply to mergers where there are safety and soundness concerns or the emergency criteria exist.

Overlaps

NCUA will generally not approve an overlap unless the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. The proposal sets forth the issues NCUA will consider in reviewing the overlap. In general, if the overlapped credit union does not object, and NCUA determines that there are no safety and soundness problems, the overlap will be permitted. If, however, the overlapped credit union objects to the overlap, a thorough review as set forth in the proposal is required. Generally, NCUA will permit overlaps between multiple common bond credit unions and community chartered credit unions without performing an overlap analysis, since NCUA has determined

that in these types of overlaps the benefit of the overlap to the member will always outweigh the harm to either credit union. A multiple common bond credit union will rarely, if ever, be protected from overlap by a community charter.

d. Community Charters

NCUA's current community chartering policy is addressed by the recent legislation and accordingly must be modified. The legislation requires that a community charter be based on "a well-defined local community, neighborhood, or rural district." The NCUA Board believes that the addition of the word "local" by Congress means that review of what constitutes a community is required. NCUA's most recent policy has been to limit the community to a single, geographically well-defined area, where residents interact. The NCUA Board believes that while the current criteria remain applicable and are essential in determining what constitutes a community for chartering purposes, the addition of the word "local" in the statutory language in the community chartering requirements requires NCUA to reevaluate how it views community. Furthermore, due to the evolving nature of communities and the intent evidenced in the legislation, NCUA is proposing to require that the residents either have common interests or interaction. It will be up to the charter applicant to decide and provide evidence on whether the individuals in the geographic area interact or have common interests. Either or both will be sufficient for community chartering requirements.

NCUA continues to recognize four types of affinity on which a community common bond can be based—persons who live, work, worship, or attend school in the community. Businesses and other legal entities within the community boundaries may also qualify for membership. However, community credit unions can not serve persons who are paid from or supervised from a business located within the community, if the employees do not live, work, worship or attend school in the community. Given the diversity of community characteristics throughout the country, the intent of the legislation, and NCUA's goal of making credit union service available to all eligible groups who wish to have it, NCUA has established the following requirements for community charters:

- The geographic area's boundaries must be clearly defined;
- The charter applicant must establish that the area is a well-defined "local community, neighborhood, or rural district;" and
- The residents must have common interests or interact.

"Well-defined" means the proposed area has specific geographic boundaries. "Local community, neighborhood, or rural district" encompasses several factors including interaction and/or common interests. Simply being able to draw a boundary around an area does not meet the requirements for a well-defined local community as that term is used in the new legislation. The meaning of well-defined local community includes a variety of factors including, but not limited to, a geographic limitation. Most prominent is the criteria that the residents of the well-defined local community interact and/or have common interests. Although the chartering manual does not precisely define interaction, it does suggest that a greater burden needs to be met when either the geographic size or the population of the area is large. In determining interaction and/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental facilities, local festivals, area newspapers, among others, are significant indicia of community interaction and/or common interests. Conversely, an area which has numerous trade areas, multiple taxing authorities, or multiple political jurisdictions tend to diminish the factors that demonstrate the existence of a local community.

In general, a large population in a small geographic area or a small population in a large geographic area, may meet NCUA community chartering requirements. For example, an ethnic neighborhood, a rural area, a county, or a political subdivision within the county, with less than 300,000 residents will often have sufficient interaction and/or common interests to meet community charter requirements.

Conversely, a large population in a large geographic area will not normally meet NCUA community chartering requirements. It is unlikely that an entire state, a major metropolitan city, a densely populated county, or an area covering multiple counties with significant population, will have sufficient interaction and/or common interests. Therefore, if the credit union is interested in serving this type of expanded area as a community charter, the burden of demonstrating interaction and/or common interests will be significantly greater than the evidence necessary for a smaller area. For example, the proposed community charter requirements make it difficult for a state or a large city such as New York, Boston, Dallas, or Los Angeles, to meet the requirements of a local community.

The well defined local community, neighborhood, or rural district will most easily be met if the area to be served is a recognized political jurisdiction, not greater than a county or its equivalent, and if the population of the requested well-defined area does not exceed 300,000. Generally, the single jurisdiction will most often coincide with a county, or its political equivalent. Multiple smaller political subdivisions within a county or its equivalent, such as a "city" or a "school district," would also qualify. For this type of community charter, the applicant must only submit a letter demonstrating how the area meets the indicia for community interaction or common interests. In addition, the applicant must provide evidence of the political jurisdiction and size of the population. At its discretion, NCUA may request more documentation demonstrating the area is a well-defined local community, neighborhood, or rural district. If the requested area is not a single political jurisdiction or exceeds 300,000, more extensive and detailed documentation, as discussed in this proposal, must be provided to support that the proposed area is a well-defined local community. This proposal does not limit community charters to a recognized single political jurisdiction, or to a proposed area where the population is 300,000 or less. Simply, additional documentation is required if the proposed community charter exceeds an area greater than a county or 300,000 in population. Specific comments are requested as to whether a streamlined approach for community charter approval is appropriate and, if so, in accordance with what criteria.

The NCUA Board believes that a low-income area meeting the low-income definition found in Section 701.34 of NCUA's Rules and Regulations, has many of the common characteristics and demographics of a local community, and generally lacks the basic financial services found in more affluent communities. When reviewing low-income community charter applications, NCUA's documentation requirements are more flexible. A new charter applicant applying to serve a low-income neighborhood of 300,000 residents in a major metropolitan city will have fewer documentation requirements than would be required in a standard community charter package. For example, an applicant seeking to serve such a low-income community need only provide evidence

demonstrating well-defined community boundaries and that the area meets the low-income definition.

Overlaps

A credit union seeking a community charter must contact all federally insured credit unions with a service facility in the proposed service area. A community credit union can overlap any other type of credit union charter. If safety and soundness concerns exist, NCUA may, on rare occasions, provide overlap protection from a community charter for a limited period of time, generally 12 to 24 months. Extensions will be granted for continued serious safety and soundness concerns. The timeframe for the duration of the exclusionary clause will be specifically listed in Section 5 of the community credit union's charter.

In the past, exclusionary clauses have been permitted for reasons other than for safety and soundness, such as when there is an agreement between the overlapping credit unions. An exclusionary clause, under circumstances other than for safety and soundness, would not be permitted under the current proposal if the overlapping credit union is a community charter. Specific comments are requested as to whether exclusionary clauses are appropriate for community charters, and, if so, under what circumstances.

A credit union that converts to a community charter may continue to serve existing members of the credit union who are not within the community, pursuant to the statutory provision that once a person becomes a credit union member, he or she can remain a member. A community credit union may not, however, add new members, or serve groups outside the community.

e. Changes Applicable to All Federal Credit Unions

Emergency Mergers

NCUA is issuing clarifying language regarding emergency mergers and purchase and assumption agreements for occupational, associational and community charters. Among other minor modifications, NCUA is removing the 12 month period within which insolvency must occur, since it is not required by the Federal Credit Union Act.

Definition of Immediate Family Member

As required by the new legislation, the proposed regulation defines an individual who is eligible for membership in a credit union on the basis of the relationship of such individual to another person who is eligible for membership in such credit union. This is commonly referred to as immediate family members. *Members of their immediate families* is defined as related persons i.e., blood, marriage, or other recognized family relationships in the same household (under the same roof), or if not in the same household, as a grandparent, parent, spouse, sibling, child, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, and stepsiblings. The immediate family member must be related to the credit union member. In other words, once a person becomes a member, then that person's immediate family could join.

Once a Member Always a Member

The statute authorizes that once a person becomes a member of the credit union, such a person or organization may remain a member until the person chooses to withdraw from the credit union, unless the person is expelled as provided in Section 118 of the Federal Credit Union Act. This provision codifies the "once a member, always a member" policy.

III. Chapter 3 of the Chartering Manual

Low-income credit unions play an especially important part in the credit union movement. Therefore, NCUA has developed a separate chapter setting forth special policies for low-income credit unions and special chartering policies for underserved areas. The intent of these policies is to encourage the formation of new credit unions and the expansion of existing credit unions into underserved and low-income areas.

The Credit Union Membership Access Act authorizes credit union service to people of modest means and the addition of underserved areas to the field of membership of a multiple common bond credit union with the approval of NCUA. The legislation defines an underserved area as a local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

An investment area includes any of the following:

- An area encompassed or located in an Enpowerment Zone or Enterprise Community designated under section 1391 or the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent and the area has significant unmet needs for loans or equity investments;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; and the area has significant unmet needs for loans or equity investments;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater; and the area has significant unmet needs for loans or equity investments;
- An area where the unemployment rate is at least 1.5 times the national average and the area has significant unmet needs for loans or equity investments;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent and the area has significant unmet needs for loans or equity investments;
- An area located outside of a Metropolitan Area with a county population loss between 1980 and 1990 of at least 10 percent and the area has significant unmet needs for loans or equity investments.

Although the new legislation specifically authorizes flexible policies regarding multiple group credit unions providing service to underserved areas, it is NCUA's determination that previous Agency policies allowing similar service to poor and disadvantaged areas should also be permitted. Accordingly, the criteria established for multiple group credit unions will also apply to single occupational, single associational, and community credit unions desiring to serve underserved areas. The charter type of the credit union will not change based on service to underserved area.

In addition, the area must be underserved based on data considered by the NCUA Board and the Federal Banking Agencies. Once an underserved area has been added to a multiple group credit union's field of membership with NCUA's approval, the credit union must establish and maintain an office or facility in the community.

Prior to approving an underserved area to a multiple group credit union's field of membership, NCUA will evaluate current service to groups within the field of membership by analyzing the credit union's penetration rates. If the credit union has a low penetration rate of existing groups, it will have a greater burden of showing

that it can adequately serve the requested underserved area.

IV. Chapter 4 of the Chartering Manual

This chapter discusses the requirements and procedures for conversion of a state credit union to a federal credit union and conversion of a federal credit union to a state credit union. The proposed policy for charter conversions is basically the same as current policy. The major change concerns changing the credit union's name on all signs, records, accounts, investments, stationery and other documents. The new policy establishes that the credit union has 180 days from the effective date of the conversion to change its signs, records, accounts, investments, and stationery. The credit union may reissue, with its new name, its outstanding debit cards, ATM cards, credit cards, at the time of renewal. Share drafts with the credit union's name can be used by the member until depleted. This provision applies to both types of conversions, state-to-federal and federal-to-state. If the state credit union is not federally insured, it must change its name and must immediately cease using any credit union documents referencing federal insurance and a federal name, including checks and credit cards.

V. Items in Process

Until this rule is finalized, NCUA must operate under interim policies. These policies primarily affect the chartering and conversion to a community charter, the approval of field of membership amendments for multiple common bond credit unions, and the eligibility of immediate family members. If NCUA received a community charter application, including conversions and expansions, prior to the enactment of the Credit Union Membership Access Act, NCUA will process the application under IRPS 94–1, as amended by IRPS 96–1 and IRPS 98–1, as required by Section 103 of the statutory amendments. If the application is denied by NCUA during the interim period after passage of the legislation, and the credit union subsequently submits a new application, the new rules contained in this proposal, if finalized, apply.

Amendments to multiple common bond credit unions cannot be approved until this rule is finalized. If NCUA receives amendment requests during this interim period, it will return the request to the credit union. However, amendments to single occupational/ assocational common bond credit unions will continue to be processed.

Under IRPS 94–1, credit unions have the ability to define immediate family through a credit union adopted bylaw amendment. Congress is requiring NCUA to specifically define immediate family member and submit the rule to Congress for review. Therefore, those immediate family members who are defined in the credit union's bylaws are eligible to join the credit union until notified by NCUA.

VI. Grandfather Provision

The Credit Union Membership Access Act permits any person or organization, who is a member of any federal credit union at the date of enactment, unless expelled under Section 118 of the Federal Credit Union Act, to maintain membership in the credit union. The Act also permits a member, or subsequent new member, of any group, whose members constituted a portion of the membership of any federal credit union at the date of enactment, to continue to be eligible for membership in the credit union. For example, an employee of a select group who was eligible for membership prior to August 7, 1998, but did not join the credit union, is still eligible to join the credit union. This also applies to new employees hired subsequent to the date of enactment.

B. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed rule will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that several requirements of this proposal constitute collections of information under the Paperwork Reduction Act. The requirements are that federal credit unions: (1) complete a charter application or conversion application; and (2) provide written requests for changes in a credit union's field of membership. These documents are necessary to ensure the safety and soundness of credit unions as well as ensuring that the legal requirements of the Act have been met. Other aspects of this proposal reduce the paperwork requirements from the current rule.

It is NCUA's view that some aspects of the time it takes a credit union to complete a charter application, charter amendment, or a community conversion or expansion application is not a burden created by this regulation but is the usual and customary practice in the normal operations of a business entity. However, NCUA estimates that it should take a credit union an average of 80 hours to develop a written charter or conversion request. NCUA estimates that it will receive 80 charter or conversion requests in any given year. The annual reporting burden would be 6,400 hours to comply with this requirement. NCUA also estimates that it should take a credit union an average of two hours to provide a written request for changes in a credit union's field of membership. NCUA estimates that it will receive 9,000 of these requests in any given year. The annual reporting burden would be 18,000 hours to comply with this requirement. The total annual burden hours imposed by the proposed rule is 24,400 hours.

The Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB) require that the public be provided an opportunity to comment on information collection requirements, including an agency's estimate of the burden of the collection of information.

The NCUA Board invites comment on: (1) whether the collection of the information is necessary for the proper performance of the functions of NCUA, including whether the information will have practical utility; (2) the accuracy of NCUA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA Board on the proposed regulation.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of

Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Alex Hunt, Desk Officer for NCUA. Comments must also be sent to NCUA, 1775 Duke Street, Alexandria, VA 22314–3428; Attention: Jim Baylen, Director, office of Administration, Telephone No. (703) 518–6410; Fax No. (703) 518–6433. Comments should be postmarked by November 13, 1998. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, at NCUA's Central Office, 6th Floor, Law Library, 1775 Duke Street, Alexandria, VA between the hours of 9 a.m. and 1 p.m., Monday through Friday of each week except federal holidays, and by appointment through the Law Librarian at telephone no. (703) 518–6540.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This proposed rule makes no significant changes with respect to state credit unions and therefore, will not materially affect state interests.

Congressional Review

Congress, by statute, has determined that NCUA's definition of "immediate family or household" as well as NCUA's definition of a "well-defined local community, neighborhood, or rural district," shall be treated as a major rule for purposes of chapter 8 of title 5 United States Code.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on August 31, 1998.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 98–3, Chartering and Field of Membership Policy. Copies may be obtained by contacting NCUA at the address found in § 792.2(g)(1) of this chapter. The IRPS is incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133–0015.)

IRPS 98–3—[Added]

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 98–3) does not appear in the Code of Federal Regulations.

3. IRPS 98–3 is added to read as follows:

Chapter 1—Federal Credit Union Chartering

I—Goals of NCUA Chartering Policy

The National Credit Union Administration's (NCUA) chartering and field of membership policies are directed toward achieving the following goals:

- To encourage the formation of credit unions;
- To uphold the provisions of the Federal Credit Union Act;
- To promote thrift and credit extension;
- To promote credit union safety and soundness; and
- To make quality credit union service available to all eligible persons.

NCUA may grant a charter to single occupational/associational groups, multiple groups, or communities if:

- The occupational, associational, or multiple groups possess an appropriate common bond or the community represents a well-defined local community, neighborhood, or rural district;
- The subscribers are of good character and are fit to represent the proposed credit union; and
- The establishment of the credit union is economically advisable.

Generally, these are the primary criteria that NCUA will consider. In unusual circumstances, however, NCUA may examine other factors, such as other federal law or public policy, in deciding if a charter should be approved.

II—Types of Charters

The Federal Credit Union Act recognizes three types of federal credit union charters—single common bond (occupational and associational), multiple common bond (more than one group each having a common bond of occupation or association), and community.

The requirements that must be met to charter a single occupational/associational group, multiple groups, or a community federal credit union are described in Chapter 2. Special rules for credit unions serving low-income groups are described in Chapter 3.

If a federal credit union charter is granted, Section 5 of the charter will describe the credit union's field of membership, which defines those persons and entities eligible for membership. Generally, federal credit unions are only able to grant loans and provide services to persons within the field of membership who have become members of the credit union.

III—Subscribers

Federal credit unions are generally organized by persons who volunteer their time and resources and are responsible for determining the interest, commitment, and economic advisability of forming a federal credit union. The organization of a successful federal credit union takes considerable planning and dedication.

Persons interested in organizing a federal credit union should contact one of the credit union trade associations or the NCUA regional office serving the state in which the credit union will be organized. Lists of NCUA offices and credit union trade associations are shown in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in contacting an organizer.

While anyone may organize a credit union, a person with training and experience in chartering new federal credit unions is generally the most effective organizer. However, extensive involvement by the group desiring credit union service is essential.

The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the proposed members are critical to the chartering process.

The Federal Credit Union Act requires that seven or more natural persons—the "subscribers"—present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed federal credit union;
- The location of the proposed federal credit union and the territory in which it will operate;
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
- The initial par value of the shares;
- The detailed proposed field of membership; and
- The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

False statements on any of the required documentation filed in obtaining a federal credit union charter may be grounds for federal criminal prosecution.

IV—Economic Advisability

IV.A—General

Before chartering a federal credit union, NCUA must be satisfied that the institution will be viable and that it will provide needed services to its members. Economic advisability is essential in order to qualify for a credit union charter.

NCUA will conduct an independent on-site investigation of each charter application to ensure that the proposed credit union can be successful. In general, the success of any credit union depends on: (a) the character and fitness of management; (b) the depth of the members' support; and (c) present and projected market conditions.

IV.B—Proposed Management's Character and Fitness

The Federal Credit Union Act requires NCUA to ensure that the subscribers are of good "general character and fitness." Prospective officials and employees will be the subject of credit and background investigations. The investigation report must demonstrate each applicant's ability to effectively handle financial matters. Employees and officials should also be competent, experienced, honest and of good character. Factors that may lead to disapproval of a prospective official or employee include criminal convictions, indictments, and acts of fraud and dishonesty. Further, factors such as serious or unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

NCUA also needs reasonable assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

Section 701.14 of NCUA's Rules and Regulations set forth the procedures for NCUA approval of officials of newly chartered credit unions. If the application of a prospective official or employee to serve is not acceptable to the regional director, the group can propose an alternate to act in that individual's place. If the charter applicant feels it is essential that the disqualified individual be retained, the individual may appeal the regional director's decision to the NCUA Board. If an appeal is pursued, action on the application may be delayed. If the appeal is denied by the NCUA Board, an acceptable new applicant must be provided before the charter can be approved.

IV.C—Member Support

While NCUA has not set a minimum field of membership size for chartering a federal credit union, experience has demonstrated that a credit union with fewer than 3,000 primary potential members (e.g., employees of a corporation or members of an association) generally is not economically advisable. Therefore, a charter applicant with a proposed field of membership of fewer than 3,000 primary potential members will have to provide significantly more support than a proposed credit union with a larger field of membership. For example, a small occupational group should demonstrate a commitment for significant long-term support from the employer.

Economic advisability is a major factor in determining whether the credit union will be chartered. An important consideration is the degree of support from the field of membership. The charter applicant must be able to demonstrate that membership support is sufficient to ensure viability.

IV.D—Present and Future Market Conditions—Business Plan

The ability to provide effective service to members, compete in the marketplace, and to adapt to changing market conditions is key to the survival of any enterprise. Before NCUA will charter or convert a credit union, a business plan based on realistic and supportable projections and assumptions must be submitted.

The business plan should contain, at a minimum, the following elements:

- Mission statement;
- Analysis of market conditions, including if applicable, geographic, demographic, employment, income, housing, and economic data;
- Identify any overlapped credit unions (discussed in Chapter 2);
- Evidence of member support;
- Goals for shares, loans, and for number of members;
- Financial services needed/desired;
- Financial services to be provided to members of all segments within the field of membership;
- How/when services are to be implemented;
- Organizational/management plan addressing qualification and planned training of officials/employees;
- Plan for continuity—directors, committee members and management staff;
- Operating facilities, to include office space/equipment and supplies, safeguarding of assets, insurance coverage, etc.;
- Type of record keeping system, including consideration of a data processing system;
- Detailed semiannual pro forma financial statements (balance sheet, income and expense projections) for 1st and 2nd year, including assumptions—e.g., loan and dividend rates;
- Plans for operating independently and adequately accumulating capital;
- Written policies (shares, lending, investments, funds management, capital accumulation, dividends, collections, etc.);
- Source of funds to pay expenses during initial months of operation, including any subsidies, assistance, etc., and terms or conditions of such resources; and
- Evidence of sponsor commitment (or other source of support) if subsidies are critical to success of the federal credit union. Evidence may be in the form of letters, contracts, financial statements from the sponsor, and any other such document on which the proposed federal credit union can substantiate its projections.

While the business plan may be prepared with outside assistance, the subscribers and proposed officials must understand and support the submitted business plan.

V—Steps in Organizing a Federal Credit Union

V.A—Getting Started

Following the guidance contained throughout this policy, the organizers should submit wording for the proposed field of membership (the persons, organizations and other legal entities the credit union will serve) to NCUA early in the application process for written preliminary approval. The proposed field of membership must meet all common bond or community requirements.

Once the field of membership has been given preliminary approval, and

the organizer is satisfied the application has merit, the organizers should conduct an organizational meeting to elect seven to ten persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at these meetings.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors of the proposed federal credit union. The new board of directors will then appoint the supervisory committee.

V.B—Charter Application Documentation

V.B.1—General

As discussed previously in this Chapter, the organizers of a federal credit union charter must, at a minimum, provide evidence that:

- The group(s) possesses an appropriate common bond or the geographical area to be served is a well-defined local community, neighborhood, or rural district;
- The subscribers, prospective officials, and employees are of good character and fitness; and
- The establishment of the credit union is economically advisable.

As part of the application process, the organizers must submit the following forms, which are available in Appendix D of this Manual:

- Federal Credit Union Investigation Report, NCUA 4001;
- Organization Certificate, NCUA 4008;
- Report of Official and Agreement to Serve, NCUA 4012;
- Applications and Agreements for Insurance of Accounts, NCUA 9500; and Certification of Resolutions, NCUA 9501.

Each of these forms is described in more detail in the following sections.

V.B.2—Federal Credit Union Investigation Report, NCUA 4001

The application for a new federal credit union will be submitted on NCUA 4001. (State-chartered credit unions applying for conversion to federal charter will use NCUA 4000. See Chapter 4 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request. Instructions and guidance for completing the form are provided on the reverse side of the form.

V.B.3—Organization Certificate, NCUA 4008

This document, which must be completed by the subscribers, includes the seven criteria established by the Federal Credit Union Act. NCUA staff assigned to the case will assist in the proper completion of this document.

V.B.4—Report of Official and Agreement to Serve, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official and employee must complete and sign this form. The organizers must review each of the NCUA 4012s for elements that would prevent the prospective official or employee from serving. Further, such factors as serious, unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

V.B.5—Application and Agreements for Insurance of Accounts, NCUA 9500

This document contains the agreements with which federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer. A federal credit union must qualify for federal share insurance.

V.B.6—Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for NCUSIF insurance of member accounts and has authorized the chief executive officer and chief recording officer to execute the Application and Agreements for Insurance of Accounts. This form must be signed by both the chief executive officer and recording officer of the proposed federal credit union.

VI—Name Selection

It is the responsibility of the federal credit union organizers or officials of an existing credit union to ensure that the proposed federal credit union name or federal credit union name change does not constitute an infringement on the name of any corporation in its trade area. This responsibility also includes researching any service marks or trademarks used by any other corporation (including credit unions) in its trade area. NCUA will ensure, to the extent possible, that the credit union's name:

- Is not already being officially used by another federal credit union;
- Will not be confused with NCUA or another federal or state agency, or with another credit union; and
- Does not include misleading or inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

The word "community," while not required, can only be included in the name of federal credit unions that have been granted a community charter.

VII—NCUA Review

VII.A—General

NCUA may provide preliminary approval of the proposed federal credit union's field of membership. Additionally, credit and background investigations may be conducted concurrently by NCUA with other work being performed by the organizers and subscribers to reduce the likelihood of delays in the chartering process.

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent to the organizers. At some point during the review process, a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union.

NCUA staff will review the application package and verify its accuracy and reasonableness. A staff member will inquire into the financial management experience, and the suitability and commitment of the proposed officials and employees and will make an assessment of economic advisability. The staff member will also provide guidance to the subscribers in the proper completion of the Organization Certificate, NCUA 4008.

The staff member will analyze the prospective credit union's business plan for realistic projections, attainable goals, adequate service to all segments of the field of membership, sufficient start-up capital, and time commitment by the proposed officials and employees. Any concerns will be reviewed with the organizers and discussed with the prospective credit union's officials. Additional on-site contacts by NCUA staff may be necessary. The organizers and subscribers will be expected to take the steps necessary to resolve any issues or concerns. Such resolution efforts may delay processing the application.

NCUA staff will then make a recommendation to the regional director

regarding the charter application. The recommendation may include specific provisions to be included in a Letter of Understanding and Agreement. In most cases, NCUA will require the prospective officials to adhere to certain operational guidelines. Generally, the agreement is for a limited term of two to four years. A sample Letter of Understanding and Agreement is found in Appendix B.

VII.B—Regional Director Approval

Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and standard bylaws from the regional director. Additionally, the officials will be advised of the name of the examiner assigned responsibility for supervising and examining the credit union.

VII.C—Regional Director Disapproval

When a regional director disapproves any charter application, in whole or in part, the organizers will be informed in writing of the specific reasons for the disapproval. Where applicable, the regional director will provide information concerning options or suggestions that the applicant could consider for gaining approval or otherwise acquiring credit union service. The letter of denial will include the procedures for appealing the decision.

VII.D—Appeal of Regional Director Decision

If the regional director denies a charter application, in whole or in part, that decision may be appealed to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reasons for denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal with a recommendation to the NCUA Board.

Before appealing, the prospective group may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the charter application is again denied, the group may proceed with the appeal process within 60 days of the date of the last denial.

VII.E—Commencement of Operations

Assistance in commencing operations is generally available through the various credit union trade organizations listed in Appendix E.

All new federal credit unions are also encouraged to establish a mentor relationship with a trained, experienced credit union individual or an existing credit union. The mentor should provide guidance and assistance to the new credit union through attendance at meetings and general oversight review. Upon request, NCUA will provide assistance in finding a qualified mentor.

VIII—Future Supervision

Each federal credit union will be examined regularly by NCUA to determine that it remains in compliance with applicable laws and regulations and to determine that it does not pose undue risk to the National Credit Union Share Insurance Fund. The examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation).

The examiner will be responsible for monitoring the progress of the credit union and providing the necessary advice and guidance to ensure it is in compliance with applicable laws and regulations. The examiner will also monitor compliance with the terms of any required Letter of Understanding and Agreement. Typically, the examiner will require the credit union to submit copies of monthly board minutes and financial statements.

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to obtain NCUA approval prior to appointment of any new board member, credit or supervisory committee member, or senior executive officer. Section 701.14 of the NCUA Rules and Regulations sets forth the notice and application requirements. If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change.

NCUA may disapprove an individual serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual indicates it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union. If a Notice of Disapproval is issued, the credit union may appeal the decision to the NCUA Board.

IX—Corporate Federal Credit Unions

A corporate federal credit union is one that is operated primarily for the purpose of serving other credit unions. Corporate federal credit unions operate under and are administered by the NCUA Office of Corporate Credit Unions.

X—Groups Seeking Credit Union Service

NCUA will attempt to assist any group in chartering a credit union or joining an existing credit union. If the group is not eligible for federal credit union service, NCUA will refer the group to the appropriate state supervisory authority where different requirements may apply.

XI—Field of Membership Designations

For monitoring purposes, NCUA will designate a credit union based on the following criteria:

Single Occupational: If a credit union serves a single occupational sponsor, such as ABC Corporation, it will be designated as an occupational credit union, followed by the name, ABC Corporation.

Single Associational: If a credit union serves a single associational sponsor, such as the Knights of Columbus, it will be designated as an associational credit union.

Multiple Group: If a credit union serves more than one group, each of which has a common bond of occupation and/or association, it will be designated as a multiple group credit union.

Community: All community credit unions will be designated as such, followed by a description of their geographic boundaries (e.g. city or county). More than one credit union may serve the same community.

XII—Serving Foreign Nationals

The Federal Credit Union Act authorizes a federal credit union to serve foreign nationals within the field of membership when they reside in or work in the United States. Foreign nationals may also be served if they reside in a foreign country, but only when the primary purpose of the credit union's foreign service facility is to serve United States citizens who are credit union members residing in the foreign country. In order to be served, the foreign nationals must be within the field of membership of the group for which the credit union maintains an office on foreign soil.

NCUA policy prohibits the establishment of a federal credit union on foreign soil for the primary purpose

of serving the citizens of a foreign nation.

Chapter 2—Field of Membership Requirements for Federal Credit Unions

I—Introduction

I.A.1—General

As set forth in Chapter 1, the Federal Credit Union Act provides for three types of federal credit union charters—single common bond (occupational or associational), multiple common bond (multiple groups), and community. Section 109 (12 U.S.C. 1759) of the Federal Credit Union Act sets forth the membership criteria for each of these three types of credit unions.

The field of membership, which is specified in Section 5 of the charter, defines those persons and entities eligible for membership. A single common bond federal credit union consists of one group which has a common bond of occupation or association. A multiple common bond federal credit union consists of more than one group, each of which has a common bond of occupation or association. A community federal credit union consists of persons or organizations within a well defined local community, neighborhood, or rural district.

Once chartered, a federal credit union can amend its field of membership; however, the same common bond or community requirements for chartering the credit union must be satisfied. Since there are differences in the three types of charters, special rules, which are fully discussed in the following sections of this Chapter may apply to each.

I.A.2—Special Low-Income Rules

Generally, federal credit unions can only grant loans and provide services to persons who have joined the credit union. The Federal Credit Union Act states that one of the purposes of federal credit unions is "to serve the productive and provident credit needs of individuals of modest means." Although field of membership requirements are applicable, special rules set forth in Chapter 3 may apply to low-income designated credit unions and those credit unions assisting low-income groups or to a federal credit union that adds an underserved community to its field of membership.

II—Occupational Common Bond

II.A.—General

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. NCUA permits a person's membership eligibility in a single occupational common bond group to be established in four ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an single occupational common bond;
- Employment in a corporation or other legal entity with a controlling ownership interest (which shall not be less than 10 percent) in or by another legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of a single occupational common bond; or
- Employment or attendance at a school makes that person part of a single occupational common bond.

A geographic limitation is not a requirement for a single occupational common bond. However, for purposes of describing the field of membership, the geographic areas being served will be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or the subsidiaries listed below;
- Employees of ABC Corporation who are paid from * * *;
- Employees of ABC Corporation who are supervised from * * *;
- Employees of ABC Corporation who are headquartered in * * *; and/or
- Employees of ABC Corporation who work in the United States.

So that NCUA may monitor any potential field of membership overlaps, each group to be served (e.g., employees of subsidiaries, franchisees, and contractors) must be separately listed in Section 5 of the charter.

The corporate or other legal entity (i.e., the employer) may also be included in the common bond—e.g., "ABC Corporation." The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

A charter applicant must provide documentation to establish that the single occupational common bond requirement has been met.

Some examples of a single occupational common bond are:

- Employees of the Hunt Manufacturing Company who work in West Chester, Pennsylvania. (common bond—same employer with geographic definition);
- Employees of the Buffalo Manufacturing Company who work in the United States. (common bond—same employer with geographic definition);
- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic definition);
- Employees of Johnson Soap Company and its majority owned subsidiary, Johnson Toothpaste Company, who work in, are paid from, are supervised from, or are headquartered in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic definition);
- Employees of those contractors who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic definition);
- Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from the Newport Beach Medical Center, Newport Beach, California. (single corporation with geographic definition);
- Employees of JLS, Incorporated and MJM, Incorporated working for the LKM Joint Venture Company in Catalina Island, California. (common bond—same employer—ongoing dependent relationship); or
- Employees of and students attending Georgetown University. (common bond—same occupation).

Some examples of insufficiently defined single occupational common bonds are:

- Employees of manufacturing firms in Seattle, Washington. (no defined sponsor or industry);
- Persons employed or working in Chicago, Illinois. (no occupational common bond); or
- Employees of all colleges and universities in the State of Texas. (not a single occupational common bond).

II.B—Occupational Common Bond Amendments

II.B.1—General

Section 5 of every single occupational federal credit union's charter defines the field of membership, i.e., common bond groups the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a new group sharing the credit union's common bond is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, if the entire field of membership is acquired by another corporation, the credit union can serve the employees of the new corporation and any subsidiaries after receiving NCUA approval.

Third, a federal credit union qualifies to change its common bond from:

- A single occupational common bond to a single associational common bond;
- A single occupational common bond to a community charter; or
- A single occupational common bond to a multiple common bond.

Fourth, a federal credit union removes a group from its field of membership through agreement with the group, a spin-off, or because the group is no longer in existence.

An existing single occupational common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the occupational common bond requirement has been met.

All amendments to an occupational common bond credit union's field of membership must be approved by the regional director. The regional director may approve an amendment to expand the field of membership if:

- The common bond requirements of this section are satisfied;
- The group to be added has provided a written request for service to the credit union;
- The change is economically advisable; and
- The group presently does not have credit union service available other than through a community charter (if non community credit union service is available, the region must conduct an overlap analysis).

II.B.2—Corporate Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership. NCUA will not permit a single common bond credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or if the credit union converts to a multiple common bond credit union.

II.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely effect on the credit union's operations and financial condition, and its likely impact on other credit unions. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section II.E are also applicable.

II.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015), or its equivalent, to the appropriate NCUA regional director. The request must be signed by an authorized credit union representative.

The Application for Field of Membership Amendment (NCUA 4015) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
- How the group shares the credit union's occupational common bond;
- That the group wants to be added to the applicant federal credit union's field of membership;
- Whether the group presently has other credit union service available; and
- The number of persons currently included within the group to be added and their locations.
- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section II.E.

II.C—NCUA'S Procedures for Amending the Field of Membership

II.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

II.C.2—Regional Director's Decision

All amendment requests will be reviewed by NCUA staff in order to ensure conformance to NCUA policy.

In some cases, an on-site review by a staff member may be required by the regional director before acting on a proposed amendment. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. NCUA will carefully consider the economic advisability of expanding the field of membership of a credit union with financial or operational problems.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

II.C.3—Regional Director Approval

If the requested amendment is approved by the regional director, the credit union will be issued an amendment to Section 5 of its charter.

II.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedure.

II.C.5—Appeal of Regional Director Decision

If a field of membership expansion, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and

present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

II.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single occupational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

II.D.1—Common Bond Mergers

Generally, the requirements applicable to field of membership expansions found in this chapter apply to mergers where the continuing credit union has a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is located, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

II.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a single occupational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is also an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's original single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is located, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

II.D.3—Purchase and Assumptions (P&As)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. If the P&A is the result of insolvency or danger of insolvency, then the emergency merger provisions apply and it is not necessary to meet common bond requirements.

A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. Specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the continuing credit union is located, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

II.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spin-off becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have a common bond (applies only to single occupational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and

• Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are located and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

II.E—Overlaps

II.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single occupational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same occupational group, an overlap can be permitted.

Proposed or existing credit unions must only investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the affected credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

• The overlapped credit union does not object to the overlap;

• The overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union; or

• there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time.

In reviewing the overlap, the regional director will consider:

• The nature of the issue;

• Efforts made to resolve the matter;

• Financial effect on the overlapped credit union;

• The desires of the group(s);

• Whether the original credit union fails to provide requested service;

• The desire of the sponsor organization; and

• The best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single occupational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

Generally, NCUA will permit single occupational federal credit unions to overlap community charters without performing an overlap analysis.

II.E.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. NCUA will make the final decision regarding field of membership amendments, taking into account the credit unions' agreements, safety and soundness concerns, the desires of the members, the significance of the overlap, and other relevant issues.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

• Employees of Lucky Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

II.E.3—Exclusionary Clauses

An exclusionary clause is a limitation which precludes the credit union from serving the primary members of a portion of a group otherwise included in its field of membership.

When two credit unions agree and/or NCUA has determined that overlap protection is appropriate for safety and soundness reasons, an exclusionary clause will be included in the expanding federal credit union's charter.

Exclusionary clauses are very difficult for credit unions and NCUA to monitor properly. Additionally, exclusionary clauses can be ineffective or create obvious inequities—one spouse may be eligible for membership in a federal credit union while the other may not; one employee may be eligible for credit union service while a co-worker may not. If, for safety and soundness reasons, an exclusionary clause is appropriate, the overlap protection only applies to primary members, which may only provide limited protection.

One example of an appropriate use of an exclusionary clause may be where there is a merger of two corporations served by two credit unions which will continue to independently serve their respective groups as they had prior to their sponsors' consolidation. The addition of an exclusionary clause to the field of membership of one or both of the credit unions may be the best way to clarify the division of service responsibility within the new corporate entity.

When an exclusionary clause is included in a federal credit union's field of membership, NCUA will define:

- The identity of the group;
- Whether the exclusion is to apply to the entire group or only to those who are actually members of another credit union;
- Whether the exclusion is to apply only to the current members of the group or to future members as well; and
- Whether the exclusion is to apply for a limited time period.

Examples of exclusionary wording are:

- Persons who work for Pearl Jam Company, except those who work in, are paid from, or are supervised from San Francisco, California.
- Persons who work for the Fastball Co., except those employed by the Ranger Division as of June 30, 1996.
- Persons who work for CAT Co., except those who were members of the St. Bonaventure Federal Credit Union as of June 30, 1996.

Exclusionary clauses granted prior to the adoption of this new chartering manual will remain in effect unless the two credit unions agree to remove them. This requires NCUA approval.

II.F—Charter Conversion

A single common bond federal credit union may apply to convert to any other type of charter provided the field of membership requirements of the new charter type are met. A group currently within the field of membership of the converting credit union which would not otherwise qualify as a group with the new charter cannot be served by the converting credit union; however, members of record can continue to be served.

In order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 1, Section IV.D.

II.G—Removal of Groups from the Field of Membership

A credit union may request removal of a group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the overlapping field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- the group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

II.H—Other Persons Sharing Common Bond

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Members of their immediate families; and
- Organizations of such persons.

Members of their immediate families is defined as related persons i.e., blood, marriage, or other recognized family relationships in the same household (under the same roof), or if not in the same household, as a grandparent, parent, spouse, sibling, child, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, and stepsiblings. The immediate family member must be related to the credit union member.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member."

III—Associational

Common Bond

III.A.1—General

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);
- Non-natural person members of the association;
- Employees of the association (for example, employees of the labor union or employees of the church); and
- The association.

Generally, a single associational common bond does not include a geographic definition. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds will include a definition of the group that may be served based on the effective date of the association's charter and bylaws. If the associational charter crosses NCUA regional boundaries, each of the affected regional directors must be consulted prior to NCUA action on the charter.

Qualifying associational groups must hold meetings open to all members, must sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership. Usually, this will be found in the association's charter and bylaws.

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will

consider the totality of the circumstances, such as:

- Whether members pay dues;
- Whether members participate in the furtherance of the goals of the association;
- Whether the members have voting rights;
- Whether the association maintains a membership list;
- The clarity of the association's definition and compactness of its membership; and
- The frequency of meetings.

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Individuals or honorary members who only make donations to the association are not eligible to join the credit union. Other classes of membership that do not meet to accomplish the goals of the association would not qualify.

Educational groups—for example, parent-teacher organizations, alumni associations, and student organizations in any school—and church groups constitute associational common bonds and may qualify for a federal credit union charter. Homeowner associations, tenant groups, co-ops, consumer groups, and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may also qualify as an association.

The terminology "Alumni of Jacksonville State University" is insufficient to demonstrate an associational common bond. To qualify as an association, the alumni association must meet the requirements for an associational common bond. The alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an associational charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of membership, may qualify as a valid associational common bond.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of the regional director, a copy of the association's charter, bylaws, or other equivalent documentation, and any legal documentation required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—e.g., "Sprocket Association"—and will be shown in the last clause of the field of membership.

III.A.2—Subsequent Changes to Association's Bylaws

If the association's membership or geographical definitions in its charter and bylaws are changed subsequent to the effective date stated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's consideration and approval prior to serving members of the association added as a result of the change.

III.A.3—Sample Single Associational Common Bonds

Some examples of associational common bonds are:

- Regular members of Locals 10 and 13, IBEW, in Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 1997;
- Members of the Hoosier Farm Bureau who live or work in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1997;
- Members of the Shalom Congregation in Chevy Chase, Maryland;
- Regular members of the Corporate Executives Association, located in Westchester, New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1997;
- Members of the University of Wisconsin Alumni Association, located in Green Bay, Wisconsin; or
- Members of the Marine Corps Reserve Officers Association.

Some examples of insufficiently defined single associational common bonds are:

- All Lutherans in the United States. (too broadly defined); or
- Veterans of U.S. military service. (group is too broadly defined; no formal association of all members of the group).

Some examples of unacceptable single associational common bonds are:

- Alumni of Amos University. (no formal association); or
- Customers of Fleetwood Insurance Company. (policyholders or primarily customer/client relationships do not meet associational standards).
- Employees of members of the Reston, Virginia Chamber of Commerce. (not a sufficiently close tie to the associational common bond).

III.B—Associational Common Bond Amendments

III.B.1—General

Section 5 of every associational federal credit union's charter defines the field of membership, i.e., common bond groups, the credit union can legally serve. Only those persons who, or legal entities that, join the credit union and are specified in the field of membership can be served. There are three instances in which Section 5 must be amended by NCUA.

First, a new group that shares the credit union's common bond is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its common bond from:

- A single associational common bond to a single occupational common bond;
- A single associational common bond to a community charter; or
- A single associational common bond to a multiple common bond.

Third, a federal credit union removes a group from its field of membership through agreement with the group, a spin-off, or the group is no longer in existence.

An existing single associational federal credit union that submits a request to amend its charter must provide documentation to establish that the associational common bond requirement has been met.

All amendments to an associational common bond credit union's field of membership must be approved by the regional director. The regional director may approve an amendment to expand the field of membership if:

- The common bond requirements of this section are satisfied;
- The group to be added has provided a written request for service to the credit union;
- The change is economically advisable; and
- The group presently does not have credit union service available other than through a community credit union (if non community credit union service is available, the region must conduct an overlap analysis.)

III.B.2—Organizational Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun-off. This is an event which requires a

change to the credit union's field of membership. NCUA may not permit a single associational credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

III.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely impact on the credit union's operations and financial condition and its likely effect on other credit unions. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section III.E are also applicable.

III.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment, NCUA 4015, or its equivalent, to the appropriate NCUA regional director. The request must be signed by an authorized credit union representative.

NCUA 4015, must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
- How the group shares the credit union's associational common bond;
- That the group wants to be added to the applicant federal credit union's field of membership;
- Whether the group presently has other credit union service available; and
- The number of persons currently included within the group to be added and their locations.
- The most recent copy of the group's charter and bylaws or equivalent documentation.
- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section III.E.

III.C—NCUA Procedures for Amending the Field of Membership

III.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

III.C.2—Regional Director's Decision

All amendment requests will be reviewed by NCUA staff in order to ensure conformance to NCUA policy.

In some cases, an on-site review by a staff member may be required by the regional director before acting on a proposed amendment. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

III.C.3—Regional Director Approval

If the requested amendment is approved by the regional director, the credit union will be issued an amendment to Section 5 of its charter.

III.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

III.C.5—Appeal of Regional Director Decision

If a field of membership expansion, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

III.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single associational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

III.D.1—Common Bond Mergers

Generally, the requirements applicable to field of membership expansions found in this section apply to mergers where the continuing credit union is a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is located, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

III.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a single associational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is located, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

III.D.3—Purchase and Assumptions (P&As)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. If the P&A is the result of insolvency or danger of insolvency, then the emergency merger provisions apply and it is not necessary to meet common bond requirements.

A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. Specified loans, shares, and certain other designated assets and liabilities, may also be acquired without regard to common bond restrictions and without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit unions' original common bond will be controlling for future common bond expansions.

If the P&A is not the result of an insolvency or danger of insolvency, then the common bond rules apply to those assets purchased and liabilities assumed.

P&As involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the continuing credit union is located, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

III.D.4—Spin-Offs

Generally, a spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares and capital of a credit union, are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All single associational common bond requirements apply regardless of whether the spin-off becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have the same common bond (applies only to single associational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are located and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

III.E—Overlaps

III.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single associational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same

associational group, an overlap can be permitted.

Proposed or existing credit unions must only investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

- The overlapped credit union does not object to the overlap;
- The overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union;
- There is limited participation by members of the group in the original credit union after the expiration of a reasonable period of time; or
- The field of membership is broadly stated, such as a national association.

In reviewing the overlap, the regional director will consider:

- The nature of the issue;
- Efforts made to resolve the matter;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- Whether the original credit union fails to provide requested service;
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single associational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

Generally, NCUA will permit single associational federal credit unions to overlap community charters without performing an overlap analysis.

III.E.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. NCUA will make the final decision regarding field of membership amendments, taking into account the credit unions' agreements, safety and soundness concerns, the desires of the members, the significance of the overlap and other relevant issues.

III.E.3—Exclusionary Clauses

An exclusionary clause is a limitation which precludes the credit union from serving the primary members of a portion of a group otherwise included in its field of membership.

When two credit unions agree and/or NCUA has determined that overlap protection is appropriate for safety and soundness reasons, an exclusionary clause will be included in the expanding federal credit union's charter.

Exclusionary clauses are very difficult for credit unions and NCUA to monitor properly. Additionally, exclusionary clauses can be ineffective or create obvious inequities—one spouse may be eligible for membership in a federal credit union while the other may not; one member may be eligible for credit union service while another may not. If, for safety and soundness reasons, an exclusionary clause is appropriate, the overlap protection only applies to primary members, which may only provide limited protection.

One example of an appropriate use of an exclusionary clause may be where there is a merger of two labor unions served by two credit unions which will continue to serve their groups as they had prior to their sponsors' consolidation. The addition of an exclusionary clause to the field of membership of one or both of the credit unions may be the best way to clarify the division of service responsibility within the new corporate entity.

When an exclusionary clause is included in a federal credit union's field of membership, NCUA will define:

- The group to be excluded;
- Whether the exclusion is to apply to the entire group or only to those who are actually members of another credit union;
- Whether the exclusion is to apply only to the current members of the group or to future members as well; and
- Whether the exclusion is to apply for a limited time period.

Examples of exclusionary wording are:

- Members of K of C Council #10, except members of the XYZ Federal Credit Union as of June 30, 1996; or
- Members of the American Bar Association, except those located in Washington, D.C.

Exclusionary clauses granted prior to the adoption of this new chartering manual will remain in effect unless the two credit unions agree to remove them. This requires NCUA approval.

III.F—Charter Conversions

A single common bond associational federal credit union may apply to convert to any other type of charter. A conversion is no different than applying for a charter or expanding the field of membership—field of membership requirements must be met. A group currently within the field of membership of the converting credit union, but which would not otherwise qualify as a member of the new charter, cannot be served by the converting credit union; however, members of record can continue to be served.

In order to support a case for a conversion, the applicant federal credit union must develop a detailed business plan as specified in Chapter 1, Section IV.D.

III.G—Removal of Groups From the Field of Membership

A credit union may request removal of a group from its field of membership for various reasons. The most common reasons for this type of amendment are:

• The group is within the overlapping field of membership of two credit unions and one wishes to discontinue service;

• The federal credit union cannot continue to provide adequate service to the group;

• The group has ceased to exist;

• The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or

• The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

III.H—Other Persons Sharing Common Bond

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership. These include the following:

• Spouses of persons who died while within the field of membership of this credit union;

• Employees of this credit union;

• Volunteers;

• Members of their immediate families; and

• Organizations of such persons.

"Members of their immediate families" is defined as related persons i.e., blood, marriage, or other recognized family relationships in the same household (under the same roof), or if not in the same household, as a grandparent, parent, spouse, sibling, child, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, and stepsiblings. The immediate family member must be related to the credit union member.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. One example is volunteers working at a church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member."

IV—Multiple Occupational/ Associational Common Bonds

IV.A.1—General

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a shared branch, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

The select group as a whole will be considered to be within a credit union's service area when:

• A majority of the persons in a select group live, work, or gather regularly within the service area;

• The group's headquarters is located within the service area; or

• The group's "paid from" or "supervised from" location is within the service area.

IV.A.2—Sample Multiple Group Field of Membership

An example of a multiple group field of membership is:

"The field of membership of this federal credit union shall be limited to the following:

1. Employees of Teltex Corporation who work in Wilmington, Delaware;

2. Partners and employees of Smith & Jones, Attorneys at Law, who work in Wilmington, Delaware;

3. Members of the M&L Association who live in Wilmington, Delaware, and qualify for membership in accordance with its charter and bylaws in effect on December 31, 1997."

IV.B—Multiple Group Amendments

IV.B.1—General

Section 5 of every multiple group federal credit union's charter defines the field of membership and select groups the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a new select group is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its charter from:

• A single occupational/associational charter to a multiple group charter;

• A multiple group to a single occupational/associational charter;

• A multiple group to a community charter; or

• A community to a multiple group charter.

Third, a federal credit union removes a group from its field of membership through agreement with the group, a spin-off, or because the group is no longer in existence.

IV.B.2—Numerical Limitation of Select Groups

An existing multiple group federal credit union that submits a request to amend its charter must provide documentation to establish that the multiple group requirements have been met. All amendments to a multiple group credit union's field of membership must be approved by the regional director.

NCUA will approve groups of less than 3,000 persons (excluding family members) to a credit union's field of membership, if the agency determines in writing that the following criteria are met:

• The credit union has not engaged in any unsafe or unsound practice, as determined by the regional director, which is material during the one year period preceding the filing to add the group;

• The credit union is "adequately capitalized." NCUA defines adequately capitalized to mean if the credit union has a net worth of not less than 6 percent;

• The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;

• Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.E are also applicable; and

• If the formation of a separate credit union by such group is not practical or consistent with safety and soundness standards.

NCUA encourages the formation of separately chartered credit unions for groups consisting of 3,000 or more persons (excluding family members). If the formation of a separate credit union by such a group is not practical because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1, the group may be added to a multiple common bond credit union's field of membership. However, NCUA must determine in writing that all the requirements set forth above are met and the group must be within the credit union's service area.

IV.B.3.—Documentation Requirements

A multiple group credit union requesting a select group expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015), or its equivalent, to the appropriate NCUA regional director. The request must be signed by an authorized credit union representative.

The Application for Field of Membership Amendment (NCUA 4015) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may, accept such other documentation or certification as deemed appropriate. This letter must indicate:

• The group's occupational or associational common bond;

• That the group wants to be added to the federal credit union's field of membership;

• Whether the group presently has other credit union service available;

• The number of persons currently included within the group to be added and their locations; and

• Evidence that the groups are within reasonable proximity of the credit union.

• If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section IV.E.

IV.B.4—Corporate Restructuring

If a select group within a federal credit union's field of membership undergoes a substantial restructuring, a change to the credit union's field of membership may be required if the credit union is to continue to provide service to the select group. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold or spun-off select group to which it has been providing service, without regard to location, if the original group is clearly identifiable, and the group requests continued service, documented by a letter from an official representative of the group. This type of amendment to the credit union's charter is not considered an expansion, therefore the criteria relating to adding new groups are not applicable.

IV.C—NCUA's Procedures for Amending the Field of Membership

IV.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

IV.C.2—Regional Director's Decision

All amendment requests will be reviewed by NCUA staff in order to ensure conformance to NCUA policy.

In some cases, an on-site review by a staff member may be required by the regional director before acting on a proposed amendment. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. An expanded field of membership may provide the basis for reversing adverse trends. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's adverse trends. The applicant credit union must clearly establish that the approval of the expanded field of membership meets the requirements of IV.B.2 and will not increase the risk to the NCUSIF.

IV.C.3—Regional Director Approval

If the requested amendment is approved by the regional director, the credit union will be issued an amendment to Section 5 of its charter.

IV.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

• Specific reasons for the action;

• If appropriate, options or suggestions that could be considered for gaining approval; and

• Appeal procedure.

IV.C.5—Appeal of Regional Director Decision

If a field of membership expansion, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The regional director will have 30-days from the date of the receipt of the request for reconsideration to make a final decision. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of date of the last denial by the regional director.

IV.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of select groups, there are three additional ways a multiple group federal credit union can expand its field of membership:

• By taking in the field of membership of another credit union through a merger;

• By taking in the field of membership of another credit union through an purchase and assumption (P&A); or

• By taking a portion of another credit union's field of membership through a spin-off.

With the exception of emergency mergers and P&As, in all cases the requirements of IV.B.2 must be met. If the merger, spin-off, or P&A is the result of safety and soundness concerns or an emergency situation as described in IV.D.2 and IV.D.3, the numerical limitation does not apply.

IV.D.1—Mergers of Multiple Group Credit Unions

Generally, the requirements applicable to field of membership expansions found in this section apply to mergers where the continuing credit union is a federal charter. If the requirements of IV.B.2 are not met, the merger will not be approved by NCUA.

If the merger is approved, the merging credit union's field of membership will be transferred intact to the continuing credit union and can continue to be served.

Where the merging credit union is state-chartered, the field of membership rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is located, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

IV.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to field of membership rules or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions including numerical limitation requirements and without changing the character of the continuing federal credit union for future amendments. Under this authority, a multiple common bond credit union may merge with any single occupational/associational, multiple common bond, or community charter and that credit union can continue to serve the merging credit union's field of membership. Subsequent field of membership expansions must be consistent with multiple group policies.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is located, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

IV.D.3—Purchase and Assumptions (P&As)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to field of membership expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. Specified loans, shares, and certain other designated assets and liabilities, without regard to field of membership restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments. Subsequent field of membership expansions must be consistent with multiple group policies.

P&As involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the continuing credit union is located, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

IV.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All requirements of IV.B.2 and IV.B.3 apply if the spun-off group goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are located and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

IV.E—Overlaps

IV.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

Proposed or existing credit unions must investigate the possibility of an overlap prior to submitting an application for a proposed charter or expansion.

When an overlap situation does arise, officials of the expanding credit union must ascertain the views of the overlapped credit union. If the overlapped credit union does not object, the applicant must submit a letter or other documentation to that effect. If the overlapped credit union does not respond, the expanding credit union must notify NCUA in writing of its attempt to obtain the overlapped credit union's comments.

NCUA will generally not approve an overlap unless the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in field of membership clearly outweighs any adverse effect on the overlapped credit union.

In reviewing the overlap, the regional director will consider:

- The view of the overlapped credit union(s);
- Whether the overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union;
- Whether there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time;
- Whether the original credit union fails to provide requested service;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Generally, if the overlapped credit union does not object, and NCUA determines that there is no safety and soundness problem, the overlap will be permitted.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every select group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

Generally, NCUA will permit multiple group federal credit unions to overlap community charters without performing an overlap analysis.

IV.E.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the field of membership descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of any select group listed in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring or merger of the parent organization. When such overlaps occur, each credit union must request a field of membership amendment to reflect the new groups each wishes to serve. NCUA will review these requests as it does any select group addition. The credit union can continue to serve any current group in its field of membership that is acquiring a new group or has been acquired by a new group. The new group cannot be served by the credit union until the field of membership amendment is approved by NCUA.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

- Employees of MHS Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

IV.E.3—Exclusionary Clauses

An exclusionary clause is a limitation which precludes the credit union from serving the primary members of a portion of a group otherwise included in its field of membership.

When NCUA determines that overlap protection is appropriate for safety and soundness reasons, an exclusionary clause will be included in the expanding federal credit union's charter.

Exclusionary clauses are very difficult for credit unions and NCUA to monitor properly. Additionally, exclusionary clauses can be ineffective or create obvious inequities—one spouse may be eligible for membership in a federal credit union while the other may not; one employee may be eligible for credit union service while a co-worker may not. If, for safety and soundness reasons, an exclusionary clause is appropriate, the overlap protection only applies to primary members, which may only provide limited protection.

One example of an appropriate use of an exclusionary clause may be where there is a merger of two corporations served by two credit unions which will continue to serve their groups as they had prior to their sponsors' consolidation. The addition of an exclusionary clause to the field of membership of one or both of the credit unions may be the best way to clarify the division of service responsibility within the new corporate entity.

When an exclusionary clause is included in a federal credit union's field of membership, NCUA will define:

- The identity of the group;
- Whether the exclusion is to apply to the entire group or only to those who are actually members of another credit union;
- Whether the exclusion is to apply only to the current members of the group or to future members as well; and
- Whether the exclusion is to apply for a limited time period.

Examples of exclusionary wording are:

- Persons who work for Monty Sugar Company, except those who work in, are paid from, or are supervised from San Francisco, California.
- Persons who work for the EWJ Co., except those employed by the JEC Division as of June 30, 1997.
- Persons who work for KLB Co, except those who were members of the St. Bonaventure Federal Credit Union as of June 30, 1997.

Exclusionary clauses granted prior to the adoption of this new chartering manual will remain in effect unless the two credit unions agree to remove them. This requires NCUA approval.

IV.F—Charter Conversion

A multiple common bond federal credit union may apply to convert to any other type of charter provided the field of membership requirements of the new charter type are met. Groups within the existing charter which cannot

qualify in the new charter can not be served except for members of record.

In order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 1, Section IV.D.

IV.G—Removal of Groups From the Field of Membership

A credit union may request removal of a group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the overlapping field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

IV.H—Other Persons Sharing Common Bond

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Members of their immediate families; and
- Organizations of such persons.

"Members of their immediate families" is defined as related persons i.e., blood, marriage, or other recognized family relationships in the same household (under the same roof), or if not in the same household, as a grandparent, parent, spouse, sibling, child, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, and stepsiblings. The immediate family member must be related to the credit union member.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member."

V—Community Charter Requirements

V.A.1—General

Community charters must be based on "a well-defined local community, neighborhood, or rural district." NCUA policy is to limit the community to a single, geographically well-defined area where individuals have common interests or interact.

NCUA recognizes four types of affinity on which a community charter can be based—persons who live in, worship in, attend school in, or work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership. More than one credit union may serve the same community area provided there are no safety and soundness concerns and it is economically feasible. Given the diversity of community characteristics throughout the country and NCUA's goal of making credit union service available to all eligible groups who wish to have it, NCUA has established the following requirements for community charters:

- The geographic area's boundaries must be clearly defined;
- The charter applicant must establish that the area is a "well-defined local, community, neighborhood, or rural district;" and
- The residents must have common interests or interact.

V.A.2 —Documentation Requirements

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide special documentation addressing the proposed area to be served and community service policies.

A community credit union is unique in that it must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

"Well-defined" means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly identifiable neighborhood. Although congressional districts or other political boundaries which are subject to occasional change, and state boundaries are well-defined areas, they do not meet the second requirement that the proposed area be a local community, neighborhood, or rural district.

The meaning of local community, neighborhood, or rural district includes a variety of factors. Most prominent is the requirement that the residents of the proposed community area interact or have common interests. In determining interaction and/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental or civic facilities, or area newspaper is significant evidence of community interaction and/or common interests. Conversely, numerous trade areas, multiple taxing authorities, and multiple political jurisdictions, tend to diminish the characteristics of a local area.

Population and geographic size are also significant factors in determining whether the area is local in nature. A large population in a small geographic area or a small population in a large geographic area, may meet NCUA community chartering requirements. For example, an ethnic neighborhood, a rural area, a city, and a county with less than 300,000 residents will generally have sufficient interaction and/or common interests to meet community charter requirements.

Conversely, a larger population in a large geographic area may not meet NCUA community chartering requirements. It is more difficult for a major metropolitan city, a densely populated county, or an area covering multiple counties with significant population to have sufficient interaction and/or common interests, and to therefore demonstrate that these areas meet the requirement of being "local." In such cases, the burden of demonstrating interaction and/or common interests will be greater than the evidence necessary for a smaller and less densely populated area.

In most cases, for a community credit union, the "well-defined local community, neighborhood, or rural district" requirement will be met if the area to be served is in a recognized single political jurisdiction, i.e., a county or its political equivalent or any

political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000. If the proposed area meets this criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests. If NCUA does not find sufficient evidence of community interaction or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined community. The credit union must also provide evidence of the political jurisdiction and population.

If the area to be served is not contained within a recognized single political jurisdiction or if the population of the area to be served exceeds 300,000, or if required by NCUA, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district. Some of that documentation may include:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- Maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas;
- Common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, etc.); or
- Other documentation that demonstrates that the area is a community where individuals have common interests or interact.

A new or converting credit union must provide a list of federally insured credit unions presently in the area and evidence that these credit unions were contacted regarding the community charter.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business plan for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the unique financial and operational factors of a community charter.

Community credit unions will be expected to follow, to the fullest extent economically possible, the marketing and/or business plan submitted with their application. The community credit union will be expected to regularly review its business plan as well as membership and loan penetration rates throughout the community to determine if the entire community is being adequately served.

V.A.3—Special Documentation Requirements for a Converting Credit Union

An existing federal credit union may apply to convert to a community charter. Groups currently in the credit union's field of membership but outside the new community credit union's boundaries may not be included in the new community charter.

The documentation requirements set forth in section V.A.2 must be met before a community charter can be approved. Demonstrating community support, as discussed in Chapter 1, is not required for converting credit unions. In order to support a case for a conversion to community charter, the applicant federal credit union must develop a business plan incorporating the following data:

- Current financial statements, including the income statement and a summary of loan delinquency;
- Pro forma financial statements for the first two years after the proposed conversion, including assumptions—e.g., member, share, loan, and asset growth;
- Financial services to be provided to members;
- Location of service facilities;
- Anticipated financial impact on the credit union in terms of need for additional employees and fixed assets; and
- Anticipated financial impact on the credit union of not being able to serve new members of existing groups that are located outside of the community boundaries. The credit union should also identify alternative financial services available to those groups.

Before approval of an application to convert to a community credit union, NCUA must be satisfied that the institution will be viable and that it will provide needed services to its members.

V.A.4—Community Boundaries

The geographic boundaries of a community federal credit union are the areas defined in its charter, usually with north, east, south, and west boundaries.

A community that is a recognized legal entity, may be stated in the field of membership—for example, "Gus Township, Texas" or "Kristi County, Virginia."

V.A.5—Special Community Charters

A community field of membership may include persons who work or attend school in a particular industrial park, shopping mall, office complex, or similar development. The proposed field of membership must have clearly defined geographic boundaries.

V.A.6—Sample Community Fields of Membership

A community charter does not have to include all four affinities (i.e., residing, working, worshipping, or going to school in a community). Some examples of community fields of membership are:

- Persons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;
- Persons who live or work in Green County, Maine;
- Persons who live, worship, or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois;
- Persons who live, worship, work, or attend school at the University of Dayton, in Dayton, Ohio; or
- Persons who work for businesses located in Clifton Country Mall, in Clifton Park, New York.

Some examples of insufficiently defined community field of membership definitions are:

- Persons who live or work within and businesses located within a ten-mile radius of Washington, D.C. (using a radius does not establish a well-defined area); or
- Persons who live or work in the industrial section of New York, New York. (not a well-defined neighborhood, community, or rural district).

Some examples of unacceptable local communities, neighborhoods, or rural districts are:

- Persons who live or work in the Greater Boston Metropolitan Area. (does not meet the definition of local community, neighborhood, or rural district).
- Persons who live or work in the State of California. (does not meet the definition of local community, neighborhood, or rural district).

V.B—Field of Membership Amendments

A community credit union may amend its field of membership by redefining its geographic boundaries, including additional affinities, or removing exclusionary clauses. Persons who live, work, worship, or attend school within the proposed well-defined local community, neighborhood or rural district must have common interests or interact. The burden of proof for establishing existence of the community is placed upon the applicant credit union.

Prior to granting a field of membership expansion, NCUA will examine the expansion's potential effect on the credit union's operations and financial condition and its likely impact on other credit unions.

Generally, if a community credit union applies to amend its geographic boundaries, or an occupational or associational credit union applies to convert to a community charter, an NCUA staff member will make an on-site evaluation of the proposal.

V.C—NCUA Procedures for Amending the Field of Membership

V.C.1—General

All requests for approval to amend a community credit union's charter must be submitted to the appropriate regional director. If a decision cannot be made within a reasonable period of time, the regional director will notify the credit union.

V.C.2—NCUA's Decision

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

V.C.3—NCUA Approval

If the requested amendment is approved by NCUA, the credit union will be issued an amendment to Section 5 of its charter.

V.C.4—NCUA Disapproval

When NCUA disapproves any application to amend the field of membership, in whole or in part, under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

V.C.5—Appeal of Regional Director Decision

If a field of membership expansion, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the charter amendment is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

V.D—Mergers, Purchase and Assumptions, and Spin-Offs

There are three additional ways a community federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a standard or emergency merger;
- By taking in the field of membership through a standard or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

V.D.1—Standard Mergers

Generally, the requirements applicable to field of membership expansions apply to mergers where the continuing credit union is a community federal charter.

Where both credit unions are community charters, the continuing credit union must meet the criteria for expanding the community boundaries. A community credit union can not merge into a single occupational/associational, or multiple common bond credit union, except in an emergency merger. However, a single occupational/associational, or multiple common bond credit union can merge into a community charter as long as the merging credit union has a service facility within the community boundaries or a majority of the merging credit union's field of membership would qualify for membership in the new community charter. While a community charter may take in an occupational, associational, or multiple group credit union in a merger, it will remain a community charter.

Groups within the merging credit union's field of membership located outside of the community boundaries may not continue to be served. However, the credit union may continue to serve members of record.

Where a state credit union is merging into a community federal credit union, the continuing federal credit union's field of membership will be worded in accordance with NCUA policy. Any subsequent field of membership expansions must comply with applicable amendment procedures.

Mergers must be approved by the NCUA regional director where the continuing credit union is located, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

V.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to

field of membership requirements or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions, including the service facility requirement, without changing the character of the continuing federal credit union for future amendments. Under this authority, a federal credit union may take in any dissimilar field of membership.

Even though the merging credit union is a single common bond credit union or multiple common bond credit union or community credit union, the continuing credit union will remain a community charter. Future community expansions will be based on the continuing credit union's original community area.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is located, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulator.

V.D.3—Purchase and Assumptions (P&As)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. If the P&A is the result of insolvency or danger of insolvency, then the emergency merger provisions apply and it is not necessary to meet field of membership requirements.

A P&A has limited application because, in most instances, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership. Specified loans, shares, and certain other designated assets and liabilities may also be acquired without regard to field of membership restrictions and without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the P&A does not meet the emergency criteria, then only members of record can be obtained unless they otherwise qualify for membership in the community charter.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is located, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulator.

V.D.4—Spin-Offs

Generally, a spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares and capital of a credit union, are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All field of membership requirements apply regardless of whether the spin-off goes to a new or existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the field of membership requirements are met;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a portion of the community, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. Voting requirements for federally insured state credit unions are governed by state law.

V.E—Overlaps

V.E.1—General

Generally, an overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. In general, no overlap protection will be provided to single occupational and associational, multiple group, and community credit unions from another community charter.

If safety and soundness concerns exist, NCUA may, on rare occasions, provide overlap protection from a community charter for a limited period of time, generally 12 to 24 months. Extensions may be granted for persistent safety and soundness problems.

A proposed credit union, an expanding credit union, or credit unions converting to a community charter, must identify any overlapped credit unions prior to submitting an application for a new proposed charter or expansion. A list of overlapped federally insured credit unions must be provided to NCUA.

A newly chartered community credit union that has been in existence less than two years (as opposed to a credit union converting to a community charter), proposing to serve an area where there is no other community credit union service, can not be overlapped by another federal community charter for a period of one year from the effective date of charter. If safety and soundness concerns persist, overlap protection can be extended by the regional director for an additional period of time, generally 12 to 24 months. This one year moratorium, and possible extension, will provide an opportunity for the new charter to become economically viable. New community credit unions chartered after the date of the original community charter for the same community are not entitled to overlap protection.

V.E.2—Exclusionary Clauses

Exclusionary clauses are rarely appropriate for inclusion in a

community credit union's field of membership and may only be granted if there are safety and soundness concerns. Exclusionary clauses granted prior to the adoption of this new chartering manual will remain in effect unless the two credit unions agree to remove them, or a credit union petitions NCUA to remove an exclusionary clause and NCUA determines that removal is in the best interests of the members.

Where NCUA has determined that for safety and soundness reasons an exclusionary clause must be included in the field of membership of a community charter, the exclusionary clause will be for a limited period of time generally 12 to 24 months. Extensions can only be granted for continued serious safety and soundness concerns. The timeframe for the duration of the exclusionary clause will be specifically listed in Section 5, of the credit union's charter.

V.F—Charter Conversions

Although rare, a community federal credit union may convert to a single occupational or associational, or multiple group credit union. The converting credit union must meet all occupational, associational, and multiple group common bond requirements as applicable. The converting credit union may continue to serve members of record of the prior field of membership as of the date of the conversion. A change to the credit union's field of membership and designated common bond will be necessary.

V.G—Other Persons With a Relationship to the Community

A number of persons who have a close relationship to the community may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Volunteers in the community;
- Members of their immediate families; and
- Organizations of such persons.

"Members of their immediate families" is defined as related persons i.e., blood, marriage, or other recognized family relationships in the same household (under the same roof), or if not in the same household, as a grandparent, parent, spouse, sibling, child, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, and stepsiblings. The immediate family member must be related to the credit union member.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member."

Chapter 3—Low-Income Credit Unions and Credit Unions Serving Underserved Areas

I—Introduction

One of the primary reasons for the creation of federal credit unions is to make credit available to people of modest means for provident and productive purposes. To help NCUA fulfill this mission, the agency has established special operational policies for federal credit unions that serve low-income groups and underserved areas. The policies provide a greater degree of flexibility that will enhance and invigorate capital infusion into low-income groups, low-income communities, and underserved areas. These unique policies are necessary to provide credit unions serving low-income groups with financial stability and potential for controlled growth.

II—Low-Income Credit Union

II.A—Defined

A low-income credit union is defined in Section 701.34 of the NCUA Rules and Regulations as one where a majority of its members either earn less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics, or whose annual household income falls at or below 80 percent of the median household income for the nation. The term "low income" also includes members who are full-time or part-time students in a college, university, high school, or vocational school.

To obtain a low-income designation from NCUA, an existing credit union must establish that a majority of its members meet the low-income definition. An existing community credit union that serves a geographic area where a majority of residents meet the annual income standard is presumed to be serving predominantly low-income members. A low-income designation for a new credit union charter may be based on a majority of the potential membership. The low-income qualification must be maintained in order to retain the low-income designation.

II.B—Special Programs

Credit unions with a low-income designation (except student credit unions) have greater flexibility in accepting non member deposits insured by the NCUSIF, and may offer secondary capital accounts to strengthen its capital base. It also may participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions (CDRLP) if it is involved in the stimulation of economic development and community revitalization efforts.

The CDRLP provides both loans and grants for technical assistance to low-income credit unions. The requirements for participation in the revolving loan program are in Part 705 of the NCUA Rules and Regulations. Only operating credit unions are eligible for participation in this program.

II.C—Low-Income Documentation

A federal credit union charter applicant or existing credit union wishing to receive a low-income designation should forward a separate request for the designation to the regional director, along with appropriate documentation supporting the request.

For community charter applicants, the supporting material should include the median household income or annual wage figures for the community to be served. If this information is unavailable, the applicant should identify the individual zip codes or census tracts that comprise the community and NCUA will assist in obtaining the necessary demographic data.

Similarly, if single occupational or associational or multiple group common bond charter applicants can not supply income data on its potential members, they should provide the regional director with a list which includes the number of potential members, sorted by their residential zip codes, and NCUA will assist in obtaining the necessary demographic data.

An existing credit union can perform a loan or membership survey to determine if the credit union is primarily serving low-income members.

II.D—Third Party Assistance

A low-income federal credit union charter applicant may contract with a third party to assist in the chartering and low-income designation process. If the charter is granted, a low-income credit union may contract with a third party to provide necessary management services. Such contracts should not exceed the duration of one year subject to renewal.

II.E—Special Rules for Low-Income Federal Credit Unions

In recognition of the unique efforts needed to help make credit union service available to low-income groups, NCUA has adopted special rules that pertain only to low-income credit union charters, as well as field of membership additions for low-income credit unions. These special rules provide additional latitude to enable underserved, low-income individuals to gain access to credit union service.

NCUA permits credit union chartering and field of membership amendments based on associational groups formed for the sole purpose of making credit union service available to low-income persons. The association must be defined so that all of its members will meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations. Any multiple group credit union can add low-income associations to their fields of membership.

A low-income community federal credit union has additional latitude in serving persons who are affiliated with the community. In addition to serving members who live, work, worship, or go to school in the community, a low-income community federal credit union may also serve persons who perform volunteer services, participate in programs to alleviate poverty or distress, or who participate in associations headquartered in the community.

Examples of a low-income community and an associational based low-income federal credit union are as follows:

- Persons who live in [the target area]; persons who regularly work, worship, attend school, perform volunteer services, or participate in associations headquartered in [the target area]; persons participating in programs to alleviate poverty or distress which are located in [the target area]; incorporated and unincorporated organizations located in [the target area] or maintaining a facility in [the target area]; and organizations of such persons.
- Members of the Canarsie Economic Assistance League, in Brooklyn, NY, an association whose members all meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations.

III—Service to Underserved Communities

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition for serving underserved areas in the Federal Credit Union Act. The Act defines an underserved area as a local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

An investment area includes any of the following:

- An area encompassed or located in an Enpowerment Zone or Enterprise Community designated under section 1391 or the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent and the area has significant unmet needs for loans or equity investments;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; and the area has significant unmet needs for loans or equity investments;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater; and the area has significant unmet needs for loans or equity investments;
- An area where the unemployment rate is at least 1.5 times the national average and the area has significant unmet needs for loans or equity investments;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent and the area has significant unmet needs for loans or equity investments;

An area located outside of a Metropolitan Area with a county population loss between 1980 and 1990 of at least 10 percent and the area has significant unmet needs for loans or equity investments.

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change and therefore the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan, as well as loan penetration rates in the community to determine if the community is being adequately served. NCUA will require periodic reports on its service to the underserved community and may review the credit union's service to persons in the community during examinations.

Chapter 4—Charter Conversions

I—Introduction

A charter conversion is a change in the jurisdictional authority under which a credit union operates.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation.

State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's regulator. If the state-chartered credit union's deposits are federally insured it will also fall under NCUA's jurisdiction.

A federal credit union's power and authority are derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-chartered credit unions are governed by state law and regulation. Certain federal laws and regulations also apply to federally insured state chartered credit unions.

There are two types of charter conversions: federal charter to state charter and state charter to federal charter. Common bond and community requirements are not an issue from NCUA's standpoint in the case of a federal to state charter conversion. The

procedures and forms relevant to such a conversion have been included.

II—Conversion of a State Credit Union to a Federal Credit Union

II.A —General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so it must:

- Comply with state law regarding conversion;
- File proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate, and other documents with NCUA;
- Comply with the requirements of the Federal Credit Union Act, e.g., chartering and reserve requirements; and
- Be granted federal share insurance by NCUA.

Conversions are treated the same as any initial application for a federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current financial condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter applicant.

A converting state credit union's field of membership must conform to NCUA's chartering policy. The field of membership will be phrased in accordance with NCUA chartering policy. Subsequent changes must conform to NCUA chartering policy in effect at that time. The converting credit union may continue to serve members of record.

If the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V. If the state chartered credit union's community boundary is more expansive than the approved federal boundary, only members of record outside of the new community boundary may continue to be served.

II.B—Submission of Conversion Proposal to NCUA

The following actions must be taken before submitting a conversion proposal:

- The credit union board must approve a proposal for conversion.
- The Application to Convert (NCUA 4401) must be completed. Its purpose is to provide the regional director with information on the present operating policies and financial condition of the credit union and the reasons why the conversion is desired. A continuation sheet may be used if space on the form is inadequate. Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.
- The application must be accompanied by all required attachments including the following:
- Written evidence regarding whether the state regulator is in agreement with the conversion proposal;
- The Application and Agreements for Insurance of Accounts (NCUA 9500);
- The Federal Credit Union Investigation Report, Conversion of State Charter to Federal Charter (NCUA 4000);
- The most current financial report and delinquent loan schedule; and
- The Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section of page 4 should be completed and, where applicable, signed by the credit union officials. The NCUA regional office will complete the other sections of this document.

If the state charter is applying to become a federal community charter, it must also comply with the documentation requirements included in Chapter 2, Sections V.A.2 and V.A.3.

II.C—NCUA Consideration of Application to Convert

II.C.1—Review by the Regional Director

The application will be reviewed to determine that it is complete and that the proposal is in compliance with Section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The regional director may make further investigation into the proposal and may require the submission of additional information to support the request to convert. At this point, NCUA will conduct an on-site review of the credit union.

II.C.2—On-Site Review

NCUA will conduct an on-site examination of the books and records of the credit union. Non-federally insured credit unions will be assessed an insurance application fee.

II.C.3—Approval by the Regional Director and Conditions to the Approval

The conversion will be approved by the regional director if it is in compliance with Section 125 of the Federal Credit Union Act and meets the criteria for federal insurance. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert to a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement (LUA), which requires the signature of the officials and the regional director.

II.C.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the conversion.

II.D—Action by Board of Directors

II.D.1—General

Upon being informed of the regional director's preliminary approval, the board must:

- Comply with all requirements of the state regulator that will enable the credit union to convert to a federal charter and cease being a state credit union;
- Obtain a letter or official statement from the state regulator certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a federal charter. A copy of this document must be submitted to the regional director;
- Obtain a letter from the private share insurer (includes excess share insurers), if applicable, certifying that the credit union has met all withdrawal requirements. A copy of this document must be submitted to the regional director; and
- Submit a statement of the action taken to comply with any conditions imposed by the regional director in the preliminary approval of the conversion proposal and, if applicable, submit the signed LUA.

II.D.2—Application for a Federal Charter

When the regional director has received evidence that the board of directors has satisfactorily completed the actions described above, the federal charter and new Certificate of Insurance will be issued.

The credit union may then complete the conversion as discussed in the following section. A denial of a conversion application can be appealed. (See Chapter 1, section VII.D)

II.E—Completion of the Conversion

II.E.1—Effective Date of Conversion

The date on which the regional director approves the Organization

Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a federal credit union. The regional director will notify the credit union and the state regulator of the date of the conversion.

II.E.2—Assumption of Assets and Liabilities

As of the effective date of the conversion, the federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

II.E.3—Board of Directors' Meeting

Upon receipt of its federal charter, the board will hold its first meeting as a federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA Rules and Regulations.

As of the commencement of operations, the accounting system, records, and forms must conform to the standards established by NCUA.

II.E.4—Change of the Credit Unions Name

Changing of the credit union's name on all signage, records, accounts, investments, stationery, and other documents should be accomplished as soon as possible after conversion. The credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of "state credit union" stationery immediately, and discontinue using credit cards, ATM cards, etc. within 180 days after the effective date of the conversion, or the reissue date—whichever is later. Member share drafts with the state chartered name can be used by the member until depleted.

II.E.5— Reports to NCUA

Within 10 business days after commencement of operations, the recently converted federal credit union must submit to the regional director the following:

- Report of Officials (NCUA 4501); and
- Financial and Statistical Reports, as of the commencement of business of the federal credit union.

III—Conversion of a Federal Credit Union to a State Credit Union

III.A—General Requirements

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

- Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;
- Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and
- Comply with applicable state law and the requirements of the state regulator.

It is important that the credit union provide an accurate disclosure of the reasons for the conversion. These reasons should be stated in specific terms, not as generalities.

III.B—Special Provisions Regarding Federal Share Insurance

If the federal credit union intends to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (NCUA 9600) to the regional director at the time it requests approval of the conversion proposal. The regional director has the authority to approve or disapprove the application.

If the converting federal credit union does not intend to continue federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of Section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the federal credit union will be terminating its federal share insurance or converting from federal to non-federal share insurance, it must comply with the membership notice and voting procedures set forth in Section 206 of the Federal Credit Union Act and Part 708 of NCUA's Rules and Regulations, and address the criteria set forth in Section 205(c) of the Federal Credit Union Act.

Where the state credit union will be non federally insured, federal insurance ceases on the effective date of the charter conversion. If it will be otherwise uninsured, then federal insurance will cease one year after the date of conversion subject to the restrictions in Section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the federal credit union's NCUSIF capitalization deposit and any unused portion of the federal insurance premium after the final date on which any of its shares are federally insured.

The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

III.C—Submission of Conversion Proposal to NCUA

Upon approval of a proposition for conversion by a majority vote of the board of directors at a meeting held in accordance with the federal credit union's bylaws, the conversion proposal will be submitted to the regional director and will include:

- A current financial report;
- A current delinquent loan schedule;
- An explanation and appropriate documents relative to any changes in insurance of member accounts;
- A resolution of the board of directors;
- A proposed Notice of Special Meeting of the Members (NCUA 4221);
- A copy of the ballot to be sent to all members (NCUA 4506);
- Evidence that the state regulator is in agreement with the conversion proposal; and
- A statement of reasons supporting the request to convert.

III.D—Approval of Proposal To Convert

III.D.1—Review by the Regional Director

The proposal will be reviewed to determine that it is complete and is in compliance with Section 125 of the Federal Credit Union Act. The regional director may make further investigation into the proposal and require the submission of additional information to support the request.

III.D.2—Conditions to the Approval

The regional director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

III.D.3—Approval by the Regional Director

The proposal will be approved by the regional director if it is in compliance with Section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of Section 206 of the Federal Credit Union Act.

III.D.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the proposal.

III.E—Approval of Proposal by Members

The members may not vote on the proposal until it is approved by the

regional director. Once approval of the proposal is received, the following actions will be taken by the board of directors:

- The proposal must be submitted to the members for approval and a date set for a meeting to vote on the proposal. The proposal may be acted on at the annual meeting or at a special meeting for that purpose. The members must also be given the opportunity to vote by written ballot to be filed by the date set for the meeting.
- Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted. The notice must:
- Specify the purpose, time and place of the meeting;
- Include a brief, complete, and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;
- Specify the costs of the conversion, i.e., changing the credit union's name, examination and operating fees, attorney and consulting fees, tax liability, etc.;
- Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;
- Be accompanied by a Ballot for Conversion Proposal (NCUA 4506); and
- State in bold face type that the issue will be decided by a majority of members who vote.
- The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to proceed further with the proposition, provided federal insurance is maintained. If the proposed state chartered credit union will not be federally insured, 20 percent of the total membership must participate in the voting, and of those, a majority must vote in favor of the proposal. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.
- The board of directors shall, within 10 days, certify the results of the membership vote to the regional director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on NCUA 4505.

III.F—Compliance With State Laws

If the proposal for conversion is approved by a majority of all members who voted, the board of directors will:

- Ensure that all requirements of state law and the state regulator have been accommodated;
- Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert; and
- Ensure that the regional director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the regional director should be informed of the reasons for the delay. The regional director may set a new date for the conversion to be completed.

III.G—Completion of Conversion

In order for the conversion to be completed, the following steps are necessary:

- The board of directors will submit a copy of the state charter to the regional director within 10 days of its receipt. This will be accompanied by the federal charter and the federal insurance certificate. A copy of the financial reports as of the preceding month-end should be submitted at this time.
- The regional director will notify the credit union and the state regulator in writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.
- The credit union shall cease to be a federal credit union as of the effective date of the state charter.
- If the regional director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state regulator shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the regional director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effective and completed until the improper actions and steps have been corrected.
- Upon ceasing to be a federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state regulator.
- If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.
- There is no federal requirement for closing the records of the federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter. The converting credit union is advised to contact the state regulator for applicable state requirements.
- The credit union shall neither use the words "Federal Credit Union" in its name nor represent itself in any manner as being a federal credit union.
- Changing of the credit union's name on all signage, records, accounts, investments, stationery, and other documents should be accomplished as soon as possible after conversion. Unless it violates state law, the credit has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of "state credit union" stationery immediately, and discontinue using credit cards, ATM cards, etc. within 180 days after the effective date of the conversion, or the reissue date—whichever is later Member share drafts with the federal chartered name can be used by the member until depleted. If the state credit union is not federally insured, it must change its name and must immediately cease using any credit union documents referencing federal insurance.
- If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

Appendix A—Glossary

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA Rules and Regulations, as well as state laws, may be used for further reference.

Adequately capitalized—A credit union is considered adequately capitalized when it has a net worth ratio (capital-to-asset ratio) of at least 6 percent. A multiple common bond credit union must be adequately capitalized in order to add new groups to its charter.

Affinity—A relationship upon which a community charter is based. Acceptable affinities include living, working, worshiping, or attending school in a community.

Appeal—The right of a credit union or charter applicant to request a formal review

of a regional director's adverse decision by the National Credit Union Administration Board.

Associational common bond—A common bond comprised of members and employees of a recognized association. It includes individuals (natural persons) and/or groups (non natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.

Business plan—Plan submitted by a charter applicant or existing federal credit union addressing the economic advisability of a proposed charter or field of membership addition.

Charter—The document which authorizes a group to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

Common bond—The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are two common bonds which can serve as a basis for a group forming a federal credit union or being included in an existing federal credit union's field of membership: occupational—employment by the same company or related companies; and associational—membership in the same association.

Community credit union—A credit union whose field of membership consists of persons who live, work, worship, or attend school in the same well-defined local community, neighborhood, or rural district.

Credit union—A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services. Federal credit unions are chartered as corporations pursuant to the Federal Credit Union Act.

Economic advisability—An overall evaluation of the credit union's or charter applicant's ability to operate successfully.

Emergency merger—Pursuant to Section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to common bond policy.

Exclusionary clause—A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group which otherwise could be included in its field of membership. Exclusionary clauses are used to prevent certain overlaps of fields of membership between credit unions.

Federal share insurance—Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

Field of membership—The persons (including organizations and other legal entities) a credit union is permitted to accept for membership.

Immediate family member—Also referred to as "members of their immediate families," this term is defined as related persons (i.e., blood, marriage or other recognized family relationships) in the same household (under the same roof), or if not in the same household, as a grandparent, parent, spouse, sibling, child, or grandchild.

Letter of Understanding and Agreement—Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants for a limited time.

Low income credit union—A low-income credit union is defined in Section 701.34 of the NCUA Rules and Regulations as one where a majority of its members either earn less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics, or whose annual household income falls at or below 80 percent of the median household income for the nation. The term "low income" also includes members who are full-time or part-time students in a college, university, high school, or vocational school.

Mentor—An individual who provides guidance and assistance to newly chartered, small, or low-income credit unions. All new federal credit unions are encouraged to establish a mentor relationship with a trained, experienced credit union individual or an existing credit union.

Merger—Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the appropriate state regulator whenever a state credit union is involved.

Multiple common bond credit union—A credit union whose field of membership consists of more than one group, each of which has a common bond of occupation or association.

Occupational common bond—Employment by the same entity or related entities.

Once a member, always a member—A provision of the Federal Credit Union Act which permits an individual to remain a member of the credit union until he or she chooses to withdraw or is expelled from the membership of the credit union. Under this provision, leaving a group that is named in the credit union's charter does not terminate an individual's membership in the credit union.

Overlap—The situation which results when a group is eligible for membership in more than one credit union.

Potential membership—Persons eligible to join a federal credit union.

Primary members—Members or employees who belong to an associational or occupational group, or persons who live, work, worship, or attend school within a community chartered credit union's field of membership.

Purchase and assumption—Purchase of all or part of the assets of and assumption of all or part of the liabilities of one credit union by another credit union. The purchased and assumed credit union must first be placed into involuntary liquidation.

Service area—The area that can reasonably be served by the service facilities accessible to the groups within the field of membership.

Service facility—A place where shares are accepted for members' accounts, loan applications are accepted, and loans are dispersed.

Single associational common bond credit union—A credit union whose field of membership includes members and employees of a recognized association.

Single common bond credit union—A credit union whose field of membership consists of one group which has a common bond of occupation or association.

Single occupational common bond credit union—A credit union whose field of membership consists of employees of the same entity or related entities.

Spin-off—The transfer of a portion of the field of membership, assets, liabilities, shares, and capital of one credit union to a new or existing credit union.

Subscribers—For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

Underserved community—A local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. The area must also be underserved based on other NCUA and federal banking agency data.

Unsafe or unsound practice—Any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the National Credit Union Share Insurance Fund.

Appendix B—Letter of Understanding and Agreement

To the Board of Directors and Other Officials

_____ Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly chartered credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements, Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization

(CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner financial and statistical reports as required by the Federal Credit Union Act and Bylaws by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the credit union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

Dated this _____ (day) of_____ (month) _____ (year).

NATIONAL CREDIT UNION ADMINISTRATION BOARD ON BEHALF OF THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

_____
Regional Director

_____
Federal Credit Union
By:

_____
Chief Executive Officer Date

_____
Chief Financial Officer Date

_____
Secretary Date

Appendix C—NCUA Offices

Central Office

1775 Duke Street, Alexandria, VA 22314–3428, Commercial: 703–518–6300

Region I—Albany

9 Washington Square, Washington Avenue Extension, Albany, NY 12205–5512, Commercial: 518–862–7400, FAX: 518–862–7420, Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont

Region II—Capital

1775 Duke Street, Suite 4206, Alexandria, VA 22314–3437, Commercial: 703–519–4600, FAX: 703–519–4620, Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia

Region III—Atlanta

7000 Central Parkway, Suite 1600, Atlanta, GA 30328–4598, Commercial: 678–443–3300, FAX: 678–443–3020, Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands

Region IV—Chicago

4225 Naperville Road, Suite 125, Lisle, IL 60532–3658, Commercial: 630–955–4100, FAX: 630–955–4120, Illinois, Indiana, Michigan, Missouri, Ohio, Wisconsin, West Virginia

Region V—Austin

4807 Spicewood Springs Road, Suite 5200, Austin, TX 78759–8490, Commercial: 512–482–4500, FAX: 512–482–4511, Arizona, Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas

Region VI—Pacific

2300 Clayton Road, Suite 1350, Concord, CA 94520–2407, Commercial: 925–363–6200, FAX: 925–363–6220, Alaska, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming

BILLING CODE 7535–01–P

APPENDIX D

NCUA FORMS

NCUA 4000 -- Conversion of State Charter to a Federal Charter -- FCU Investigation Report

NCUA 4001 -- FCU Investigation Report

NCUA 4008 -- Charter

NCUA 4009 -- Approval of Organization Certificate & Certification of Insurance

NCUA 4012 -- Report of Official & Agreement to Serve

NCUA 4015 -- Application for Field of Membership Amendment

NCUA 4221 -- Notice of Meeting of Members

NCUA 4401 -- Application to Convert from a State Credit Union to an FCU

NCUA 4505 -- Affidavit

NCUA 4506 -- Ballot for Conversion Proposal

NCUA 9500 -- Application and Agreement for Insurance of Accounts

NCUA 9501 -- Certification of Resolutions

NCUA 9600 -- Information to be Provided in Support of the Application of a State Credit Union for Insurance of Accounts

Conversion of State Charter to Federal Charter
FEDERAL CREDIT UNION INVESTIGATION REPORT
(Note of Organizer)

This report must be filled in completely and submitted with the other completed forms listed in Chapter 4.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed Name _____ Federal Credit Union
   Second Choice of Name _____ Federal Credit Union

2. Contact Person _____ Bus. Tel. No./Area Code _____
   Res. Tel. No./Area Code _____

3. The credit union will maintain its office at _____

(City) (County) (State) (Zip)

4. Permanent mailing address of credit union

5. Define proposed field of membership (Attach a copy of current state charter field of membership)

6. The board will have (an odd number 5 to 15)__members: the credit committee (an odd number, 3 to 7)__members: the supervisory committee (3 to 5)__members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. CHARACTER AND FITNESS OF SUBSCRIBERS
(Please type or print)

7. List of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Year of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of his/her knowledge and belief the above information is true and correct.
I do (do not) recommend that a charter be granted to this group.
Signature _____, Organizer
Organizer's Address _____

INSTRUCTIONS

A. INFORMATION FOR CHARTERS AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 5. The principle office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the "*Chartering and Field of Membership Manual.*"

With the guidance of the organizer, the subscribers tc the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on th name of any corporation in tis trade area. The last three workds in the name must be "Federal Credit Union." Sinc the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for second choice.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and address of the subscribers should be recorded legibly and completely in item 7 of this repc It is from this information that the Administration prepares Section 3 of the charter. The names of the subscril must be **IDENTICAL** to their signatures on the Organization Certificate.

C. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate reg director of NCUA:

1. Organization Certificate, NCUA 4008-one notarized original. At least *seven, but no more than ten pe* must sign the organization certificate. The person administering the oath must not be one of the subscriber: oath on the organization certificate must be executed and show the notary's seal and date the commission e as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Business Plan - refer to Chapter 1 of the Chartering and Field of Membership Manual for a disc the components of an acceptable business plan.
5. Certificate of Resolution, NCUA 9501 - one original.

FEDERAL CREDIT UNION INVESTIGATION REPORT

(Note to Organizer) This report form must be filled in completely and submitted with the other completed forms listed on page 8 under "Submittal of Charter Application." Please refer to page 7 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name _____ Federal Credit Union
   Second choice _____ Federal Credit Union

2. Contact Person _____ Business Tel. _____ Residence Tel. _____
   Address _____

3. The credit union will maintain its offices at _____
   (City, State, County, Zip Code)

3a. Proposed permanent mailing address of credit union _____

4. Define proposed field of membership _____

5. The board will have (an odd number, 5 to 15) _____ members; the credit committee will have (an odd number, 3 to 7) _____ members; the supervisory committee will have (3 to 5) _____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

(Attach a separate sheet if space available is not adequate.)

GENERAL INFORMATION

1. Potential membership _____
   NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

2. Potential interest (survey results).
   NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.
   Number of people surveyed _____
   Number of people responding to survey _____
   Number of people pledging an initial deposit _____
   Total dollars pledged $ _____
   Number pledging systematic savings _____
   Total dollars pledged (per month) $ _____

3. Number of persons attending the charter-organization meeting _____

4. Are officials of the sponsor favorable toward the proposal to organize a credit union? _____
   NOTE: Attach letters of support from company officials (occupational-type); association officials (associational-type); business, civic, or other community organizations (community-type).

For paperwork Reduction Act Notice, see page 7.

5. What facilities and assistance, if any, will the sponsor provide?

_____ Office Space (Describe)
_____ Office Supplies
_____ Payroll deductions
_____ Funding for start-up costs, if so $ _____
_____ Other (Describe)

6. Is credit union service now available to any members of the group? _____
If so, explain the nature and approximate extent of overlapping of such service with the field of membership proposed in this application, i.e., employees who are labor union members eligible for membership in another credit union on an associational basis; labor union members who are eligible for credit union membership on an occupational basis; community residents who are eligible for credit union membership in occupational or associational credit unions located within the proposed boundaries.

_____
_____
_____
_____
_____

7. What potential difficulties do you detect in the elected officials carrying out their management, responsibilities or in the FCU achieving its stated objectives? _____
_____
_____
_____

NOTE TO ORGANIZER: The officials' projected goals for share growth must be recorded in the business plan.

8. What provisions have been made to overcome potential difficulties? _____
_____
_____
_____

Dates of planned contacts by organizer to determine progress and to assist the group:

_____ (Date) _____ (Date) _____ (Date)

SPECIFIC INFORMATION - OCCUPATIONAL CHARTER APPLICANTS

9. How long has the sponsor company been in existence? _____

10. What was the highest number of employees during the past three years? _____; Lowest number during the past three years? _____ If a large variance, please explain, _____

11. Are there any contemplated changes in the corporate structure of the company? _____ If yes, explain _____

12. Have there been any significant changes in the corporate structure in the past three years? _____ If yes, please explain. _____

13. Are there any negotiations now in progress between management and labor that could lead to work stoppages? _____ If yes, please explain _____

14. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members. _____

15. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each. _____

16. Are there other employees of the company who are not being included in the proposed field of membership? _____ If so, give the number and location of the other employees and explain why a credit union is being proposed for this group only, _____

SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS

17. State the purpose and goals of the organization sponsoring this charter. _____

18. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed. _____

19. In what year was the organization established?_____ Is it incorporated? _____. Where is the headquarters located? _____

20. Give statistics as to trends in membership during the last five years. _____

21. What is the frequency of members' meetings? _____ Average attendance _____ Dues required _____

22. State the geographic territory where members reside. _____

23. Obtain a copy of the current bylaws of the association, the constitution or articles of incorporation, and recent financial statements, i.e. balance sheet, and income and expense statement. Submit these documents with this application.

24. If the bylaws, constitution or articles of incorporation provide for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members. _____

25. For labor union group only, complete a through c:

a. State the number of labor union members at each place of employment. _____

b. State the total number of employees, whether union members or not, working at each place of employment. Give a breakdown of union versus nonunion employees. _____

c. What has been done toward organizing a credit union on an employee basis? Discuss fully. _____

SPECIFIC INFORMATION - COMMUNITY CHARTER APPLICANTS

26. Community charters must be based on a well-defined local community, neighborhood, or rural district where individuals have common interests or interact. Describe how the proposed community area meets these requirements.

27. Which business, civic, or other community organizations support the proposed credit union? List and show the support pledged including the names and titles of officials who were contacted. Obtain and attach letters of support from these individuals.

28. Describe the proposed area's specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly definable neighborhood.

29. Provide a map which clearly outlines the credit union's proposed community boundaries.

30. Are there currently any state or federal credit unions operating within the proposed community boundaries? _____ If so, provide a list of the credit union's names and mailing addresses.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

1. List of subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signature on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:.

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

2. Are all of the subscribers within the field of membership? _____. Do they appear to be fairly representative of the group described in the definition of the field of membership? _____ If not, explain _____

3. Does your investigation indicate that the subscribers are persons of good character? _____. If not, explain _____

4. From your investigation, is it your judgement that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? _____If not, explain _____

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? _____. If so, explain _____

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served? _____

7. Is an application for a State Charter now pending? _____

8. Has the group ever had a credit union? _____ If so, when did it liquidate or merge? _____

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.
Signature _____, Organizer
Organizer's Address _____
_____
Telephone No. _____ Date _____

INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, Item 1 provides space for a second choice.

The territory of operations of a Federal Credit Union is described in the field of membership, item 4. The principle office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

This section of the report contains information on:

1. The size and compactness of the group;
2. The nature of the common bond;
3. The attitude of the:
   a. (if occupational based field of membership) management of the sponsor organization;
   b. (if associational based field of membership) officers of the sponsor association;
   c. (if community based field of membership) community leaders and/or*officers* of prominent associations or organizations in the area to be served;
4. The facilities available for credit union operations;
5. The availability of existing credit union service, and
6. Other facts to support a potential for successful operation.

This section of the report should contain information on the management, association or civic leaders contacted that intend to support or utilize the credit union. In those cases where certain persons in the area are opposed to the credit union, the organizer should point out the factors which indicate that the group will be able to overcome this handicap.

Clerical assistance at least during the first few months of operation, payroll deductions, and office space are desirable aids in the development of a credit union. Plans for overcoming any obstacles to effective operation such as lack of office space or scattered field of membership should be described briefly. If more space is needed than that provided, a separate sheet may be used.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item C. 1. of this report. It is from this information that the Administration prepares Section 3 of the charter. The names of the subscribers must be IDENTICAL to their signatures on the Organization Certificate.

D. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008-one notarized original. At least *seven, but no more than ten persons,* must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Business Plan - refer to Chapter 1 of the *"Chartering and Field of Membership Manual"* for a discussion of the components of an acceptable business plan.
5. Certificate of Resolution, NCUA 9501 - one original.

NATIONAL CREDIT UNION ADMINISTRATION

FEDERAL CREDIT UNION

(A corporation chartered under
the laws of the United States)

CHARTER NO. _____

NCUA 4008
Page 1

ORGANIZATION CERTIFICATE

_____ FEDERAL CREDIT UNION

Charter No. _____

TO NATIONAL CREDIT UNION ADMINISTRATION:

We, the undersigned, do hereby associate ourselves as a Federal Credit Union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal Credit Unions.

(1) The name of this credit union shall be _____

_____ Federal Credit Union.

(2) This credit union will maintain its office and will operate in the territory described in the field of membership.

(3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

NAME	ADDRESS	SHARES

(4) The par value of the shares of this credit union will be stated in the bylaws.

(5) The field of membership shall be limited to those having the following common bond:

(6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120 (b) of the Federal Credit Union Act.

(7) This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.

(8) The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.

IN WITNESS WHEREOF we[1] have here unto subscribed our names this

____ _____ _____
(day) (month) (year)

_____ _____

_____ _____

_____ _____

_____

_____

Subscribed before me, an officer competent to

administer oaths, at _____
CITY/STATE

this _____ _____ _____
(day) (month)

_____
(year)

Signed _____

Title _____
(Notary public or other competent officer)

[1]At least seven signers none of whom should administer the oath

APPROVAL OF ORGANIZATION CERTIFICATE AND CERTIFICATION OF INSURANCE

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. seq.), the foregoing organization certificate and insurance of member accounts of _____ _____ Federal Credit Union are approved this _____ _____ _____ _____
(day) (month) (year)

_____

CHAIRMAN

NATIONAL CREDIT UNION ADMINISTRATION

NCUA 4009

REPORT OF OFFICIAL AND AGREEMENT TO SERVE

TO: NATIONAL CREDIT UNION ADMINISTRATION

(Type or Print)

Proposed _____ Federal Credit Union

Name ☐Mr. ☐Ms. ☐Mrs. ☐Miss _____ (Last / First / Middle)

Title of Newly Elected/Appointed Credit Union Position _____

Maiden Name (If Different From Above) _____

Address (Res.) _____ (Street / City / State / Zip Code)

Phone + Area Code _____ (Residence) (Business)

Place of Birth _____ (City/State) Date of Birth _____

Employer _____ Social Security Number _____

Type of Business _____

Number of years with present employer _____ Your position title _____

Education background (circle highest grade completed)

1 2 3 4 5 6 7 8 9 10 11 12 (Grade and High School)

1 2 3 4 ( ) (College) MAJOR FIELD OF STUDY _____

Other training or experience _____

Are you willing to accept the position of trust for which you have been selected and to remain in office until such time as a qualified successor is found? ..... ☐Yes ☐No

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal Credit Union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties? ..... ☐Yes ☐No

Estimated number of hours per month you will be able to donate as a volunteer _____

IF THE ANSWER IS YES TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON REVERSE SIDE OF THIS FORM:

Have you ever been convicted of any CRIMINAL OFFENSE involving dishonestly or a breach of trust? ..... ☐Yes ☐No

To facilitate the process of obtaining a credit and background check, please provide the following:

1. Any other names which you have used _____, and,
2. Previous address, (if your address changed over the past 2 years) _____
3. Name of Spouse _____

READ THE FOLLOWING CAREFULLY BEFORE SIGNING

CERTIFICATION AND AGREEMENT TO SERVE

I certify that the information provided on this form is true and correct. Further, I, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate and said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice on the reverse side if this form.

_____ (Date / Signature / Witness)

PRIVACY ACT NOTICE

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office; an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, except for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.36 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on reverse side of form was YES:

CRIMINAL OFFENSE:

Nature of offense _____

_____

Date of occurrence _____ **Date of conviction** _____

Sentence conferred _____

_____

(Attach a separate sheet if space provided if not adequate)

CRIMINAL OFFENSE GUIDELINES

The Federal Credit Union Act, Subchapter II, section 205(d), requires that, "Except with the written consent of the Administrator, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust." To assist the Administrator in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.

If the Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.

An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage ☐ Yes ☐ No

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT

This form is to be used by occupational and associational credit unions for common bond additions, and by multiple group credit unions for select group additions.

Attach a separate application for each group included in your request for expansion.

1. Name and address of credit union: _____

_____

_____

2. Name and address of group to be added: _____

_____

_____

If applicable, include work and/or paid from locations. Also indicate the number of employees at each location:

_____

_____

Description of business: _____

(If an association, include a copy of group's Charter/Bylaws.)

For common bond additions, explain how the group shares the credit union's common bond:

_____

_____

_____

3. Total number of potential employees/members to be added (excluding family members):

_____

4. For multiple group (not common bond) expansions, explain why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. *(The formation of a separate credit union may not be practical if the group lacks sufficient volunteers or resources to support the operation of a credit union or does not meet the economic advisability criteria outlined in Chapter 1 of the Chartering and Field of Membership Manual):*

_____

_____

_____

_____

5. (a) For multiple group expansions, what is the distance between the group's location and the nearest credit union service facility it has access to? _____

   (b) What is the address of this service facility? _____

   (c) Describe how the group will receive credit union service from this facility (i.e., by teller or electronic means, ATM, telephone response system, etc.)

_____

_____

6. Is the group eligible for membership in <u>any</u> other credit union? NO_____ YES_____

   <u>If yes</u>, give the name and location of the other servicing credit union. Also include, if applicable, a letter of release from the overlapped credit union. _____

   <u>If yes</u>, explain how the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union:

_____

_____

_____

7. Other information required for multiple group expansions:

(a) Explain how the credit union has the administrative capability and the financial resources to meet the need for additional staff and assets to serve the new group:

_____

_____

_____

_____

(b) Is the credit union's net worth (capitalization) at least 6 percent? YES _____ NO _____

(c) What is the credit union's capital-to-assets ratio? _____

8. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. _____

Other comments: _____

_____

_____

Name and title of credit union board-authorized representative (e.g., Manager/President/CEO)

_____

(Please print or type)

_____ _____

(Signature) (Date)

NOTICE OF MEETING OF THE MEMBERS

_____ FEDERAL CREDIT UNION

_____ _____
(City) (State)

THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE.

Notice is hereby given that a meeting of the members of _____ Federal Credit Union, _____ has been called and will be held at _____ on _____, _____, at _____ o'clock, ___ .M. for the purpose of considering and voting upon the following resolution:
(year)

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and that its operation under Federal charter be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons: _____

The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union: _____

The proposed conversion would result in the following costs of conversion (i.e. changing the credit unions name, examination and operating fees, attorney and consulting fees, tax liability, etc): _____

NCUA 4221

The board of directors recommends that the members approve the proposal to convert to a State charter

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, have it postmarked no later than the date and the time announced for the meeting of the members, and mail it to the following address: _____

_____

_____

_____

BY ORDER OF THE BOARD OF DIRECTORS

_____

TITLE:
(CHIEF EXECUTIVE OFFICER)

_____

TITLE:
(CHIEF RECORDING OFFICER)

Issued _____
(Date)

NCUA 4221

APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION

The _____ Credit Union of _____ (city), _____ (State), incorporated under the laws of the State of _____ on _____, ____, by decision of its board (year)

of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union.

1. Field of membership of State-chartered credit union. (Use exact wording of charter, articles of incorporation or bylaws, as amended to date.)

_____

_____

_____

_____

_____

2. Is proposed Federal charter to cover same field of membership? Yes ☐ No ☐ If answer is "No," explain fully:

_____

_____

_____

_____

_____

3. Standard financial and statistical reports as of _____, _____, or comparable forms of reports, (year)

certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.

4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached. (As a minimum, schedule should include for each delinquent loan: loan date, last payment date, unpaid balance, security, and comment on collectibility.)

5. The following policies on loans to members are currently in effect in this credit union:

a. Interest rates on loans: _____

_____

b. Charges incident to making loans which are passed on to borrowers: _____

_____

c. Maturity limits: _____

_____

_____

d. Unsecured loan limit: _____

_____

e. Secured loan limit: _____

_____

f. Types of security accepted: _____

_____

g. Requirements of amortization (Repayment requirements): _____

_____

6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

7. Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)

8. Types of accounts which members are required or are permitted to maintain: Share ☐ Deposit ☐ Other ☐ (describe): _____

9. Describe any real estate owned by credit union, including a list of its current market value: _____

10. Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act): _____

11. Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act.

12. Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members: _____

13. Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act: _____

14. Give specific reasons as to why you desire to convert to a Federal credit union: _____

We hereby authorize the National Credit Union Administration to examine our books and our records and agree to pay an examination fee in accordance with Section 701.6 of the National Credit Union Administration Rules and Regulations.

We, the undersigned _____ Chief Executive Officer and _____ Chief Financial Officer of the _____ Credit Union of _____, State of _____ certify: That we are the duly elected Chief Executive Officer and the Chief Financial Officer, respectfully, of said credit union; that the statements made in this Application to Convert from a State to a Federal Credit Union and the schedules attached hereto are true, complete, and correct to the best of our knowledge and belief and are made in good faith.

_____
TITLE:
(CHIEF FINANCIAL OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

NCUA 4401

AFFIDAVIT
PROOF OF RESULTS OF MEMBERSHIP VOTE PROPOSED CONVERSION

We, the undersigned _____
president/vice president and _____
secretary of the _____ Federal Credit Union, hereby swear or affirm as follows:

1. That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.

2. That on the date of the said meeting of members there were _____ members of this credit union qualified to vote; _____ members were present at said meeting; of those members present, _____ members voted in favor of the conversion and _____ members _____ voted against the conversion; of those members not present at the meeting but who filed ballots, _____ members voted in favor of the conversion and _____ members voted against the conversion; and that, without duplication of the votes of any member, a total of _____ members voted in favor of the conversion and _____ members voted against the conversion.

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

_____
Federal Credit Union

Subscribed before me, an officer competent to administer oaths, at _____

_____ ,this _____ _____ _____ _____
(day) (month) (year)

Signed _____

(SEAL)

Title _____
(Notary Public or other competent officer)

My Commission Expires _____ , _____
(year)

NCUA 4505

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____, _____, to consider and to vote upon the following proposition:
(year)

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____, and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date _____

NCUA 4506

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

Date

TO: The National Credit Union Administration Board (Board)

The proposed _____ Federal Credit Union

_____
(Mailing Address)

_____
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.

2. To permit and pay the reasonable cost of such examinations as in the judgement of the Board may from time to time be necessary for the protection of the fund and other insured credit unions.

3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.

4. To provide protection and idemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.

5. To maintain such regular reserves as may be required by Section 116 of the Federal Credit Union Act.

6. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.

7. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.

8. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.

9. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

10. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.

11. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.

12. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. In support of this application the undersigned submit the Schedules described below:

Schedule No. Title

We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

_____ _____
Chief Executive Officer Chief Financial Officer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18. Sec. 1001.

NCUA 9500

CERTIFICATION OF RESOLUTIONS

_____ FEDERAL CREDIT UNION (PROPOSED)

We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting the board of directors passed the following resolution and recorded it in its minutes:

"Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."

_____

Chief Executive Officer

_____

Recording Officer, Board of Directors

NCUA 9501

INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

_____ Credit Union

1. Show below the location of the credit union's books and records.

_____
(Street Address)

_____
(City) (State) (Zip) (Telephone)

2. Show the date (month, day, year) in which the credit union was chartered_____ ____ (year)
3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence as discussed in the instructions. Schedule No. _____
4. Potential membership (total number of persons who could be served including present members._____
5. Describe type activity sponsor organization is engaged in. (See instructions pertaining to item No. 5.)

_____

_____

6. Does the credit union operate under standard bylaws provided by the state supervisory authority? Yes ☐ (Stop) No ☐ (Complete a.)
   a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No._____
7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes ☐ (Complete a.) No ☐ (Stop)
   a. Explain fully on an attached schedule. Schedule No._____
8. Attach a copy of the latest State supervisory authority examination. Copies of any correspondence from the accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.
9. Attach copies of the Balance Sheet and of the Statement of Income and Expense (or Financial and Statistical Report) for the month preceding the date of this application and for the same month of the preceding year. Schedule Nos. _____ .(Identify current year statement with (a) after schedule no. and previous Year with (b).)
10. Reserves
    a. Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

11. Delinquent Loans and Charged-off Loans
    a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11 a. on page 7. Schedule No._____ .

b. List below the requested information on delinquent loans for the latest four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for all members for the same period.

(a) *Other Delinquent Categories	(b) Delinquent Categories	Date _____	Date _____	Date _____	Date _____
	2 mos. to less than 6 mos.	$	$	$	$
	6 mos. to less than 12 mos.	$	$	$	$
	12 mos. and over	$	$	$	$
	Totals				
	Share Balances	$	$	$	$
	Loan Balances	$	$	$	$

*See instructions pertaining to Item No. 11 b.

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end and or current period).

	Year_____	Year_____	Year_____	Current Yr. to Date	*Totals Since Organization
Total Charged Off					
Total Recovered					
Net Charged Off					
Total of all Reserves					

*this information is available

12. Does the credit union have any unrecorded or contingent liabilities (Including pending law suits or civil actions)? Yes ☐ (Complete a.) No ☐ (Stop)

a. List on a schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No_____

13. Do any asset accounts (other than loans to members, investments, and real estate) have actual values less than the book values shown on the Balance Sheet? Yes ☐ (Complete a.) No ☐ (Stop)

a. List on a separate schedule a description of such assets, showing at least the following information; account number, description of Item, book value and actual value. Schedule No_____

14. List below or on an attached schedule any investments or real estate as discussed in the instructions pertaining to Item No. 14 Schedule No. _____. Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately on page 6.

Description of Item	Current Market Value	Current Book Value
	$	$
	$	$
	$	$

15. Individual Share and Loan Ledgers:
   a. Were the totals of the trial balance tapes of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application?

   b. What are the differences as of the month and preceding the date of this application?

	Shares	Loans
Balances in General Ledger	$ _____	$ _____
Totals of the trial balance of the individual ledgers	$ _____	$ _____
Differences	$ _____	$ _____

16. Supervisory Committee:
   a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee? Effective Date
      (1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit? Date _____

   b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts: Effective Date _____
      (1) If all members' accounts have not been verified under controlled conditions during the last two years what is the supervisory committee's target date for completion of the verification program? Date _____

   c. If it is necessary to complete either 16a(1) or 16 b(1); please describe the directors' plans for seeing that the target dates are met. (DISCUSS below or an attached schedule.) Schedule No. _____

17. Surety Bond. List below the credit union's surety bond coverage.
   a. Name of carrier _____
   b. Standard form number of the bond (i.e. 23, 576, 577, 578, 581, 562 CU-1, other) _____
   c. Basic amount of coverage $ _____
   d. Bond premium paid to (date) _____
   e. What is the amount of coverage required by State law or your bylaws? _____
   f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.)

18. Credit Union Services
   Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members?
   a. Attach a schedule describing each activity in full. Schedule No. _____

19. Does the credit union know of any adverse economic condition that is affecting or will affect its present or future operation or that of the sponsor organization?
   a. Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. _____

20. To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust?
   a. Attach a statement describing the circumstances. Schedule No. _____

21. Lending policies and practices:
   a. Complete (on page 4) showing the present policies and practices on loans to members.
   b. Complete page 5 in accordance with the instructions pertaining to Item No. 21 b.

LENDING POLICIES AND PRACTICES

	Maximum Loan Amount	Maximum Period of Repayment	Required Amount of Downpayment (Equity)
1. *Credit Union Policies and Practices*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
(1) New Auto Collateral			
(2) Used Auto Collateral			
(3) Real Estate			
(a) First Mortgage			
(b) Second Mortgage			
(4) Comakers			
(5) Others (describe)			
c. Loans to Organizations			
d. Loans to Director, Officers, or Committee Members			
2. *State Credit Union Law; Bylaws*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
c. Loans to Directors, Officers, or Committee Members			

List below or an attached page, any additional policies, including the interest rates applied to members' loans and the method of assessing and accounting for interest income, i.e.: add-on, discount or unpaid balance.

SCHEDULE OF LARGEST LOANS

Complete this form as discussed in the instructions pertaining to Item 21b.

Account No.	Unpaid Loan Balance	Repayment Period (No. Months)	Status of Repayment		Appraised Collateral Value*	Description of Collateral
			Current	Delinquent (No. Months)		

*if there is more than one type of collateral assign value to each type.

CREDIT UNION SERVICE ORGANIZATION (CUSO)

1. Name of CUSO _____

2. Date of CUSO'S Organization _____
(Date of obtaining charter from State)

3. Type of organization (circle one):

a. General Partnership
b. Limited Partnership
c. Joint Ownership
d. Corporation

4. Owners of CUSO (list name, charter number if FCU, and percentage of ownership, if possible).

	Name - Charter Number (If FCU)	%	Name - Charter Number (If FCU)	%
a.				
b.				

(Continue on reverse side if additional space is required)

5. Capitalization (list investors and amount of investment in CUSO).

	Name - Charter Number (if FCU)	Amount	Name - Charter Number (if FCU)	Amount
a.				
b.				

(Continue on reverse side if additional space is required)

6. List all known services which are being offered by CUSO (be as specific as possible).

_____

_____

_____

7. Comments (include all other pertinent information, if applicable, not previously discussed).

_____

_____

_____

8. Attach latest Financial and Statistical Report of CUSO, if available.

INSTRUCTIONS FOR COMPLETION OF APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with the procedures outlined in the letter that transmitted these instructions. Additional schedules may be included if deemed appropriate.

All items should be completed. If the answer given to a question is followed by the word "Stop," proceed to the next numbered question. If, however, the answer given is followed by instructions, the additional parts of that question should be completed before going on to the next question.

When page 1 specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

Item No. 5: Show whether the sponsor organization is associational, occupational or residential. If occupational, please show the specific products or services produced.

Item No. 10: Reserves: The term "reserve" in Exhibit A means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members. (These accounts are usually called Regular Reserve, Reserve for Bad Debts, Guarantee Reserve, Guarantee Fund, Special Reserve for Losses, and Allowance for Loan Losses.)

Item No. 11a: The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principle, excluding transfers from pledged shares, collateral, and comments regarding the collectibility of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

For the purpose of this application, loan delinquency will be determined on the basis of the borrowers' payments in relation to the terms of the notes, as follows:

> If a loan is in arrears by two monthly payments plus any part of the third payment, the loan is 2 months delinquent and, therefore, the entire unpaid balance is shown in the 2 months to less than 6 months category. A loan in arrears a total of 6 monthly payments plus any part of the seventh payment would be 6 months delinquent and the entire unpaid balance shown in the 6 months to less than 12 months category. A loan in arrears a total of 12 monthly payments plus any part of the thirteenth payment would be 12 months delinquent and the entire unpaid balance shown in the 12 months and over category.

Item No. 11b: The schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 months to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

Adverse Trends: If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved serious exceptions shown in the State examination report, the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or Unresolved Examination Exceptions" and assign it a schedule number.

Item No. 14: This item need be completed only if the credit union owns any of the following:

A. Investments in U.S. Government securities guaranteed as to principle and interest or Federal Agency securities, the market value of which is now less than the book value.

B. Real estate other than that used entirely for the credit union's own office(s).

C. Other investments of any type except:

1. Loans to other credit unions.
2. Certificates of, or accounts in, federally insured savings and loan associations.
3. Certificates of deposit in National or State banks.
4. Deposits or accounts in State central credit unions.
5. Common trust investments with International Credit Union Services Corporation (ICUS).

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

Item No. 21 b: The largest loans to members should be shown on page 5. In selecting the loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified below has

been shown. The number of such loans to be listed will be determined as follows:

If your credit union has the following no. of outstanding loans	You should list the following no. of the largest unpaid balances
Under 100	5
100 to 199	10
200 to 299	15
300 to 399	20
400 or more	25

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Repayment" column.

Page 6: Complete page 6 for each investment/loan to a Credit Union Service Organization (CUSO).

TERMINATION OF INSURANCE

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurance from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS STATE CHARTERED CREDIT UNION

TO: The National Credit Union Administration Board Date _____

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____

(mailing address) (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund;

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board;

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 701.20 and 741 of NCUA'S regulations;

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal Credit Unions by Section 116 of the Federal Credit Union Act and Parts 702 of NCUA'S regulations, and to maintain such special reserves as the NCUA Board may be regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA'S regulations;

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions;

6. To maintain the deposit and pay the insurance premium charges imposed as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act;

7. To comply with the requirement of Title II (Share insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto; and

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a stat-bartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share insurance. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(l) and 206(c) of the Federal Credit Union Act and Part 741.6 of NCUA'S regulations.

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS STATE CHARTERED CREDIT UNION

TO: The National Credit Union Administration Board Date _____

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____

(mailing address) (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund;

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board;

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 701.20 and 741 of NCUA'S regulations;

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal Credit Unions by Section 116 of the Federal Credit Union Act and Parts 702 of NCUA'S regulations, and to maintain such special reserves as the NCUA Board may be regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA'S regulations;

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions;

6. To maintain the deposit and pay the insurance premium charges imposed as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act;

7. To comply with the requirement of Title II (Share insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto; and

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a stat-bartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share Insurance. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(I) and 206(c) of the Federal Credit Union Act and Part 741.6 of NCUA'S regulations.

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act.

In support of this application we submit pages 1-6 and Schedules described below:

Schedule No.	Title

CERTIFICATIONS AND RESOLUTIONS

We, the undersigned, certify that we are the duly elected and qualified presiding officer and recording officer of the credit union and that at a properly called and regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:

We, the undersigned, certify to the correctness of the information submitted.

Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it resolved that the presiding officer and recording officer be authorized and directed to execute the Application and Agreement for Insurance of Accounts as prescribed by the NCUA Board and any other papers and documents required in connection therewith and to pay all expenses and do all such other things necessary or proper to secure and continue in force such insurance.

We further certify that to the best of our knowledge and belief no existing or proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any existing, proposed or future officer, committee member or employee is indicted for such an offense.

_____

(Signature) Presiding Officer, Board of Directors

_____

(Print or type Presiding Officer's Name)

_____

(Signature) Recording Officer, Board of Directors

_____

(Print or type Recording Officer's Name)

BILLING CODE 7535-01-C

Appendix E—Associations

Credit Union National Association (CUNA), P.O. Box 431, Madison, WI 53701, 608–231–4000

National Association of Federal Credit Unions (NAFCU), 38 N. 10th Street, Suite 300, Arlington, VA 22201, 703–522–4770

National Association of State Credit Union Supervisors (NASCUS), 1901 North Fort Myer Drive, Suite 201, Arlington, VA 22209, 703–528–8351

National Federation of Community Development Credit Unions (NFCDCU), 120 Wall Street, 10th Floor, New York, NY 10005–3902, 212–809–1850

[FR Doc. 98–24285 Filed 9–11–98; 8:45 am]

BILLING CODE 7535–01–P

federal register

Monday
September 14, 1998

Part III

Environmental Protection Agency

Draft Integrated Urban Air Toxics Strategy To Comply With Section 112(d), 112(c)(3) and Section 202(l) of the Clean Air Act; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6157–2; Docket No. A–97–44]

Draft Integrated Urban Air Toxics Strategy To Comply With Section 112(k), 112(c)(3) and section 202(l) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides a draft strategy for public comment to address health impacts from air toxics in urban areas. The strategy includes a draft list of 33 hazardous air pollutants (HAP) judged to pose the greatest potential threat to public health in the largest number of urban areas, based on available information. Thirty of these HAP are from area sources. It also provides a draft list of area source categories to be listed for regulation under section 112(d) of the Clean Air Act (Act). The draft strategy also provides a schedule for specific actions to address risk from air toxics in urban locations. This draft strategy is being developed as required in section 112(k) and 112(c)(3) and section 202(l) of the Act, as amended in 1990, and a consent decree entered in *Sierra Club* v. *Browner*, Civ. No. 95–1747 (D.D.C. 1995) (consolidated with *Sierra Club* v. *Browner*, Civ. No. 96–436 (D.D.C. 1996)). Even though the draft strategy identifies source categories for which additional standards under section 112(d) may be developed, the strategy by itself does not automatically result in regulation or control of emissions from sources within these source categories. The EPA will perform further analyses of HAP emissions, control methods for the listed source categories, and health impacts as appropriate, for stationary and mobile sources. These analyses will determine the ultimate regulatory requirements, if any, which may be developed under the strategy.

DATES: A draft and final strategy, including HAP and source category lists, are required under the consent decree to be completed and made available by August 31, 1998 and June 18, 1999, respectively. Written comments on this draft must be received by November 30, 1998. We will hold four stake-holder meetings on this draft. The first will be at Radisson Plaza Hotel at Mark Center, 5000 Seminary Road, in Alexandria, VA on September 23, 1998. The second at the Durham Marriott at the Civic Center, 201 Foster Street, Durham, NC on September 29, 1998, the third, in Chicago, Illinois at Hyatt Regency Chicago, 151 East Wacker Drive, Chicago, IL 60601 on November 5 and 6, 1998, and the final at Cathedral Hill Hotel, 1101 Van Ness Avenue, in San Francisco, California 94109, on November 19, 1998. Persons wishing to present oral comments pertaining to this notice should contact EPA at the address listed below.

ADDRESSES: A docket containing information relating to the development of this notice (Docket No. A–97–44) is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, in the Air and Radiation Docket and Information Center (MC–6102), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Laura McKelvey, Office of Air Quality Planning and Standards (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5497, electronic mail address: McKelvey.Laura@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of the Draft Urban Air Toxic Strategy. The principal purpose of this docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's notice. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this notice.

In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in government writing, this package is written using plain language. Thus, the use of "we" in this package refers to EPA. The use of "you" refers to the reader and may include industry, State and local agencies, environmental groups and other interested individuals.

The information in this notice is organized as follows:

I. Introduction

We have made considerable progress since the passage of the Clean Air Act Amendments of 1990 in improving air quality for all Americans by reducing air toxics [1] emissions through regulatory, voluntary and other programs. To date, we have focused mainly on substantially reducing emissions of toxic air pollutants entering the environment, primarily by setting standards for major industrial sources and mobile sources. These reductions are only part of the solution to protecting public health and the environment from toxic air pollutants. In addition to lowering overall emissions of these toxic pollutants, we need to develop focused strategies to combat problems of particular concern. As we continue to develop the national air toxics program, and planned research yields improved data on health risks, we envision making increased use of risk information in setting priorities and measuring progress.

As discussed in more detail in section II.B. current information shows that some of the greatest health risks affecting the most people are in urban areas. This **Federal Register** notice presents our draft strategy to address the problem of urban air toxics, considering major industrial sources, smaller "area" sources and mobile sources. The Act requires us to develop a strategy for reducing urban air toxics by focusing on area sources. However, these sources are not the only contributors to toxic air pollutants in urban areas and are not the only sources of concern to the public. Therefore, in addition to satisfying our statutory obligation to address the threats presented by emissions from area sources, we intend to devise a broad strategy for reducing risks posed by air toxics from all sources. Different types of sources emit the same pollutants; and especially in urban areas, there are many sources emitting multiple pollutants. As part of our overall plan to target risk reductions, our draft strategy addresses the problems of cumulative exposures from air toxics through an integrated approach that considers all sources.

In developing the urban strategy, we make use of the best available scientific information providing insight into health risks from hazardous air pollutants. Based on this information, we have suggested priorities for the urban air toxics program. Our aim is to achieve the greatest reductions in risk

[1] Our use of the terms "air toxics" or "toxic air pollutants" in this notice refers specifically to those pollutants which are listed under CAA section 112(b) as "hazardous air pollutants" or HAP.

for the largest number of Americans, in an expeditious manner. In addition, we intend to address cases in which specific groups of individuals, such as low-income communities and children, may be exposed to disproportionately higher risks. Available information in many cases is not sufficient to quantify health risks from air toxics; there are significant gaps and uncertainties. However, section 112 generally provides a framework requiring the Nation to (1) move ahead to reduce emissions through standards under section 112(d) or section 129, initially reducing health threats from urban air toxics, while (2) conducting further research to address uncertainties and improve information on risks under section 112(f), 112(k) and 112(m) in order to then act to address the remaining identified risk.

In this introduction, we present a brief overview of the air toxics problem, actions that we have taken to reduce emissions, and our overall strategy for dealing with urban air toxics. We view this draft strategy as a starting point. We welcome public comment and will meet with various stakeholders, including direct dialogues with community groups such as environmental justice communities, to develop this approach further before the final strategy is issued in June 1999.

A. What is the air toxics situation?

There are currently 188 HAP regulated under the Clean Air Act that have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects and developmental effects.[2] We estimate that approximately 4.4 million tons (or 8.8 billion pounds) of HAP were released in the United States in 1990, declining to 3.7 million tons in 1993 (Second Report to Congress on the Status of the Pollution Program under the Clean Air Act, October 1997). In total, we have issued 25 maximum achievable control technology (MACT) and two section 129 standards, achieving estimated emission reductions of approximately 1 million tons once these standards are fully implemented.

We categorize anthropogenic sources of air toxics into three broad types: (1) major stationary sources, which are sources that emit more that 10 tons per year of any one HAP or 25 tons per year of a combination of HAP, such as chemical plants, oil refineries, aerospace manufacturers and steel mills; (2) area sources, which are smaller sources of air toxics which emit less than 10 tons per year of any one HAP or less than 25 tons per year of a combination of HAP, such as drycleaners, solvent cleaning industries and secondary lead smelters; and (3) mobile sources, which include cars, trucks and off-road engines. According to 1993 data, on a national basis, 24 percent or about 890 thousand tons of air toxics were emitted by major sources, 34 percent or about 1.26 million tons, were emitted by area sources, and 42 percent, or about 1.55 million tons, came from mobile sources (see emissions inventory report in docket).

In urban areas, toxic air pollutants pose special threats because of the concentration of people and sources of emissions. While threats posed by some pollutants may be fairly common across the country, studies in a number of urban areas indicate that threats posed by others vary significantly from one urban area to the next. We are concerned that because minority and low income communities are often located close to urban industrial and commercial areas where ambient concentrations of HAP may be greater, their risks of exposure to HAP at levels above acceptable health bench marks may be disproportionately higher than for other segments of the population. Through this study, we intend to collect and evaluate additional information needed to determine the extent to which there may be disproportionate risks for these communities in urban areas.

In order to fully understand the air toxics problem, we must understand the level of the pollution to which people are exposed. In order to do this, we would like to know the concentrations of all HAP as measured by ambient air monitors. However, the monitoring data are scarce and limited. Consequently, we estimate pollution concentrations through the use of models, relying on emissions measurements or estimates.

B. What are we doing to address air toxics?

In amending the Act in 1990, Congress required us to establish national emission standards for stationary sources of air toxics and to study a number of air toxics problems to determine whether additional reductions are needed. These emission standards are known as maximum achievable control technology, or MACT standards, and generally available control technology, or GACT standards. We have promulgated standards for the first 47 of 174 source categories, which will reduce air toxics emissions by approximately 980,000 tons per year. Within the next 10 years, as we complete more MACT standards, the air toxics program is estimated to reduce emissions of toxic air pollutants by well over 1.5 million tons per year (Second Report to Congress on the Status of the Hazardous Air Pollutant Program Under the Clean Air Act, October 1997).

We have also established mobile source evaporative and exhaust emission standards, as well as fuel standards, which are greatly reducing the amount of air toxics coming from motor vehicles. Between 1995 and 2000, highway vehicle emissions of benzene, 1,3-butadiene, and directly emitted formaldehyde will be reduced by about 40,000 tons per year. Toxic emissions from non-road sources will also be reduced in this period. Calculations and analyses which will improve our ability to project the impact of planned mobile source standards are currently in progress.

Congress instructed us to develop a strategy for air toxics in urban areas, emphasizing actions to address the large number of smaller, area stationary sources. Section 112(k)(1) states:

> The Congress finds that emissions of hazardous air pollutants from area sources may individually, or in the aggregate, present significant risks to the public health in urban areas. Considering the large number of persons exposed and the risks of carcinogenic and other adverse health effects from hazardous air pollutants, ambient concentrations characteristic of large urban areas should be reduced to levels substantially below those currently experienced * * *.

In particular, section 112(c)(3) and 112(k) instruct us to:

- Develop a research program on air toxics, including research on the health effects of the urban HAP, monitoring and modeling improvements to better identify and address risk in urban areas;
- Identify at least 30 HAP from area sources in urban areas that present "the greatest threat to public health;"
- Identify the area source categories or subcategories emitting the 30 HAP and assure that 90 percent or more of the aggregate emissions are subject to standards under subsection (d);
- Provide a schedule for activities to substantially reduce risks to public health (including a 75 percent reduction in cancer risk attributable to 1990 exposures to HAP emitted by all stationary sources) using all EPA and State/local authorities;
- Implement the strategy and achieve compliance with all requirements within 9 years of enactment;
- Encourage and support State/local programs in reducing risks within individual urban areas; and

[2] Section 112(b) of the Act lists 189 hazardous air pollutants (HAP). One of the HAP, caprolactam, was subsequently delisted.

• Provide a Report to Congress at intervals not later than 8 and 12 years after enactment, on actions taken to reduce the risks to the public health.

In addition, section 202(l) of the Act requires that we:

• Study the need for and feasibility of controlling emissions of toxic air pollutants associated with mobile sources; and

• Promulgate regulations containing reasonable requirements to control HAP from motor vehicles or motor vehicle fuels.

In September of 1995, the Sierra Club filed suit against EPA alleging that we failed to promulgate regulations to control HAP from motor vehicles and motor vehicle fuels within the deadlines required under section 202(l)(2). Subsequently, in March 1996, the Sierra Club filed another suit alleging that we failed to issue the source category list under section 112(c) and the strategy under section 112(k) by their respective deadlines. These were initially separate suits but we agreed to address both of these requirements as part of a consolidated consent decree (Defendant's Motion to Consolidate, *Sierra Club* v. *Browner*, (D.D.C. 1996)(N0.99–1747)).

To address the problem of exposure to air toxics in urban areas and to fulfill our obligations under the consent decree, we intend to implement an integrated urban air toxics strategy that addresses the urban air toxics risks from both stationary and mobile sources. This strategy is expected to produce a set of actions that will be more responsive to the cumulative risks presented by multiple sources of toxics and combined exposures to multiple toxics. We believe that by considering urban air toxics emissions from all sources, we will better respond to the relative risks posed by any one pollutant and/or source category. Thus, integration of the activities under both sections of the Act will more realistically address the total exposure and will better allow us and the States to develop activities to address risks posed by toxic pollutants where the emissions and risks are most significant and controls are most cost effective.

As discussed previously, we have a number of Act requirements to address. For instance, section 112(k)(3)(B)(ii) and 112(c)(3) require us to list and regulate area source categories accounting for 90 percent of the aggregate emissions of the 30 HAP identified under section 112(k)(3)(B)(i). Promulgating these standards is an important initial step in the strategy to reduce emissions. However, a separate but equally important requirement of section 112(k)(3)(C) requires us to substantially reduce the public health risk posed by exposure to HAP, including a 75 percent reduction in cancer incidence. It is important to recognize that even though they are linked, because emissions reductions achieved through standards required under section 112(k)(3)(B)(ii) will help in achieving the risk goals under 112(k)(3)(C), they are two separate requirements. There are also some important differences between the requirements. For example, section 112(k)(3)(B)(ii) is limited to emission standards for area source categories emitting the 30 section 112(k) HAP, whereas, section 112(k)(3)(C) refers more broadly to reducing risk from all HAP emitted by all stationary sources. In addition, standards addressing section 112(k)(3)(B)(ii) must be set under the authority of section 112(d), whereas the risk reductions to address section 112(k)(3)(C) can be achieved more flexibly using any of Administrator's authorities under the Act or other statutes, or those of the States.

C. What is our strategy for addressing urban air toxics?

Today's notice presents our draft strategy for addressing urban air toxics on a national level and for working with State and local governments to reduce air toxics risks in our communities. The primary goal of this strategy is to substantially reduce public health risks from air toxics. The basic framework of our strategy is to:

1. Define the air toxics threat for urban areas from a cumulative perspective, considering major, area and mobile sources.

Our implementation of the toxics provisions of the 1990 Amendments to date has focused on setting technology-based emissions standards for individual source categories and, separately, developing fuel and vehicle standards for mobile sources. While we have achieved significant toxics emissions reductions, including reductions in urban areas, we believe that a focused urban strategy is needed to address the "urban soup" of multiple toxic pollutants emitted by multiple sources. In this strategy, we have looked at the contribution from all sources of air toxics to develop a draft list of the relatively worst HAP in urban areas. This list of HAP is provided and discussed in Section II. We plan to use our range of authorities under the Act to address these problems in the most effective way possible.

2. Improve our understanding of the risks from air toxics in urban areas.

This draft strategy presents our first steps to characterize "urban soup" or the cumulative problem of air toxics in urban areas and describe how risk can be reduced. As described in more detail in Section II of this notice, we have analyzed the most significant HAP in urban areas based on the best available data, including emissions and toxicity information. To understand the risks from air toxics more fully, however, we must address significant data gaps. For example, we have limited information on human health effects associated with many of the HAP, the extent to which people are exposed to air toxics in urban areas, and the effect of exposure to multiple pollutants. We will be providing a brief discussion of our research needs in Section V.

3. Reduce risks from urban air toxics through near- and longer-term actions.

In addition to the research and other efforts planned to improve our understanding of air toxics risks, we are suggesting specific actions that will help achieve emissions reductions in the near-term and longer-term. For example, as part of our statutory requirements, we will be proposing air toxics standards for motor vehicles and motor vehicle fuels, and will begin to develop area source standards by the end of 1999. From 2002 to 2006, we will issue emissions standards for these area sources that contribute significantly to emissions of urban air toxics. In the longer-term, we could also use our residual risk authority to address major sources that are already subject to regulation, but which continue to pose substantial risks to urban areas. More information on these and other actions is found in Section IV.

4. Work with State and local governments on developing urban strategies for their communities.

This draft strategy provides a national picture of air toxics in urban areas, suggests a number of actions that we could take to reduce toxics emissions, and discusses ways to involve State and local governments to address toxics risks on the local level. We anticipate that State and local measures, as well as Federal measures, will be needed to reduce urban air toxics risks. Urban areas can differ greatly in terms of air toxics, sources and meteorology. In addition, State and local programs to address air toxics vary widely; and we recognize that many States have successfully operated many programs to reduce air toxic emissions at the State or local levels. Consequently, we intend to seek collaborative relationships with State and local agencies, minority and economically disadvantaged communities, and affected industries to

assure our actions are responsive to health concerns while promoting environmental justice, encouraging urban redevelopment, and minimizing regulatory burdens. We will further encourage and provide enhanced technical assistance to these States' efforts and will be seeking ways to expand opportunities for flexible and effective State and local actions to address risks in more geographically-specific ways.

In this notice, we are suggesting a broad framework for addressing urban air toxics with some specific actions to reduce emissions and to improve our understanding of risks posed by air toxics. We will work over the next several months with various stakeholder groups, including States, local governments, industry representatives, small businesses, local health officials and environmental groups to refine this strategy. In addition, through our Regional Offices, we hope to reach out to community groups that have not traditionally participated in these efforts but who may be disproportionately affected by air toxics.

D. What are the components of this Federal Register Notice?

This draft strategy for urban air toxics presents our analysis of the HAP posing the greatest threats to public health in urban areas, near- and longer-term actions to address air toxics risks, and a discussion on developing State and local programs. More specifically:

- Section II discusses the health threats posed by air toxics, describes our emissions inventory and our methodology for identifying the HAP estimated to pose the greatest threats to public health in urban areas (based on current information on 1990 conditions), and identifies 33 HAP from all emissions sectors.
- Section III focuses on how we are planning to address air toxics from area sources, as required by section 112(c) and (k), including a draft list of 34 categories or subcategories of area sources that account for 90 percent of the emissions of the worst HAP in urban areas, and that will be subject to additional standards.
- Section IV discusses our near-term actions to address urban air toxics. These include evaluating the need and feasibility for fuels and vehicle standards, developing area source standards, reviewing and expanding monitoring networks, developing modeling tools for national and local scale risk assessments, and beginning to work with State and local governments to set up air toxic programs. It also provides information on what EPA and State programs are currently doing to reduce risks.
- Section V describes our longer-term activities to address air toxics risks in urban areas, including residual risk standards, additional stationary source standards, and possible State program actions. It also discusses our research strategy to characterize risks and to measure progress toward the risks reduction goals of the strategy.

II. List of Pollutants, their Effects and Sources

A. General Overview

This section provides further discussion of what air toxics are and what concerns they present, and describes how we evaluated and selected a draft list of HAP to guide our actions under the strategy. It includes descriptions of our emissions inventory and our methodology for identifying the HAP estimated to pose the greatest threats to public health in urban areas.

In brief, we evaluated the health effects information available for the 188 HAP, estimated emissions from all known sources using a variety of techniques, assessed available air quality monitoring data, reviewed existing studies, and produced a list of pollutants based on the relative hazards they pose in urban areas when considering toxicity, emissions and related characteristics. From this effort, we were able to establish a list of HAP which we believe to pose the greatest threats to public health in urban areas, considering emissions from major stationary, area and mobile sources.

B. What are Air Toxics and what threats do they present to public health?

Toxic air pollutants include a wide variety of organic and inorganic substances released from industrial operations (both large and small), fossil fuel combustion, gasoline and diesel-powered vehicles, and many other sources. The Act as amended in 1990 identifies 188 toxic chemicals as HAP. Major categories of toxic air pollutants include volatile organic compounds, known as VOC, metals and inorganic chemicals, and semi-volatile organic chemicals. Volatile chemicals are usually released into the air as vapor, while semi-volatile organics and metals may be released in the form of particles.

The HAP have the potential to cause various types of harm under certain circumstances of exposure (e.g., depending on the amount of chemical, the length of time exposed, the stage in life of person exposed). We have classified many as "known," "probable," or "possible" human carcinogens and have included this information in EPA's Integrated Risk Information System.[3] The HAP can also be described with regard to the part of the human body to which they pose threats of harm. For example, neurotoxic pollutants cause harm to the nervous system. The severity of harm, however, can range from headaches and nausea to respiratory arrest and death. The level of severity differs both with the amount and length of exposure and the chemical itself (i.e., how it interacts with individual components of the nervous system). Some chemicals pose particular hazards to people of a certain age or stage in life. For example, some HAP are developmentally toxic. That is, exposure to certain amounts of these chemicals during the development of a fetus or young child can prevent normal development into a healthy adult. Other HAP are reproductive toxicants, meaning that they may have the potential to affect the ability of adults to conceive or give birth.

In a recent effort to characterize the magnitude, extent and significance of airborne HAP in the U.S. (as part of EPA's Cumulative Exposure Project or CEP), computer modeling was used to estimate outdoor concentrations nationwide using a 1990 national emissions inventory compiled for 148 pollutants from major area and mobile sources (Woodruff et al., 1998). The estimated outdoor concentrations for 119 HAP were compared to health-based benchmarks. The benchmarks for potential cancer effects were set at HAP concentrations which, if experienced throughout a lifetime, are predicted to be associated with an upper bound excess cancer risk of 1-in-1 million. The benchmarks for potential health effects other than cancer were set at exposure concentrations for each HAP which, if experienced over a lifetime, are considered to have no significant risk of adverse noncancer effects. The study looked at more than 60,000 census tracts in the continental U.S. Census tracts vary in size but typically contain a population of approximately 4,000.

[3] The Integrated Risk Information System (IRIS), prepared and maintained by the U.S. Environmental Protection Agency (U.S. EPA), is an electronic data base containing information on human health effects that may result from exposure to various chemicals in the environment. IRIS was initially developed for EPA staff in response to a growing demand for consistent information on chemical substances for use in risk assessments, decision-making and regulatory activities. The information in IRIS is intended for those without extensive training in toxicology, but with some knowledge of health sciences. Further information about IRIS, including the information it contains, can be found on the IRIS web site at http://www.epa.gov/iris.

It is very important to understand that this modeling estimates annual average outdoor concentrations for 1990 and does not incorporate other aspects of exposure modeling, such as differences in concentrations in various micro environments, indoor air and individuals' commuting patterns. Thus, the study did not attempt to estimate the number of people who might be exposed to these estimated concentrations of HAP, nor the frequency or duration of such exposures. For this reason, results should be viewed as an indicator of potential hazard and not as a characterization of actual risk. This effort suggests that HAP exposures are prevalent nationwide; and for some HAP in some locations, the concentrations are significant. Concentrations of eight [4] HAP appear to be greater than their lifetime excess cancer risk-based benchmarks (10^{-6} lifetime individual excess cancer risk) in all of the census tracts, primarily because of background concentrations (i.e., airborne levels occurring as a result of long-range transport, resuspension of historic emissions and natural sources), not just from localized current anthropogenic emissions. Current anthropogenic emissions, however, appear to contribute to concentrations of at least two HAP (benzene and formaldehyde) above the associated benchmark in up to 90 percent of the census tracts. Further, there are 28 HAP for which estimated concentrations were greater than the associated benchmark in a larger number proportion of urban areas than rural areas. In a much smaller number of locations, concentrations of certain HAP were estimated to be more than a factor of 100 greater than the corresponding cancer and noncancer based benchmark.

We conclude from this analysis that for certain HAP, concentrations of potential concern are common in all census tracts. Additionally, there is a subset of the HAP at levels of potential concern in more urban than in rural areas. This project has highlighted many of the HAP on which we will be focusing our attention in the urban air toxics strategy.

C. How did EPA Identify the Priority HAP?

In this section, we present our analysis of what HAP we consider to pose the greatest threat to public health in urban areas as of 1990. Although we have limited information on risks, we used the best available data on air toxics: (1) the National Toxics Inventory, which provides emissions data on the 188 HAP, combined with information on toxicity to determine the relative hazard among HAP; (2) monitoring data available from the Aerometric Information Retrieval System and our toxics data archive, (3) toxicological information from EPA and other government sources, (4) an analysis of previous studies on air toxics in urban area; and (5) the Cumulative Exposure Project analysis of modeled emissions from 148 HAP by census tracts of the contiguous U.S. We begin with a discussion of the emissions inventory and then explain our methodology for picking the HAP in more detail.

1. Emissions Inventory

a. How was the emissions inventory developed?

In order to provide information on all 188 HAP, we are developing and refining the national toxics inventory. Moreover, in order to implement the specific requirements of section 112(k), we believed that it was important to have the best information possible in determining which of the 188 HAP should be included on the urban HAP list. Therefore, we conducted an initial ranking analysis based on the information we had at the time and identified a candidate list of 40 HAP. We provided the candidate list to the public for comment through the Internet in September of 1997. We developed a national inventory of sources and emissions for these 40 potential urban area pollutants considering the information provided by the public for the base year 1990. The base year 1990 was used because it was the year that the Act was amended and, thus, the year in which EPA received congressional direction to take actions to address the hazards posed by HAP. Therefore, we believe that 1990 represents a reasonable starting point for our analyses and regulatory efforts. The base year inventory report can be obtained from our Internet World Wide Web site (www.epa.gov/ttn/uatw/112k/riurban.html). The report notes that current emissions may differ from emissions calculated for the 1990 base year. We used these 1990 emissions estimates for the urban area pollutants identified in the next subsection to evaluate what source categories should be subject to regulation.

The 1990 base year inventory document includes estimates for all sources of the section 112(k) pollutants for which we could establish estimation techniques. We believe this base year inventory report will be a useful reference to those who wish to understand the relative relationship of stationary source emissions (and in particular those that have been evaluated for section 112(k) purposes) to emissions from other types of sources. Therefore, this inventory includes estimates for sources that we believe would not be subject to section 112 regulations (e.g., mobile sources, fires, and residential fuel combustion). In addition, where we do not have data to support an emissions estimate but do have information to suggest a source category is a potential emitter of a section 112(k) pollutant, we note this in the inventory document.

Although section 112(k) focuses on area sources, the inventory provides information concerning both "major" and "area" sources as defined in section 112(a) of the Act for each source category, as well as mobile source categories. This information is important to our ability to fully characterize risk potential, even though regulatory decisions under section 112(k) focus on area sources.

To address the requirements of section 112(k), we developed a national inventory of sources and emissions of the urban area pollutants based on data collected from the MACT standards program, Urban Air Toxics Program, the Toxics Release Inventory (TRI), the Great Waters Study, the Clean Air Act-mandated Reports to Congress on mercury and electric utility steam generating units, locating and estimating (L&E) documents used as guides to identify and estimate emissions, and review of other published technical literature. Emission factors were obtained from our Compilation of Air Pollutant Emission Factors, Volume I: Stationary, Point and Area Sources (AP–42) document, our Factor Information Retrieval System emission factor database, L&E documents, MACT programs, Federal Aviation Engine Emission Database, and industry studies. Activity data were obtained from published government reports (e.g., vehicle miles traveled data from the Department of Transportation's annual highway statistics, landing and take-off cycles from the Federal Aviation Administration air traffic statistics, energy consumption data from Department of Energy publications), industry trade publications, industrial economic reports, industry trade groups, and the MACT development programs. With the exception of TRI data, the inventory primarily represents the product of a "top-down" calculation methodology. This means emissions

[4] These HAP include: benzene, carbon tetrachloride, chloroform, ethylene dibromide, ethylene dichloride, formaldehyde, methyl chloride, and bis(2-ethylhexyl)phthalate.

were estimated by using some measure of source category activity (on the national level) and associated emission factors or speciation profiles for the category and its processes. With a few exceptions (e.g., use of TRI, emissions data from municipal waste combustors, and secondary lead refining operations), section 112(k) national emissions are not the sum of individual facility estimates (i.e., a "bottom-up" process). The initial phase of the section 112(k) emissions inventory effort constituted a screening analysis since we were attempting to preliminarily quantify atmospheric releases of all sources of the section 112(k) pollutants. A top-down approach is generally considered an appropriate and cost-effective use of resources for screening efforts such as those needed to assess section 112(k) pollutants. The level of effort required to estimate emissions using a bottom-up approach for all source categories that emit these pollutants would be extremely costly. Should it be dictated as a result of this analysis and listing, such detailed facility-specific emissions information may be collected during the technical analysis phase of MACT program development for the source categories listed for future section 112(k) rulemaking consideration.

b. What is the base year for the inventory?

As noted above, we chose the base year 1990 for the emissions inventory because we believe that the year the Act was amended represents the most reasonable starting point for our analyses and regulatory efforts..Since section 112(k) requires a comparative accounting of the sources of these specific pollutants, we also believed it important that, to the greatest extent possible, all emissions be estimated from the same base year. In several cases, other and perhaps better, emissions estimates were available that represent more current emissions levels. In these instances, the more current estimate was noted, but the 1990 emissions estimate was used for the section 112(k) accounting of the sources of urban HAP. For example, lead emissions from gasoline distribution from the refinery to the storage tanks at service stations (commonly referred to as Stage I) for on-road mobile sources were estimated to be 0.086 tons in 1990. By 1996, there were no lead emissions from this source due to the mandated phaseout of leaded gasoline by December 31, 1995. However, the lead phaseout does not include fuels used for aviation, non-road egines, marine vessels and automotive racing purposes. Data were insufficient to estimate the emissions from fuel usage from non-road engines, marine vessels and automotive racing. For this reason, we are requesting additional information to help quantify emissions of lead compounds from these sources.

c. How were pollutants that are regulated as sets of individual species handled in the inventory?

a. Polycyclic Organic Matter (POM). Various conventions were adopted for developing the inventory of the pollutant groups where no standardized methods currently exist. This is most notably the case for POM, which is defined in section 112(b) of the Act as organic compounds with more than one benzene ring and a boiling point greater than or equal to 100°C, which would include a complex mixture of thousands of polynuclear aromatic hydrocarbons (PAH).

Because compiling the inventory of all POM compounds individually is currently impossible, surrogate approaches have been used. For instance, some of the available POM data are expressed in terms of the solvent-extractable fraction of particulate matter, referred to as extractable organic matter or EOM. Other POM data are defined as being included in either the group of seven or group of 16 individual PAH species, referred to as 7–PAH and 16–PAH, respectively. The species that make up 7–PAH have been identified by EPA as probable human carcinogens, and the 16–PAH are those species that are measured by EPA Method 610. The 16–PAH include the 7–PAH group.

For the purposes of section 112(k), we decided to use 7–PAH as the POM surrogate because of its more well-established relationship to health effects of concern. That is, 7–PAH includes 7 specific carcinogenic compounds, whereas the health significance of the 16–PAH surrogate is less certain.

b. Dioxins and Furans. In developing the emissions inventory to support this action, we initially attempted to inventory the specific dioxin and furan species, but soon found a significant shortage of available emissions data for these pollutants for all pertinent source categories. During the data collection phase of the process, we found that more emissions estimates and emissions factors were available for dioxins and furans on the basis of 2,3,7,8–TCDD toxic equivalent quantities (TEQ, 1989 international-NATO). The MACT program, section 112(c)(6) source category list, and the Office of Research and Development's Dioxin Reassessment Study predominantly report emissions estimates on a 2,3,7,8–TCDD TEQ basis. Therefore, to maximize the number of source categories for which national estimates could be determined on a common basis and best carry out the objectives of section 112(k), EPA chose to use the TEQ method for developing the inventory for dioxin and furan species. It should be understood that TEQs aggregate all of the dioxin and furan species into one value weighted by toxicity, so that the dioxin and furan emissions estimates compiled in this inventory include individual species. More information on the use of the TEQ method can be obtained from the section 112(k) inventory report (www.epa.gov/ttn/uatw/112k/riurban.html).

d. Why and how were national emissions disaggregated to major and area source categories?

For the purposes of section 112(k), determining the percentage of a source category's emissions that come from major sources generally establishes the percentage subject to a given section 112(d)(2) standard unless area sources for the category are also listed and regulated. The allocation of emissions between major and area sources (major/area splits) used for various source categories in the section 112(k) analysis are a rough approximation based on our current understanding of the industries concerned. Where specific data pertaining to major/area splits are available, the splits are typically derived from definitions of facilities, not necessarily the allocation of emissions.

Generally, we collect information on the major/area split during the development of each source category specific regulation by surveying individual facilities with detailed questions. This section 112(k) study is considered a screening analysis, and we considered collecting more detailed data for this study to be cost prohibitive, as well as redundant, since such information will be gathered on a source specific basis during any subsequent regulatory development. For information about the specific major/area splits used in the section 112(k) inventory, see Appendix C of the inventory report. We solicit public comment on the appropriateness of the major/area splits used in the section 112(k) emissions inventory, as well as the inventory estimates of emissions. This information will also be on the web.

e. How were national emissions spatially disaggregated?

Section 112(k) of the Act addresses HAP that "present the greatest threat to public health in the largest number of urban areas." The Act does not provide a definition of "urban," however. To spatially allocate emissions on an urban

and rural basis, we used Bureau of the Census statistical data (U.S. Bureau of the Census, 1990). The Bureau of the Census lists the counties included in each Metropolitan Statistical area (MSA) in the United States. An MSA can include more than one county. We first summed the county population in each MSA. We designated the counties as urban or rural based on the sum of their populations. Emissions were assigned to counties by various methods. In some cases, such as with TRI estimates and data obtained from MACT studies, emissions could be assigned to individual facilities and then summed at the county level.

In cases where facility-specific data were not available or could not be provided in an appropriate format within the time constraints of this project, emissions were assigned to individual counties using surrogate approaches. Two examples of these surrogate approaches include proportioning national non-road vehicle emissions to counties based on population proportioning emissions from some industrial sectors to counties based on 1990 SIC code employment estimates. For a complete list of spatial allocation approaches used in this study, see appendix C of the section 112(k) Inventory Report on the previously mentioned web site.

f. How reliable is the inventory?

The emissions inventory developed to support section 112(k) activities contains data of highly varying specificity and reliability. In some cases, we or the industry prepared the emissions estimates in response to other regulatory initiatives. These data are, in several cases, based on individual facility data or representative, category-wide data developed from extensive testing. Other more source-specific estimate data are based on industry-submitted estimates to TRI, which have been based on testing or process-specific knowledge. Other estimates were based on a top-down approach utilizing limited emission factors. Generally, activity data even for these categories were of reasonably good quality. The emission factor data, however, varied considerably in terms of number, quality, and representativeness. As discussed previously, the draft inventory in this notice reflects the input received.

The section 112(k) 1990 emissions inventory represents the best data available to the Agency for that period. However, as more source categories are evaluated during development of rules and more data on industry activity, emissions factors and source tests become available, emission estimates should continue to improve. In addition, although there is currently no requirement for States to collect and/or report HAP emissions estimates (as there are for criteria pollutant data), many States are developing data bases for HAP emissions. As these programs evolve, emissions estimates will improve further.

g. Has this inventory been reviewed by the public?

A draft of the section 112(k) emissions inventory was made available on EPA's Internet World Wide Web site (www.epa.gov/ttn/uatw/112k/riurban.html) for review by the public in September 1997. In addition, we identified a list of trade organizations, industry, and environmental advocacy groups and contacted them individually by letter to announce the availability of the inventory and to request their reviews. The EPA requested that any comments on the September 1997 draft section 112(k) inventory be submitted by October 15, 1997. The comments submitted were summarized in the EPA document entitled "Public Comments Received about Technical Aspects of the 1990 Emission Inventory of Forty Pollutants in the Section 112(k) External Review Draft Report," which can be obtained from the EPA's Internet Web site mentioned earlier.

2. List of the Priority HAP

a. What are the priority HAP?

Table 1 presents a draft list of HAP that we believe pose the greatest threat to public health in urban areas. Although information is limited regarding actual risks posed by specific HAP emissions, the availability of various other types of information is sufficient to achieve our objective of identifying those HAP posing the greatest potential public health concern in urban areas. Even though section 112(k)(3)(B)(i) requires that we list HAP emitted from area sources, we believe that the public is exposed to complex mixtures of pollutants, and these pollutants are emitted by all sources. The risk from exposure to HAP has public health implications regardless of what the source of the emissions are. We judged these HAP to pose significant health threats and believe it is important to include them in the strategy to support activities to achieve the risk reductions required under section 112(k)(3)(C). Therefore, in the interests of best protecting public health, we have identified HAP considering the cumulative exposure potential of mobile, area, and major stationary source emissions combined. Included on the draft list of urban HAP are those 30 HAP, the identification of which is required under section 112(k)(3), that present the greatest threat to public health and result from area source emissions. Emissions of only these 30 HAP were considered in the area source category listing required under section 112(c)(3) and 112(k). As discussed before, those HAP that are emitted by major or mobile sources, without a significant contribution from area sources, will be addressed using our other existing authorities under the Act, such as section 112(c)(1), 112(d) and 112(f) (these HAP are noted on the table with an asterisk). For example, if there is a major source category that emits one of these HAP and is not currently addressed by MACT or section 129, we may determine additional regulation under section 112(b) is necessary. Alternatively, if the HAP presents more of a local concern, it may be appropriate for the State or local agency to address it under its authorities. In light of the requirement of section 112(k)(3) and EPA's desire to integrate other statutory requirements regarding air toxics, we are requesting comment on whether it is appropriate for us to include the HAP that do not have significant contributions from area sources on the list.

TABLE 1.—DRAFT LIST OF HAP FOR THE INTEGRATED URBAN AIR TOXICS STRATEGY

acetaldehyde	ethylene dichloride (1,2-dichloroethane).
acrolein	ethylene oxide.
acrylonitrile	formaldehyde.
arsenic compounds	hydrazine.
benzene	lead compounds.
bis(2-ethylhexyl) phthalate	manganese compounds.
1,3-butadiene	mercury compounds.
cadmium compounds	methyl chloride*.
carbon tetrachloride	methylene diphenyl diisocynate (MDI).

TABLE 1.—DRAFT LIST OF HAP FOR THE INTEGRATED URBAN AIR TOXICS STRATEGY—Continued

chloroform	methylene chloride (dichloromethane).
chromium compounds	nickel compounds.
coke oven emissions*	polycyclic organic matter (POM) (7–PAH).
1,4-dichlorobenzene	propylene dichloride (1,2-dichloropropane).
1,3-dichloropropene	quinoline*.
2,3,7,8-tetrachlorodibenzo-p-dioxin (& congeners & TCDF congeners)	tetrachloroethylene (perchloroethylene).
ethylene dibromide (dibromoethane)	trichloroethylene
	vinyl chloride.

The method by which we identified HAP for the urban HAP list is summarized here and more fully described in the technical support document in the docket. In order to use the available information in the most robust manner, we ranked HAP for consideration for the urban HAP list in the following three ways. First, we ranked HAP by combining indicators of toxicity and exposure into ranking indices. The surrogates for toxicity were the risk-based concentration (RBC) for inhalation or risk-based dose (RBD) for ingestion. For effects other than cancer, the RBC or RBD represented an exposure estimated to be without adverse effects in human populations, including sensitive individuals. For carcinogenic HAP, we used RBC or RBD values representing both exposures associated with a 1-in-1 million and a 1-in-10 thousand upper-bound predicted lifetime cancer risks. Surrogates for exposure included measured ambient concentrations and emission rates from area, major and mobile sources. As more completely described in the technical support document, seven separate indices were calculated, then combined into a single ranking.

Second, we reviewed a number of existing exposure or hazard assessments concerning HAP that have been conducted previously by EPA, State agencies and others. Fourteen studies were deemed appropriate for comparative ranking of HAP in urban areas because they were sufficiently broad in the pollutants evaluated, they included area sources of HAP, and they focused on the risks presented in urban areas. The resultant HAP rankings from each study were normalized to the same scale, then aggregated to make a total score for each HAP. Carcinogens and noncarcinogens were ranked separately. Because section 112(k) places special emphasis on area sources of HAP, analyses were done for major, area, and mobile sources combined, and for area sources alone.

Third, we used information provided by the CEP which compares modeled ambient concentrations of HAP in urban areas with health-based benchmarks. The CEP used estimates of 1990 HAP emissions rates to model long-term average concentrations at the census tract level for 148 HAP [Woodruff et al., 1998]. A long-term Gaussian dispersion modeling approach was used, with emission estimates drawn from TRI and other EPA databases addressing major, area, and mobile sources. Contributions from historic emissions of persistent pollutants and from nonanthropogenic sources were addressed with background values drawn from measurements in remote locations. The CEP compared its estimated ambient concentrations to benchmarks corresponding to a one in a million upper bound estimate of excess lifetime cancer risks, or no significant risks of adverse noncancer effects. The HAP were prioritized according to the number of urban census tracts in which the modeled concentration was above the health based benchmark.

In our selection of urban HAP for the integrated strategy, we compared and then combined the results of these three separate ranking analyses. Thirty-one of the 33 urban HAP on the draft list in Table 1 were identified as significant by more than one of these separate analyses. Two more HAP, mercury and POM were added to the draft list of HAP. We were concerned that studies considered in the ranking methodology that we used did not fully consider these two HAP. For example, multipathway exposure to persistent pollutants was only considered in one of the ranking methodologies. Therefore, although mercury was identified by only one of the three analyses, it was added to the proposed list because it was identified due to food chain exposures. Moreover, the Mercury Study Report to Congress (December 1997) provides substantial information demonstrating the health and ecological threats posed by mercury in the environment. Thus, in our judgement, had multipathway exposure been more fully considered in the CEP and other studies, mercury would have ranked significantly in them.

The health effect of greatest concern is the neurotoxicity to the developing fetus associated with methylmercury exposure. Fish consumption is a principle pathway for human exposure to methylmercury. Since other forms of mercury are capable of methylation once introduced into the environment, we do not limit the scope of our regulatory analyses to methylmercury, but consider emissions of other mercury species as well. Environmental loadings of mercury which lead to concentrations in fish result from natural sources, historical contamination through different media, and from current inputs, including air emissions. Given the current scientific understanding, it is not possible to quantify how much of methylmercury in fish consumed by the U.S. population is contributed by U.S. air emissions relative to other sources of mercury.[5]

Given the concentrations of people in urban areas, the numerous area sources of mercury emissions in those areas, and the resulting greater potential for people to be exposed to mercury through multiple pathways, we believe that

[5] Critical elemants in estimating methylmercury axposura and risk form fish consumption includa tha specias of fish consumad, the concantrations of methylmercury in tha fish, tha quantity of fish consumed, and how frequently fish is consumad. Tha typical U.S. consumer eating fish from restaurants and grocery storas is not in danger of consuming harmful levals of methylmarcury from fish and is not advised to limit fish consumption. The levels of methylmercury found in the most frequantly consumed commercial fish are low, especially compared to levels that might be found in soma non-commarcial fish from fresh watar bodias that hava been affected by marcury pollution. Whila most U.S. consumars need not be concerned about their axposure to mathylmarcury, soma exposures may be of concern. Thosa who regularly and frequently consuma larga amounts of fish— either marina species that typically have much higher levels of mathylmercury than the rest of seafood, or freshwater fish that hava been affected by mercury pollution—ara mora highly exposed. Becausa tha developing fatus may be tha most sensitiva to the effects from methylmercury, women of child-bearing age ara regarded as tha population of greatest interest. An analysis of dietary surveys presented in tha 1997 EPA Marcury Study lad the EPA to conclude that between 1 and 3 percent of women of child-bearing aga (i.e., betwean ages of 15 and 44) eat sufficient amounts of fish to be at risk from mathylmercury exposure, depending on tha mathylmercury concentration in tha fish. Thesa consumers should be aware of tha Food and Drug Administration and State fish advisories that suggest limiting the consumption of contaminatad fish. Advisories in the United States hava been issued by 40 States and soma Tribes, warning against consumption of certain species of fish contaminated with methylmercury.

inclusion of mercury in the list of HAP under section 112(k)(3)(B)(i) is appropriate. However, we are seeking comment on the inclusion of mercury on this list and whether it is appropriate to identify a HAP under this subsection based on pathways in addition to inhalation.

Polycyclic organic matter was only evaluated under one of the three analyses and only partially under another and was added to the proposed section 112(k) list based upon its identification in one analysis and a recognition from the scientific literature of its potential hazard. For POM, we are identifying the 7–PAH surrogate, which is focused on seven specific carcinogenic species.

One family of pollutants emitted primarily by mobile sources, diesel exhaust emissions, is not listed in Table 1 but is appropriately noted here as one which is presently undergoing testing or assessment by EPA for its role in the urban air toxics problem. Although diesel exhaust was not specifically investigated in the studies that we used to select the pollutants which do appear in Table 1, we will be considering it along with those specific pollutants listed in Table 1 as we develop and implement the integrated urban strategy.

Diesel engines in highway and nonroad mobile sources are numerous and widespread. There have been recent studies linking diesel emissions to lung cancer and other health impacts. Diesel engines are a source of POM which appears on Table 1. However, there may be other constituents in diesel exhaust that adversely affect health. We have prepared a draft assessment document on the health risks of diesel emissions and have obtained comment on it from the Clean Air Science Advisory Committee of the Science Advisory Board. When this document is completed, it will inform the further development of the integrated strategy for urban air toxics. There are area sources which employ stationary diesel engines, but we are not proposing such stationary engines for regulation under section 112(k) even though they emit POM because we do not believe these engines are a substantial urban source of POM or any of the other pollutants listed in Table 1. Stationary diesel engines used by area sources located in urban environments are primarily used only for emergency service and operate infrequently.

b. How did EPA identify the 30 HAP for section 112(k) purposes?

As discussed earlier, section 112(k)(3)(B) of the Act requires EPA to identify not less than 30 HAP that are estimated to pose the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. Although the Act requires that these HAP pose threats "as the result of emissions from area sources," it does not state that such threats be exclusively the result of emissions from area sources. Therefore, for the purpose of meeting the requirements of section 112(k) and 112(c)(3), we identified those HAP that pose the greatest threat to public health in the analysis discussed above because they ranked highest relative to the other HAP and because they demonstrated significant contribution from area sources. By identifying the draft list of 30 HAP as those that have a significant contribution from area sources, we are ensuring that the threats posed by those HAP are "the result of emissions from area sources." Without that contribution from area sources, the threat from those HAP would not be as great. We judged an urban HAP to meet this area source demonstration if it was identified in the CEP urban analysis as having estimated concentrations greater than the health based benchmark in a significant number of urban census tracts as a result of area source emissions only, or according to EPA's National Toxics Inventory, augmented by the section 112(k) inventory, its area source emissions accounted for at least 5 percent of the total emissions for that HAP. It is important to remember that these 30 HAP were used in identifying the draft list of new area source categories for which standards will be addressed in the future as required by section 112(c)(3) and 112(k)(3)(B)(ii). The entire list of 33 HAP will be used to guide actions to meet the requirements of section 112(k)(3)(C).

We are taking comment on the criteria we used in developing the HAP list including whether it is appropriate for us to include multipathway exposures as part of this determination; whether it is appropriate to include more than those HAP with significant contribution from area sources; and if we should expand the list to include a broader representation of HAP.

III. Plan for the Area Source Strategy

This section discusses how we intend to use the information collected in the emissions inventory development and HAP ranking assessment efforts to address the requirements of section 112(c)(3) and 112(k)(3) to regulate emissions of air toxics from area sources. It reviews the process of establishing a list of source categories, identifies those source categories we intend to subject to further emission standards, and discusses the significance of the listing processes.

A. How does EPA plan to address area sources of HAP?

One component of the integrated urban air toxics strategy will address the provisions of section 112(k). The basis for the draft area source component of the integrated urban air toxics strategy is our draft list of HAP that, as a result of emissions from area sources, present the greatest threat to public health in urban areas. Section 112(k)(3) requires that we assure that area source categories or subcategories accounting for at least 90 percent "of each of the 30 identified hazardous air pollutants are subject to standards pursuant to subsection [112](d)." In addition, section 112(c)(3) specifies that we list source categories or subcategories representing 90 percent of area source emissions of the 30 HAP.

These provisions of the 1990 Amendments reflect Congress's judgment that there are significant health risks from air toxics in urban areas that should be expeditiously reduced. In addition, these provisions reflect an understanding that available information is in many cases insufficient to quantify risks from air toxics. Therefore, we are directed to identify the pollutants from area sources that, in a relative sense, present the greatest threat in urban areas and to set achievable standards to reduce overall emissions of these priority pollutants of concern. By requiring 90 percent of the emissions of each of the identified HAP to be subject to regulation, the statute directs us to seek opportunities for emissions reductions in many industry sectors. However, the statute provided us with significant flexibility to determine the stringency of the sector-based standards (i.e., MACT or GACT standards) and to ensure that they are achievable and reasonable. To provide compliance flexibility, standards are to be performance-based (i.e., in the form of numerical emissions limits) except where infeasible. We will also consider the use of incentives, nonregulatory programs and other innovative approaches in seeking ways to reduce emissions and risks from area sources, as well as other sources addressed by the integrated strategy.

The following presents the analysis of the area source categories that we are considering listing to meet the requirements of section 112(c)(3) and 112(k). Because this section of the Act imposes requirements that are specific to area sources, this discussion did not include an analysis of major or mobile source categories. Any regulatory

activities for those categories will be addressed under other Act authorities.

B. What is a "listing"?

When we list a source category under the authority of section 112(c), we publicly identify it for regulatory action under section 112(d). As discussed earlier, the details of that regulation, such as what kinds of controls will be imposed or emission reductions accomplished, are determined in the subsequent regulatory development process and cannot be predicted at the time of listing. This strategy is not considered a rule and does not by itself affect the interests of any party in a direct or quantifiable manner. Any standards that result from this listing, however, will undergo full public notice and comment. We believe that this is consistent with section 112(e)(4) of the Act which states:

> Notwithstanding section 307 of this Act, no action of the Administrator adding a pollutant to the list under subsection (b) or listing a source category or subcategory under subsection (c) shall be a final agency action subject to judicial review, except that any such action may be reviewed under such section 307 when the Administrator issues emission standards for such pollutant or category.

At the time we propose new emission standards for a source category or subcategory identified in the final strategy, we intend also to request comment on the section 112(k)(3)(B)(i) listing of the specific pollutants that serve as the basis for the listing of that category or subcategory.

C. What is EPA's goal in area source listing?

The stated purpose of section 112(k) of the Act is "to achieve a substantial reduction in the emissions of hazardous air pollutants from area sources and an equivalent reduction in the public health risks associated with such sources." In addition to assuring compliance with the requirements of section 112(c)(3) and 112(k), our goal in this draft listing action is to meet the purpose of the urban area source program in the most effective and least burdensome way possible.

D. What does "subject to standards" mean?

In order to subject a source category to standards, we plan to conduct an evaluation of the source category, then, based on that evaluation, make rulemaking decisions as to what are the most appropriate controls or other requirements for that area source category and publish our findings or promulgate a rule, as appropriate. This process will take place after publication of the final list of newly identified source categories. That is, source categories listed under section 112(c)(3) and (k)(3) will be "subject to standards" under section 112(d), but the appropriate controls and resulting emission reductions will not be known until an area source standard is subsequently proposed and promulgated.

E. Which area source categories are to be listed?

The following table summarizes which of the additional source categories EPA intends to list in the final strategy. These categories are in addition to those already listed for which standards have been published or are being developed. Attached as an appendix is a table for each HAP showing the source categories listed. We are requesting comment on the list of area source categories identified below.

TABLE 1.—DRAFT LIST OF SOURCE CATEGORIES FOR REGULATION UNDER SECTION 112(k)

Abrasive Grain (Media) Manufacturing.
Acrylic and Modacrylic Fiber Production.
Agricultural Chemicals and Pesticides Manufacture.
Manufacture of Nutritional Yeast.
Cadmium Refining and Cadmium Oxide Production.
Chemical Manufacturing: Chromium Compounds.
Electronic and other Electric Equipment Manufacturing (SICs combined).
Food Products (SICs combined) manufacturing.
Gasoline Distribution Stage I.
Hospital Sterilizers.
Industrial Inorganic Chemical Manufacturing.
Industrial Machinery and Electrical Equipment (SICs combined).
Industrial Organic Chemicals Manufacturing.
Instruments and Related Products (SICs combined).
Iron and Steel Foundries: Steel Foundries.
Landfills (excluding Gas Flares).
Mineral Wool Manufacturing (includes Wool Fiberglass).
Miscellaneous Manufacturing (SICs combined).
Mobile Homes Manufacturing.
Nonclay Refractories.
Oil and Gas Production: Glycol Dehydrators.
Paint Application (no spray booths).
Pharmaceuticals Preparations and Manufacturing (SICs combined).
Plastics Materials and Resins Manufacturing.
Plastics Products Manufacturing.
Primary Copper Smelting.
Primary Metal Products Manufacturing (SICs combined).
Publicly Owned Treatment Works (POTWs).
Reconstituted Wood Products.
Sawmills and Planing Mills, general.
Secondary Copper Smelting.
Secondary Smelting and Refining of Nonferrous Metals.
Storage Batteries Manufacturing.
Textiles (SICs combined).

F. How were the source categories selected for listing?

The language about selecting area source categories in section 112(c)(3) and section 112(k)(3)(b) differs somewhat. Section 112(c)(3) requires us to list sufficient categories "to ensure that area sources representing 90 percent of the area source emissions of the 30 [listed] hazardous air pollutants" are subject to regulation under section 112. That would seem to allow us to regulate either 90 percent of the combined emissions of all of the 30 HAP or 90 percent of the emissions of each of the 30 HAP. By contrast, section 112(k)(3)(B) requires us to identify sufficient categories to "assure that sources accounting for 90 percent or more of the aggregate emissions or each of the 30 identified hazardous air pollutants" are subject to standards under section 112(d). That language explicitly requires us to regulate 90 percent of the emissions of each of the 30 HAP. Consequently, we selected the interpretation that allows us to read the two provisions consistently. In other words, we assembled a draft list of area source categories sufficient to cover 90 percent of the emissions of each of the 30 HAP.

We ranked area source categories in the 1990 area source emission inventory (described earlier) on a HAP-by-HAP basis. That is, area source categories were ranked for each of the 30 urban HAP (30 separate rankings) by mass of annual emissions (greatest tons per year to least tons per year). For each HAP, we included emissions from those area source categories which are already regulated or listed for regulation. We then selected the greatest-emitting source categories until emissions added up to 90 percent of the total emissions of that HAP. All source categories selected in this process but not already listed under section 112 are then to be listed for regulation.

It is important to note that for POM, we identified source categories based on the 7–PAH surrogate. Because the available data for the 7–PAH form are most amenable to risk analysis, we intend to apply additional emissions standards only to the sources of emissions of this form of POM.

However, we are seeking comment on the appropriateness of this approach.

G. If my source category is already subject to MACT, will section 112(k) mean any changes to my requirements?

Additional requirements, if any, for new or existing standards may follow after we conduct further assessments under section 112(f) of the Act to determine residual risks after the implementation of MACT standards set under section 112(d) and/or whether further actions under section 112(k) and other Act authorities are needed to achieve risk reduction goals. Because these elements of the program are not yet developed, it is difficult to determine what, if any, changes will be necessary. Section 112(k) requires that we ensure that 90 percent of the aggregate emissions are subject to standards. If your area source category is subject to a standard that has already been promulgated, then that standard has been considered in the 90 percent and thus would not require further listing under section 112(k). Where standards have not yet been promulgated for your category, area sources may be made subject to further requirements in order to assure the 90 percent requirement is met.

H. Are changes to the list possible after the strategy is final?

It must be emphasized that, since the emissions inventory is likely to change as new information becomes available from public comments, as well as new data obtained in the regulatory development process, the source categories selected for listing to meet the 90 percent emissions requirement may also change. We expect to make revisions to this regulatory listing based on new emissions information where it is more accurate and effective to do so.

IV. Near-Term Actions To Implement the Strategy

This section discusses actions that we intend to take within the next 2–3 years to address air toxics from all sources, including decisions on the need for, and feasibility of, standards for motor vehicle fuels and emissions, development of standards for area sources, improvement in air quality and emissions databases, development of analytical tools, and initiating collaboration with State and local governments. It also provides summary information about what EPA and State programs are currently in place to reduce risks from exposure to HAP in urban areas.

A. How will EPA develop motor vehicle and/or motor vehicle fuel standards?

As previously discussed, under section 202(l)(2) of the Act, we will promulgate appropriate national regulations controlling HAP from motor vehicles and their fuels. The standards will be based on the updated analyses of the Motor Vehicle Related Air Toxic Study published in 1993 under section 202(l)(1) of the Act, which analyzed the need for, and feasibility of, controlling emissions of toxic air pollutants which are associated with mobile sources. The section 202(l)(2) regulations will reflect the greatest degree of emissions reductions that can be achieved considering various factors including availability and cost, and will at a minimum, address benzene and formaldehyde emissions. We will examine mobile source contributions to urban air toxics health risks and any new national mobile source regulations will be established by 2000. We envision that work done in the early stages of strategy implementation will serve to facilitate the important comparisons of various emissions sources in the urban areas and allow comparisons of control authorities to provide the best relative reduction of risk to the urban public. Although the study of mobile source emissions will be completed soon, and the rules may be among the earliest activities of the strategy, we expect to continue our efforts to ensure coordinated use of our authorities to address priority risks.

We expect to complete activities required by section 202(l) according to the following dates, consistent with the consent decree:

1998: Complete the updated analysis of risks from mobile sources, including addressing comments received from review of that study to provide better estimations of mobile source emissions projected in the future; estimate the exposure and predict risk to the public from motor vehicle toxic emissions in 9 urban areas to better quantify the magnitude of the health risks; and, assess available motor vehicle and/or fuel technologies, and the impact or cost effectiveness of those technologies to achieve the greatest reduction in public health risks from air toxics under section 202(l).

1999: Issue a notice of proposed rulemaking for mobile source standards

2000: Issue final rulemaking on mobile source standards

B. How will EPA develop area source standards?

As discussed in section III, we must ensure that 90 percent of the aggregate emissions of each of the area source urban HAP are subject to regulation. Earlier, we presented the draft list of source categories that must be included in addition to the existing MACT regulations to achieve this requirement. We intend to ensure that the regulations that result are both efficient and warranted for protection of public health. In this notice, we are requesting comment on the following approach to developing the regulations necessary to meet this requirement.

We intend to focus MACT on those area sources where the impact is greatest and where the technology applicable to major sources is also appropriate to area sources. However, there are likely to be circumstances where GACT might be more appropriate than MACT. In establishing the basis for emission standards under section 112(d)(5), Congress provided for GACT for area sources in lieu of MACT. That provision does not define GACT, but only states that the Administrator may elect to promulgate "standards or requirements * * * which provide for the use of generally available control technologies or management practices by such sources to reduce emission of hazardous air pollutants." For instance, there may be important differences in the processes involved or the costs of control that might make it infeasible for area sources to comply with MACT.

Although the primary focus of the specific requirements of section 112(c)(3) and 112(k) is to ensure that at least 90 percent of the aggregate emissions of each of the 30 urban area source HAP are subject to standards, we anticipate that area sources may be further addressed in the strategy, as would major sources and motor vehicles, if we determine that they continue to present significant public health risks either on a national or local level once we have conducted analyses of the estimated reduction of cancer and noncancer health risks.

We are seeking comments on the following schedule for developing the urban area source standards:

1999: Finalize the Integrated Urban Air Toxics Strategy; Initiate the development of additional area source standards

2002: Promulgate 50 percent of the area source standards

2004: Promulgate an additional 25 percent of the area source standards

2006: Promulgate final 25 percent of the area source standards

2008: Submit Report to Congress
2009: Require compliance with the urban air toxics standards

This schedule was established considering the facts that we are currently engaged in significant efforts to develop standards for stationary sources that were previously listed under section 112(c), and that realistic schedule and resource constraints suggest that our efforts to develop additional standards should be phased in over time.

C. What role do major stationary sources play in the strategy?

As previously discussed, section 112(k)(3)(b) requires that we ensure that area sources accounting for 90 percent of the aggregate emissions of the 30 112(k) HAP are subject to standards. Thus, major sources are not affected by the requirements of this subsection.

However, in achieving required reductions in estimated cancer risk and substantial reductions in health risks in general, section 112(k)(3)(C) permits us to consider reductions in public health risks resulting from actions to reduce emissions from "all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws." We interpret the language of this section to include reductions in major stationary source emissions as well as area source emissions. Therefore, any reductions resulting from MACT, the national ambient air quality standards, and other programs that achieve reductions in HAP can be included in the assessment of reductions in risks. In addition, in future stages of the strategy, if it is determined that a source category or an individual source is presenting a significant health risk, then it will be addressed under the appropriate regulatory authority. For example, if a source category is currently subject to MACT and it is found to pose a significant remaining risk, then that risk could be addressed through section 112(f) residual risk standards. Similarly, if a specific source is contributing to a local risk problem, then the State or local program may be more appropriate to address that risk. Finally, it is important to note that while additional actions may be required to address risks in the future, the baseline for evaluating what is needed to achieve a 75 percent reduction in cancer incidence remains at the 1990 level.

D. How will EPA review and expand monitoring networks?

In order to better characterize the risks from HAP in urban areas, it is important that we improve our ability to measure HAP in the urban areas. To that end, we are working to improve our monitoring networks for HAP in the urban areas over the next several years. The first step in this effort is to improve our knowledge of where the State and local agencies are currently monitoring HAP. We are currently conducting a study to determine the coverage, comparability, and relevance of existing monitoring networks. Further, recognizing competing resource needs, we are encouraging the State and local agencies to tailor their monitoring programs to address their most pressing air toxics issues and local needs. However, we are requesting the State and local agencies to work with us to develop a monitoring network distribution that capitalizes on existing efforts and capabilities. We expect to add 17 new monitoring sites to the network in 1999. This will include one new site in the major metropolitan areas of each of the ten EPA Regions and an additional site in each of the seven areas with existing Photochemical Air Monitoring System networks. In addition, we are expecting to increase that number by up to 40 additional sites in 2000.

E. How will the consolidated emissions reporting rule fit in the strategy?

In addition to expanded monitoring, we recognize the need for improved emissions information to support air quality, modeling and risk assessments. We are in the process of developing a consolidated emissions reporting rule whose purpose is to simplify reporting, offer options for data exchange, and unify reporting dates for various categories of inventories. This action is expected to consolidate the numerous emissions inventory reporting requirements found in various parts of the Act and is being taken at the request of numerous State and local agencies. Consolidation of reporting requirements will enable these agencies to better explain to program managers and the public the necessity for a consistent inventory program, increases the efficiency of the emissions inventory program, and provides more consistent and uniform data.

As discussed earlier, modeling is one of the primary tools that will be used to estimate the exposure and risk from HAP. We will continue to develop modeling tools and guidance for assessment of risks on both the national and local scales.

F. What is the schedule for conducting risk assessments and assessing progress toward the risk goals?

In addition to the emission standards called for by section 112(k)(3)(B), and to addressing the risk reduction goals described in section 112(k)(3)(C), we expect to conduct assessments and make the determination of whether additional risk assessment and risk management activities are needed on an ongoing basis. However, the schedule for conducting the risk assessments will be influenced by the Agency's goal-setting and strategic planning processes and by the schedules set forth in applicable provisions of section 112, including schedules for the Reports to Congress required by section 112(k)(5). There are a number of interim milestones that must be met in order to conduct these assessments, particularly in the area of developing and refining the modeling tools to conduct these assessments. They include:

1999:
(1) Initiate analyses of risks in urban areas; conduct assessment of the emissions reductions from 1990 level due to current programs and activities;
(2) expand monitoring network to 17 additional urban areas;
2000: Complete the national scale screening model (CEP2)
2001: Complete the local scale risk assessment model (TRIM);

Schedules for conducting more site-specific risk assessments will be established based on the outcome of our efforts to develop, enhance, and support State and local programs in the managing urban air toxics risks.

G. Coordinate with State and local governments to develop or strengthen risk-based air toxics programs.

In order to achieve our risk reduction goals, we will need to look at ways to address public health risks not only on the national level, but also on the local level because many of the factors that influence risks, such as the types of sources, activity patterns, and meteorology, vary from city to city. Much of what has been previously discussed pertains to the tools and programs that can be employed on the national level to address emissions and risks that occur uniformly across the country. However, in order to achieve risk reductions at the local level, it is important that the strategy provide for a strong State or local role. We intend to work with the State and local air program agencies to refine this aspect of the strategy. The following is a discussion of some of the key elements

to developing the nature and scope of the State and local program.

One of our goals in the strategy will be to encourage and support the State and local agencies in reducing public health risks (cancer and noncancer—chronic and acute) in individual urban areas. Because many of these risks are associated with specific local considerations, such as clusters of sources, local meteorology, local fish and other food consumption patterns, industrial make-up, and motor vehicle density and activity in the specific urban area, we believe State and local regulatory avenues are the most appropriate authorities to address these risks. To that end, we envision a process that will provide regulations, technical support and guidance, and/or other support as necessary to State and local agencies to ensure that there are substantial reductions in the public health risks in each urban area. The process is expected to provide flexibility for local planning and allow the development of city specific solutions to localized urban risks. We envision our role in this program to include providing guidance on important elements such as monitoring, emissions inventory development, modeling and risk assessment, control techniques, and enforcement provisions. As in the national elements of the program, we envision a process that will include periodic review of the risks associated with HAP emissions in the urban areas, and reductions achieved to ensure that the program goals are met. In addition, because the goal of the integrated strategy is to achieve public health risk reductions, we believe that the State and local programs should be able to address all emissions sources as appropriate to address the aggregate risks in the area. For instance, if the largest contributor to cumulative risk in an area is a cluster of MACT-controlled sources, then the State may find that controls beyond MACT or those imposed by residual risk are required. Likewise, if the risks are largely due to mobile source emissions based on vehicle activity, then the State or local Agency may consider transportation related measures to address the risk.

1. What are the principles used in developing the State and local program?

Based on our early discussions with a number of State and local agencies, we developed and intend to employ the following principles in developing provisions for use by State and local programs:

- Provide a mechanism to encourage the development of State and local requirements and programs;
- Provide flexibility in implementing the national standards;
- Provide a balance between the need for flexibility for States and local agencies with existing programs and the need to provide a program for those States where Federal requirements are necessary to enable addressing risks from the HAP.

We would like your comments on these principles, including the need for other or different operating principles.

2. What are the key issues that must be addressed in developing the State and local program?

Again, based on our discussions with State representatives, there are a number of key issues that must be addressed which will determine the nature and scope of the State/local programs. They include:

- Should the program be mandatory?
- If the program is required in some way, should the State requirements be federally enforceable and, if so, by what mechanism?
- Should the State and local program include elements to address risk from all emission sectors (area source, major sources and mobile sources)?

We would like your comments on these questions, including important legal, technical, or other factual information in support of your comments.

3. What might these programs include?

State and local representatives working with us developed a number of preliminary ideas of how the program might work. We are requesting comment on these ideas and on other ideas in developing the State and local programs.

One suggested approach might be a control strategy approach where we would set an urban areawide risk reduction target, considering risk from all pathways, which the States could develop control strategies and requirements for achieving those targets. These control strategies would supplement the national MACT program and might include emissions controls or other innovative strategies to address specific local health risks from HAP. Another suggested approach might include States that would be setting technology requirements for sources that contribute to risks above a given level. This would be similar to programs already in place in California, Maryland and other States. Some State and local programs may be more effective if the strategy provides for a purely voluntary program where we would provide Federal guidance and information for reducing risks from urban HAP to the State/local agencies and leave the program design to each individual State or local program to develop and implement. Another approach would be for us to set a HAP ambient concentration level and require/recommend actions from the States where these levels were exceeded for a specified duration and frequency. Another approach may be to use combinations of these options. These options are not mutually exclusive and other ideas might be developed or expanded upon in the future. We are requesting input from you on the feasibility and desirability of these options and on what the appropriate level of State and local involvement should be. We expect to undertake some or all of the following activities under section 112, depending on the outcome of this process:

- Development or strengthening of State and local programs;
- Development of regulations necessary to provide authority to implement the program (if appropriate);
- Development of implementation guidance including information on risk assessment, monitoring, modeling, emissions inventory, potential control options; and,
- Development of risk assessment tools for local planning. While in the near term we intend to initiate discussions with the States to further refine the program, most of these activities will be longer-term activities. We expect to provide you with further information and opportunities to comment as these elements are developed or refined.

H. How does EPA intend to address special concerns about Environmental Justice in the Urban Areas?

As discussed previously, we are particularly concerned about the potential for disproportionate risk in low-income minority communities. The Federal Government has not traditionally sought involvement from these communities in environmental program development and have voiced significant concerns about the difficulties and disadvantages they face when attempting to participate in decisions affecting their communities. We believe that the integrated urban air toxics strategy should evaluate the potential links between toxic exposure and health effects in disproportionately exposed populations, and should address any significant resulting risks. Concurrently, we will consider economic development and employment-related issues to ensure sustainable economic development while addressing unacceptable levels of

risk. In order to facilitate the development of a strategy which will be responsive to these environmental justice concerns, we are actively encouraging community groups not only to comment on the strategy, but also to work actively with us in developing a program that can address their concerns.

I. What EPA or State programs are currently in place to address the risk posed by these HAP?

There are a number of activities that will take place prior to risk-based goal setting envisioned in the national air toxics program that will achieve significant early emissions reductions. They include actions to reduce emissions from mobile, major, and areas sources, both as a direct result of the Act requirements for control of air toxics described above, and requirements under programs (e.g., the national ambient air quality standards) which achieve significant coincidental air toxics benefits. As discussed above, the strategy called for under section 112(k)(3) is to achieve reductions in public health risks through emissions control "measures implemented by the Administrator or by the States under this or other laws." The following presents a summary of Federal and State and local programs that are currently achieving HAP emissions reductions. This information will be considered in our assessments of reductions in public health risks which have been achieved as we evaluate the need for additional regulations.

1. Federal Regulatory Authorities

Clean Air Act, Section 112 Authorities: Under section 112 of the 1990 Amendments to the Act, there are many provisions, authorities, and programs that are reducing, and will continue to reduce, HAP emissions, exposures and health risks. Several of the major programs are discussed below. Further information is available from the "Second Report to Congress on the Status of the Hazardous Air Pollutant Program under the Clean Air Act," EPA–453/R–96–015, October 1997.

Section 112 established a procedure for developing and requiring performance-based emission standards for sources of HAP following a detailed 10 year schedule for action. These standards of control technology, required by section 112(d), are known as MACT standards and GACT standards. We are required to list categories and subcategories of major and area sources of HAP and then, according to a 10 year schedule, establish control requirements to assure that all major sources of HAP achieve the level of control already being achieved by the best performing sources in each category (i.e., MACT standards), and ensure that listed categories of area sources are subject to MACT or, alternatively, to GACT standards, which are controls that are generally available across the industry. As required by section 112(c)(1), we published an initial list of source categories in 1992 (57 FR 31576). Revisions made thus far have included adding and deleting source categories, combining categories for purposes of efficiency, and making other relatively minor changes and corrections. The list currently contains 175 categories, of which 167 are for major sources and eight for area sources (61 FR 28197). Note that some categories include both major and area sources. The schedule, initially published in 1993 (58 FR 63941), specifies source categories for which standards are to be promulgated within 2, 4, 7 and 10 years following November 15, 1990, such that standards are promulgated for 25 percent of the listed categories in the first 4 years (i.e., by November 15, 1994), an additional 25 percent by November 15, 1997, and the remaining 50 percent by November 15, 2000.

We have thus far promulgated standards for all 47 source categories listed in the 2 and 4 year groups, which is approximately 25 percent of the 175 listed source categories. We estimate that these major and area source regulations will reduce air toxics emissions by approximately 980,000 tons per year. Additional MACT and/or GACT emissions standards for the remaining listed source categories are scheduled to be promulgated by November 15, 2000. These standards are expected to obtain substantial additional reductions in air toxics over the next several years and will decrease exposures and risks due to air toxics in urban areas.

Under the Residual Risk Program established by section 112(f), we will be assessing public exposures to HAP following MACT standard promulgation to assess the remaining public health and environmental effects of HAP and issue standards to provide an ample margin of safety to protect public health, if necessary. The residual risk provisions apply to all MACT standards and, therefore, focus primarily on major sources. We have the discretion to apply residual risk provisions to MACT standards that affect area sources as well.

Under section 112(r), we published a final risk management program rule for the Prevention of Accidental Releases on June 20, 1996 (61 FR 31668). Along with the final rule, we published guidance to assist the owner or operator of processes covered by the risk management program rule in the analysis of offsite consequences of accidental releases of substances regulated under section 112(r) of the Act. The list of regulated substances with threshold quantities was published on January 31, 1994 (59 FR 4478). Of the 140 chemicals (77 acutely toxic substances and 63 flammable gases) regulated under section 112(r), 18 are HAP under section 112(b) and eight are on the draft list of urban HAP presented in this notice for public comment. Section 112(r) also requires the source to assess each process to ensure they are safe and will not accidently release HAP. By preventing accidental releases, the section 112(r) rule will help reduce or prevent emissions of these HAP in the future.

Requirements associated with the Act in section 112(g) and 112(i)(5) are also expected to yield reductions in emissions of HAP in urban areas. The Construction and Reconstruction Rule required by section 112(g) of the Act was issued in final form on December 27, 1996 (61 FR 68384). The rule requires, as of July 1, 1998, MACT controls for any new or reconstructed major source of HAP and major HAP-emitting production units at existing facilities. Section 112(i)(5), early reductions rules, provide incentives for sources of HAP to reduce emissions by 90 percent (95 percent for particulates) from 1990 levels prior to the proposal of MACT for that source category. Eligible sources may be granted a 6-year extension from compliance with the later promulgated MACT, during which time they must meet alternative emissions limitations which reflect the early reductions. Approximately 27 permit applications have been received, representing HAP reductions of over 6,800 tpy. Approximately six permits have been issued to date.

Other CAA authorities: In addition to authorities under section 112, there are several other Act sections, the implementation of which may contribute or has already contributed to reductions in air toxics in urban areas. For example, state implementation plans developed to attain compliance with the national ambient air quality standards (set under section 109) are expected to provide incidental, but potentially significant, reductions in HAP in addition to their intended result of reducing levels of criteria pollutants (e.g., particulate matter, ozone, etc).

The Act's mandated acid rain program may also provide HAP reductions in urban areas in addition to the intended

result of sulfur dioxide and nitrogen oxides emissions reductions.

Section 202(l) is a critical part of the national air toxics program and will be very important to the success of the Urban Air Toxics Strategy because efforts to respond to section 202(l) will address exposure to HAP from motor vehicles and motor vehicle fuels. However, section 202(l) is just one example of the Act's authorities regarding mobile sources. Other provisions which may affect reductions in urban air toxics from mobile sources include sections 211 (fuel requirements), 213 (emission standards for nonroad engines and vehicles), and 219 (urban bus standards).

Performance standard setting for solid waste incineration units and landfills under section 129 of the Act, which has been completed for two of the four categories (municipal, medical, industrial and commercial, and other categories of incinerators), is estimated to result in substantial reductions in total HAP emissions (>50,000 tons/yr), much of which may be in urban areas. Under section 129, specific numerical emission limitations are required for various pollutants including lead, cadmium, mercury, and dioxins/furans, all of which are included on the draft list of urban HAP. Like the MACT standards, residual risk applies to section 129 standards and thus potential additional reductions may be possible in these areas.

Title VI of the Act directs us to protect the stratospheric ozone layer through the reduction or elimination of certain chemicals. These ozone-depleting substances include three HAP (carbon tetrachloride, methly chloroform, and methly bromide), one of which, carbon tetrachloride, is included in the draft list of urban HAP in addition to the better known chlorofluorocarbons (CFC). We are implementing title VI through a number of regulatory and voluntary programs which have been successful in reducing production, use, and emissions of many CFC and other ozone depleting chemicals. Production and import of carbon tetrachloride and methyl chloroform were phased out as of January 1, 1996 and the third is expected to be phased out by 2001. Related regulations restrict uses to minimize the potential for these chemicals to get into the atmosphere.

Other Federal laws: There are a number of other authorities, laws, rules, and programs that will also help reduce emissions of HAP and consequent exposures and risks. Some of these are discussed below. We are currently evaluating the appropriateness of these statutes for controlling emissions of HAP as described under section 112(k)(3) and intend to take further actions under these statutes as appropriate.

Under the Toxic Substances Control Act (TSCA), chemicals produced or imported into the United States are evaluated as to toxicity to human health and the environment. To prevent adverse consequences of the many chemicals developed each year, TSCA requires that any chemical that will reach the consumer marketplace be tested for possible toxic effects prior to commercial manufacture. Any existing chemical that is determined to pose health and environmental hazards is tracked and reported under TSCA. Procedures also are authorized for corrective action under TSCA in cases of cleanup of toxic materials contamination. The TSCA is a complementary authority to the Act and has contributed to decreased emissions of several HAP. For example, concern over the toxicity and persistence in the environment of polychlorinated biphenyl compounds (PCB) led Congress to include in TSCA (see section 6(e) of TSCA), prohibitions on the manufacture, processing, and distribution in commerce of PCB. In 1990, TSCA authority was relied upon to eliminate chromium use in and emissions from comfort cooling towers, i.e., industrial process cooling towers used exclusively for cooling, heating, ventilation, and air conditioning systems.

There are several provisions of the Resource Conservation and Recovery Act (RCRA) and its amendments which may yield reductions of urban air toxics. One impact evidenced in the 1990's is increased recycling and recovery of hazardous waste, including solvents which through volatilization contribute to HAP emissions. The RCRA's section 3004(n) has been the basis of a three-phased regulatory program to control air emissions from hazardous waste treatment, storage and disposal facilities. The third phase will address any risks remaining after implementation of the control regulations issued in 1990 and 1994, which were estimated to reduce HAP emissions by more than one million tons per year. Any resulting emissions and risk reductions can be considered in assessing progress in achieving the 75 percent reduction in cancer incidence from the 1990 base year.

Under the Comprehensive Environmental Response, Compensation and Liability Act, commonly known as Superfund, the clean up of abandoned hazardous waste sites may also reduce emissions of HAP. Where significant health risks from chemical releases to the air have been identified at Superfund sites in urban areas, clean-up will reduce risks from urban air toxics.

Under the Clean Water Act (CWA), States are required to adopt water quality standards for those section 304(a) priority pollutants which may be interfering with their water bodies' designated uses. In response to the CWA, we identified 126 priority pollutants for action. The CWA authorities provide for the regulation of discharges of these pollutants in order to meet applicable water quality standards. Among these pollutants, many are on the draft list of urban HAP. We are exploring how the CWA and the Act tools can be used together to reduce HAP.

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) provides Federal control of pesticide distribution, sale, and use. Several HAP have been used as pesticides. An EPA registration is required of all pesticides sold in the United States and is intended to ensure that pesticide use, when in accordance with label specifications regarding acceptable uses, does not cause unreasonable harm to people or the environment. It is a violation of FIFRA to use a pesticide in a manner inconsistent with its label. Registered pesticides classified as "restricted use" may only be used by registered applicators who have passed a certification exam. This restricted use requirement minimizes the number of persons having access to certain pesticides. The FIFRA regulations may also reduce emissions and exposures by banning (canceling or denying registration) or severely restricting pesticide use. Seven individual HAP and members of three HAP compound groups have been banned or severely restricted in their use as pesticides.

Two other Federal laws, the Emergency Planning and Community Right-To-Know Act (EPCRA) of 1986 and the Pollution Prevention Act (PPA) of 1990, while not directly regulating air emissions of HAP, may influence decisions regarding chemical usage and storage and yield significant reductions in air toxics risks in urban areas. The goal of EPCRA is to reduce risks to communities through informing communities and citizens of chemical hazards in their areas. Sections 311 and 312 of EPCRA require certain facilities to report the locations and quantities of chemicals stored at their facilities to State and local governments. This information is used by State and local agencies in preparing for and responding to chemical spills and similar emergencies.

Through EPCRA, Congress mandated that a Toxics Release Inventory be made public. The TRI provides citizens with accurate information about potentially hazardous chemicals stored, manufactured and used in their community so that they have more power to hold companies accountable and make informed decisions about how toxic chemicals are to be managed. Section 313 of EPCRA specifically requires certain manufacturers and all Federal facilities to report to EPA and State governments, all releases of any or more than 600 designated toxic chemicals to the environment (including most of the 188 HAP). Each year, more than 20,000 manufacturing facilities and 200 Federal facilities submit information to us on the releases of chemicals to the environment. We compile these data in an on-line, publicly accessible national database, which is a significant source of information regarding HAP emissions. Reporting requirements for TRI became more comprehensive in 1991, highlighting the importance of pollution prevention. It is expected, and has been observed for some chemicals, that this public accounting for use and disposal of toxic chemicals may lead to reductions in their environmental release.

The passage of the Pollution Prevention Act (PPA) established an environmental hierarchy that establishes pollution prevention (P2) as the first choice among waste management practices and was adopted as national policy. Traditionally, much environmental protection has involved controlling, treating or cleaning up pollution which, in many cases, we continue to create. Pollution prevention, which eliminates or minimizes pollution at the source, is most effective in reducing health and environmental risks because it: (1) Eliminates any pollutant associated risks; (2) avoids shifts of pollutants from one medium (air, water or land) to another, which can result from certain waste treatments; and (3) protects natural resources for future generations by cutting wastes and conserving resources. For waste that cannot be avoided at the source, recycling is considered the next best option. A waste generator should turn to treatment or disposal only after source reduction and recycling have been considered. Pollution prevention strategies include redesigning products, changing processes, substituting raw materials for less toxic substances, increasing efficiency in the use of raw materials, energy, water, land and other techniques. This is done in several ways, such as using voluntary pollution reduction programs, engaging in partnerships, providing technical assistance, funding demonstration projects and incorporating cost-effective pollution prevention alternatives into regulations and other initiatives.

In addition, in 1994, we developed the Waste Minimization National Plan, a voluntary, long-term effort to reduce the quantity and toxicity of hazardous waste through waste minimization. The plan calls for a 50 percent reduction in the presence of the most persistent, bioaccumulative and toxic (PBT) chemicals in hazardous waste by 2005. To assist in implementing this plan, we are developing a software tool to prioritize PBT chemicals to focus national waste minimization efforts and methods to track progress in reducing the presence of PBT chemicals in waste and the volume of hazardous waste streams containing PBT chemicals.

The starting point for selecting chemicals for the national waste minimization list is EPA's Waste Minimization Prioritization Tool, a software program which provides a screening-level assessment of potential chronic risks chemicals pose to human health and the environment, based on their persistence, bioaccumulative potential, and human and ecological toxicity. This software program contains full or partial PBT data for approximately 4200 chemicals. The draft Waste Minimization Prioritization Tool was released for public comment in June 1997 (62 FR 33868, June 23, 1997) and a revised version is expected to be released in early 1999.

In addition to PBT data from the Waste Minimization Prioritization Tool, we are considering a number of other factors in selecting chemicals for the national waste minimization list, including information about the quantity of chemicals in hazardous waste, the number of facilities generating or handling the chemicals in waste, the extent to which the chemicals have been found in the environment, and the significance of the chemicals to the RCRA program, other Agency programs, and States.

We are requesting comment and specific information on other Federal programs, such as the Oil Pollution Act of 1990, that should be considered for potential reductions in risk from HAP.

2. Summary of State and Local requirements

The Act requires that the strategy reduce cancer incidence by actions under "this or other laws * * * or by the States." By including this language, Congress acknowledged that there are many State programs achieving HAP emissions reductions and therefore, reducing the chance for exposure and health risks including cancer. For example, before the Clean Air Act was amended in 1990, many State and local governments developed their own programs for the control of air toxics from stationary sources. Some of these State and local government programs have now been in place for many years and, for some of the source categories regulated by Federal emissions standards under section 112 of the Act, the State or local government programs have likely reduced air toxics emissions and may have succeeded in reducing air toxics emissions to levels at or below those required by the Federal standards. It is clear that Congress intended State and local governments to be important partners in carrying out the mandates of the Federal air toxics program, and the strategy provides a mechanism to recognize the reductions made by them.

Because of the varied nature of the emissions sources, legislative structures, and other factors, the State and local government programs address air toxics in a number of ways. For example, some States and local programs have enacted technology standards for source categories that require controls for specific HAP, much like the MACT program. Other State or local government programs apply a risk standard to sources that prohibit emissions beyond a certain level of risk. Other States use an ambient air standard for air toxics that is based on threshold or exposure levels. Still others may rely on reductions achieved through volatile organic compounds, particulate matter, or lead regulations developed under section 110 or subpart D of the Act that control emissions of HAP to meet national ambient air quality standards. Regardless of the approaches used to address air toxics, State and local governments have accomplished and continue to accomplish reductions of HAP. As we proceed to implement the strategy, we will work with the States to better characterize these reductions in emissions and the resulting reductions of public health risks, including risk of cancer.

V. Longer-Term Activities

This section discusses longer-term activities we expect to take to address risks from air toxics in urban areas, including how we intend to initiate assessments of urban risk, residual risk standards, additional stationary source standards, and possible State program actions. It further discusses our research strategy to better characterize risk and to

assess progress toward the risk reduction goals of the strategy.

A. How will EPA assess improvements in health risks?

1. How will EPA assess the reduction in cancer risk?

As discussed previously, in the integrated urban air toxics strategy, we expect to utilize qualitative assessments of cancer initially by determining the emissions reductions achieved since 1990 and using these emission reductions as rough surrogates for risk. Over time, we intend to develop more quantitative estimates of risk or estimated cancer incidence associated with toxic air pollutants to measure progress toward the Act's goal of achieving a 75 percent reduction in cancer incidence from 1990 levels. This effort is still under development, and the final strategy will include more detailed text describing the cancer risk-reduction estimation methodology and a timeframe for carrying out the analysis.

2. How will EPA assess the reduction in noncancer risks?

As discussed before, Congress also expressed concern in section 112(k) about the noncancer health risks posed by HAP. While Congress did not provide a quantitative goal for noncancer risks, we believe that these risks are important to address. Several issues, however, complicate our ability to assess reductions in noncancer risks. A complication particularly relevant to urban air is our incomplete knowledge about the effect of multiple pollutants. At a more fundamental level, however, while we and other agencies have developed estimates of lifetime excess cancer risks associated with air exposures to many HAP, we do not have comparable quantitative "risk per exposure" measures for assessing health risks other than cancer. The reason for this is the assumption that there are thresholds associated with most noncancer health effects such that exposures below the threshold are considered unlikely to be harmful. Consistent with this reasoning, we and other entities charged with protection of public health, have identified ambient air levels for many air pollutants which are unlikely to pose health risks for persons (including sensitive sub-populations) who are exposed to that level over their lifetime. These levels do not, however, provide information on the exposure levels at which health effects are expected (i.e., the threshold). Moreover, these cancer and noncancer concern thresholds do not account for possible additive (i.e., synergistic) or antagonistic effects when there are mixtures of HAP, as in urban areas. The issues raised here necessitate the development of a noncancer risk reduction assessment methodology or selection from among existing methods which differs from that which we intend to follow for assessment of cancer risk reduction.

We intend to address these issues as we proceed to set goals for noncancer risk reductions and provide a description of assessment methodologies, evaluating progress against the goal and identifying appropriate additional risk reduction actions. The final strategy will document our progress in addressing these activities.

3. How will EPA use modeling to assess risks?

In general, two types of models are important to our ability to assess risk to the public from exposure to HAP: (1) transport, diffusion and/or dispersion models simulate the release and transport of pollutants, estimating concentrations at different points in time and space; and (2) Exposure models simulate human activity patterns to estimate the extent to which people may be exposed to pollutants and, therefore, experience some level of risk. Air quality simulation models have a long history of use in providing pollutant concentrations for use in specifying emission limits and assessing control strategies to attain ambient air quality standards. The Guideline on Air Quality Models was established to promote consistency in the use of models within the air management process.

Our use of exposure models to estimate risks to the public from HAP in a meaningful and reliable manner has been more limited. As part of the integrated urban air toxics strategy, we are conducting a pilot modeling study for certain cities to better understand the potential public exposure to HAP. The use of existing modeling tools to estimate exposure potential for the urban air toxics strategy poses special challenges due to the large geographical scale in urban areas relative to the types of exposures which can produce adverse health effects, the large number and variety of sources to be modeled, the variety of pollutants to be considered, and variations in the exposure regimes of significance for estimating the likelihood of effects. For that purpose, we are developing a document describing suggested methodology for using air dispersion models in urban areas. The document illustrates the type of issues encountered when modeling two example urban areas and provides suggestions for State and local agencies to follow when modeling air toxics in urban areas.

4. How will EPA use ambient monitoring to assess risk?

Ambient air quality data can provide valuable input into the assessment of the cancer and noncancer risks from air toxics in urban areas. First, ambient air quality data provide a measure against which any modeling of atmospheric HAP concentrations can be compared for evaluation or verification purposes. Ambient air quality data can also be used to evaluate differences in HAP concentrations from one urban area to another to determine geographic patterns and/or characteristic profiles based on demographic, economic or other attributes of these areas. Finally, trends analyses of ambient air quality data on toxics can provide a measure of the effectiveness of regulatory programs over time. In addition to chronic exposure data, short term exposure data may be important in various noncancer assessments. It is important to recognize that exposure data can include more than ambient air concentrations, and that microenvironmental exposure data can be important to achieve a distribution of the population exposures.

As the goals for the program are established and the early activities are carried out, we will conduct appropriate analyses to determine the success of the program against the goals. If, in the assessment of risk reduction, we conclude that the reduction goals (e.g., 75 percent reduction in cancer risk) are not yet met, we expect to identify and implement additional activities necessary to meet those goals. These activities might include regulations to reduce stationary or mobile source emissions or implementation of specific State programs. Some examples of such actions are described below:

a. Residual risk standards. Under section 112(f) of the Act, we are required to assess the risks remaining after the MACT standards are implemented. For some source categories, more stringent standards to achieve additional risks reductions from those standards might be necessary. We intend to count any resulting risks reductions in the urban areas toward the 75 percent reduction in cancer risks. However, it is important to remember that residual risk only applies to source categories for which there are MACT standards. Because MACT standard development has focused on major sources, the residual risk program will

primarily address risk from major sources.

b. Additional stationary source standards. We will develop section 112(d) standards (MACT/GACT) for the source categories listed previously to address the requirements of section 112(k)(3)(B). Emissions reductions from these standards are expected to reduce HAP-associated health risks, thus providing early progress in achieving the risk goals required under section 112(k)(3)(C). However, it is important to recognize that in order to achieve the risk goals, we may need to go beyond source-category-by-source-category approaches because of concerns about cumulative risk from numerous sources. We believe that individual 112(d) standards may not adequately address those risks without further actions.

c. State program actions. As discussed earlier, in order to achieve our risk reduction goals at the local level, it is important that the strategy provide for a strong State or local role. We believe that this will require significant ongoing efforts to develop and implement the program in the urban areas. We will work with the State and local air program agencies to refine this aspect of the strategy and we expect to provide further opportunities for comment on it.

To address these issues and develcp the necessary additional technical, policy and/or regulatory support, we expect to carry out additional efforts under the following schedule.

1999: Convene a State/local work group to better define the State and local program structure
2000: Complete work on program development
2001: Development of any regulations necessary to provide authority to implement the program (if appropriate)
2002: Develop implementation guidance concerning: risk assessment, monitoring, modeling, emissions inventory, potential control options
2006: Assess progress toward goals, including the Integrated Urban Air Toxics Strategy Report to Congress.

d. How will EPA address information and data gaps?

Significant research and data needs must be addressed in order to achieve the goals of the strategy. Estimates of the reduction of cancer incidence and of other significant public health effects related to exposure to HAP targeted in this strategy will require:

- Additional knowledge of both cancer and noncancer health effects of these pollutants. This will include determinations of specific toxicities determined from animal and human studies as well as the development of models to extrapolate across species, across time and across routes of exposure with a special emphasis on the effects of HAP in children.
- Improved monitoring data for ambient levels of HAP to improve spatial characterization of exposure potential and act as a measure against which modeling concentrations can be compared for evaluation or verification purposes.
- Improved data to better understand the potential for disproportionate impacts on minority and low income communities.
- Improved emissions models to estimate and assess HAP emissions in a representative number of cities, and to extrapolate results to other locations, together with atmospheric transport and fate models.
- Improved exposure models that include multiscale air dispersion models (neighborhood, urban, and regional) and simulated microenvironments of exposure, to estimate inhalation exposures to urban HAP and their potential transformation products.
- Improved modeling and monitoring to assess noninhalation exposures to contaminated foods, such as fish, vegetables and beef, resulting from deposition of urban HAP.
- Measurement methods for many HAP for which none are currently available.
- Reference values such as inhalation reference concentrations, acute reference exposure values, and cancer unit risk factors for those among the HAP for which such values have not been developed to perform quantitative risk assessments that EPA plans to use as part of this strategy.[6]
- Statistical methods for quantifying and reducing uncertainty in risk assessments.
- Cost-effective control technologies for all HAP and more effective controls developed for those pollutants predicted to have residual risk using currently available controls.

[6] The use of These values is an essential part of EPA's current practices in conducting risk assessment. For further information about how the we conduct risk assessments please refer to the draft Residual Risk Report to Congress on the EPA website (www.epa.gov/ttn/oarpg/t3/report/rrisk.pdf) and the National Research Council (NRC). 1994 *Science and Judgment in Risk Assessment.* National Academy Press, Washington, D.C. and the Commission on Risk Assessment and Risk Management (CRARM). 1997. Risk Assessment and Risk Management in Regulatory Decision making. Final Report, Volume 2.

e. What is the schedule for addressing the research needs?

Research needed to improve the quantitative risk assessment and risk management of pollutants addressed in the urban air toxics strategy will be identified in a separate research needs chapter of the Integrated Urban Air Toxics Strategy Report to Congress that will be provided to the public in June of 1999. Our current and near-term planned research activities will also be described.

VI. How will EPA communicate with the public on progress in meeting the strategy's goals?

The Act requires us to report to Congress at intervals not later than 8 and 12 years after the date of enactment of the CAA Amendments of 1990. We expect to provide the first Report to Congress when we issue the final strategy on June 18, 1999. We anticipate updating the public periodically on the status of the activities to implement the work plan, as well as the status of the activities to reduce risks in urban areas. However, we also expect to report to the public annually on the air quality and emissions trends for air toxics in urban and other areas in our annual Air Quality and Emissions Trends Reports.

Many of the activities identified in the strategy will require further public notice and comment, and we will be providing further opportunities as they are developed. The public will also be able to measure the progress of the strategy by tracking these milestones.

VII. Regulatory Requirements

A. General

Today's notice is not a rule and does not impose regulatory requirements or costs on any sources, including small businesses. Therefore, the EPA has not prepared an economic impact analysis pursuant to section 317 of the Act, nor a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980), nor a budgetary impact statement pursuant to the Unfunded Mandates Act of 1995. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

B. Executive Order 12866 and Office of Management and Budget (OMB) Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order.

The Order defines "significant" regulatory action as one that is likely to lead to a rule that may either: (1) have an annual effect on this economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, this is not a "significant regulatory action" within the meaning of the Executive Order. This notice was submitted to OMB for review. Any written comments from OMB and written EPA responses are available in the docket.

C. Regulatory Flexibility Act of 1996

Today's action is not a rule that requires the publication of a general notice of proposed rulemaking. Thus, it is not subject to the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. In any case, as mentioned above, this notice does not impose any regulatory requirements. Instead, it merely provides a draft list of source categories and a draft schedule of specific actions. Consequently, this notice will not have any economic impact on small entities.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments because it is not a rule and does not impose regulatory requirements or costs on any sources. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Applicability of the E.O. 13045: Children's Health Protection

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

This draft strategy is not subject to the Executive Order because it is not a rule, it is not economically significant as defined in E.O. 12866, and the Agency does not, at this time, have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to any of the HAP of concern discussed in this notice.

F. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this draft strategy. The section 112(k)(3) strategy and section 112(c)(3) listing are not regulatory actions that require the public to perform activities conducive to the use of VCS. Instead, the strategy and listing are actions performed by the Agency in anticipation of potential future standard-setting, research, and other related activities. The EPA may, however, find that VCS are available, applicable, and practical for regulations that are promulgated in the future pursuant to the strategy and listing. In any case, the Agency requests comments on whether any VCS exist that could be considered for inclusion in this strategy and listing.

Dated: August 31, 1998.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 98–24335 Filed 9–11–98; 8:45 am]

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federal register

Monday
September 14, 1998

Part IV

The President

Proclamation 7118—America Goes Back to School, 1998

Federal Register
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Monday, September 14, 1998

Presidential Documents

Title 3—

The President

Proclamation 7118 of September 9, 1998

America Goes Back to School, 1998

By the President of the United States of America

A Proclamation

Across America, millions of children are beginning a new school year with a sense of excitement and anticipation, taking another important step toward their future. As caring parents and responsible citizens, we must work together to nurture their love of learning and to ensure that the education they receive provides them with the knowledge and skills they need to succeed in the 21st century.

The Partnership for Family Involvement in Education is taking a leadership role in this important endeavor. The partners in this effort include the Department of Education and more than 4,000 schools, colleges, and universities; community, cultural, and religious groups; businesses; elected officials; policymakers; and the men and women of our Armed Forces. They have pledged to support our initiative, entitled "America Goes Back to School: Get Involved! Stay Involved!" Across the country, the Partnership is working to encourage family and community involvement in children's learning and to create innovative solutions to education issues at the grassroots level.

I have set ambitious goals for America's educational system, and we must pursue them with vigor if we are to prepare our Nation for the challenges and possibilities of the next century. We must have strong standards of achievement and discipline and well-trained, dedicated teachers in every classroom. We must work to reduce class size so all our children get the individual attention they need, especially in the critical early grades. We must build new schools, modernize existing ones, and expand public school choice by strengthening Federal support for charter schools. We must bring computers, communications technology, and the latest educational software into the classroom so that every American student is technologically literate and can take advantage of today's information revolution.

My Administration is also committed to making our schools safe and orderly places where teachers can teach and children can learn. With the Safe and Drug-Free Schools program, we have supported schools and communities that offer antitruancy, curfew, school uniform, and dress code policies. We have strictly enforced the policy of zero tolerance for guns. Last year alone, more than 6,000 students had guns taken from them and were sent home. This month, we will begin distributing a guide—*Early Warning, Timely Response: A Guide to Safe Schools*—to help all schools prevent violence before it starts. At my direction, the Secretary of Education and the Attorney General developed this guide to help school officials recognize and respond to the early signs of student violence. Later this fall, we will hold the first ever White House Conference on School Safety to develop effective strategies to keep our schools safe, disciplined, and drug-free.

My Administration also supports legislative initiatives that encourage literacy and learning at every age—from expanding the Head Start program for preschoolers to providing trained reading tutors to elementary school children to offering college aid for low-income students. We are working with the Congress to fund the Administration's proposal to strengthen teacher training programs and provide scholarships to 35,000 well-prepared teachers who commit to teaching in underserved urban or rural schools.

The quality of America's educational system will determine the shape of our children's future and the success of our Nation. As America's students go back to school this year, let us renew our commitment to ensuring that the doors of every classroom open onto a future bright with possibility for every child.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 6 through September 12, 1998, as a time when America Goes Back to School. I encourage parents, schools, community and State leaders, businesses, civic and religious organizations, and the people of the United States to observe this week with appropriate ceremonies and activities expressing support for high academic standards and meaningful involvement in schools and colleges and the students and families they serve.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

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Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 9-21-98; published 8-21-98
- Georgia; comments due by 9-24-98; published 8-25-98
- Maryland; comments due by 9-25-98; published 8-26-98

Water pollution; effluent guidelines for point source categories:
- Organic pesticide chemicals manufacturing industry; comments due by 9-21-98; published 7-22-98
- Transportation equipment cleaning; comments due by 9-23-98; published 6-25-98

EXPORT-IMPORT BANK

Freedom of Information Act and Privacy Act; implementation; comments due by 9-24-98; published 9-10-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- International applications; biennial review; comments due by 9-22-98; published 7-24-98
- Satellite communications—
  - Mobile-satellite service above 1 GHz; comments due by 9-21-98; published 8-20-98
- Wireless communication services—
  - Regulations streamlining; comments due by 9-23-98; published 9-8-98
- Wireless telecommunications service—
  - 2.3 GHz and 47 GHz bands; comments due by 9-21-98; published 8-21-98

Radio stations; table of assignments:
- Alaska; comments due by 9-21-98; published 8-5-98
- Montana; comments due by 9-21-98; published 8-5-98
- Oklahoma; comments due by 9-21-98; published 8-5-98
- Texas; comments due by 9-21-98; published 8-5-98

FEDERAL TRADE COMMISSION

Freedom of Information Act; implementation; comments due by 9-25-98; published 8-26-98

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-034-00001-1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869-034-00002-9)	19.00	[1] Jan. 1, 1998
4	(869-034-00003-7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1-699	(869-034-00004-5)	35.00	Jan. 1, 1998
700-1199	(869-034-00005-3)	26.00	Jan. 1, 1998
1200-End, 6 (6 Reserved)	(869-034-00006-1)	39.00	Jan. 1, 1998
7 Parts:			
1-26	(869-034-00007-0)	24.00	Jan. 1, 1998
27-52	(869-034-00008-8)	30.00	Jan. 1, 1998
53-209	(869-034-00009-6)	20.00	Jan. 1, 1998
210-299	(869-034-00010-0)	44.00	Jan. 1, 1998
300-399	(869-034-00011-8)	24.00	Jan. 1, 1998
400-699	(869-034-00012-6)	33.00	Jan. 1, 1998
700-899	(869-034-00013-4)	30.00	Jan. 1, 1998
900-999	(869-034-00014-2)	39.00	Jan. 1, 1998
1000-1199	(869-034-00015-1)	44.00	Jan. 1, 1998
1200-1599	(869-034-00016-9)	34.00	Jan. 1, 1998
1600-1899	(869-034-00017-7)	58.00	Jan. 1, 1998
1900-1939	(869-034-00018-5)	18.00	Jan. 1, 1998
1940-1949	(869-034-00019-3)	33.00	Jan. 1, 1998
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8	(869-034-00022-3)	33.00	Jan. 1, 1998
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200-End	(869-034-00024-0)	33.00	Jan. 1, 1998
10 Parts:			
0-50	(869-034-00025-8)	39.00	Jan. 1, 1998
51-199	(869-034-00026-6)	32.00	Jan. 1, 1998
200-499	(869-034-00027-4)	31.00	Jan. 1, 1998
500-End	(869-034-00028-2)	43.00	Jan. 1, 1998
11	(869-034-00029-1)	19.00	Jan. 1, 1998
12 Parts:			
1-199	(869-034-00030-4)	17.00	Jan. 1, 1998
200-219	(869-034-00031-2)	21.00	Jan. 1, 1998
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20 Parts:			
*1-399	(869-034-00056-8)	29.00	Apr. 1, 1998
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*§§ 1.1401-End	(869-034-00088-6)	51.00	Apr. 1, 1998
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200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1997
28 Parts:			
0–42	(869–034–00098–3)	36.00	July 1, 1998
43–end	(869–032–00099–9)	30.00	July 1, 1997
29 Parts:			
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500–899	(869–034–00102–5)	40.00	July 1, 1998
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1900–1910 (§§ 1900 to 1910.999)	(869–032–00104–9)	43.00	July 1, 1997
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1911–1925	(869–032–00106–5)	19.00	July 1, 1997
1926	(869–032–00107–3)	31.00	July 1, 1997
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–032–00110–3)	28.00	July 1, 1997
700–End	(869–032–00111–1)	32.00	July 1, 1997
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200–End	(869–032–00113–8)	42.00	July 1, 1997
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
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1–190	(869–032–00114–6)	42.00	July 1, 1997
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630–699	(869–032–00117–1)	22.00	July 1, 1997
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125–199	(869–032–00121–9)	36.00	July 1, 1997
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
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300–399	(869–032–00124–3)	27.00	July 1, 1997
400–End	(869–032–00125–1)	44.00	July 1, 1997
35	(869–032–00126–0)	15.00	July 1, 1997
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200–299	(869–032–00128–6)	21.00	July 1, 1997
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52 (52.1019–End)	(869–032–00137–5)	32.00	July 1, 1997
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1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
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41–69	(869–032–00171–5)	22.00	Oct. 1, 1997
70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
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47 Parts:			
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50 Parts:			
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200–599	(869–032–00199–5)	22.00	Oct. 1, 1997
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Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
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Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

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105th Congress, 2nd Session, 1998

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