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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AH08

Flexible Marketing Allotments for Sugar

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the sugar marketing allotment regulations with respect to processors' marketings of sugar, the permanent termination of processor operations, processors purchasing assets of another processor, processors sharing allocations among producers, appeals, and other related matters.

EFFECTIVE DATE: June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso, Dairy and Sweeteners Analysis, Economic and Policy Analysis Staff, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0516, 1400 Independence Ave., SW., Washington, DC 20250–0516. Phone: (202) 720–4146. E-mail: *barbara.fecso@usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, 116 Stat 183) (the 2002 Act) requires that the regulations implementing Title I of the 2002 Act, which includes the Sugar Program, are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Discussion of Changes

Section 1403 of the 2002 Act amended the Agricultural Adjustment Act of 1938 (7 U.S.C. 359aa *et seq.*) (the 1938 Act) to establish flexible sugar marketing allotments. A final rule implementing the regulations was published August 26, 2002 (67 FR 54926), and a correction was published October 28, 2002 (67 FR 65690). In administering the program, the Commodity Credit Corporation (CCC) has determined that a few regulatory provisions require clarification.

The regulations at 7 CFR 1435.307(a)(3)(i) and (ii) describe adjustments CCC makes to a sugar beet processor's weighted average sugar production history for opening or closing a "sugar factory" during the base period. This rule clarifies that the provisions refer to the opening or closing of a "sugar beet processing factory," as provided by sections 359d(b)(2)(D)(ii)(I) and (II) of the 1938 Act.

The regulations at 7 CFR 1435.307(d) provide that during any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products a processor markets shall not exceed the quantity of the processor's allocation. Section 1435.307(e) contains exceptions to that requirement. This rule adds section 1435.307(e)(4) to clarify that the provision does not apply to the sale of purchased sugar because the sugar would already have been counted as part of the original processor's marketing.

The regulation at 1435.307(e)(3)(ii) permits a processor's marketings to exceed its allocation if the marketing enables the purchasing processor to fulfill its allocation and the marketing is reported to CCC within 5 days of the date of sale. This rule extends the time period to report the sale to 51 days because CCC is revising its monthly survey forms to include these sales and eliminate the need for separate reporting forms. Given the current schedule for submitting the monthly forms, the sale of overallocation sugar may take place up to 51 days before CCC receives the company monthly reports.

The regulations at 7 CFR 1435.307(f) provided that CCC may charge liquidated damages on surplus allocation after sales made after May 1 of the crop year if the purchasing processor had surplus allocation after May 1 because the purchasing processor provided incomplete or erroneous information provided to CCC. This rule revises the section to provide simply that CCC may charge liquidated damages on surplus allocations after the end of the crop year, if a processor provides incomplete or erroneous data that results in surplus allocation.

The regulations at 7 CFR 1435.308 are revised to add a new provision with respect to the elimination of a processor's allocation when there is a permanent termination of operations. Previously, § 1435.308(b) provided that CCC will eliminate the allocation of a processor that has been dissolved or liquidated in a bankruptcy proceeding and will distribute the allocation to all other processors on a pro rata basis. In addition to being dissolved or liquidated in bankruptcy proceeding, another condition that will eliminate a processor's allocation, "permanently terminated operations," is added. CCC will consider a processor to have permanently terminated operations if it has ceased processing for 2 complete years or notifies CCC that it has permanently terminated operations.

This rule clarifies that only processors that are not purchasing all the assets of the selling processor must continue operation of the purchased plants for the remainder of the initial season and the following crop year. Purchasing processors that are purchasing all the assets of the selling processor and new entrants are not required to operate the acquired facilities for the required time period.

Section 1435.308(c) provided that if a processor purchasing factories is not a new entrant, the purchased plants must operate for the remainder of the initial season and the following crop year for the purchasing processor to permanently obtain the allocation. It also provided that CCC would reassign the allocation on a pro rata basis if the purchased plants failed to operate for the required time period. This section has been renumbered as § 1435.308(d).

Section 1435.308(d) provided that if the purchasing processor is a new entrant or a processor purchasing all the assets of the selling processor, CCC shall immediately transfer allocation commensurate with the purchased factories' production history with no requirement on operating the facility for the required time period. This section has been renumbered as § 1435.308(c).

Section 1435.308(f) provides that new entrants not acquiring existing facilities may apply to the Executive Vice President, CCC, for an allocation. That provision is clarified to provide that new entrants that are not acquiring existing facilities with production history in the base period may apply for an allocation. Section 1435.308(f)(5) is added to provide for a hearing in accordance with the statutory requirement that a hearing be held on a new can sugar entrant's application, if requested by interested parties.

Section 1435.310 is expanded to clarify the 1938 Act's requirement in section 359f so that a processor's "allocation will be shared among producers served by the processor in a fair and equitable manner that adequately reflects producers' production histories." CCC has determined that cooperatively owned processors, not in a proportionate share state, have met this requirement if they share their allocation with their growers according to their cooperative agreement. CCC has determined that, for a State subject to proportionate shares, a processor will be in compliance with this requirement if it establishes a priority system for payment that pays growers first for production on proportionate share acreage, then for production on base acreage other than the proportionate share acreage, then for production on non-base acreage. Production from a grower with no production history at a mill will be considered the same as production from non-base acreage, unless the grower had an allocation release from a predecessor mill or was designated by the mill as replacing sugarcane lost to the mill after the 2001 crop year. In determining the payment priority in Louisiana, processors may aggregate the acreage of an operator (producer making the crop production decisions) across all the operator's farms delivering cane to the processor. Growers should note that there is no change to the requirements of § 1435.318 that provide penalties for farms exceeding their proportionate shares if proportionate shares are in effect and a processor exceeds its allocation.

Clarifying this provision of the regulation will reduce uncertainty about the effect the marketing allotment program has on the relationship between growers and processors. This clarification should also reduce arbitrations under the provision in the statute and regulation that permits a grower to request Departmental arbitration of disputes with processors.

Section 1435.319(b) concerns the appeal of issues arising under sections 359d, 359f(b) and (c), and 359(i) of the 1938 Act and provides that after reconsideration of an adverse decision by the Executive Vice President, CCC, an adversely affected person may appeal the determination and that any hearings with respect to the matter shall be conducted by USDA's Judicial Officer. This section is revised to clarify that appeals of decisions of the Executive Vice President, CCC under section 359d are limited to the establishment of the allocations of marketing allotments. This is in accordance with the limited jurisdiction set forth in section 359i(a) of the 1938 Act. The language in the regulation was never intended to provide broader appeal rights than what was required under the statute and therefore is amended to clarify this.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Commodity Loans and Loan Deficiency Payments, 10.051.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule were considered for the sugar program final rule published in the **Federal Register** August 26, 2002 (67 FR 54926). This rule does not make changes that will affect the Finding of No Significant Impact.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it. However, this rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about this rule. Nonetheless, this rule contains no mandates as defined in sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 533. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), which allows an agency to forego SBREFA's usual 60-day Congressional review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the planting and marketing decisions of a large number of agricultural producers. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

List of Subjects in 7 CFR Part 1435

Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, and Sugar.

■ For the reasons set out in the preamble, 7 CFR part 1435 is amended as set forth below.

PART 1435—SUGAR PROGRAM

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

Authority: 7 U.S.C. 1359aa–1359jj and 7272 et seq.; 15 U.S.C. 714b and 714c.

■ 2. In § 1435.307, revise paragraphs (a)(3)(i) and (a)(3)(ii), (e) and (f), and add paragraph (g) to read as follows:

§ 1435.307 Allocation of marketing allotments to processors.

(a) * * *

(3) * * *

(i) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for opening a sugar beet processing factory during the 1996 through 2000 crop years;

(ii) Decreased 1.25 percent of the sum of beet processors' weighted average sugar production for closing a sugar beet processing factory during the 1998 through 2000 crop years:

* * * * *

(e) Paragraph (d) of this section shall not apply to:

(1) Any sugar marketings to facilitate the export of sugar or sugar-containing products;

(2) Any sugar marketings for nonhuman consumption; and

(3) Any processor marketings of sugar to another processor made to enable the purchasing processor to fulfill its allocation if such sales;

(i) Are made before May 1, and

(ii) Reported to CCC within 51 days of the date of sale.

(f) Paragraph (d) of this section also shall not apply to marketings of purchased sugar marketed in the crop year of the purchase, but does apply to marketings of sugar purchased as part of a transaction pursuant to paragraph (e)(3) of this section.

(g) CCC may charge liquidated damages, as specified in a surplus allocation survey and agreement, on surplus allocation after the end of a crop year if the processor had surplus allocation because the processor provided incomplete or erroneous information to CCC.

■ 3. Revise § 1435.308 to read as follows:

§ 1435.308 Transfer of allocation, new entrants.

(a) If a sugar beet or sugarcane processing facility is closed and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer the share of allocation commensurate with the growers' production history from the processor that closed the facility to their new processor. CCC may grant the request to transfer the allocation upon:

(1) Written approval of the processing company that will accept the additional deliveries, and

(2) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers.

(b) After a transfer of allocation described in paragraph (a) of this section is completed, CCC will permanently eliminate the processor's remaining allocation and distribute it to all other processors on a pro-rata basis when the processor:

(1) Has been dissolved,

(2) Has been liquidated in a bankruptcy proceeding, or

(3) Has permanently terminated operations by:

(i) Not processing sugarcane or sugar beets for 2 consecutive years, or

(ii) Notifying CCC that the processor has permanently terminated operations.

(c) If a purchaser purchasing the assets of another processor is a new entrant or is a processor purchasing all the assets of the selling processor, then CCC shall immediately transfer allocation commensurate with the purchased factories' production history.

(d) If a processor does not purchase all of the assets of another processor, then the purchased factories must operate for the remainder of the initial season and the following crop year for the purchasing processor to permanently obtain the allocation. If the purchased factories do not operate for this required time period, CCC shall reassign the allocation to the other processors on a pro rata basis.

(e) Allocations, equal to the number of acres of proportionate shares being transferred times the State's per-acre yield goal, will be transferred between mills in proportionate share States, if the transfers are based on:

(1) Written consent of the crop-share owners, or their representatives,

(2) Written consent of the processing company holding the allocation for the subject proportionate shares,

(3) Written consent of the processing company that will accept the additional sugarcane deliveries, and

(4) Evidence, satisfactory to CCC, that the additional sugarcane deliveries will not exceed the processing capacity of the receiving company.

(f) New entrants, not acquiring existing facilities with production history in the base period, may apply to the Executive Vice President, CCC, for an allocation.

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year.

(2) CCC will consider adverse effects of the allocation upon existing processors and producers.

(3) New entrant cane processors are limited to 50,000 short tons, raw value, the first crop year.

(4) New entrant cane processors will be provided, as determined by CCC:

(i) A share of their State's cane allotment if the processor is located in Hawaii, Puerto Rico, Florida, Louisiana, or Texas, or

(ii) A share of the overall cane allotment if the processor is located in any state not listed in paragraph (f)(4)(i) of this section.

(5) CCC will conduct a hearing on a new entrant application if an interested processor or grower requests a hearing.

(6) If a new entrant acquires and reopens a factory that previously produced beet sugar from sugar beets and sugar beet molasses, but the factory last operated during the 1997 crop year, CCC will:

(i) Assign an allocation to the new entrant not less than the greater of 1.67 percent of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years, as determined under § 1435.307, or 1,500,000 hundredweight.

(ii) Reduce all other beet processor allocations on a pro rata basis.

■ 4. In § 1435.310, redesignate paragraph (b) as paragraph (e) and add new paragraphs (b), (c) and (d) to read as follows:

§ 1435.310 Sharing processors' allocations with producers.

* * * * *

(b) CCC will determine that a processor in a proportionate share state has met the conditions of paragraph (a) of this section if the processor establishes a grower payment plan that incorporates the following provisions:

(1) Pays growers for sugar from their delivered sugarcane in the following priority:

(i) Sugar production from proportionate share acreage; as established under § 1435.311, for producers determined by CCC, who;

(A) Delivered to the mill in at least one of the crop years 1999, 2000, or 2001,

(B) Obtained an allocation transfer from a predecessor mill, or

(C) Have been designated by the mill to supply sugarcane replacing sugarcane lost to the mill since the 2001 crop year,

(ii) Sugar production from base acreage, as established under § 1435.312, but exclusive of the acreage described in paragraph (b)(1)(i) of this section, for producers who meet the requirements of paragraph (b)(1)(i) of this section, then

(iii) All other sugar production.

(2) If a mill cancels a producer's contract, the mill must permit the producer to move an allocation commensurate with the producer's production history to a mill of the producer's choice.

(3) In determining the payment priority, a processor may aggregate the acreage of an operator (producer making the crop production decisions) across all the operator's farms delivering cane to the processor.

(c) CCC will determine that a processor not in a proportionate share state, which is cooperatively owned by producers, has met the conditions of paragraph (a) of this section if the processor shares its allocation with its producers according to its cooperative membership agreement.

(d) CCC will disclose farm base and reported acres data in a proportionate share state to processors upon their request for growers delivering to their mill. In the case of multiple producers on a farm or growers delivering to more than one mill, subject mills will be responsible for coordinating proportionate share data.

* * * * *

■ 5. In § 1435.319, revise paragraph (b) to read as follows:

§ 1435.319 Appeals and arbitration.

* * * * *

(b) For issues arising under section 359d establishing allocations for marketing allotments, and sections 359f(b) and (c), and section 359i of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by a reconsidered determination may appeal such determination by filing a written notice of appeal within 20 days of the issuance of the reconsidered determination with the Hearing Clerk, USDA, Room 1081, South Building, 1400 Independence Ave., SW., Washington, DC 20250–9200. Any hearing conducted under this paragraph shall be in accordance with instructions issued by USDA's Judicial Officer.

* * * * *

Signed in Washington, DC, on June 25, 2004.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 04–14900 Filed 6–30–04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 214, and 299

[ICE No. 2297–03]

RIN 1653–AA23

Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104–208; SEVIS

AGENCY: Bureau of Immigration and Customs Enforcement, DHS.

ACTION: Final rule.

SUMMARY: On October 26, 2003, the Department of Homeland Security (DHS) published a proposed rule in the **Federal Register**, to implement section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), requiring the collection of information relating to nonimmigrant foreign students and exchange visitors, and providing for the collection of the required fee to defray the costs.

This rule amends the DHS regulations to provide for the collection of a fee to be paid by certain aliens who are seeking status as F–1, F–3, M–1, or M–3 nonimmigrant students or as J–1 nonimmigrant exchange visitors. Generally, the rule levies a fee of $100, although applicants for certain J–1 exchange visitor programs will pay a reduced fee of $35, and certain other aliens will be exempt from the fee altogether. This final rule explains which aliens will be required to pay the fee, describes the consequences that an alien seeking F–1, F–3, M–1, M–3, or J–1 nonimmigrant status faces upon failure to pay the fee, and specifies which aliens are exempt from the fee. This fee is being levied on aliens seeking F–1, F–3, M–1, M–3, or J–1 nonimmigrant status to cover the costs of administering and maintaining the Student and Exchange Visitor Information System (SEVIS), which includes ensuring compliance with the system's requirements by individuals, schools, and exchange visitor program sponsors. The fee will also pay for the continued operation of the Student and Exchange Visitor Program (SEVP) and offset the resources to ensure compliance with SEVIS requirements, including funds to hire and train SEVIS Liaison Officers and other Bureau of Immigration and Customs Enforcement (ICE) officers.

The rule will be effective on September 1, 2004, and will apply to potential nonimmigrants who are initially issued a Form I–20 or Form DS–2019 on or after that date. Potential nonimmigrants, for purposes of this rule, are those aliens who will apply to the Department of State (DOS) or DHS for initial attendance as an F, M, or J nonimmigrant, certain nonimmigrants in the United States that will apply for a change of status to an F, M, or J classification, and current J–1 nonimmigrants that will apply for a J–1 category change on or after that date. If a Form I–20 or Form DS–2019 for initial status in a new program is issued on or after the effective date, the nonimmigrant traveling on that document will be required to pay the fee. Applicants, schools, and exchange visitor program sponsors should refer to the fee pay table contained in this rule for more detailed information concerning when a fee is required.

DATES: This final rule is effective September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jill Drury, Director'Student and Exchange Visitor Program (SEVP), Bureau of Immigration and Customs Enforcement, Department of Homeland Security, 800 K Street, NW., Room 1000, Washington, DC 20536, telephone (202) 305–2346.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2003, the former Immigration and Naturalization Service (Service) transferred from the Department of Justice to DHS pursuant to the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (November 25, 2002). The Service's adjudication functions transferred to the Bureau of Citizenship and Immigration Services (CIS), and the Service's SEVIS function transferred to the Bureau of Border Security, now the Bureau of Immigration and Customs Enforcement (ICE). For the sake of simplicity, any reference to the Service has been changed to DHS, even when referencing events that preceded March 1, 2003.

What Are SEVP, SEVIS, and the SEVIS Fee?

Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law No. 104–208, 110 Stat. 3546 (September 30, 1996), codified at 8 U.S.C. 1372, required the creation of a program to collect

information relating to nonimmigrant foreign students and exchange visitor program participants during the course of their stay in the United States, using electronic reporting technology to the fullest extent practical. While the pilot program initially involved a small number of schools, the program has been expanded and fully implemented to cover all DHS-approved schools and DOS-designated exchange visitor program sponsors that enroll foreign nationals. The program became known as SEVP, and its core technology became known as SEVIS. The substantive requirements and procedures for SEVIS have been promulgated in separate rulemaking proceedings. See 67 FR 34862 (May 16, 2002, proposed rule for implementing SEVIS); 67 FR 44343 (July 1, 2002, interim rule for schools to apply for preliminary enrollment in SEVIS); 67 FR 60107 (September 25, 2002, interim rule for certification of schools applying for enrollment in SEVIS); 67 FR 76256 (December 11, 2002, DHS's final rule implementing SEVIS); and 67 FR 76307 (December 12, 2002, DOS interim final rule implementing SEVIS). Under section 442(a)(4) of the HSA, as amended, responsibility over SEVIS specifically transferred to ICE. Section 641(e) of IIRIRA requires that a fee be established and charged to aliens tracked in SEVIS to fund the program, and further requires that the fee be used only for SEVP related purposes. Consistent with this mandate, a sub-account will be created within the Immigration Examination Fee Account into which SEVIS fees will be deposited and maintained for exclusive use related to SEVP.

Who Are the Nonimmigrants Affected by IIRIRA Section 641?

The Immigration and Nationality Act (Act) provides for the admission of different classes of nonimmigrant aliens, who are foreign nationals seeking temporary admission to the United States. The purpose of the alien's intended stay in the United States determines his or her proper nonimmigrant visa classification. Some visa classifications permit the nonimmigrant's spouse and qualifying children to accompany the nonimmigrant to the United States, or to join the nonimmigrant who is already in the United States. To qualify, the alien's child must be unmarried and under the age of 21.

F–1 nonimmigrants, as defined in section 101(a)(15)(F) of the Act, are foreign nationals who come to the United States as foreign students to pursue a full course of study in DHS-approved colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, other academic institutions, or in language training programs in the United States. For the purposes of this rule, the term "school" refers to all of these types of DHS-approved institutions. Generally, F–1 nonimmigrants are subject to the SEVIS fee and monitoring in SEVIS. An F–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an F–1 student. While F–2 nonimmigrants are subject to monitoring in SEVIS, as an alien deriving his or her status from that of the F–1 nonimmigrant, they are not required to pay a separate SEVIS fee.

J–1 nonimmigrants, as defined in section 101(a)(15)(J) of the Act, are foreign nationals who have been selected by an exchange visitor program sponsor designated by the United States DOS to participate in an exchange visitor program in the United States. The J–1 classification includes nonimmigrants participating in programs in which they will receive graduate medical education or training. Generally, J–1 nonimmigrants are required to pay a SEVIS fee, and are subject to monitoring in SEVIS. A J–2 nonimmigrant is a foreign national who is the spouse or qualifying child of a J–1 exchange visitor. While J–2 nonimmigrants are subject to monitoring in SEVIS, as an alien deriving his or her status from that of the J–1 nonimmigrant, they are not required to pay a separate SEVIS fee.

M–1 nonimmigrants, as defined in section 101(a)(15)(M) of the Act, are foreign nationals pursuing a full course of study at a DHS-approved vocational or other recognized nonacademic institution (other than in language training programs) in the United States. The term "school" also encompasses those institutions attended by M–1 students for the purposes of this rule. Generally, M–1 nonimmigrants are subject to the SEVIS fee and monitoring in SEVIS. An M–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an M–1 student. While M–2 nonimmigrants are subject to monitoring in SEVIS, as an alien deriving his or her status from that of the M–1 nonimmigrant, they are not required to pay a separate SEVIS fee.

On November 2, 2002, Congress passed the Border Commuter Student Act of 2002, Public Law 107–274, 116 Stat. 1923 (2002), which created the F–3 and M–3 nonimmigrant classifications for certain aliens who are citizens of Canada or Mexico and who continue to reside in their home country while commuting to the United States to attend an approved school. Such border commuter students are not subject to the existing requirement for F–1 and M–1 students to be pursuing a full course of study. Instead, these border commuter students are specifically permitted to engage in either full-time or part-time studies. DHS adopted regulations relating to border commuter students, 67 FR 54941 (August 27, 2002) (codified at 8 CFR 214.2(f)(18) and (m)(19)), and will be amending those regulations in the future to conform to the new legislation. In this rule, DHS notes that F–3 and M–3 students will be subject to the same rules as F–1 and M–1 students regarding the collection of the fee.

Response to Public Comments on the Proposed Rule

DHS initially proposed a rule implementing section 641(e) of IIRIRA, requiring fee collection related to SEVIS on December 21, 1999, at 64 FR 71323, and received 4,617 comments in response to this proposed rule. On October 26, 2003, DHS published a second proposed rule in the **Federal Register** at 68 FR 61148. The October 26, 2003, proposed rule addressed the 4,617 comments, as well as setting forth a new proposal for collection of the SEVIS fee. Comments to the second proposed rule were due to DHS on or before December 26, 2003. DHS received 239 comments regarding the collection of the required fee, as set forth in the second proposed rule. The following paragraphs will address each substantive issue raised in comments received in response to the October 2003 proposed rule. However, this discussion will not describe in detail all the provisions outlined in either of the prior proposed rules. Rather, it will address only those provisions relevant to the October 2003 comments. Commenters frequently addressed identical issues in their comments and, as a result, the number of comments received exceeds the number of issues discussed.

In general, commenters acknowledged the Congressional mandate that DHS collect this fee and stated that this 2003 proposed rule was a significant improvement over the 1999 proposed rule. A significant number of commenters stated that they were generally pleased with SEVIS and DHS efforts to reach out to the schools and exchange visitor program sponsors. However, most of these commenters further stated that they believed the imposition of the fee would adversely impact participation by foreign students and exchange visitors. The commenters discussed the fee amount, the collection and remittance process, exemptions and

reductions to the fee, the frequency of the fee, the applicability of the fee, and the propriety of the fee.

I. Fee Amount

The October 2003 proposed rule set the fee amount at $100, with the exception of specific J–1 exchange visitor programs. Although several commenters stated that the $100 fee was not overly burdensome, the majority of commenters stated that the fee was excessive and should be set at $54, based upon the fee study conducted in September 2002 by an independent contractor for DHS. Some commenters expressed concern regarding the use of the SEVIS fee to pay for SEVIS-related enforcement and compliance costs. Additionally, some commenters expressed concern that excessive fee receipts would become a money-generating tool for DHS, subsidizing other, unrelated programs.

DHS reviewed and considered all comments on the fee amount, but has made the decision not to change the amount of the $100 proposed fee. Comments in response to the 1999 rule raised concerns about the proposed $95 fee, which had been determined by a fee study done in conjunction with the 1999 rule making. An independent fee study, carried out in September 2002, was done to respond to those commenter concerns, and to reassess the amount of the fee, based on changes in the SEVIS project funding since the publication of the 1999 proposed rule. An independent consulting firm was hired to conduct an objective fee review and ensure that applicable Federal law and fee guidance were followed. The fee review included the recovery of historical costs and costs over the FY 2003/2004 time period, as well as the appropriated monies received. The fee review also included costs for increased staffing and training for DHS personnel involved in the SEVP at DHS headquarters, district offices, service centers, and regional offices, as well as training for DOS personnel. The fee study determined that the fee should be set at $54.

DHS arrived at the final rule fee amount of $100 by taking the fee recommended in the independent study ($54) and adding estimated compliance and enforcement costs, which the fee study did not include. DHS has determined that this fee should offset the resources necessary to ensure compliance with regulations, since compliance and maintenance of system integrity are an integral part of SEVP. Indeed, Congress, in placing SEVIS within ICE, specifically directed that the information collected in the program be used for enforcement purposes; thus, the use of the SEVIS fee for enforcement purposes is consistent with the HSA. See HSA 442(a)(4). This application of user fees as a funding source for compliance activities is also consistent with the introduction of user fees in the early 1980s. A Federal agency is authorized to recoup the "full cost" of providing special benefits, including the costs of enforcement, collection, research, as well as establishment of standards and regulations, when calculating its fees. DHS currently recoups some of the costs of detecting and deterring fraud and protecting the integrity of benefits and documents through its immigration benefit application fees.

One important program benefit to be funded by the $100 fee is the establishment of localized personnel, or SEVIS Liaison Officers. These SEVIS Liaison Officers will be a local resource for schools and students, providing timely and accurate information or assistance in meeting the requirements of the program. SEVIS Liaison Officers may visit schools, interview school officials, review records, compare system information to school information, and assist schools with SEVP issues. They will also coordinate with local school representatives and assist with local training program development and implementation. Finally, SEVIS Liaison Officers will be available to assist immigration and other law enforcement officials who may have a need for information derived from SEVIS.

As previously noted, consistent with the HSA mandate to utilize the information collected in SEVIS for enforcement purposes, also included in the fee calculation are funds that will be used to offset the total cost of SEVP enforcement. A portion of the fee will be used to fund new positions and to support officers in existing positions who are performing SEVIS enforcement, as well as to pay for any training, equipment, technical systems, or other items necessary to enhance their ability to enforce SEVIS. The ICE officers supported by the SEVIS fee will conduct investigations to ensure compliance with student and exchange visitor regulations. These officers are essential to ensuring data integrity in SEVIS. In addition, these officers will work in conjunction with SEVIS Liaison Officers on school reviews and re-certifications. As noted in the 2003 proposed rule, while the fee will fund only a portion of the ICE officer positions needed to ensure SEVP integrity, DHS intends to staff all of the ICE officers necessary to ensure the success of compliance efforts.

This rule sets the fee at the maximum amount initially authorized by IIRIRA ($100) for all F, M, and J nonimmigrants, with the exception of exchange visitors admitted as au pairs, camp counselors, or participants in summer work/travel programs who will be subject to a fee of $35, and those exempt from the fee altogether. IIRIRA also provides that the Secretary of Homeland Security may, on a periodic basis, revise the amount of the fee imposed and collected to take into account changes in the cost of carrying out the SEVP. Pursuant to the Chief Financial Officers Act of 1990, DHS will review this fee amount at least every 2 years. Upon review, if DHS finds that the fee is either too high or too low, the fee amount may be adjusted. Adjustments will be made subject to the Federal rulemaking process.

Fee reviews to determine the appropriate amount of the fee and any adjustments required typically look at historical costs as well as anticipated costs based upon programmatic changes. Since DHS is establishing a dedicated sub-account for SEVIS fees within the Immigration Examination Fee Account, any excess revenue will accrue until the next scheduled fee review and will then be factored into the establishment of the new fee. As required by section 641 of IIRIRA, DHS will not use the proceeds from SEVIS fees except for SEVIS-related purposes, and will not generate revenue for other programs from this source. DHS notes that several commenters suggested that future fee studies be conducted by independent contractors and DHS acknowledges the value of this suggestion. However, DHS will not specifically comment in this rule on how future fee studies will be conducted.

Several commenters objected to both the concept of a fee and the fee amount proposed. Some commenters stated that the imposition of a fee would deter participation and adversely affect the position of the United States in the international student/exchange visitor market, and that the regulations authorizing collection of such a fee will interfere with important cultural exchanges. DHS acknowledges these concerns; however, Congress has mandated that DHS set the SEVIS fee at an amount sufficient to cover the costs associated with the SEVP, including recouping the historical costs of program implementation, and ongoing costs of program maintenance. Thus, DHS is required to impose a fee on the nonimmigrants for whom the system

was developed and maintained. DHS set the fee amount based upon program costs and is statutorily prohibited from lowering the fee to an amount that does not fund the program in order to address these concerns.

Some commenters expressed concern that imposition of a SEVIS fee might lead to fraudulent use of visitor visa classifications to attend non-SEVIS-certified schools (particularly short-term English language programs). However, DHS cannot fail to implement the statutorily mandated fee because of potential fraud. Rather, DHS enforcement officers will continue to work to ensure that all nonimmigrant entries and stays in the United States are legal and based upon appropriate visa classifications.

II. The Fee Collection and Remittance Process

The 1999 proposed rule required that educational institutions and exchange visitor program sponsors collect the fee, based upon then existing law, and mandated that the fee be collected prior to visa issuance. Congress subsequently amended the law to permit DHS to collect the fee directly from the F–1, F–3, J–1, M–1, or M–3 nonimmigrants. Based upon these amendments to the law, the October 2003 proposed rule provided for fee collection by DHS and required that proof of payment be presented during the visa application process or prior to submitting a change of status request.

A number of the comments DHS received focused on the DHS fee collection process. The majority of commenters suggested that DOS collect the fee at the time of the visa interview, similar to the payment methodology used for collecting visa fees. Many commenters felt that without this change, nonimmigrants would experience difficulties and delays with payment methods that required use of the Internet, use of credit cards, use of checks drawn on U.S. banks and payable in U.S. dollars, and/or use of foreign mail delivery systems which may not be timely or reliable. A few commenters proposed the collection of the fee at the ports-of-entry when students and exchange visitors entered the United States, as an alternative payment method.

DHS has considered the concerns raised by the commenters and will continue to work on alternate fee payment methodologies. DHS will not be able to establish a workable arrangement for fee collection by DOS prior to the effective date of this rule. However, a pilot DOS fee collection methodology is being developed at this time. Additionally, DHS is unable to implement fee collection at ports-of-entry due to the statutory mandate that the SEVIS fee be paid prior to visa issuance. Aliens who are exempt from the F, M, or J visa requirement, as described in section 212(d)(4) of the Act (*e.g.*, Canadians), will be required to pay the fee and have the fee processed prior to applying for admission at a U.S. port-of-entry. Ports-of-entry will not be equipped to collect fees or provide mechanisms for nonimmigrants to submit fee payments. Also, consistent with the requirements of section 641 of IIRIRA, nonimmigrants who are already located in the United States will be required to pay the fee prior to being approved for a change of classification to an F or M student or J exchange visitor, unless specifically exempt by DHS due to extenuating circumstances as determined by SEVP.

A. Payment Options on Implementation

In order to allow for fee collection by DHS under the constraints outlined in the preceding paragraph, this rule establishes the same fee payment methods discussed in the proposed rule. However, recognizing that aliens abroad will be required to pay the fee prior to obtaining an F, J, or M visa at a U.S. embassy or consulate, DHS has sought to build in as much flexibility as possible for the payment of the fee. Accordingly, DHS establishes two options for fee payment:

(1) The fee may be paid by mail, by submitting Form I–901, Fee Remittance for Certain F, M, and J Nonimmigrants, together with a check or money order drawn on a U.S. bank and payable in U.S. currency; or

(2) The fee may be paid electronically, by completing Form I–901 through the Internet and using a credit card.

These options are similar to the means currently used by nonimmigrants abroad to pay fees and expenses to a school or exchange visitor program sponsor, as well as methods used by aliens in other circumstances to pay fees to DHS for immigration purposes.

DHS acknowledges the commenters' concerns that some aliens may have difficulty making these payments. To alleviate these problems as much as possible, DHS will accept fee payment from a third party, either in the United States or abroad, using the methods outlined previously. This allows schools and exchange visitor program sponsors to pay for some or all of their participants, as they choose. Friends, family, or other interested parties may also make the fee payment on behalf of an alien.

Additionally, some commenters requested a bulk or batch fee payment system that would allow exchange visitor program sponsors to pay the fee for their participants. In response, DHS has established a bulk fee payment process that will allow an exchange visitor program sponsor to pay the fee for large numbers of individuals at one time. This automated fee payment system has been successfully pilot tested. At this time, only exchange visitor program sponsors have expressed an interest in making bulk payments on behalf of affected aliens. As a result, DHS has only developed the bulk payment option for exchange visitor program sponsors. Although this regulation does not provide for a bulk payment option for schools enrolling F and M nonimmigrants, should schools express an interest in bulk payments in the future, DHS will assess the feasibility of developing this option for them.

DHS wishes to clarify that the requirement that a check or money order be drawn on a U.S. bank does not necessitate that the student or potential exchange visitor living outside the United States approach a U.S. bank to make a payment. As provided in 8 CFR 103.7(a)(1), an application fee submitted from outside the United States, "may be made by bank international money order or foreign draft drawn on a financial institution in the United States," and payable in U.S. currency. Many foreign banks are able to issue checks or money orders drawn on a U.S. bank. Accordingly, students or potential exchange visitors may obtain checks from banks chartered or operated in the United States, from foreign subsidiaries of U.S. banks, or from foreign banks that have an arrangement with a U.S. bank to issue a check, money order, or foreign draft that is drawn on a U.S. bank.

DHS also clarifies that any Visa, MasterCard, or American Express credit card, whether issued in the United States or overseas, can be used to pay the fee over the Internet.

B. Payment Options in the Future

DHS will continue to explore alternate fee payment methods that might ease potential difficulties associated with fee payment from foreign countries. Most significantly, DHS is working closely with DOS to establish a pilot project for DOS collection of the SEVIS fee overseas. This pilot is being developed to explore the feasibility of SEVIS fee collection at both consular offices with outsourced fee collection using foreign financial institutions and at consular offices with internal cashiers. The pilot will be

conducted in a small number of consulates.

A number of issues surround the implementation of SEVIS fee collection at DOS consulates. It is important to note that fee settlement costs are distributed among all fee-payers. DHS will avoid implementing collection solutions that result in excessively high fee collection costs. The very real possibility of excessive costs associated with fee collections performed by some foreign financial institutions may make this method untenable in some locations. It is also possible that DHS and DOS will not be able to reach a negotiated agreement with foreign financial institutions to collect the fees in some locations where the Machine Readable Visa Fee is currently collected. The visa application fee is collected from all visa applicants every time they apply for a visa with no reductions or exceptions; the SEVIS fee is collected from a select group of nonimmigrants, does not apply each time a new visa is sought, and the amount varies depending upon several factors. Further, the SEVIS fee must be associated with an I–901 form so that the payment can be linked to a specific nonimmigrant in the SEVIS system. Because these factors may complicate collection, some foreign financial institutions may not be interested in collecting the fee. Further difficulties may arise with foreign government regulations limiting the ability of the Consulate Offices to transfer funds to the United States.

Additionally, a needs analysis will be done to document the requirement for an alternative fee collection method in each individual country being considered. To avoid increased fee settlement costs that would be spread among all fee payers, the DOS pilot would be extended only post-by-post, country-by-country, on the basis of documented need. For these reasons, DHS will assess the feasibility, efficiency, and effectiveness of these pilot projects to determine whether and how SEVIS fee collection can occur through DOS consulates.

Two additional methods being explored are the use of payment clearinghouses and the establishment of direct contractual relationships with foreign financial institutions to allow the potential nonimmigrant to pay that financial institution in foreign funds, similar to the process used by DOS for visa fee payments. While DHS remains committed to providing many options for fee payment, DHS can only allow for two avenues for fee remittance at this time. The alternative types of fee remittance discussed in this section will be fully explored and piloted as appropriate; however they will not be fully implemented without a cost-benefit analysis and a needs analysis. DHS will issue further guidance and a **Federal Register** notice relating to alternative collection methods when they become feasible.

C. Verification of Fee Payment

Several commenters expressed concerns that, due to the timeframes involved in the visa application process, requiring fee payment prior to visa issuance creates an undue burden on F, M, and J visa applicants. DHS wishes to clarify that fee payment does not need to be completed prior to scheduling an interview with the consulate, or any other activities undertaken prior to the in-person application process at the consulate. However, in order to assure that fee payment can be verified for purposes of visa issuance, the fee payment must be processed at least 3 business days prior to the date upon which the alien reports to the consulate to submit the visa application and undergo a visa interview. For nonimmigrants paying the fee electronically using the Internet, and who choose to rely on electronic fee verification at the consulate, the fee must be submitted at least 3 days in advance of the interview. However, a nonimmigrant paying the fee electronically by using the Internet is able to print out a receipt at the time of fee payment, and will be able to use that printed fee receipt for immediate verification of payment. For nonimmigrants paying the fee by mail, the fee must be submitted in a manner that assures arrival at the DHS address listed on the Form I–901 at least 3 business days before the scheduled interview. This timeframe is also required for aliens who are exempt from the F, M, or J visa requirement, as described in section 212(d)(4) of the Act (*e.g.*, Canadians). For the fee to be verified electronically, the nonimmigrant must pay the fee either electronically via the Internet or by mail so that it arrives at the address listed on the I–901 form at least 3 business days prior to applying for admission at a U.S. port-of-entry. Again, a nonimmigrant paying electronically using the Internet who is able to print out the receipt at the time of fee payment will immediately be able to use that printed fee receipt for verification of payment.

Other commenters expressed concern that the use of paper receipts would lead to fraud. DHS acknowledges this concern, but also must make receipts available to nonimmigrants because the statute requires that nonimmigrants be able to present proof of fee payment before being granted certain benefits, such as admission, a visa, or change of status. At this time, certain SEVIS users (*e.g.*, DHS service centers processing change of status requests, SEVP telephone hotline) will be able to electronically verify fee payment status for nonimmigrants. DHS is working with DOS to finalize the interface that will allow consular officers overseas to see fee payment status electronically in the DOS data management system. Unfortunately, not every DOS consulate and embassy is anticipated to have electronic fee verification upon the effective date of this final rule. However, DHS believes that if fee collection were delayed until such time as paper receipts can be eliminated this would be inconsistent with Congressional statements favoring expeditious implementation of a SEVIS fee, and also with the Congressional requirement that nonimmigrants be able to present proof of fee payment before receiving benefits. See Visa Waiver Permanent Program Act of 2000 404(6), Public Law 106–396, 114 Stat 1637 (October 30, 2000); 8 U.S.C. 1372(e)(5). Therefore, at this time, DHS will issue an official paper receipt acknowledging every payment regardless of payment method used. The paper receipt will be mailed or sent via express delivery service to the address provided on the Form I–901. Additionally, anyone who submits an individual fee electronically will be able to print out an electronic receipt immediately at the time of payment for use pending the mail delivery of the official paper receipt. Exchange visitor program sponsors who submit Form I–901s and pay the fee via the bulk filing process will receive receipts via express delivery for distribution to their program participants.

While DHS will continue to provide a paper fee receipt, consular officials will use the DOS system to verify fee payment when validating Form I–20 or Form DS–2019 information, wherever possible. Even in cases where DOS can generally use the system to verify fee payment, the paper receipts will continue to serve as a secondary means of fee verification. Paper receipts will serve to assist students in demonstrating that the fee has been paid. However, a paper receipt is not required for the visa interview, admission at the port-of-entry, or any other part of the SEVIS process when proof of payment can be verified electronically. This dual system will ensure that, in instances where paper receipts sent by mail are either delayed in transit or not received at all, the issuance of the nonimmigrant visa

will proceed unimpeded; additionally, in instances where paper receipts are presented as proof of fee payment, the electronic records will serve as fraud prevention. As part of the regulatory implementation and during this initial period of dual paper and electronic fee payment verification, DHS will also initiate and maintain a telephone hotline to be used by DOS consular officers, DHS inspectors at ports-of-entry, and DHS officers adjudicating change of status cases at service centers as a backup means to allow these officials to verify the electronic record of fee payment. This dual process, in which paper receipts may be relied upon for fee verification until electronic verification is available at every consulate, is necessary to assure a timely and effective implementation of the fee payment validation process. DHS may issue a notice in the **Federal Register** to eliminate the paper receipt at some time in the future, if it has been clearly demonstrated that it is no longer necessary. In summation, non-immigrants affected by this rule are encouraged to present a paper receipt in the following cases:

- Nonimmigrants applying for an F, M, or J visa abroad should present a paper receipt to verify fee payment until such time that all consular officers can electronically verify fee payment. DHS will inform all schools and program sponsors when an electronic fee verification capability has been established at all consulates.
- Nonimmigrants exempt from the visa requirement (pursuant to section 212(d)(4) of the Act) should present a paper receipt to verify fee payment at the port-of-entry, prior to being admitted to the United States as an F, M, or J nonimmigrant, although all DHS inspectors should be able to electronically verify fee payment if a paper receipt is not available.
- Nonimmigrants applying for a change of status to F, M, or J from within the United States will not be required to send the paper receipt with their change of status application. Rather, the adjudicating officer will access SEVIS to verify payment of the fee. However, students and exchange visitors should note that if the adjudicating officer does not find verification of fee payment in SEVIS, the applicant will receive a request for evidence from the service center and the applicant may be required to submit a paper receipt in response to this request.

D. The I–901 Form

Finally, in response to the notice published in the **Federal Register** (68 FR 59800) on October 17, 2003, some commenters expressed concern about the Form I–901, Fee Remittance For Certain F, J, and M Nonimmigrants. Commenters were concerned that a fee payment was linked to a single SEVIS identification number, since a nonimmigrant may apply to more than one school or exchange visitor program, and, therefore, may have multiple I–20s or DS–2019s with multiple SEVIS identification numbers. DHS clarifies that fee verification will allow for a fee payment made on one SEVIS identification number to be applied to another SEVIS identification number issued to the same individual. Nonimmigrants are strongly encouraged to bring proof of both SEVIS identification numbers to the consulate or port-of-entry when payment has been made on a SEVIS identification number that is different than the one being used to obtain a visa or entry. DHS notes that if a new fee payment is required, as explained fully below, it must be paid, regardless of payments made on the same or different SEVIS identification numbers. In the future, multiple SEVIS identification numbers for a single nonimmigrant are likely to be augmented with the unique biometric identifier used by the United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT). This will enable positive matches where more than one record exists for a single person.

In response to comments, several minor changes are being made to the I–901 form. The titles for the name blocks are being further clarified. DHS is amending the instructions to clarify that a credit card may be used to pay the fee when the Internet version of the form is used. In addition, DHS is changing the form so that an "N" will automatically populate the first space of the SEVIS identification number to help prevent data entry errors. And finally, DHS is adding a street address to the form to allow for courier delivery of the form and payment to DHS.

III. Fee Exemption and Reduction

IIRIRA section 641provides that an alien seeking J–1 status to participate in an exchange visitor program that is sponsored by the Federal government is exempt from paying a fee. Several commenters requested clarification on how to determine which programs the Federal government sponsors. DHS clarifies that those potential J–1 exchange visitors exempt from the fee as participants in a Federal government sponsored exchange visitor program are those participating in an exchange visitor program with a program identification designator prefix of G–1, G–2, or G–3.

Commenters suggested that other students and/or exchange visitors should be exempt from the fee. Similarly, a number of commenters suggested that the fee be reduced below $100 for other programs to mirror the reduction Congress expressly provided to certain J–1 participants, including lower fees for short-term English language programs, for all English language programs, for some or all short-term programs, for part-time and full-time commuter students, and for secondary school students. As noted in the 2003 proposed rule, Congress specifically exempted from the SEVIS fee only J–1 nonimmigrants who are participating in an exchange visitor program sponsored by the Federal government, and explicitly reduced it only for certain other J–1 nonimmigrants. DHS interprets the Congressional mandate such that no other groups of nonimmigrants should be exempted from the SEVIS fee or have a reduced SEVIS fee based upon the principle of expressio unius: when one or more things of a class are expressly mentioned, others of the same class are necessarily excluded.

Additionally, DHS cannot adopt the suggestion made by some commenters, that secondary school students and exchange visitors should be exempt from the fee payment because they were not initially required to be tracked in SEVIS. DHS is requiring that all elementary and secondary non-immigrant students on F–1 and J–1 visas be tracked in SEVIS, based upon amendments to section 641(e)(1) of IIRIRA made by section 416 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107–56, 115 Stat 272 (October 26, 2001). Since these students are required to be tracked in SEVIS and are not expressly exempted from paying fees by Congress, DHS requires fee payment from them.

IV. The Frequency of the Fee

In the 2003 proposed rule, DHS suggested that aliens who paid the fee and were denied a visa would not have to pay another fee to apply for the same visa classification for a period of 9 months, and specifically sought comments on this timeframe. The majority of commenters felt that this timeframe should be extended to 12 months to accommodate the academic and program-specific annual calendars. This suggestion was accepted and adopted in this final rule.

Although DHS provided an explanation of when a new fee payment would be required in the 2003 proposed rule, several commenters requested a more detailed clarification. In the following paragraphs, DHS re-states and further clarifies exactly when a fee is initially required, and when an additional fee payment would be subsequently required by the same individual. The SEVIS fee is a one-time fee for each nonimmigrant program in which the student or exchange visitor participates. For purposes of this fee, a "single program" for an F or M student generally extends from the time that the student is granted a particular nonimmigrant status, until such time that the nonimmigrant falls out of status, changes status, or departs the United States for an extended period of time. For a J exchange visitor, a single program is defined by the category and/or sponsor at the time of initial program participation, and extends until a change of category, a transfer from a fee-exempt sponsor to a non-fee-exempt sponsor, or until such time as the nonimmigrant falls out of status or changes status. In general:

- An F or M student will be required to pay only one fee if he/she maintains continuous status in a single visa classification, or if he/she is granted a reinstatement to student status in a timely manner following a violation of status;
- A J exchange visitor will be required to pay only one fee if he/she maintains status while participating in a single exchange visitor program, or if he/she resumes status within the same program following a violation of status;
- A student or exchange visitor will be required to pay a new fee if he/she violates status and cannot or does not resume status in a program, in accordance with 8 CFR 214.2 (f)(16) and (m)(16) or 22 CFR 62.45, and subsequently returns to the United States to participate in another program;
- A student or exchange visitor will be required to pay a new fee if he/she wishes to change to another student or exchange visitor status, unless explicitly exempt; and,
- An exchange visitor will be required to pay a new fee prior to applying for a change of category.

This final rule further clarifies that an F or M student will not be required to pay a new fee upon transfer to a new school, extension of stay, change in educational level, when obtaining a new visa for re-entry for program continuation, upon a temporary absence of less than 5 months, or upon a period of approved absence in which the student is engaged in overseas study as a part of his/her U.S. educational program requirements. Further, a student will not have to pay a new fee if he/she falls out of status and files for reinstatement prior to the presumptive ineligibility deadline set forth in 8 CFR 214.2(f)(16)(i)(A) or (m)(16)(i)(A). An exchange visitor will not generally be required to pay a new fee upon transfer between programs within the same exchange visitor category. However, an exchange visitor that transfers from a fee-exempt program to a non-fee-exempt program under the same exchange visitor category, *e.g.*, a program with a prefix of G–1, G–2 or G–3, to another program with a program prefix that is not G–1, G–2 or G–3, but is within the same program category (*e.g.*, research scholar), will be required to pay the fee upon transfer. Further, as previously stated, a change of J–1 exchange visitor category will require payment of a new fee. An intending J–1 nonimmigrant will be required to pay a new fee if, after completion of an exchange visitor program, he/she wishes to return to the United States to begin a new program, even if it is in the same category. An exchange visitor will not be required to pay a new fee if he/she falls out of valid program status due to a minor or technical infraction. However, an exchange visitor will be required to pay the SEVIS fee prior to applying for reinstatement under 22 CFR 62.45 with DOS.

As previously noted, this final rule extends the period of time from 9 months to 12 months during which an alien does not need to repay the fee when re-applying for the same category of visa after initial denial. Additionally, DHS clarifies that this 12-month exemption applies to a student or exchange visitor who has been denied a change of status within the United States, and whose application is subsequently re-opened and approved. However, DHS wishes to clarify that if a visa is denied for a particular J–1 exchange visitor category, and the alien is applying for a visa in a different J–1 category, the alien will have to pay a new fee in conjunction with that visa application, even if the second application is made within the 12-month period identified previously. This restriction on J–1 applications also applies to applications for change of status to a J–1 exchange visitor program.

Where an F or M nonimmigrant is applying for reinstatement to student status, and has been out of status for a period that exceeds 5 months at the time of filing, the nonimmigrant will be required to pay a new fee to DHS prior to the adjudication of the reinstatement request. This 5-month time limit is set in accordance with the 5-month presumptive ineligibility deadline at 8 CFR 214.2(f)(16)(i)(A) and (m)(16)(i)(A). Similarly, pursuant to 22 CFR 62.45, where an exchange visitor applies for reinstatement after a substantive violation or after falling out of his/her valid J program status for longer than 120 days but less than 270 days, the exchange visitor will be required to pay a new fee prior to applying with DOS for reinstatement.

A new fee would also be required if an F, M, or J nonimmigrant changes to a non-student/exchange visitor visa classification and then wishes to return to the previously held F, M, or J status. Finally, a new fee is needed if an alien re-applies for the same visa status or for the same change in status more than 12 months after a denial is issued either overseas at a U.S. embassy or consulate, or within the United States.

The following charts outline who is exempt from paying a fee, who is required to pay a fee and when a fee payment is required, and who may pay a reduced fee:

Chart I—Fee payment *not* required if applicant is:

A continuing F, M, or J nonimmigrant who maintains that status, and whose initial Form I–20 or DS–2019 was issued before September 1, 2004, as evidenced by their SEVIS record and the issuance date on their form.

An F–2, J–2, or M–2 dependent .

A J–1 participant in an exchange visitor program sponsored by the Federal government. A program sponsored by the Federal government is identified by a program designation prefix of G–1, G–2, or G–3 .

An F–1, F–3, J–1, M–1, or M–3 nonimmigrant applying for a visa to return to the United States as a continuing student or a continuing participant of an exchange visitor program.

- This provision applies only to nonimmigrants returning to the United States to resume participation in a program that was previously begun, in which he or she has maintained status, and which has not yet been completed.
- This includes F or M nonimmigrants who will return as continuing students after a temporary absence from the United States for a period of less than 5 months in duration.
- This provision also includes F or M students returning as continuing students after working towards completion of the U.S. program in authorized overseas study.

An F–1 or F–3, nonimmigrant maintaining continuous status and

changing educational levels. Examples include F students:

- Moving directly from high school to college.
- Moving directly from a masters degree program to a doctoral program.

An F–1, F–3, M–1, or M–3 nonimmigrant transferring between approved schools at the same educational level.

A J–1 nonimmigrant transferring between programs in the same exchange visitor category where no differential fee exists. Examples include transfers:

- Between two fee-exempt programs (a transfer between G–1, G–2, or G–3 programs).
- Between two non-fee-exempt programs.
- From a non-fee-exempt program to a fee-exempt program (G–1, G–2, or G–3 program).

A nonimmigrant applying for a change of classification from within the United States between an F–1 and F–3 status, or between M–1 and M–3 status.

An F–1, F–3, J–1, M–1, or M–3 nonimmigrant requesting/applying for an extension of stay in a single program.

- "Extension" for purposes of this example applies to students who have maintained participation in a program when additional time is needed for program completion.

An alien who paid an initial fee when seeking an F–1, F–3, M–1, or M–3 visa from an embassy or consulate abroad, was denied a visa, and is applying again for a visa for the same type of program within 12 months of the initial denial.

An alien who paid an initial fee when seeking a J–1 visa from an embassy or consulate abroad, was denied a visa, and is applying again for a visa in the *same* J–1 exchange visitor category within 12 months of the initial visa denial.

- This provision does *NOT* apply to J–1 applicants who initially applied for a fee exempt program (*e.g.*, a program with a program identifier designation prefix of G–1, G–2 or G–3), and who, after visa denial, apply for a program that is not fee exempt.

A nonimmigrant who has applied for a change of status in the United States to an F, M, or J classification, had the initial application for the change of status denied for a reason other than failure to pay the SEVIS fee, and is applying for a motion to re-open the case within 12 months of the original denial.

Pursuant to SEVP discretion, certain nonimmigrants changing between F and M status due solely to a change in school classification during their course of study.

An F or M nonimmigrant applying for reinstatement of student status, who has not been out of student status for a period exceeding the presumptive ineligibility requirement set forth in 8 CFR 214.2(f)(16)(A) or 214.2(m)(16)(A).

Chart II—Fee payment of $100 *is* required if the applicant is:

An alien seeking an initial F–1, F–3, J–1, M–1, or M–3 visa from an embassy or consulate abroad for initial attendance at a DHS-approved school or initial participation in a Department of State-designated exchange visitor program that is subject to the $100 fee amount. (Specific J–1 programs not subject to the $100 fee are described in both Chart I and Chart III.)

The fee must be processed 3 business days before the consular interview, unless the applicant has a printed receipt from Internet payment. Fees will not be payable at the consulate.

An alien exempt from the visa requirement described in section 212(d)(4) of the Act, who will be applying for admission at a United States port-of-entry to begin initial attendance at a DHS-approved school or initial participation in a Department of State-designated exchange visitor program that is subject to the $100 fee amount. (Specific J–1 programs not subject to the $100 fee are described in both Chart I and Chart III.) Such fee must be processed at least 3 business days prior to making an application for admission at the port-of-entry, unless the applicant has a printed receipt from Internet payment. Fees will not be payable at the port-of-entry.

An alien in the United States seeking a change of status to F–1, F–3, J–1, M–1, or M–3 . Exceptions are listed in Chart I for instances not requiring fee payment.

A nonimmigrant who was initially granted J–1 status as a participant in an exchange visitor program sponsored by the Federal government, (*i.e.*, with a program identifier designation prefix of G–1, G–2, or G–3), and who is now transferring to another J–1 program in the same category that is not similarly sponsored (*i.e.*, has a program identifier designation prefix other than G–1, G–2, or G–3).

A J–1 nonimmigrant who is applying for a change of category within the United States, with the exception of a change to a J–1 program specifically requiring an alternate fee, as indicated in Chart III, or a program whose program identifier designation prefix is G–1, G–2, or G–3.

A J–1 nonimmigrant who is applying for reinstatement after a substantive violation, or who has been out of program status for longer than 120 days but less than 270 days during the course of his or her program.

An F or M nonimmigrant applying for reinstatement of student status, who has been out of student status for a period exceeding the presumptive ineligibility requirement set forth in 8 CFR 214.2(f)(16)(A) or 214.2(m)(16)(A).

An F or M nonimmigrant, including an F–3 or M–3 nonimmigrant, who has been absent from the United States for a period exceeding 5 months, was not working towards completion of curriculum in authorized overseas study, and now wishes to re-enter for a new F or M program of study in the United States.

Chart III—Fee payment is *reduced* to $35 if applicant is:

A J–1 nonimmigrant applying for participation in a summer work/travel, au pair, or camp counselor program.

V. Applicability of the Fee Requirement

A number of commenters to the proposed rule stated that the fee should not be implemented without adequate notice. Generally, commenters suggested that implementation be delayed to not earlier than September 2004, although one commenter felt that January 2005 would be most appropriate. Additionally, various commenters stated that fee implementation should not take place in the spring, summer, or fall due to considerations with academic and program calendars. However, Congress mandated in section 641 of the IIRIRA that the Student and Exchange Visitor Program information collection effort be funded by those aliens included in the program, and made express provisions to expedite implementation and collection of the fee. See, *e.g.*, Visa Waiver Permanent Program Act of 2000, 404, Public Law 106–396, 114 Stat. 1637 (October 30, 2000) (exempting the SEVIS fee from the Administrative Procedures Act rulemaking process in order to "ensure the expeditious, initial implementation of this section"). SEVIS is currently operational and DHS is incurring associated operating costs. As such, while the fee is not being imposed retroactively, this fee must be collected as soon as feasible. This final rule imposes the fee requirement for students and exchange visitors whose Form I–20 or Form DS–2019 is initially issued on or after September 1, 2004. In general, nonimmigrants maintaining F, M, or J status will not be subject to the fee. Further, intending F, M, or J nonimmigrants issued an I–20 or DS–2019 prior to September 1, 2004, (as evidenced by the issuance date on the form) will not be subject to the fee except as defined in the preceding charts. While some school and exchange visitor programs requested more time to

prepare for the implementation of the fee, a proposed rule on this fee was initially published in 1999 and, most recently, a revised proposal was published in October 2003. The statutory provisions and proposed rules have informed the schools and exchange visitor programs that this fee collection will occur. Moreover, DHS is collecting the fee, which is a change to the 1999 proposal that schools and exchange visitor program sponsors collect this fee. Thus, DHS believes that there has been sufficient time to prepare for fee implementation.

As noted, this rule will be effective on September 1, 2004, and will apply to potential nonimmigrants that are initially issued a Form I–20 or Form DS–2019 on or after that date. Potential nonimmigrants, for purposes of this rule, are those aliens who will apply to DOS or DHS for initial attendance as an F, M, or J nonimmigrant, certain nonimmigrants in the United States that will apply for a change of status to an F, M, or J classification, and current J–1 nonimmigrants that will apply for a J–1 category change, on or after that date. If a Form I–20 or Form DS–2019 for initial status in a new program is issued on or after the effective date, the nonimmigrant traveling on that document will be required to pay the fee. Applicants, schools, and exchange visitor program sponsors should refer to the fee pay table contained in this rule for more detailed information concerning when a fee is required.

VI. Propriety of the Fee Requirement

Some commenters stated that it is unfair to charge fees to nonimmigrants who were denied a visa, stating that these nonimmigrants receive no benefit from the program. A few commenters further stated that the fee should only be paid by those who choose to actually come to the United States, regardless of whether or not a visa is issued. These recommendations, while acknowledged, cannot be adopted by DHS. Pursuant to statutory mandate, the fee payment must be processed prior to obtaining a nonimmigrant visa.

DHS has modified the proposed rule to make the fee payable prior to obtaining a visa, rather than prior to starting the visa application process. Likewise, for aliens who are exempt from the visa requirements, the fee must be paid and processed prior to making an application for admission at a port-of-entry. However, DHS wishes to further clarify this distinction. Fee payment does not need to be completed prior to scheduling an interview with the consulate or any other activities undertaken prior to the in-person application process at the consulate. In order to assure that fee payment can be verified for purposes of visa issuance, the fee payment should be processed at least 3 business days prior to the date upon which the alien reports to the consulate to submit the visa application and undergo a visa interview, unless the alien can present a printed receipt from Internet payment. Similarly, 3 business days also must elapse between the processing of a fee and submitting an application for admission at a port-of-entry for aliens exempt from the visa provisions, as described in section 212(d)(4) of the Act, unless the alien can present a printed receipt from Internet payment. As stated in previous sections, if the visa or admission is subsequently denied and the alien applies again within 12 months, no new SEVIS fee will be required.

DHS further wishes to clarify that those nonimmigrants who are denied a visa or who are granted a visa and then choose not to come to the United States have already benefited from SEVIS. A nonimmigrant seeking F, M, or J status must prove to the consular officer granting his or her visa that he or she has been admitted by a DHS certified school or DOS designated exchange visitor program sponsor. Prior to SEVIS, nonimmigrants used hard copy forms issued by the schools or sponsors to verify their claim. These forms were subject to fraud and difficult to verify. This led to abuse of these nonimmigrant classifications as well as delays and denials of visa applications when consular officers suspected fraud. SEVIS allows nonimmigrant information to be entered into the system by certified schools or designated sponsors. The nonimmigrant is then granted a Form I–20 or Form DS–2019, which he or she can then use to apply for an F, M, or J visa. SEVIS allows for immediate electronic verification of an alien's I–20 or DS–2019 information, assisting consular officers as they determine the alien's eligibility for F, M, or J status. This constitutes a benefit for every applicant seeking student or exchange visitor status.

Further, some commenters argued that the tracking of F, M, and J nonimmigrants while they are in the United States does not benefit individuals, but rather benefits the population as a whole by increasing the security of the United States. DHS disagrees. SEVIS was developed subsequent to the discovery that some of the terrorists participating in the 1993 World Trade Center bombing and the September 11, 2001 attacks were nonimmigrants using student visas. At a time when some Americans felt that student and exchange visitor visas ought to be severely curtailed or eliminated, the development of SEVIS with its ability to maintain information on F, M, and J nonimmigrants allowed for the continued use of these visa classifications. Thus, SEVIS benefits the individual nonimmigrants able to obtain and use visas of these classifications. Additionally, when an F, M, or J nonimmigrant seeks further benefits such as employment, change of status, or reinstatement, SEVIS is used to verify their eligibility.

Further, enforcement of F, M, or J status violations benefits all F, M, or J nonimmigrants. DHS notes that these visa classifications allow nonimmigrants to enter the United States for long periods of time with benefits (such as employment opportunities) not available for many other visa classifications. Prior to SEVIS, there was widespread abuse of these visa classifications, including overstays. Widespread abuse of the F, M, and J visa classifications undermines the legitimacy of the entire foreign student and exchange visitor program. An effective enforcement program that relies upon SEVIS information to identify and initiate investigations of status violations enhances the integrity of the entire program. Enforcement oversight leads to the increased integrity of the program; it is possible to differentiate between legitimate students and exchange visitors and the status violators. This benefits the individual F, M, or J nonimmigrants who are legitimate.

SEVIS allows each F, M, or J nonimmigrant to provide easily verifiable documentation that confirms that he or she is abiding by the requirements of his or her student or exchange visitor status. Further, SEVIS creates alerts when certified schools or designated sponsors provide or fail to provide certain required information. These alerts are used to initiate investigations in which ICE enforcement officers verify whether or not a violation of status has occurred. By enforcing status violations, DHS helps ensure that the majority of students and exchange visitors in SEVIS are legitimately in status and that the data in SEVIS is reliable. Without enforcement, the violations of status that undermined the student and exchange visitor program in the past would occur again. With enforcement ensuring the integrity of SEVIS data, legitimate students and exchange visitors can provide reliable documentation of their status and avoid difficulties and delay when seeking benefits.

As previously stated, some nonimmigrants may not be granted visas or may choose not to come to the United States after their visas are granted. DHS will not refund the fee in these cases. However, fees paid in error will be refunded.

VII. Miscellaneous Comments and Concerns

A number of commenters suggested that the proposed fee will deter participation by foreign students and exchange visitors. In particular, it was noted that participation in short-term or intensive English language programs has already dropped significantly. DHS recognizes that there have been significant changes in the national security environment since September 11, 2001. However, DHS notes that while the demand for foreign student and exchange visitor visas has been down in the past 2 years, so has the demand for visas in general. Therefore, there is little reason to believe that this downward trend for students and exchange visitors is based solely upon the implementation of SEVIS. Similarly, future reduced participation (especially that already evidenced by reduced applications) will not necessarily be linked directly to the implementation of the SEVIS fee. It is noted that in many cases, compared with the overall cost of a U.S. education or participation in an exchange visitor program, the imposition of the SEVIS fee does not significantly increase the financial burden on foreign students and exchange visitor program participants.

Additionally, a few commenters expressed a belief that the imposition of this fee would deter the participation of students and exchange visitors with the most limited resources, particularly those from the least developed countries. While DHS acknowledges this possibility, the statute mandating the implementation of the fee allows for no specific fee reductions, exemptions, or delayed payments based upon a nonimmigrant's available resources or the infrastructure limitations of his/her country. Further, F, M, and J nonimmigrants are required by DHS and DOS regulations to provide evidence of sufficient financial resources to support themselves throughout their program. When considering the average cost of a temporary stay in the United States, including all related program costs, DHS does not believe that the SEVIS fee presents an additional cost burden sufficient to act as a deterrent to F, M, or J program participation. DHS notes that many schools and exchange visitor program sponsors, as well as other interested third party organizations (such as advocacy groups), already make special efforts to assist these nonimmigrants. DHS commends and encourages this assistance and, to facilitate such assistance, DHS will accept fee payment from third parties.

Regulatory Flexibility Act

I have reviewed this final rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and, by approving it, I preliminarily certify that this rule will not have a significant economic impact on a substantial number of small entities. The students and exchange visitors impacted by this rule are not considered "small entities," as that term is defined in 5 U.S.C. 601(6).

Since Congress changed the law to provide that DHS will collect the fee directly from the nonimmigrant, rather than having the school or exchange visitor program sponsor collect and remit the fee, schools and exchange visitor program sponsors will no longer need to be involved in any way with respect to the collection of the fee. However, they are free to offer assistance to their students or potential exchange visitors if they choose to do so. Exchange visitor program sponsors who choose to participate in the bulk payment process to pay the fee on behalf of their participants may incur costs associated with establishing their batch file connection with the fee payment system, as well as the costs of the fees. However, the program sponsor's assumption of these costs on behalf of their participants is voluntary and, therefore, not subject to the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule, as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the U.S. 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 U.S.-based companies to compete with foreign-based companies in domestic and export markets. As mandated by Congress, this rule levies a fee in the amount of $100 on some nonimmigrant students and exchange visitors, and a fee in the amount of $35 for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program.

Executive Order 12866

DHS is required to implement this rule under section 641(e) of IIRIRA, 8 U.S.C. 1372. This rule is considered by DHS to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review. In particular, DHS has assessed both the costs and benefits of this rule, as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this regulation justify its costs.

How Was the Amount of the Fee Determined?

The costs to the public that this rule imposes are primarily the fees that must be paid by nonimmigrant students and exchange visitors that will be processed through SEVIS prior to being admitted to the United States. DHS is required by section 641 of IIRIRA to collect a fee to recover the cost of collecting student and exchange visitor information electronically. After careful evaluation of the costs to design, develop, and accurately maintain the statutorily mandated information collection system, DHS is now imposing a fee of $100 for nonimmigrant students and most intending exchange visitors, and $35 for potential exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program. The fees imposed under this final rule will support personnel costs, ongoing system operation and maintenance costs, training costs, and other costs related to the program, as well as offset the resources necessary to ensure compliance with the regulations.

Approximately 362,400 F–1 students and 312,400 J–1 exchange visitors are expected to enter the United States in Fiscal Year 2004. Based upon historical trends, it is further estimated that as many as 10% may subsequently violate the terms of their nonimmigrant status each year. However, in an effort to compensate for the possible inaccuracies of earlier systems and data on student and exchange visitor noncompliance, the estimated number of violators has been reduced to 5%.

Using this percentage, DHS estimates 33,720 foreign students and exchange visitors might be subject to enforcement actions on an annual basis, although no actual measure of the number of student and exchange visitors who have violated their immigration status has ever been conducted. While remaining within the initial $100 statutory limitation, DHS has calculated the fee to cover the costs of systems and program office operations and maintenance, training, and personnel, including SEVIS liaison officers and ICE officers in the field. Based upon estimates of the total F, M, and J visa population and estimates of the total staff-hours that will be needed to ensure compliance with SEVIS requirements, DHS has estimated that the fee will fund approximately 60% of the personnel resources needed for compliance efforts.

Why Is the SEVIS Fee Necessary?

If DHS failed to assess a SEVIS fee, it would be in violation of the law. Additionally, should DHS either not assess the fees under this rule or assess the fees at a lesser amount, DHS would be unable to continue to implement and operate SEVIS or, at a minimum, be forced to sustain a more limited capability to ensure compliance by foreign students and exchange visitors with the requirements of SEVIS. This would be contrary to the intent of Congress in giving ICE responsibility over SEVIS. If the fees are not imposed or are imposed at a lesser amount, the public could incur the intangible impact of reduced security, as a result of a more limited ability to ensure compliance. The imposition of this fee shifts the burden of funding program operating and compliance efforts to the population whose data is actually entered and tracked in SEVIS. If the fees are not imposed, or are imposed at a lesser amount, the general public would become responsible for bearing the shortage in the funding of program implementation and conformity. This would be contrary to the explicit directive of Congress, as set out in section 641 of IIRIRA, and subsequent amendments.

What Are the Benefits of Establishing the SEVIS Fee?

SEVIS is a vital tool in protecting the public by: (1) Enhancing the process by which nonimmigrants seeking to be foreign students and exchange visitors gain admission to the United States; and (2) increasing the ability of DHS to track and monitor foreign students and exchange visitors to ensure that they arrive in the United States, show up and register at the school or be validated as participating in their exchange visitor program activity, and properly maintain their status during their stay in this country. SEVIS enables a proper balance between openness in admitting foreign students and exchange visitors into the United States and preserving the security enhanced by enforcing the law.

What Are the Costs of Establishing the SEVIS Fee?

The projected time per response for this collection of information were derived by first breaking the process into three basic components:

Learning about the Law and the Form—5 Minutes

Completion of the Form—9 Minutes

Assembling and Filing the Form—5 Minutes

Total Time per Response—19 Minutes

For all components, DHS used tests to determine completion times. People who were not conversant with immigration processes were used to determine average completion times. The Total annual reporting burden hours is 192,000. This figure was derived by multiplying the number of respondents (600,000) × frequency of response (1) × 19 minutes or (.32 hours) per response. The estimated annual public cost is $61,920,000. This figure is based on the number of respondents 600,000 multiplied by 19 minutes (.32), multiplied by $10 (average hourly rate); plus the number of respondents (600,000) × fee of $100.

Conclusion

Balanced against the costs and requirements to collect information electronically, the burden imposed by this regulation is fully justified by the benefits it provides.

Executive Order 13132

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

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

This final rule requires the use of the Form I–901, Fee Remittance Form for Certain F, J, and M Nonimmigrants. This form is considered an information collection document and subject to review and clearance under Paperwork Reduction Act procedures. On October 17, 2003, at 68 FR 59800, DHS published a notice in the **Federal Register**, soliciting public comments on the Form I–901 for a period of 60 days. The comments that were filed by the public and OMB have been addressed and reconciled in the preamble of this final rule. DHS has received OMB approval for proposed information collection, Form I–901, Fee Remittance for Certain F, J, and M Nonimmigrants (OMB No. 1653–0034) that is contained in this final rule. The costs and benefits of Form I–901 have been fully set out in the supporting statement for the Form I–901 that will be published separately in the **Federal Register**.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements, Students.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Pub. L. 107–296 116, Stat. 2135 (6 U.S.C. 1 *et. seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 2. Section 103.7(b)(1) is amended by adding the entry for Form I–901 to the listing of fees, in proper alpha/numeric sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–901. For remittance of the SEVIS fee levied on certain F, J, and M

nonimmigrant aliens—$100. For remittance of the SEVIS fee levied for J–1 au pairs, camp counselors, and participants in a summer work/travel program—$35.

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 3. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to E.O. 13323, 69 FR 241), 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1372, 1379, 1731–32; section 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

■ 4. Section 214.2 is amended by:
■ a. Adding a new paragraph (f)(19);
■ b. Adding a new paragraph (j)(5); and by
■ c. Adding a new paragraph (m)(20).
The additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(19) *Remittance of the fee.* An alien who applies for F–1 or F–3 nonimmigrant status in order to enroll in a program of study at a Department of Homeland Security (DHS)-approved educational institution is required to pay the Student and Exchange Visitor Information System (SEVIS) fee to DHS, pursuant to 8 CFR 214.13, except as otherwise provided in that section.

* * * * *

(j) * * *

(5) *Remittance of the fee.* An alien who applies for J–1 nonimmigrant status in order to commence participation in a Department of State-designated exchange visitor program is required to pay the SEVIS fee to DHS, pursuant to 8 CFR 214.13, except as otherwise provided in that section.

* * * * *

(m) * * *

(20) *Remittance of the fee.* An alien who applies for M–1 or M–3 nonimmigrant status in order to enroll in a program of study at a DHS-approved vocational educational institution is required to pay the SEVIS fee to DHS, pursuant to 8 CFR 214.13, except as otherwise provided in that section.

* * * * *

■ 5. Section 214.13 is added to read as follows:

§ 214.13 SEVIS fee for certain F, J, and M nonimmigrants.

(a) *Applicability.* Except as otherwise provided for in this section, the following aliens are required to submit a payment of $100 to the Department of Homeland Security (DHS) in advance of obtaining nonimmigrant status as a student or exchange visitor, in addition to any other applicable fees:

(1) An alien who applies for F–1 or F–3 nonimmigrant status in order to enroll in a program of study at a DHS-approved institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended, or in a program of study at any other DHS-approved academic or language-training institution including private elementary and secondary schools and public secondary schools;

(2) An alien who applies for J–1 nonimmigrant status in order to commence participation in an exchange visitor program designated by the Department of State (DOS), with a reduced fee for certain exchange visitor categories as provided in paragraphs (b)(1) and (c) of this section; and

(3) An alien who applies for M–1 or M–3 nonimmigrant status in order to enroll in a program of study at a DHS-approved vocational educational institution, including a flight school.

(b) *Aliens not subject to a fee.* No SEVIS fee is required with respect to:

(1) A J–1 exchange visitor who is coming to the United States as a participant in an exchange visitor program sponsored by the Federal government, identified by a program identifier designation prefix of G–1, G–2, or G–3;

(2) Dependents of F, M, or J nonimmigrants. The principal alien must pay the fee, when required under this section, in order for his/her qualifying dependents to obtain F–2, J–2, or M–2 status. However, an F–2, J–2, or M–2 dependent is not required to pay a separate fee under this section in order to obtain that status or during the time he/she remains in that status.

(3) A nonimmigrant described in paragraph (a) of this section whose Form I–20 or Form DS–2019 for initial attendance was issued on or before May 31, 2004.

(c) *Special Fee for Certain J–1 Nonimmigrants.* A J–1 exchange visitor coming to the United States as an au pair, camp counselor, or participant in a summer work/travel program is subject to a fee of $35.

(d) *Time for payment of SEVIS fee.* An alien who is subject to payment of the SEVIS fee must remit the fee directly to DHS as follows:

(1) An alien seeking an F–1, F–3, J–1, M–1, or M–3 visa from a consular officer abroad for initial attendance at a DHS-approved school or to commence participation in a Department of State-designated exchange visitor program, must pay the fee to DHS before issuance of the visa.

(2) An alien who is exempt from the visa requirement described in section 212(d)(4) of the Act must pay the fee to DHS before the alien applies for admission at a U.S. port-of-entry to begin initial attendance at a DHS-approved school or initial participation in a Department of State-designated exchange visitor program.

(3) A nonimmigrant alien in the United States seeking a change of status to F–1, F–3, J–1, M–1, or M–3 must pay the fee to DHS before the alien is granted the change of nonimmigrant status, except as provided in paragraph (e)(4) of this section.

(4) A J–1 nonimmigrant who is applying for a change of program category within the United Status, in accordance with 22 CFR 62.42, must pay the fee associated with that new category, if any, prior to being granted such a change.

(5) A J–1 nonimmigrant initially granted J–1 status to participate in a program sponsored by the Federal government, as defined in paragraph (b)(1) of this section, and transferring in accordance with 22 CFR 62.42 to a program that is not similarly sponsored, must pay the fee associated with the new program prior to completing the transfer.

(6) A J–1 nonimmigrant who is applying for reinstatement after a substantive violation of status, or who has been out of program status for longer than 120 days but less than 270 days during the course of his/her program must pay a new fee to DHS, if applicable, prior to being granted a reinstatement to valid J–1 status.

(7) An F or M student who is applying for reinstatement of student status because of a violation of status, and who has been out of status for a period of time that exceeds the presumptive ineligibility deadline set forth in 8 CFR 214.2(f)(16)(i)(A) or (m)(16)(i)(A), must pay a new fee to DHS prior to being granted a return to valid status.

(8) An F–1, F–3, M–1, or M–3 nonimmigrant who has been absent from the United States for a period that exceeds 5 months in duration, and wishes to reenter the United States to engage in further study in the same course of study, with the exception of students who have been working toward completion of a U.S. course of study in authorized overseas study, must pay a

new fee to DHS prior to being granted student status.

(e) *Circumstances where no new fee is required.* (1) Extension of stay, transfer, or optional practical training for students. An F–1, F–3, M–1, or M–3 nonimmigrant is not required to pay a new fee in connection with:

(i) An application for an extension of stay, as provided in 8 CFR 214.2(f)(7) or (m)(10);

(ii) An application for transfer, as provided in 8 CFR 214.2(f)(8) or (m)(11);

(iii) A change in educational level, as provided in 8 CFR 214.2(f)(5)(ii); or

(iv) An application for post-completion practical training, as provided in 8 CFR 214.2(f)(10)(ii) or (m)(14).

(2) Extension of program or transfer for exchange visitors. A J–1 nonimmigrant is not required to pay a new fee in connection with:

(i) An application for an extension of program, as provided in 22 CFR 62.43; or

(ii) An application for transfer of program, as provided in 22 CFR 62.42.

(3) Visa issuance for a continuation of study. An F–1, F–3, J–1, M–1, or M–3 nonimmigrant who has previously paid the fee is not required to pay a new fee in order to be granted a visa to return to the United States as a continuing student or exchange visitor in a single course of study, so long as the nonimmigrant is not otherwise required to pay a new fee in accordance with the other provisions in this section.

(4) Certain changes in student classification.

(i) No fee is required for changes between the F–1 and F–3 classifications, and no fee is required for changes between the M–1 and M–3 classifications.

(ii) Institutional reclassification. DHS retains the discretionary authority to waive the additional fee requirement when a nonimmigrant changes classification between F and M, if the change of status is due solely to institutional reclassification by the Student and Exchange Visitor Program during that nonimmigrant's course of study.

(5) Re-application following denial of application by consular officer. An alien who fully paid a SEVIS fee in connection with an initial application for an F–1, F–3, M–1, or M–3 visa, or a J–1 visa in a particular program category, whose initial application was denied, and who is reapplying for the same status, or the same J–1 exchange visitor category, within 12 months following the initial notice of denial is not required to repay the SEVIS fee.

(6) Re-application following denial of an application for a change of status. A nonimmigrant who fully paid a SEVIS fee in connection with an initial application for a change of status within in the United States to F–1, F–3, M–1, or M–3 classification, or for a change of status to a particular J–1 exchange visitor category, whose initial application was denied, and who is granted a motion to reopen the denied case is not required to repay the SEVIS fee if the motion to reopen is granted within 12 months of receipt of initial notice of denial.

(f) [Reserved]

(g) *Procedures for payment of the SEVIS fee.* (1) Options for payment. An alien subject to payment of a fee under this section may pay the fee by any procedure approved by DHS, including:

(i) Submission of Form I–901, to DHS by mail, along with the proper fee paid by check, money order, or foreign draft drawn on a financial institution in the United States and payable in United States currency, as provided by 8 CFR 103.7(a)(1);

(ii) Electronic submission of Form I–901 to DHS using a credit card or other electronic means of payment accepted by DHS; or,

(iii) A designated payment service and receipt mechanism approved and set forth in future guidance by DHS.

(2) Receipts. DHS will provide a receipt for each fee payment under paragraph (g)(1) of this section until such time as DHS issues a notice in the **Federal Register** that paper receipts will no longer be necessary. Further receipt provisions include:

(i) DHS will provide for an expedited delivery of the receipt, upon request and receipt of an additional fee;

(ii) If payment was made electronically, both DHS and the Department of State will accept a properly completed receipt that is printed-out electronically, in lieu of the receipt generated by DHS;

(iii) If payment was made through an approved payment service, DHS and the Department of State will accept a properly completed receipt issued by the payment service, in lieu of the receipt generated by DHS.

(3) Electronic record of fee payment. DHS will maintain an electronic record of payment for the alien as verification of receipt of the required fee under this section. If DHS records indicate that the fee has been paid, an alien who has lost or did not receive a receipt for a fee payment under this section will not be denied an immigration benefit, including visa issuance or admission to the United States, solely because of a failure to present a paper receipt of fee payment.

(4) Third-party payments. DHS will accept payment of the required fee for an alien from an approved school or a designated exchange visitor program sponsor, or from another source, in accordance with procedures approved by DHS.

(h) *Failure to pay the fee.* The failure to pay the required fee is grounds for denial of F, M, or J nonimmigrant status or status-related benefits. Payment of the fee does not preserve the lawful status of any F, J, or M nonimmigrant that has violated his or her status in some other manner.

(1) For purposes of reinstatement to F or M status, failure to pay the required fee will be considered a "willful violation" under 8 CFR 214.2(f)(16) or (m)(16), unless DHS determines that there are sufficient extenuating circumstances (as determined at the discretion of the Student and Exchange Visitor Program).

(2) For purposes of reinstatement to valid J program status, failure to pay the required fee will not be considered a "minor or technical infraction" under 22 CFR 62.45.

PART 299—IMMIGRATION FORMS

■ 6. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

■ 7. Section 299.1 is amended in the table by adding, in proper alpha/numeric sequence, the entry for "Form I–901" to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* * * * * * *		
I–901	02–09–04	Fee Remittance for Certain F, J, and M Nonimmigrants.
* * * * * * *		

■ 8. Section 299.5 is amended by:
■ a. Revising the term "INS form No." to read "Form No." in the table heading;
■ b. Revising the term "INS form title" to read "Title" in the table heading; and by
■ c. Adding the entry for Form "I–901" to the table, in proper alpha/numeric sequence.

The addition reads as follows:

§ 299.5 Display of control numbers.

* * * * *

Form No.	Title	Currently assigned OMB control No.
*	*	*
I–901	Fee Remittance For Certain F, J, and M Nonimmigrants.	1653–0034
*	*	*

Dated: June 25, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–14961 Filed 6–30–04; 8:45 am]

BILLING CODE 4410–10–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 704

Investment in Exchangeable Collateralized Mortgage Obligations

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is issuing final revisions to its regulations regarding investment in collateralized mortgage obligations (CMOs) to authorize all federal credit unions (FCUs) and corporate credit unions to invest in exchangeable CMOs representing interests in one or more SMBS subject to certain safety and soundness limitations. Currently, NCUA regulations prohibit FCUs and certain corporate credit unions from investing in stripped mortgage backed securities (SMBS) and exchangeable CMOs that represent interests in one or more SMBS. NCUA has safety and soundness concerns with direct investment in SMBS, but recognizes that some exchangeable CMOs representing interests in one or more SMBS may be safe investments for credit unions. This rule will also authorize FCUs and corporate credit unions to accept exchangeable CMOs as assets in a repurchase transaction or as collateral on a securities lending transaction regardless of whether the CMO contains SMBS. Finally, this rule contains miscellaneous technical corrections and minor changes to NCUA's Investment and Deposit Activities rule and Corporate Credit Unions rule.

DATES: This rule is effective August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Steve Sherrod, Senior Investment Officer, Office of Strategic Program Support and Planning (OSPSP) at the above address or telephone (703) 518–6620; Kim Iverson, Senior Investment Officer, Office of Strategic Program Support and Planning, at the above address or telephone (703) 518–6620; George Curtis, Corporate Program Specialist, Office of Corporate Credit Unions at the above address or telephone (703) 518–6640; or Paul Peterson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6555.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Credit Union Act permits FCUs and corporate credit unions to purchase mortgage related securities (MRS) subject to such regulations as the NCUA Board may prescribe. 12 U.S.C. 1757(15)(B). NCUA regulations generally permit the purchase of CMOs, a multi-class MRS, but not if the CMO is a stripped mortgage backed security (SMBS). 12 CFR 703.14(d) and 703.16(e); 704.5(c)(5) and (h)(4). SMBS include interest-only CMOs (IOs) and principal-only CMOs (POs).

Currently, many CMO issues contain one or more classes of exchangeable CMOs. An exchangeable CMO represents a beneficial ownership interest in a combination of two or more underlying CMOs, and the owner may pay a fee and take delivery of the underlying CMOs. In many cases, these underlying CMOs include IOs and POs.

Because NCUA regulations prohibit investment in SMBS, the regulations also prohibit investment in an exchangeable CMO that represents an interest in one or more IOs or POs. Certain exchangeable CMOs representing IOs or POs, however, do not carry the risk or raise the same safety and soundness concerns associated with direct investment in an SMBS.

On January 22, 2004, the NCUA Board issued a notice of proposed rulemaking to amend NCUA rules to authorize FCUs and corporate credit unions to invest in an exchangeable CMO representing interests in one or more IOs or POs if the exchangeable CMO meets certain conditions. 69 FR 4886 (February 2, 2004).

The first condition concerned the rate of amortization of the underlying IOs and POs. For an exchangeable CMO representing one or more IOs, the Board proposed that the notional principal of each IO must decline at the same rate as the principal on one or more non-IO CMOs included in the combination. For an exchangeable CMO representing one or more POs, the Board proposed that the principal of each PO must decline at the same rate as the notional principal of one or more IOs included in the combination or at the same rate as the principal on one or more interest-bearing CMOs included in the combination. The Board also proposed a second condition: that, at the time of purchase, the ratio of the market price of the CMO to its remaining principal balance is between .8 and 1.2, meaning that the discount or premium of the market price to par must be less than 20 points. The proposed rule also stated that credit unions may not exercise the right to exchange an exchangeable CMO if it represents an interest in one or more SMBS that would be impermissible for that credit union to hold as a separate investment.

The Board's proposal also contained several definitional changes and other technical corrections to Parts 703 and 704 of NCUA's rules and regulations. In Part 703, the Board proposed to add a definition of "collateralized mortgage obligation;" amend the definitions of "put," "call," "custodial agreement," "derivative," and "european financial options;" and change the phrase "nationally recognized statistical rating

agency" to "nationally recognized statistical rating organization." In Part 704, the Board proposed to add a definition of "derivative," amend the definitions of "small business related security" and "weighted average life," and change the phrase "interest rate risk simulation tests" to "interest rate sensitivity analysis requirements."

B. Summary of Changes From the Proposed Rule

In this final rule, the Board generally adopts the rule as proposed with some variations. The Board will permit the purchase of exchangeable CMOs representing interests in SMBS only if the CMOs satisfy the conditions established in the proposed rule. The final rule differs from the proposed rule as follows: First, the Board believes that CMOs are not appropriate for all credit unions, and notes that those with investment authority at a credit union must be qualified by education or experience to assess the risk characteristics of every investment that they make, including CMOs. Since exchangeable CMOs are a more complex investment, the final rule specifically requires that a credit union seeking to invest in exchangeable CMOs must have the expertise to apply the unique price range and amortization conditions in this rule. Second, the final rule relaxes the proposed conditions on exchangeable CMOs containing SMBS, but only for CMOs that are accepted by the credit union as assets associated with repurchase transactions or as collateral associated with securities lending transactions. Third, the rule clarifies that derivatives in the form of interest rate lock commitments and forward sales commitments on loans originated by the credit union are not prohibited. Fourth, the rule changes the NCUA office to which applications for an Investment Pilot Program should be addressed from the Office of Examination and Insurance to the Office of Strategic Program Support and Planning.

C. Public Comments

NCUA received 30 comment letters regarding the proposed rule. Many commenters supported the exchangeable CMO portion of the proposed rule without reservation, and all but a few of the remaining commenters expressed general support for the Board's intent to allow credit unions to invest in certain exchangeable CMOs containing strips. In addition, the commenters uniformly supported the miscellaneous technical corrections and clarifying amendments.

Comments Requesting Elimination of the Proposed Safety and Soundness Conditions

Several commenters supported authorizing credit unions to purchase exchangeable CMOs representing SMBS without conditions, or with significantly lesser conditions, than those NCUA proposed.

One commenter suggested that NCUA authorize credit unions to buy any exchangeable CMO containing strips, without restriction, so long as the credit union does not exercise the exchange option. This commenter believes a simple statement that the exchange option cannot be exercised is sufficient, and no other conditions are necessary.

Several commenters thought that, for corporate credit unions, NCUA should focus on the interest rate risk associated with the corporate's aggregate portfolio and should not place conditions on particular individual investments such as exchangeable CMOs and strips. These commenters believe that the proposed conditions on the purchase of individual exchangeable CMOs are unnecessary and overly complex in light of the requirement that corporate credit unions conduct a periodic interest rate sensitivity analysis on their investment portfolios and limit their risk exposure as described in § 704.8. 12 CFR 704.8.

Two commenters said NCUA should allow FCUs to invest directly in SMBS, and in exchangeable CMOs containing SMBS, without restriction when used for the purpose of reducing balance sheet risk and earnings volatility.

One commenter suggested that credit unions qualifying under NCUA's Regulatory Flexibility Program, 12 CFR part 742, should be exempt from the Part 703 prohibition on investment in SMBS and any prohibition on exchangeable CMOs representing SMBS.

A few commenters question the need for the proposed rule. One of these commenters stated, "It appears that the proposed rule is basically seeking to prevent practices that simply do not exist today. Current rules clearly state that investing in IO and PO Strips is not allowed because of the highly volatile nature of theses investments. Exchangeable CMOs are clearly not MBS strips." The commenter requests a simple clarification that "a credit union may not exercise the right to exchange an exchangeable CMO nor undertake any re-engineering of mortgage cash flows that results in the creation of securities that are impermissible under NCUA rules and regulations."

While the Board appreciates these comments, it is concerned about the volatile and risky nature of SMBS. The Board believes SMBS are generally inappropriate investments for credit unions and are not normally well suited to risk reduction practices such as hedging, even in a well-run credit union or a credit union conducting aggregate portfolio interest rate risk analysis. On the other hand, the Board agrees that very few, if any, of the existing exchangeable CMOs that represent SMBS are overly risky. In fact, the Board believes that all or almost all currently existing exchangeable CMOs satisfy the safety and soundness conditions imposed in the final rule. Nevertheless, the securities market is constantly evolving, and the Board anticipates that, in the future, the market may include exchangeable CMOs representing SMBS that do have the substantive risks of those SMBS. The Board wants to make clear in this rulemaking how federal credit unions and corporate credit unions can determine the permissibility of any exchangeable CMO representing SMBS.

Comments Expressing Concern About the Complexity of Exchangeable CMO Investments

Two commenters remarked on the complexity of the exchangeable CMO investment and thought credit unions that invest in them should demonstrate a complete understanding of how these products work and the risks they entail. Another commenter noted that SMBS are volatile and should only play a limited role, if any, as a core investment. Still another commenter thought NCUA should not authorize credit unions to purchase exchangeable CMOs representing SMBS because of a perceived lack of expertise and sophistication at some credit unions.

The Board appreciates that CMOs may offer a unique risk-reward tradeoff among the various investments permitted for FCUs by the FCU Act, and that CMOs may play an important role in a well-diversified investment portfolio. Still, the Board agrees with these commenters that CMOs are not appropriate investments for all credit unions and notes that NCUA's investment regulation specifically provides that "those with investment authority [at the FCU] must be qualified by education or experience to assess the risk characteristics of investments and investment transactions." 12 CFR 703.3(g). The Board expects FCUs and corporate credit unions to understand each and every investment that they make, including CMOs, and how those investments work. Since exchangeable CMOs are a more complex investment and subject to unique price range and amortization conditions, the final rule

specifically requires that a credit union seeking to invest in exchangeable CMOs must have the expertise to apply the price range and amortization conditions.

Comments on the Proposed Price Range Condition for Exchangeable CMOs Representing SMBS

Most commenters thought the .8 to 1.2 range on the ratio of purchase price to par was a reasonable method to separate out those exchangeable CMOs with risk characteristics substantially similar to the underlying SMBS. Some commenters suggested variations on this condition.

A few commenters suggest NCUA should treat exchangeable CMOs containing PO strips differently from those containing IO strips. These commenters believe NCUA should allow the purchase at less than 80% of par of exchangeable CMOs containing PO strips. One commenter states "A PO that trades at a steep discount (less than 80% of par) is often less risky than one that trades at par, since it can result in significant gains if paid off early, and it does not have more downside risk than a PO CMO purchased at greater than 80% of par."

One commenter suggests that, to keep an exchangeable CMO from having the substantive risk characteristics of an IO, NCUA should limit the coupon rate of the exchangeable CMO so that it is no higher than the coupon on the underlying collateral. The same commenter suggests that, to keep the exchangeable CMO from having the substantive risk characteristics of a PO, NCUA should require eligible securities to have a coupon at the time of issuance that is above a readily available index. For example, if the security has an expected weighted average life of 3 years at the time of issuance, the coupon for such security can not be below the yield on a 3 year Treasury plus a set spread, such as 50 basis points.

One commenter suggests that a credit union with adequate staff and resources to monitor an exchangeable CMO would be in the best position to determine acceptable risk tolerances and set premium or discount limits.

As stated above, the Board believes some safety and soundness conditions on exchangeable CMOs representing SMBS are necessary. The conditions in the final rule are simple enough for a credit union to apply but specific enough to ensure that any exchangeable CMO that meets these conditions will not be too risky. Any FCU that wishes to invest in exchangeable CMOs subject to different conditions may always submit an application seeking NCUA approval for an investment pilot program. 12 CFR 703.19.

Comments on the Proposed Amortization Condition for Exchangeable CMOs Representing SMBS

Another commenter asks that NCUA provide more flexibility to allow for underlying IOs to amortize slower than other non-IO portions of exchangeable CMO. The commenter believes this would allow the investing credit union to receive more income over the life of the investment.

The Board notes that if the underlying IO amortized more slowly than the other non-IO portions of the exchangeable CMO, the credit union would eventually hold an exchangeable CMO that represented only an IO and had risk characteristics identical to the underlying IO. This is unacceptable to the Board and demonstrates the need for the amortization condition.

One commenter agreed with the proposed price range restrictions but stated that the amortization limitations do not materially advance NCUA's safety and soundness objectives and may unnecessarily restrict the investment flexibility of FCUs.

Another commenter also supported the "pre-purchase" condition, meaning the limit on premium or discount of purchase price to par, but objects to the "post-purchase" condition, meaning the amortization requirement. This commenter believes the latter issue is addressed for corporate credit unions by the interest rate modeling of § 704.8, and that "to require separate risk management requirements specific to exchangeable CMOs is both unnecessary and overly burdensome."

The Board does not intend that the amortization condition be a "post-purchase" condition; that is, that the credit union monitor amortization speeds after purchase. The Board is changing the language of the final rule to clarify that the determination of whether a particular CMO complies with the amortization condition will be made at the time of purchase from estimates of amortization speeds contained in the offering circular or other official information.

Comments on the Proposed Requirement That Credit Unions Not Exercise the Exchange Option if One or More of the Underlying CMOs Is an Impermissible IO or PO

One commenter suggests NCUA allow credit unions that hold otherwise permissible exchangeable CMOs representing IOs or POs to exchange the CMO for the underlying securities if the credit union immediately sells the impermissible IOs or POs resulting from the exchange. This commenter believes this approach will allow the credit union flexibility to make best use of the exchangeable CMO feature.

As stated above, the Board is generally opposed to credit unions holding SMBS. A credit union that invests in exchangeable CMOs representing impermissible SMBS and that would like to exercise the exchange option may, however, submit an investment pilot program for NCUA review and possible approval. 12 CFR 703.19.

Miscellaneous Comments on the Proposed Exchangeable CMO Rule

Several commenters state a final prospectus may not be available for CMOs purchased at time of issue. These commenters ask that, for investments in exchangeable CMOs made before issuance of the final prospectus, NCUA authorize the credit union to rely on a preliminary prospectus to determine if the CMO is exchangeable and, if so, permissible. If the preliminary prospectus does not indicate the CMO will be exchangeable or does not include decrement tables allowing the CU to determine if the underlying investments amortize at the same rate, these commenters want NCUA to allow the credit union to purchase and hold the investment even if the final prospectus indicates the investment is an exchangeable CMO that fails the amortization requirement.

The Board appreciates that credit unions may have difficulty ascertaining if a CMO purchased at or before issuance satisfies the requirements of this final rule. Before committing to purchase, a credit union should use its best efforts to examine the available documentary information to determine if the CMO will satisfy the requirements. If necessary, a credit union may seek assurances of compliance from the issuer. If an FCU uses its best efforts, and then determines after purchase that the CMO fails the requirements of this rule, it should process the investment as specified in its investment policies for investments that fail a requirement of part 703. 12 CFR 703.3(j). Corporate credit unions should process the failed investment under the Investment Action Plan provisions of the corporate rule. 12 CFR 704.10.

Several commenters ask that NCUA provide guidance to credit unions currently holding exchangeable CMOs that fail the requirements in the proposed rule, preferring that NCUA allow credit unions to continue holding

these CMOs. One of these commenters also noted that in 1993 NCUA indicated some CMOs created from SMBS might be permissible. *See* 58 FR 34868 (June 30, 1993) ("The NCUA Board notes that recently some CMOs and REMICs have been created from stripped mortgage-backed securities. These instruments are permitted if they can pass the high-risk security tests.") This 1993 statement has lead the commenter to believe that there is no regulatory prohibition on CMOs containing strips.

As stated above, the Board believes that few, if any, existing exchangeable CMOs will fail the conditions established in this final rule. Any CMOs that do fail the conditions should be processed under the FCU's investment policies or, for corporate credit unions, under an Investment Action Plan. 12 CFR 703.3(j), 704.10. While the NCUA recognized in 1993 that some CMOs had been created from SMBS and that they might be permissible if they passed the high-risk securities test (HRST), any CMO that had substantially the same risk characteristics as the underlying SMBS would likely have failed the HRST. NCUA regulations no longer require HRS testing. To ensure that credit unions do not hold exchangeable CMOs with significant risks from the underlying SMBS, those CMOs must satisfy the conditions provided in this final rule.

One corporate credit union commenter is particularly concerned about the effect of the rule on repurchase transactions. FCUs and corporate credit unions may only accept as repurchase assets those assets in which they can invest directly, and this commenter believes it will be difficult to identify and cull out impermissible exchangeable CMOs. 12 CFR 703.13(c)(1), 704.5(d)(2). The commenter states that, since credit unions are a small portion of the repurchase market, it is improbable that repurchase custodians will restrict repurchase assets to those CMOs qualifying under this proposal. Given the speed and volume of repurchase transactions, the commenter believes it would be onerous for a credit union to review each CMO that is part of the repurchase transaction to ensure it complies with this proposal.

The Board appreciates the commenter's concerns about the difficulties in separating out impermissible assets and collateral in these transactions. The Board also notes that, in both repurchase transactions and securities lending transactions, a credit union relies primarily on the creditworthiness of the counterparty to get its money back and only secondarily on the repurchase asset or securities lending collateral. The potential for interest rate risk and price volatility associated with CMOs representing interests in SMBS is less significant in these transactions. Accordingly, the Board is amending parts 703 and 704 to indicate that exchangeable CMOs representing interests in SMBS may be used as assets or collateral in investment repurchase transactions or securities lending transactions, and the price range and amortization conditions need not be applied to exchangeable CMOs used in this way.

One commenter seeks clarification that the rule applies to both privately issued and federally issued CMOs. The Board intends that the rule apply to all exchangeable CMOs, regardless of issuer.

Miscellaneous Comments on the Exchangeable CMO Rule

Two commenters suggested that NCUA modify the proposed exchangeable CMO definition, and references to CMOs in the rule text, to reflect that the purchase of a CMO is an investment in a particular class of a CMO structure, not in an instrument that is a multi-class CMO structure. The Board agrees with the commenter and amends the final rule text as suggested.

One commenter states credit unions should set aggregate investment limits, not NCUA. Another commenter states NCUA should amend the call report to obtain additional detail on exchangeable CMOs. These issues are beyond the scope of the proposed rule and are not addressed in the final rule.

Comments on the Proposed Miscellaneous Technical Corrections and Clarifying Amendments

One commenter states that, if NCUA does not intend with its proposed change to the definition of derivative to expand or contract permissible types of investments for credit unions, it should say so.

The Board does not intend, through its changes to the derivative definition and other provisions of parts 703 and 704 that reference that definition, to either expand or contract the universe of investments currently permissible for FCUs and corporate credit unions.

D. Other Changes in the Final Rule

The Board is making additional changes not triggered by specific public comment. The Board proposed to change the definition of derivative so it would track the definition of derivative instrument used under generally accepted accounting principles (GAAP) while excluding those derivatives that, under GAAP, do not have to be recognized as an asset or liability in the statement of financial condition and be valued at fair market value. The Board's intent was to ensure that: (1) The regulatory definition of derivative is consistent with the accounting definition; and (2) embedded options in an otherwise permissible investment that are not significant enough to require separate accounting under GAAP would not cause that investment to be considered a prohibited derivative. The final rule retains the Board's intent but achieves it through different rule text. Instead of excluding embedded options from the regulatory definition of derivative, the final rule recognizes them as derivatives but excludes them from the general prohibition on derivatives.

Recently, the GAAP definition of derivative evolved to include loan commitments that relate to the origination of mortgage loans that will be held for sale. Financial Accounting Standards Board Statement of Financial Accounting Standards No. 149, *Amendment of Statement 133 on Derivative Instruments and Hedging Activities*, paragraph 6(c): FCUs routinely enter into loan commitments such as interest rate lock commitments and forward sales commitments on mortgage loans they originate for sale, and the Board supports such commitments when used in a prudent manner. Since NCUA will now tie the regulatory definition of derivative to the GAAP definition, the general prohibition on derivatives could be interpreted to prohibit these types of commitments. Accordingly, the final rule clarifies that derivatives in the form of interest rate lock commitments and forward sales commitments on loans FCUs originate are excluded from the general prohibition on derivatives. Similarly, for corporate credit unions, the general prohibition on derivatives excludes forward sales commitments on loans originated by another credit union where the corporate intends to purchase the loan.

Currently, the responsibility for receipt and initial processing of applications under the Investment Pilot Program rests with NCUA's Office of Examination and Insurance. 12 CFR 703.19(c). The final rule transfers that responsibility to NCUA's Office of Strategic Program Support and Planning.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to

describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under $10 million in assets). This rule expands the investment authority granted to FCUs and corporate credit unions. The 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 the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. NCUA currently has OMB clearance of part 703 and part 704 collection requirements. *See* OMB No. 3133–0133 for 12 CFR part 703, and OMB No. 3133–0129 for 12 CFR part 704.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The executive order states that: "[n]ational action limiting the policymaking discretion of the states shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance." Portions of the rule apply to all corporates that accept funds from federally insured credit unions, including state chartered corporates. The Board believes that the protection of such credit unions from unwarranted investment in risky investments, and ultimately the National Credit Union Share Insurance Fund (NCUSIF), warrants application of the proposed rule to all corporates, including both state chartered and nonfederally insured. The rule does not impose additional costs or burdens on the states or affect the states' ability to discharge traditional state government functions. NCUA has determined that this rule may have an occasional direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. However, the potential risk to the NCUSIF without the final changes justifies them.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget is reviewing whether this rule is a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR Part 703

Credit unions, Investments.

12 CFR Part 704

Corporate Credit unions, Reporting and Recordkeeping Requirements.

By the National Credit Union Administration Board on June 24, 2004.

Becky Baker,

Secretary of the Board.

■ For the reasons stated in the preamble, NCUA amends 12 CFR part 703 and 12 CFR part 704 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

■ 2. Amend § 703.2 to revise the definitions of *Call, Custodial Agreement, Derivatives*, and *Put*, and add definitions of *Collateralized Mortgage Obligation* and *Exchangeable Collateralized Mortgage Obligation*, as follows:

§ 703.2 Definitions.

* * * * *

Call means an option that gives the holder the right to buy a specified quantity of a security at a specified price during a fixed time period.

* * * * *

Collateralized Mortgage Obligation (CMO) means a multi-class mortgage related security.

* * * * *

Custodial Agreement means a contract in which one party agrees to hold securities in safekeeping for others.

* * * * *

Derivatives means any derivative instrument as defined under generally accepted accounting principles (GAAP).

* * * * *

Exchangeable Collateralized Mortgage Obligation means a class of a collateralized mortgage obligation (CMO) that, at the time of purchase, represents beneficial ownership interests in a combination of two or more underlying classes of the same CMO structure. The holder of an exchangeable CMO may pay a fee and take delivery of the underlying classes of the CMO.

* * * * *

Put means an option that gives the holder the right to sell a specified quantity of a security at a specified price during a fixed time period.

* * * * *

■ 3. Amend § 703.8 by revising the second sentence of paragraph (b)(3) to read as follows:

§ 703.8 Broker-dealers.

* * * * *

(b) * * *

(3) * * * The Federal credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information.

* * * * *

■ 4. Amend § 703.9 by revising the second sentence of paragraph (d) to read as follows:

§ 703.9 Safekeeping of investments.

* * * * *

(d) * * * The Federal credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information.

* * * * *

■ 5. Amend § 703.14 to revise paragraph (g)(4) and paragraph (g)(13) introductory text to read as follows:

§ 703.14 Permissible investments.

* * * * *

(g) * * *

(4) The options' expiration dates are no later than the maturity date of the share certificate.

* * * * *

(13) The Federal credit union provides its board of directors with a monthly report detailing at a minimum:

* * * * *

■ 6. Amend § 703.16 to revise paragraphs (a) and (e) and add paragraph (f) to read as follows:

§ 703.16 Prohibited investments.

(a) *Derivatives.* A Federal credit union may not purchase or sell financial derivatives, such as futures, options, interest rate swaps, or forward rate swaps. This prohibition does not apply to:

(1) Any derivatives permitted under §§ 701.21(i) and 703.14(g) of this chapter;

(2) Embedded options not required under GAAP to be accounted for separately from the host contract; and

(3) Interest rate lock commitments or forward sales commitments made in connection with a loan originated by the Federal credit union.

* * * * *

(e) *Stripped mortgage backed securities (SMBS).* A Federal credit union may not invest in SMBS or securities that represent interests in SMBS except as described in paragraphs (1) and (3) below.

(1) A Federal credit union may invest in and hold exchangeable collateralized mortgage obligations (exchangeable CMOs) representing beneficial ownership interests in one or more interest-only classes of a CMO (IO CMOs) or principal-only classes of a CMO (PO CMOs), but only if:

(i) At the time of purchase, the ratio of the market price to the remaining principal balance is between .8 and 1.2, meaning that the discount or premium of the market price to par must be less than 20 points;

(ii) The offering circular or other official information available at the time of purchase indicates that the notional principal on each underlying IO CMO should decline at the same rate as the principal on one or more of the underlying non-IO CMOs, and that the principal on each underlying PO CMO should decline at the same rate as the principal, or notional principal, on one or more of the underlying non-PO CMOs; and

(iii) The credit union staff has the expertise dealing with exchangeable CMOs to apply the conditions in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(2) A Federal credit union that invests in an exchangeable CMO may exercise the exchange option only if all of the underlying CMOs are permissible investments for that credit union.

(3) A Federal credit union may accept an exchangeable CMO representing beneficial ownership interests in one or more IO CMOs or PO CMOs as an asset associated with an investment repurchase transaction or as collateral in a securities lending transaction. When the exchangeable CMO is associated with one of these two transactions, it need not conform to the conditions in paragraphs (e)(1)(i) and (ii) of this section.

(f) *Other prohibited investments.* A Federal credit union may not purchase residual interests in collateralized mortgage obligations, real estate mortgage investment conduits, or small business related securities.

■ 7. Amend § 703.19 by revising the introductory language of paragraph (c) to read as follows:

§ 703.19 Investment Pilot Program.

* * * * *

(c) A third-party seeking approval of an investment pilot program must submit a request to the Director of the Office of Strategic Program Support and Planning that addresses the following items:

* * * * *

PART 704—CORPORATE CREDIT UNIONS

■ 8. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1781, and 1789.

■ 9. Amend § 704.2 to add definitions of *Derivatives* and *Exchangeable collateralized mortgage obligation,* and to revise the definitions of *Small business related security* and *Weighted average life,* as follows:

§ 704.2 Definitions.

* * * * *

Derivatives means any derivative instrument as defined under generally accepted accounting principles (GAAP).

* * * * *

Exchangeable collateralized mortgage obligation means a class of a collateralized mortgage obligation (CMO) that, at the time of purchase, represents beneficial ownership interests in a combination of two or more underlying classes of the same CMO structure. The holder of an exchangeable CMO may pay a fee and take delivery of the underlying classes of the CMO.

* * * * *

Small business related security means a security as defined in section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53)), *e.g.,* a security that is rated in 1 of the 4 highest rating categories by at least one nationally recognized statistical rating organization, and represents an interest in 1 or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company. This definition does not include Small Business Administration securities permissible under § 107(7) of the Act.

* * * * *

Weighted average life means the weighted-average time to the return of a dollar of principal, calculated by multiplying each portion of principal received by the time at which it is expected to be received (based on a reasonable and supportable estimate of that time) and then summing and dividing by the total amount of principal.

* * * * *

■ 10. Amend § 704.5 by revising paragraphs (h)(1) and (h)(4) and adding paragraph (h)(5) to read as follows:

§ 704.5 Investments.

* * * * *

(h) * * *

(1) Purchasing or selling derivatives, except for embedded options not required under GAAP to be accounted for separately from the host contract or forward sales commitments on loans to be purchased by the corporate credit union;

* * * * *

(4) Purchasing mortgage servicing rights, small business related securities, residual interests in collateralized mortgage obligations, residual interests in real estate mortgage investment conduits, or residual interests in asset-backed securities; and

(5) Purchasing stripped mortgage backed securities (SMBS), or securities that represent interests in SMBS, except as described in subparagraphs (i) and (iii) below.

(i) A corporate credit union may invest in exchangeable collateralized mortgage obligations (exchangeable CMOs) representing beneficial ownership interests in one or more interest-only classes of a CMO (IO CMOs) or principal-only classes of a CMO (PO CMOs), but only if:

(A) At the time of purchase, the ratio of the market price to the remaining principal balance is between .8 and 1.2, meaning that the discount or premium

of the market price to par must be less than 20 points;

(B) The offering circular or other official information available at the time of purchase indicates that the notional principal on each underlying IO CMO should decline at the same rate as the principal on one or more of the underlying non-IO CMOs, and that the principal on each underlying PO CMO should decline at the same rate as the principal, or notional principal, on one or more of the underlying non-PO CMOs; and

(C) The credit union investment staff has the expertise dealing with exchangeable CMOs to apply the conditions in paragraphs (h)(5)(i)(A) and (B) of this section.

(ii) A corporate credit union that invests in an exchangeable CMO may exercise the exchange option only if all of the underlying CMOs are permissible investments for that credit union.

(iii) A corporate credit union may accept an exchangeable CMO representing beneficial ownership interests in one or more IO CMOs or PO CMOs as an asset associated with an investment repurchase transaction or as collateral in a securities lending transaction. When the exchangeable CMO is associated with one of these two transactions, it need not conform to the conditions in paragraphs (h)(5)(i)(A) or (B) of this section.

■ 11. Amend § 704.8 by revising paragraph (a)(4) to read as follows:

§ 704.8 Asset and liability management.

(a) * * *

(4) Policy limits and specific test parameters for the interest rate sensitivity analysis requirements set forth in paragraph (d) of this section; and

* * * * *

[FR Doc. 04–14762 Filed 6–30–04; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–223–AD; Amendment 39–13699; AD 2004–13–17]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0070 series airplanes, that currently requires a one-time inspection to detect loose bolts attaching the gustlock counter-bracket to the pulley on the elevator tension regulator (control) assembly, and corrective action if necessary. This AD instead requires a modification of the elevator tension control mechanism. This AD also revises the applicability to include additional airplanes. The actions specified by this AD are intended to prevent restricted elevator movement and consequent reduced controllability of the airplane. This AD is intended to address the identified unsafe condition.

DATES: Effective August 5, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–09–11, amendment 39–11720 (65 FR 30529, May 12, 2000), which is applicable to certain Fokker Model F.28 Mark 0070 series airplanes, was published in the **Federal Register** on April 15, 2004 (69 FR 19950). The proposed AD would require modifying the elevator tension control mechanism and revising the applicability to include additional airplanes.

Comments

We provided the public the opportunity to participate in developing this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Cost Impact

This AD affects about 75 airplanes of U.S. registry. The actions take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts will be provided to operators at no cost. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,875, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11720 (65 FR 30529, May 12, 2000), and by adding a new airworthiness directive (AD), amendment 39–13699, to read as follows:

2004–13–17 Fokker Services B.V.: Amendment 39–13699. Docket 2002–NM–223–AD. Supersedes AD 2000–09–11, Amendment 39–11720.

Applicability: Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category, equipped with elevator tension control assemblies having any part number (P/N) D78179–405, –407, –409, –411, or –413.

Compliance: Required as indicated, unless accomplished previously.

To prevent restricted elevator movement and consequent reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD, modify the elevator tension control mechanism in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–081, dated January 1, 2002; or Fokker Component Service Bulletin D78179–27–017, dated January 1, 2002.

Parts Installation

(b) As of the effective date of this AD, no person may install an elevator tension control assembly on any airplane, unless the assembly has been modified and reidentified in accordance with the requirements of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) The actions must be done in accordance with Fokker Service Bulletin SBF100–27–081, dated January 1, 2002; or Fokker Component Service Bulletin D78179–27–017, dated January 1, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in Dutch airworthiness directive 2002–058, dated April 29, 2002.

Effective Date

(e) This amendment becomes effective on August 5, 2004.

Issued in Renton, Washington, on June 17, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–14576 Filed 6–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–204–AD; Amendment 39–13700; AD 2004–13–18]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Astra SPX, and 1125 Westwind Astra Series Airplanes; and Model Gulfstream 100 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Gulfstream Aerospace LP Model Astra SPX, and 1125 Westwind Astra series airplanes; and Model Gulfstream 100 airplanes. This AD requires a one-time inspection of the outboard doors of the main landing gear (MLG) for evidence of impact with the surrounding structure, and for damage to the door seals and seal channels; measurements for adequate gaps and clearances; and related investigative and corrective actions, if necessary. This action is necessary to prevent damage to or breakage of the MLG outboard doors, which could result in the loss of a door during flight, and consequent damage to the airplane and injury to people or damage to property on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective August 5, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of August 5, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Gulfstream Aerospace LP Model Astra SPX, and 1125 Westwind Astra series airplanes; and Model Gulfstream 100 airplanes was published in the **Federal Register** on May 3, 2004 (69 FR 24103). That action proposed to require a one-time inspection of the outboard doors of the main landing gear (MLG) for evidence of impact with the surrounding structure, and for damage to the door seals and seal channels; measurements for adequate gaps and clearances; and related investigative and corrective actions, if necessary.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 125 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact

of the AD on U.S. operators is estimated to be $130,000, or $1,040 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–13–18 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39–13700. Docket 2003–NM–204–AD.

Applicability: Gulfstream Aerospace LP Model Astra SPX, and Westwind Astra 1125 series airplanes; and Model Gulfstream 100 airplanes; as listed in Gulfstream Service Bulletin 100–32–223, Revision 2, dated June 2, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to or breakage of the main landing gear (MLG) outboard doors, which could result in the loss of a door during flight, and consequent damage to the airplane and injury to people or damage to property on the ground, accomplish the following:

Inspections and Measurements

(a) Except as provided by paragraph (b) of this AD: Within 250 flight hours after the effective date of this AD, do general visual inspections of the MLG outboard doors for evidence of impact with the surrounding structure, measure door gap clearances, and do any related investigative and corrective actions, as applicable, by accomplishing all of the actions per Part A of the Accomplishment Instructions of Gulfstream Service Bulletin 100–32–223, Revision 2, dated June 2, 2003. Do the applicable related investigative and corrective actions prior to further flight following the inspections.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Repair of Cracks or Delamination, If Necessary

(b) If any evidence of cracking or delamination is found on any MLG door during the inspection for delamination or cracking required by paragraph (a) of this AD: Before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Administration of Israel (CAAI) (or its delegated agent).

No Reply Requirement

(c) Although the service bulletin describes procedures for completion and submission of a service reply card, this AD would not require those actions.

Actions Accomplished Per a Previous Release of the Service Bulletin

(d) Actions accomplished before the effective date of this AD per Gulfstream Service Bulletin 100–32–223, Revision 1, dated May 22, 2003, are considered acceptable for compliance with the corresponding actions specified in paragraph (a) of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Gulfstream Service Bulletin 100–32–223, Revision 2, dated June 2, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in Israeli airworthiness directive 32–03–03–04 R3, dated June 24, 2003.

Effective Date

(g) This amendment becomes effective on August 5, 2004.

Issued in Renton, Washington, on June 18, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–14575 Filed 6–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–274–AD; Amendment 39–13701; AD 2004–13–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4; Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (Collectively Called A300–600); and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and A300 B4; Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600); and Model A310 series airplanes. This AD requires an inspection to determine the part number of certain passenger/crew escape slides; and related investigative action and corrective action, if necessary. This action is necessary to prevent the failure of an escape slide to deploy during emergency evacuation, which could impede an evacuation and result in injury to flightcrew and passengers. This action is intended to address the identified unsafe condition.

DATES: Effective August 5, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and A300 B4; Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600); and Model A310 series airplanes was published in the **Federal Register** on May 3, 2004 (69 FR 24099). That action proposed to require an inspection to determine the part number of certain passenger/crew escape slides; and related investigative action and corrective action, if necessary.

Comments

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

Conclusion

We have determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

We estimate that 202 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $195 per slide.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–13–19 Airbus: Amendment 39–13701. Docket 2003–NM–274–AD.

Applicability: Model A300 B2 and A300 B4; Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600); and Model A310 series airplanes; equipped with Goodrich escape slides; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of an escape slide to deploy during emergency evacuation, which could impede an evacuation and result in injury to flightcrew and passengers, accomplish the following:

Service Bulletin Reference

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

(1) For Model A300 B2 and A300 B4 series airplanes: Airbus Service Bulletin A300–25A0475, dated October 3, 2003;

(2) For Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600) series airplanes: Airbus Service Bulletin A300–25A6184, dated October 3, 2003; and

(3) For Model A310 series airplanes: Airbus Service Bulletin A310–25A2165, dated October 3, 2003.

Note 1: These service bulletins reference Goodrich Alert Service Bulletin 7A1296/7A1298–25A345, dated October 15, 2003, as an additional source of service information for accomplishment of the inspection and modification.

Inspections and Corrective Action

(b) Within 180 days after the effective date of this AD: Do an inspection to determine the part number (P/N) of the passenger/crew door escape slides. If any Goodrich P/N 7A1298–001, 7A1298–002, 7A1296–001, or 7A1296–002 is found during the inspection, prior to further flight, do the related investigative action, any applicable

corrective action, and replace the slide with a new or modified slide which has a girt with the correct P/N. Do all actions per the applicable service bulletin.

Parts Installation

(c) As of the effective date of this AD, no person may install on any airplane a Goodrich escape slide having P/N 7A1298–001, 7A1298–002, 7A1296–001, or 7A1296–002, unless the related investigative action and any applicable corrective action has been done per paragraph (b) of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A300–25A0475, dated October 3, 2003; Airbus Service Bulletin A300–25A6184, dated October 3, 2003; or Airbus Service Bulletin A310–25A2165, dated October 3, 2003; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in French airworthiness directive F–2003–435, dated December 10, 2003.

Effective Date

(f) This amendment becomes effective on August 5, 2004.

Issued in Renton, Washington, on June 18, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–14574 Filed 6–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2004–16971; Airspace Docket 02–ANM–14]

Correction to Class E Airspace; Durango, CO

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in airspace designated as Class E 700 feet above the surface, 6.1 mile radius around Durango-La Plata County Airport; Durango, CO.

DATES: 0901 UTC, September 2, 2004.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

Airspace Designations and Reporting Points Document 7400.9L dated September 2, 2003, and effective September 16, 2003, describes the Class E5 700 feet above the surface of the earth airspace as 6.1 mile radius distance around Durango-La Plata County Airport, Durango, CO. An error was discovered in the radius distance of that airspace. This action corrects that error.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Correction to Final Rule

■ The radius distance for the Class E 700 feet above the surface of the earth airspace as published in Airspace Designations and Reporting Points Document 7400.9L, dated September 2, 2003, and effective September 16, 3003 is corrected 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 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points; dated September 2, 2003, and effective September 16, 2003; is corrected as follows:

Paragraph 6005 Class E Airspace extending upward from 700-feet above the surface.

* * * * *

ANM CO E 5 Durango, CO [Revised]
Durango-La Plata County Airport, CO
(lat. 37°09′05″N, long. 107°45′14″W)
Durango VOR/DME
(lat. 37°09′12″N, long. 107°44′59″W)

That airspace extending upward from 700 feet above the surface within a 6.8 mile radius of Durango-La Plata County Airport, and within 4.3 miles each side of the Durango VOR/DME 224° radial extending from the 6.8 mile radius to 15.2 miles southwest of the VOR/DME; that airspace extending upward from 1,200 feet above the surface bounded by a line from lat. 37°07′59″N, long. 107°25′54″W; to lat. 37°05′30″N, long. 107°18′17″W; to lat. 36°35′00″N, long. 107°53′32″W; to lat. 36°58′00″N, long. 108°25′02″W; to lat. 37°31′30″N, long. 107°47′02″W; to lat. 37°21′41″N, long. 107°33′52″W; thence clockwise via the 15.3-mile radius of the Durango VOR/DME, to the point of beginning, excluding the airspace within the Farmington, NM class E airspace area and all Federal Airways.

* * * * *

Issued in Seattle, Washington, on June 8, 2004.

John Warner,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 04–13826 Filed 6–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 161

Automatic Identification System; Vessel Carriage Requirement

CFR Correction

In Title 33 of the Code of Federal Regulations, Parts 125 to 199, revised as of July 1, 2003, on page 565, in § 161.15, the last sentence of paragraph (b) is corrected to read as follows:

§ 161.15 Purpose and intent.

* * * * *

(b) * * * These reports are consolidated into three reports (sailing plan, position, and final).

[FR Doc. 04–55515 Filed 6–30–04; 8:45 am]

BILLING CODE 1505–01–D

LIBRARY OF CONGRESS

36 CFR Parts 701, 702, 704, and 705

[Docket No. LOC 04–1]

Reproduction, Compilation and Distribution of News Transmissions; Miscellaneous Amendments

AGENCY: Library of Congress.

ACTION: Final rule.

SUMMARY: Since neither the Federal Register Act nor the Administrative

Procedures Act has binding effect on legislative branch, the Library of Congress is not required to publish its regulations in the CFR. However, because the purpose of the CFR is to "notify industry, general business, and the people" (*P. & W.R.R.* v. *Stover,* 60 F. Supp. 587 (S.D. Ill. 1945)), it is appropriate for the Library to continue publishing those regulations which affect the rights and responsibilities of, and are restrictions on, the public. In addition to removing several regulations and therefore renumbering rules in chapter VII, the Library has issued a final regulation, which was authorized by the American Television and Radio Archives Act, to prescribe standards and conditions under which the Librarian may reproduce, compile, and distribute transmission programs which consist of a regularly scheduled newscast or on-the-spot coverage of news events. This new regulation is added as part 705.

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Pugh, General Counsel, Office of the General Counsel, Library of Congress, Washington, DC 20540–1050. Telephone No. (202) 707–6316. For information on part 705, contact Emily Vartanian, Assistant General Counsel. Telephone No. (202) 707–7205.

SUPPLEMENTARY INFORMATION: The Regulation added as part 705 implements certain provisions of the American Television and Radio Archives Act, 2 U.S.C. 170, which was enacted in 1976. Section 170(b) of title 2 authorizes the Librarian to prescribe regulations to reproduce, compile, and distribute television and radio transmission programs of regularly scheduled newscasts or on-the-spot coverage of news events. The Regulation provides definitions of relevant terms, describes the authority and procedures for Library of Congress staff to make reproductions of such newscasts and on-the-spot coverage of news events, and outlines procedures for the disposition and use of such copies by the Library of Congress. In addition, the Regulation authorizes Library of Congress staff to make compilations of recordings, provided that they are not edited, and also authorizes the Library to reproduce these compilations for preservation, security or distribution purposes under specified conditions. The Regulation further provides that Library of Congress staff may distribute such reproductions by loan to a researcher under certain circumstances and by deposit in a library or archive meeting the requirements of 17 U.S.C. 108(a). At the same time, the Regulation requires Library staff to advise recipients of such reproductions that they may be used for research only and not for reproduction or performance.

List of Subjects in 36 CFR Parts 701, 702, 704 and 705

Archives and records, Libraries, Motion pictures.

Final Regulation

■ In consideration of the foregoing the Library of Congress amends 36 CFR chapter VII as follows:

PART 701—PROCEDURES AND SERVICES

■ 1. Revise part 701 to read as follows:

Sec.

Authority: 2 U.S.C. 136; 18 U.S.C. 1017.

§ 701.1 Information about the Library.

(a) *Information about the Library.* It is the Library's policy to furnish freely information about the Library to the media. All requests from the media, for other than generally published information and Library records, should be referred to the Public Affairs Office. For information about access to, service of, and employment with the Library of Congress, go to *http://www.loc.gov.*

(b) *Public Affairs Office.* The Public Affairs Office shall have the principal responsibility for responding to requests for information about the Library from representatives of the media; giving advice to Library officers and staff members on public-relations and public-information matters; keeping the Librarian and other officers informed of important developments in this field; and promoting the resources and activities of the Library.

(1) During regular office hours (8:30 a.m. to 5 p.m.) telephone operators shall refer requests for information, from the media only, about the Library to the Public Affairs Office. All other requests for information shall be referred to the National Reference Service or other appropriate offices of the Library.

(2) All other Library offices and staff members who receive inquiries directly from representatives of the media for information about the Library, other than generally published information, shall refer such inquiries to the Public Affairs Office.

(3) The Public Affairs Office shall respond directly to inquiries concerning the Library, calling upon other offices to supply information to it as necessary, or shall arrange for other offices or staff members, as appropriate, to supply such information directly and report back to Public Affairs after the contact has been made. Requests for Library of Congress records, however, shall be made in accordance with 36 CFR part 703.

(4) When the Public Affairs Office is closed (evenings, Saturdays, Sundays, and holidays), requests from the media for information about the Library shall be referred to the Public Affairs Officer at his/her home. In the event that person is not available, inquiries shall be referred to the Acting Public Affairs Officer, or, in turn, a designated public affairs specialist.

(c) *Other Library Units and Staff Members.* All Other Library Units and Staff Members shall be responsible for keeping the Public Affairs Office fully and promptly informed of contacts with the press, except in those instances of routine reference inquiries; supplying the Public Affairs Office with any data it requires in order to respond to inquiries from representatives of the media; and reporting promptly to the Public Affairs Office substantive contacts with media representatives about the Library and its policies or activities.

§ 701.2 Acquisition of Library material by non-purchase means.

(a) *Gifts.* It is the policy of the Library of Congress to foster the enrichment of its collections through gifts of materials within the terms of the Library's acquisitions policies. In implementing this policy, division chiefs and other authorized officers of the Library may undertake, as representatives of the Library, preliminary negotiations for gifts to the Library. However, responsibility for formal acceptance of gifts of material and for approval of conditions of such gifts rests with The Librarian of Congress or his designee. The Chief, African/Asian Acquisitions and Overseas Operations Division, Chief, Anglo-American Acquisitions Division, and Chief, European and Latin American Acquisitions Division are responsible for routine gifts in the geographic areas covered by their divisions.

(b) *Deposits.* (1) The Anglo-American Acquisitions Division is the only division in the Library authorized to make technical arrangements, formally negotiate for the transportation of materials and conditions of use at the Library, and prepare written Agreements of Deposit to formalize these negotiations. The term "deposit" is used to mean materials which are placed in the custody of the Library for

general use on its premises, but which remain the property of their owners during the time of deposit and until such time as title in them may pass to the Library of Congress. A deposit becomes the permanent property of the Library when title to it is conveyed by gift or bequest. A deposit may be withdrawn by the owner rather than conveyed to the Library. A deposit shall be accompanied by a signed Agreement of Deposit.

(2) It is the policy of the Library of Congress to accept certain individual items or special collections as deposits when: permanent acquisition of such materials cannot be effected immediately; the depositors give reasonable assurance of their intention to donate the materials deposited to the United States of America for the benefit of the Library of Congress; the Library of Congress determines that such ultimate transfer of title will enrich its collections; and the depositors agree that the materials so deposited may be available for unrestricted use or use in the Library under reasonable restrictions.

(c) *Conditional Gifts of Material to the Library.* In cases where donors wish to attach conditions of use, negotiating officers cannot commit the Library to acceptance of such conditions. The Librarian of Congress or designee will consult the appropriate division and service unit officers and the General Counsel to ascertain whether the conditions are generally acceptable.

§ 701.3 Methods of disposition of surplus and/or duplicate materials.

(a) *Exchange.* All libraries may make selections on an exchange basis from the materials available in the "Exchange/Transfer" category. The policy governing these selections is that exchange be made only when materials of approximately equal value are expected to be furnished in return within a reasonable period. Dealers also may negotiate exchanges of this type for items selected from available exchange materials, but surplus copyright deposit copies of works published after 1977 shall not knowingly be exchanged with dealers. Offers of exchange submitted by libraries shall be submitted to the Chief of the African/Asian Acquisitions and Overseas Operations Division, Anglo-American Acquisitions Division, or European/Latin American Acquisitions Division, or their designees, as appropriate, who shall establish the value of the material concerned. Offers from dealers shall be referred to the Chief of the Anglo-American Acquisitions Division. Exchange offers involving materials valued at $1,000 or more must be approved by the Acquisitions Division Chief; offers of $10,000 or more must be approved by the Director for Acquisitions and Support Services; and offers of $50,000 or more must be approved by the Associate Librarian for Library Services. The Library also explicitly reserves the right to suspend, for any period of time it deems appropriate, the selection privileges of any book dealer who fails to comply fully with any rules prescribed for the disposal of library materials under this section or any other pertinent regulations or statutes.

(b) *Transfer of materials to Government Agencies.* Library materials no longer needed by the Library of Congress, including the exchange use mentioned above, shall be available for transfer to Federal agency libraries or to the District of Columbia Public Library, upon the request of appropriate officers of such entities, and may be selected from both the "Exchange/Transfer" and "Donation" categories. Existing arrangements for the transfer of materials, such as the automatic transfer of certain classes of books, etc., to specified Government libraries, shall be continued unless modified by the Library.

(c) *Donations of Library materials to educational institutions, public bodies, and nonprofit tax-exempt organizations in the United States.* It is the Library's policy, in keeping with the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471 *et seq.*, which does not cover the Library of Congress, to use materials no longer needed for any of the purposes mentioned above to strengthen the educational resources of the Nation by enriching the book collections of educational institutions (full-time, tax-supported or nonprofit schools, school systems, colleges, universities, museums, and public libraries), public bodies (agencies of local, State, or Federal Government), and nonprofit tax-exempt organizations (section 501 of the Internal Revenue Code of 1954, 26 U.S.C. 501, by authorizing the Anglo-American Acquisitions Division to donate to such groups in the United States any materials selected by their representatives. Eligibility to participate in the donation program shall be limited as defined by procedures established by the Anglo-American Acquisitions Division.

(d) *Disposition of residue.* Library materials not needed for the collections of the Library, for its exchange and transfer programs, for sale, or for donation, and which, in the opinion of the Chief, Anglo-American Acquisitions Division, have no commercial value, may be turned over to the General Services Administration (GSA) to be disposed of in accordance with standard Government practice.

§ 701.4 Contracting Officers.

While the Librarian of Congress may sign any agreement, certain other offices of the Library have been delegated authority to contract for materials and services on behalf of the Library of Congress. Contact the Office of the General Counsel of the Library at 202–707–6316 for information on specific delegations.

§ 701.5 Policy on authorized use of the Library name, seal, or logo.

(a) *Purpose.* The purpose of this part is three-fold:

(1) To assure that the Library of Congress is properly and appropriately identified and credited as a source of materials in publications.

(2) To assure that the name or logo of the Library of Congress, or any unit thereof, is used only with the prior approval of the Librarian of Congress or his designee; and

(3) To assure that the seal of the Library of Congress is used only on official documents or publications of the Library.

(b) *Definitions.* (1) For the purposes of this part, publication means any tangible expression of words or thoughts in any form or format, including print, sound recording, television, optical disc, software, online delivery, or other technology now known or hereinafter created. It includes the whole range of tangible products from simple signs, posters, pamphlets, and brochures to books, television productions, and movies.

(2) *Internal Library publication* means a publication over which any unit of the Library has complete or substantial control or responsibility.

(3) *Cooperative publications* are those in which the Library is a partner with the publisher by terms of a cooperative publishing agreement.

(4) *Commercial publications* are those known or likely to involve subsequent mass distribution, whether by a for-profit or not-for-profit organization or individual, which involve a cooperative agreement. A commercial publication can also include a significant number of LC references and is also approved by the LC office that entered into a formal agreement. Noncommercial publications are those which are produced by non-commercial entities.

(5) *Internet sites* are those on-line entities, both commercial and non-commercial, that have links to the Library's site.

(6) *Library logo* refers to any official symbol of the Library or any entity thereof and includes any design officially approved by the Librarian of Congress for use by Library officials.

(7) *Seal* refers to any statutorily recognized seal.

(c) *Credit and recognition policy.* (1) The name "Library of Congress," or any abbreviation or subset such as "Copyright Office" or "Congressional Research Service," thereof, is used officially to represent the Library of Congress and its programs, projects, functions, activities, or elements thereof. The use of the Library's name, explicitly or implicitly to endorse a product or service, or materials in any publication is prohibited, except as provided for in this part.

(2) The Library of Congress seal symbolizes the Library's authority and standing as an official agency of the U.S. Government. As such, it shall be displayed only on official documents or publications of the Library. The seal of the Library of Congress Trust Fund Board shall be affixed to documents of that body as prescribed by the Librarian of Congress. The seal of the National Film Preservation Board shall be affixed to documents of that body as prescribed by the Librarian of Congress. Procedures governing the use of any Library of Congress logo or symbol are set out below. Any person or organization that uses the Library Seal or the Seal of the Library of Congress Trust Fund Board in a manner other than as authorized by the provisions of this section shall be subject to the criminal provisions of 18 U.S.C. 1017.

(3) Questions regarding the appropriateness of the use of any Library logos or symbols, or the use of the Library's name, shall be referred to the Public Affairs Officer.

(4) Cooperative Ventures. (i) Individual, commercial enterprises or non-commercial entities with whom the Library has a cooperative agreement to engage in cooperative efforts shall be instructed regarding Library policy on credit, recognition, and endorsement by the officer or manager with whom they are dealing.

(ii) Ordinarily, the Library logo should appear in an appropriate and suitable location on all cooperative publications. The Library requires that a credit line accompany reproductions of images from its collections and reflect the nature of the relationship such as "published in association with * * *."

(iii) The size, location, and other attributes of the logo and credit line should be positioned in such a way that they do not imply Library endorsement of the publication unless such endorsement is expressly intended by the Library, as would be the case in cooperative activities. Use of the Library name or logo in any context suggesting an explicit or implicit endorsement may be approved in only those instances where the Library has sufficient control over the publication to make changes necessary to reflect Library expertise.

(iv) Library officers working on cooperative projects shall notify all collaborators of Library policy in writing if the collaboration is arranged through an exchange of correspondence. All uses of the Library of Congress's name, seal or logo on promotional materials must be approved by the Public Affairs Officer, in consultation with the Office of the General Counsel, in advance. A statement of Library policy shall be incorporated into the agreement if the terms of the collaboration are embodied in any written instrument, such as a contract or letter of understanding. The statement could read as follows:

Name of partner recognizes the great value, prestige and goodwill associated with the name, "Library of Congress" and any logo pertaining thereto. *Name of partner* agrees not to knowingly harm, misuse, or bring into disrepute the name or logo of the Library of Congress, and further to assist the Library, as it may reasonably request, in preserving all rights, integrity and dignity associated with its name. Subject to the Library's prior written approval over all aspects of the use and presentation of the Library's name and logo, the *Name of Partner* may use the name of the Library of Congress in connection with publication, distribution, packaging, advertising, publicity and promotion of the _____, produced as a result of this Agreement. The Library will have fifteen (15) business days from receipt of *Name of partner's* written request to approve or deny with comment such requests for use of its name or logo.

(d) *Noncommercial Users.* Library officers assisting individuals who are noncommercial users of Library resources shall encourage them to extend the customary professional courtesy of acknowledging their sources in publications, including films, television, and radio, and to use approved credit lines.

(1) Each product acquired for resale by the Library that involves new labeling or packaging shall bear a Library logo and shall contain information describing the relevance of the item to the Library or its collections. Items not involving new packaging shall be accompanied by a printed description of the Library and its mission, with Library logo, as well as the rationale for operating a gift shop program in a statement such as, "Proceeds from gift shop sales are used to support the Library collections and to further the Library's educational mission."

(2) Electronic Users. Links to other sites from the Library of Congress's site should adhere to the Appropriate Use Policy for External Linking in the Internet Policies and Procedures Handbook. Requests for such linkage must be submitted to the Public Affairs Office for review and approval.

(3) Office Systems Services shall make available copies of the Library seal or logo in a variety of sizes and formats, including digital versions, if use has been approved by the Public Affairs Officer, in consultation with the Office of General Counsel.

(4) Each service unit head shall be responsible for devising the most appropriate way to carry out and enforce this policy in consultation with the General Counsel and the Public Affairs Officer.

(e) *Prohibitions and Enforcement.* (1) All violations, or suspected violations, of this part, shall be reported to the Office of the General Counsel as soon as they become known. Whoever, except as permitted by laws of the U.S., or with the written permission of the Librarian of Congress or his designee, falsely advertises or otherwise represents by any device whatsoever that his or its business, product, or service has been in any way endorsed, authorized, or approved by the Library of Congress shall be subject to criminal penalties pursuant to law.

(2) Whenever the General Counsel has determined that any person or organization is engaged in or about to engage in an act or practice that constitutes or will constitute conduct prohibited by this part or a violation of any requirement of this part, the General Counsel shall take whatever steps are necessary, including seeking the assistance of the U.S. Department of Justice, to enforce the provisions of the applicable statutes and to seek all means of redress authorized by law, including both civil and criminal penalties.

PART 702—CONDUCT ON LIBRARY PREMISES

■ 2. Revise part 702 to read as follows:

Sec.

Authority: Sec. 1, 29 Stat. 544; 2 U.S.C. 136.

§ 702.1 Applicability.

The rules and regulations in this part apply to all Federal property under the charge and control of the Librarian of Congress and to all persons entering in or on such property.

§ 702.2 Conduct on Library premises.

(a) All persons using the premises shall conduct themselves in such manner as not to affect detrimentally the peace, tranquility, and good order of the Library. Such persons shall:

(1) Use areas that are open to them only at the times those areas are open to them and only for the purposes for which those areas are intended;

(2) Comply with any lawful order of the police or of other authorized individuals; and

(3) Comply with official signs of a restrictive or directory nature.

(b) All persons using the premises shall refrain from:

(1) Creating any hazard to oneself or another person or property, such as by tampering with fire detection and/or security equipment and devices, by fighting, by starting fires, or by throwing or deliberately dropping any breakable article, such as glass, pottery, or any sharp article, or stones or other missiles;

(2) Using Library facilities for living accommodation purposes, such as unauthorized bathing, sleeping, or storage of personal belongings, regardless of the specific intent of the individual;

(3) Engaging in inordinately loud or noisy activities;

(4) Disposing of rubbish other than in receptacles provided for that purpose;

(5) Throwing articles of any kind from or at a Library building or appurtenance;

(6) Committing any obscene or indecent act such as prurient prying, indecent exposure, and soliciting for illegal purposes;

(7) Removing, defacing, damaging, or in any other way so misusing a statue, seat, wall, fountain, or other architectural feature or any tree, shrub, plant, or turf;

(8) Stepping upon or climbing upon any statue, fountain, or other ornamental architectural feature or any tree, shrub, or plant;

(9) Bathing, wading, or swimming in any fountain;

(10) Painting, marking or writing on, or posting or otherwise affixing any handbill or sign upon any part of a Library building or appurtenance, except on bulletin boards installed for that purpose and with the appropriate authorization;

(11) Bringing any animal onto Library buildings and turf other than dogs trained to assist hearing or visually impaired persons;

(12) Threatening the physical well-being of an individual; and

(13) Unreasonably obstructing reading rooms, food service facilities, entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots in such manner as to impede or disrupt the performance of official duties by the Library staff or to prevent Library patrons from using or viewing the collections.

(c) Public reading rooms, research facilities, and catalog rooms are designated as nonpublic forums. As such, they shall be used only for quiet scholarly research or educational purposes requiring use of Library materials. All persons using these areas shall comply with the rules in effect in the various public reading rooms, shall avoid disturbing other readers, and shall refrain from engaging in disruptive behavior, including but not limited to (1) Eating, drinking, or smoking in areas where these activities are expressly prohibited;

(2) Using loud language or making disruptive noises;

(3) Using any musical instrument or device, loudspeaker, sound amplifier, or other similar machine or device for the production or reproduction of sound, except for devices to assist hearing or visually impaired persons, without authorization;

(4) Interfering by offensive personal hygiene with the use of the area by other persons;

(5) Spitting, defecating, urinating, or similar disruptive activities;

(6) Intentionally abusing the furniture or furnishings in the area;

(7) Intentionally damaging any item from the collections of the Library of Congress or any item of Library property;

(8) Using computing terminals for purposes other than searching or training persons to search the Library's data bases or those under contract to the Library, or misusing the terminals by intentional improper or obstructive searching; and

(9) Using the Library's photocopy machines or microfilm reader-printers for purposes other than copying Library materials, for copying that violates the copyright law (Title 17 U.S.C.), or for copying in violation of posted usage restrictions, *e.g.*, "staff only."

(10) Performing any other inappropriate or illegal act, such as accessing or showing child pornography, online or otherwise on Library premises; and

(11) failing to wear appropriate clothing in Library facilities, including, but not limited to, footwear (shoes or sandals) and shirts.

(12) any behavior or interaction by a member of the public that unnecessarily hinders staff from performing the Library's public service functions.

§ 702.3 Demonstrations.

(a) Library buildings and grounds are designated as limited public forums, except for those areas designated as nonpublic forums. However, only Library grounds (defined in 2 U.S.C. 167j), not buildings, may be utilized for demonstrations, including assembling, marching, picketing, or rallying. In addition, as the need for the determination of other matters arises, the Librarian will determine what additional First Amendment activities may not be permitted in a limited public forum. In making such determination, The Librarian will consider only whether the intended activity is incompatible with the primary purpose and intended use of that area.

(b) The Director, Integrated Support Services, shall designate certain Library grounds as available for demonstrations. Persons seeking to use such designated areas for the purpose of demonstrations shall first secure written permission from the Director, Integrated Support Services. An application for such permission shall be filed with Facility Services no later than four business days before the time of the proposed demonstration and shall include:

(1) The name of the organization(s) or sponsor(s) of the demonstration;

(2) The contact person's name and telephone number;

(3) The proposed purpose of the demonstration;

(4) The proposed location of the demonstration;

(5) The date and hour(s) planned for the demonstration;

(6) The anticipated number of demonstrators;

(7) A concise statement detailing arrangements for the prompt cleanup of the site after the demonstration;

(8) Any request for permission to use loudspeakers, microphones, or other amplifying devices, hand held or otherwise; and

(9) A signed agreement by the applicant(s) to comply with Library regulations and terms and conditions established for the demonstration.

(c) Upon receipt of an application, Facility Services shall forward the

application, along with any comments and recommendations, to the Director, Integrated Support Services, within one business day of the office's receipt of said application. The Director, Integrated Support Services, shall respond to the request within three business days of his or her receipt of said application. The Director, Integrated Support Services, shall request advice from the Office of the General Counsel on any legal questions arising from said application.

(d) Permission to demonstrate shall be based upon:

(1) The availability of the requested location;

(2) The likelihood that the demonstration will not interfere with Library operations or exceed city noise limitations as defined by District of Columbia regulations; and

(3) The likelihood that the demonstration will proceed peacefully in the event that a volatile situation in the United States or abroad might lead to a potentially harmful threat toward the Capitol complex, including Library buildings and grounds.

§ 702.4 Photographs.

(a) The policy set out herein applies to all individuals who are photographing Library of Congress buildings.

(b) Special permission is not required for photographing public areas, if no tripods, lights or other specialized equipment is used. Public areas do not include reading rooms, exhibition areas or other areas where photographing is prohibited by signage.

(c) For all other photographing, requests for permission must be made at least one week prior to the photographing. The Director of Communications, or his/her designee, is authorized to grant or deny permission, in writing, to photograph the interior of Library buildings and may set the conditions under which the photographing may take place. Such conditions may include provision for a fee for services rendered consistent with the Library's policies and procedures for the revolving fund under 2 U.S.C. 182b.

§ 702.5 Gambling.

Participation in any illegal gambling, such as the operation of gambling devices, the conduct of an illegal pool or lottery, or the unauthorized sale or purchase of numbers or lottery tickets, on the premises is prohibited.

§ 702.6 Alcoholic beverages and controlled substances.

(a) The use of alcoholic beverages on the premises is prohibited except on official occasions for which advance written approval has been given and except for concessionaires to whom Library management has granted permission to sell alcoholic beverages on the premises.

(b) The illegal use or possession of controlled substances on the premises is prohibited.

§ 702.7 Weapons and explosives.

Except where duly authorized by law, and in the performance of law enforcement functions, no person shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, while on the premises.

§ 702.8 Use and carrying of food and beverages in Library buildings.

Consumption of food and beverages in Library buildings is prohibited except at point of purchase or other authorized eating places. Under no circumstances may food or beverages be carried to the bookstacks or other areas where there exists significant risk to Library materials or property or where there may result a detraction from the dignity or efficiency of public service.

§ 702.9 Inspection of property.

(a) Individuals entering Library buildings do so with the understanding that all property in their possession including, but not limited to, suitcases, briefcases, large envelopes, packages, and office equipment may be inspected.

(b) Upon entering the Library buildings privately owned office machines including but not limited to typewriters, computing machines, stenotype machines, and dictating machines, shall be registered with the police officer at the entrance to buildings for the purpose of controlling such equipment.

(c) In the discharge of official duties, Library officials are authorized to inspect Government-owned or furnished property assigned to readers and the general public for their use, such as cabinets, lockers, and desks. Unauthorized property or contraband found in the possession of members of the Library staff, readers, or the general public as a result of such inspections will be subject to confiscation by Library officials.

§ 702.10 Protection of property.

(a) Any person who shall steal, wrongfully deface, injure, mutilate, tear, or destroy library materials, or any portion thereof, shall be punished by a fine of not more than $1,000 or imprisoned not more than 3 years, or both (18 U.S.C. 641; 18 U.S.C. 1361; 18 U.S.C. 2071).

(b) Any person who embezzles, steals, purloins, or, without authority, disposes of anything of value of the United States, or willfully injures or commits any depredation against any Government property shall be punished by a fine of not more than $10,000 or imprisoned not more than 10 years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. (18 U.S.C. 641; 18 U.S.C. 1361.)

§ 702.11 Smoking in Library buildings.

Smoking in Library areas is prohibited except in those areas specifically designated for this purpose.

§ 702.12 Space for meetings and special events.

Information about the use of space for meeting and special events at the Library can be found at *http://www.loc.gov/about/facilities/index.html*, or by accessing the Library's home page at *http://www.loc.gov* and following the link "About the Library" to "Event Facilities."

§ 702.13 Soliciting, vending, debt collection, and distribution of handbills.

(a) The soliciting of alms and contributions, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, the offering or exposing of any article for sale, or the collecting of private debts on the grounds or within the buildings of the Library is prohibited. This rule does not apply to national or local drives for funds for welfare, health, or other purposes sponsored or approved by The Librarian of Congress, nor does it apply to authorized concessions, vending devices in approved areas, or as specifically approved by the Librarian or designee.

(b) Distribution of material such as pamphlets, handbills, and flyers is prohibited without prior approval.

(c) Peddlers and solicitors will not be permitted to enter Library buildings unless they have a specific appointment, and they will not be permitted to canvass Library buildings.

§ 702.14 Penalties.

(a) Persons violating provisions of 2 U.S.C. 167a to 167e, inclusive, regulations promulgated pursuant to 2 U.S.C. 167f, this part 702, or other applicable Federal laws relating to the Library's property, including its collections, are subject to removal from the premises, to arrest, and to any additional penalties prescribed by law.

(b) Upon written notification by the Director of Security, disruptive persons may be denied further access to the

premises and may be prohibited from further use of the Library's facilities.

(1) Within three workdays of receipt of such notification, an affected individual may make a written request, including the reasons for such a request, to the Director of Security for a reconsideration of said notification.

(2) The Director of Security shall respond within three workdays of receipt of such request for reconsideration and may, at his or her option, rescind, modify, or reaffirm said notification.

(c) Readers who violate established conditions and/or procedures for using material are subject to penalties to be determined by or in consultation with the unit head responsible for the custody of the material used.

(1) When a reader violates a condition and/or procedure for using material, the division chief or head of the unit where the infraction occurred may, upon written notification, deny further access to the material, or to the unit in which it is housed, to be determined by the nature of the infraction and the material involved.

(2) Within five workdays of receipt of such notification, the reader may make a written request, including the reasons for such request to the Associate Librarian for that service unit, or his/her designee, for a reconsideration of said notification.

(3) The Associate Librarian for that service unit, or his/her designee, shall respond within five workdays of receipt of such request for reconsideration and may rescind, modify, or reaffirm said notification, as appropriate.

(4) Repeated violations of established conditions and/or procedures for using material may result in denial of further access to the premises and further use of the Library's facilities or revocation of the reader's User Card, in accordance with established access regulations.

(5) Mutilation or theft of Library property also may result in criminal prosecution, as set forth in 18 U.S.C. 641, 1361, and 2071; and 22 D.C. Code 3106.

(6) In certain emergency situations requiring prompt action, the division chief or head of the unit where the infraction occurred may immediately deny further access to the material or unit prior to formally taking written action. In such cases, the reader shall be notified, in writing, within three days of the action taken and the reasons therefor. The reader then may request reconsideration.

(7) A copy of any written notification delivered pursuant to this part shall be forwarded to the Captain, Library Police, the service unit, and the Director, Integrated Support Services, for retention.

■ 3. Revise part 704 to read as follows:

PART 704—NATIONAL FILM REGISTRY OF THE LIBRARY OF CONGRESS

§ 704.1 Films selected for inclusion in the National Film Registry.

After the reauthorization of the National Film Registry Act, only the list of films selected for the year of publication will be printed. For a complete list of films included in the National Film Registry, see *http://lcweb.loc.gov/film/nfrchron.html.*

Authority: Pub. L. 102–307, 106 Stat. 267 (2 U.S.C. 179).

■ 4. Remove part 705.

■ 5. Add a new part 705 to read as follows:

PART 705—REPRODUCTION, COMPILATION, AND DISTRIBUTION OF NEWS TRANSMISSIONS UNDER THE PROVISIONS OF THE AMERICAN TELEVISION AND RADIO ARCHIVES ACT

Sec.

Authority: 2 U.S.C. 136, and 170.

§ 705.1 Scope and purpose of this part.

The purpose of this part is to implement certain provisions of the American Television and Radio Archives Act, 2 U.S.C. 170. Specifically, this part prescribes rules pertaining to the reproduction, compilation, and distribution by the Library of Congress, under section 170(b) of title 2 of the United States Code, of television and radio transmission programs consisting of regularly scheduled newscasts or on-the-spot coverage of news events.

§ 705.2 Authority.

Section 170(b) of Title 2 authorizes the Librarian, with respect to a transmission program which consists of a regularly scheduled newscast or on-the-spot coverage of news events, to prescribe by regulation standards and conditions to reproduce, compile, and distribute such a program as more particularly specified in the statute.

§ 705.3 Definitions.

For purposes of this part:

(a) The terms copies, fixed, phonorecords and transmission program, and their variant forms, have the meanings given to them in section 101 of title 17 of the United States Code. For the purpose of this part, the term transmission includes transmission via the Internet, cable, broadcasting, and satellite systems, and via any other existing or future devices or processes for the communication of a performance or display whereby images or sounds are received beyond the place from which they are sent. 17 U.S.C. 101; H.R. Rep. No. 94–1476, at 64 (1976).

(b) The term regularly scheduled newscasts means transmission programs in any format that report on current events, regardless of quality, subject matter, or significance, and that air on a periodic basis, (including but not limited to daily, weekly, or quarterly), or on an occasional basis, but not on a special, one-time basis. The term on-the-spot coverage of news events refers to transmission programs in any format that report on reasonably recent current events, regardless of quality, subject matter, or significance, and that are aired in a timely manner but not necessarily contemporaneously with the recording of the events.

(c) The term staff for the purpose of this part includes both Library employees and contractors.

§ 705.4 Reproduction.

(a) Library of Congress staff acting under the general authority of the Librarian of Congress may reproduce fixations of television and radio transmission programs consisting of regularly scheduled newscasts or on-the-spot coverage of news events directly from transmissions to the public in the United States in accordance with section 170(b) of title 2 of the United States Code. Recording may be accomplished in the same or another tangible form as the original transmission. The choice of programs selected for recording will be made consistent with the purpose of, and based on the criteria set forth in, the American Television and Radio Archives Act at 2 U.S.C. 170(a), and on Library of Congress acquisition policies in effect at the time of recording.

(b) Specific notice of an intent to copy a transmission program will ordinarily not be given. In general, the Library of Congress will seek to copy off-the-air selected portions of the programming transmitted by both noncommercial educational broadcast stations as defined in section 397 of title 47 of the United States Code, and by commercial broadcast stations. Upon written request addressed to the Chief, Motion Picture,

Broadcasting and Recorded Sound Division by a broadcast station or other owner of the right of transmission, the Library of Congress will inform the requestor whether a particular transmission program has been copied by the Library.

§ 705.5 Disposition and use of copies and phonorecords by the Library of Congress.

(a) All copies and phonorecords acquired under this part will be maintained by the Motion Picture, Broadcasting and Recorded Sound Division of the Library of Congress. The Library may make such copies or phonorecords of a program as are necessary for purposes of preservation, security, and, as specified in §705.7, distribution.

(b) To the extent that the Library of Congress's use of copies and phonorecords acquired under this part is not subject to the provisions of the American Television and Radio Archives Act (section 170 of title 2 of the United States Code) and this part, such use shall be subject to the restrictions concerning copying and access found in Library of Congress Regulation 818–17, "Policies Governing the Use and Availability of Motion Pictures and Other Audiovisual Works in the Collections of the Library of Congress," and Library of Congress Regulation 818–18.1, "Recorded Sound Listening and Duplication Services" available from the Office of the General Counsel, Library of Congress, Washington, DC 20540–1050. Such use shall also be governed by the Copyright Act of 1976, as amended.

§ 705.6 Compilation.

(a) Library of Congress staff acting under the general authority of the Librarian of Congress may compile, without abridgement or any other editing, portions of recordings created pursuant to §705.4 according to subject matter, and may reproduce such compilations for purposes of preservation, security, or distribution as permitted under §705.7 below.

(b) Compilations shall be organized, to the greatest extent possible, in chronological order, and shall include the entirety of any particular news segment.

(c) No compilation by the Librarian shall be deemed for any purpose or proceeding to be an official determination of the subject matter covered by such compilation.

§ 705.7 Distribution.

(a) Library staff acting under the general authority of the Librarian of Congress may distribute a reproduction of a transmission program or a compilation of transmission programs made under this part, by loan to a researcher, provided that the researcher indicates the particular segments of the news broadcasts or compilations that he or she wishes to review, on the basis of an index or other finding aid prepared by the Librarian; and for deposit in a library or archives which meets the requirements of section 108(a) of title 17 of the United States Code.

(b) Library staff will advise all recipients of such reproductions that such distribution shall be only for the purposes of research and not for further reproduction or performance, and that any use in excess of that permitted by the American Television and Radio Archives Act (section 170 of title 2 of the United States Code), title 17 of the United States Code, and this part may violate copyrights or other rights.

§ 705.8 Agreements modifying the terms of this part.

(a) The Library of Congress may, at its sole discretion, enter into an agreement whereby the provision of copies or phonorecords of transmission programs of regularly scheduled newscasts or on-the-spot coverage of news events on terms different from those contained in this part is authorized.

(b) Any such agreement may be terminated without notice by the Library of Congress.

Dated: June 24, 2004.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 04–14867 Filed 6–30–04; 8:45 am]

BILLING CODE 1410–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AM00

Eligibility for Burial in a National Cemetery for Surviving Spouses Who Remarry and New Philippine Scouts

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulations to implement sections 212 and 502 of the Veterans Benefits Act of 2003 (Public Law 108–183). Section 502 of the Act extends eligibility for burial in a national cemetery to a remarried surviving spouse who died on or after January 1, 2000, based on his or her prior marriage to an eligible veteran. Additionally, section 212 of the Act extends eligibility for burial in a national cemetery to New Philippine Scouts who lawfully resided in the United States and died on or after December 16, 2003.

DATES: *Effective Date:* August 2, 2004.

Applicability Date: Pursuant to the provisions of Public Law 108–183, the Veterans Benefits Act of 2003, the provisions to this regulation shall apply with respect to interment of remarried surviving spouses whose deaths occurred on or after January 1, 2000, and with respect to interment of certain New Philippine Scouts whose deaths occurred on or after December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Beth Beardsley, Program Analyst, Office of Field Programs (41A), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; Telephone: (202) 273–5227 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. 2402 set forth eligibility requirements for burying the remains of persons in any national cemetery with available space under the jurisdiction of the National Cemetery Administration. This final rule implements provisions of the Veterans Benefits Act of 2003, to extend eligibility for burial in a national cemetery to a remarried surviving spouse whose death occurred on or after January 1, 2000, based on his or her prior marriage to an eligible veteran. This revision acknowledges the importance of the prior marriage and will allow the deceased veteran to be buried with a spouse with whom he or she expected to be buried. It will also allow any children to visit a single gravesite to pay their respects to their parents.

Additionally, this final rule implements provisions of the Veterans Benefits Act of 2003, extending eligibility for burial in a national cemetery to certain New Philippine Scouts. To be eligible, a person must have died on or after December 16, 2003, and must have enlisted in the U.S. Armed Forces with the consent of the Philippine government between October 6, 1945, and June 30, 1947, pursuant to section 14 of the Armed Forces Voluntary Recruitment Act of 1945. At time of death, the person must have been a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, and residing in the United States.

Organization and Clarity

We are making changes to the format of 38 CFR 1.620(e) and (h) to provide better organization and clarity.

Administrative Procedures Act

We are publishing this as a final rule without notice and comment under the provisions of 5 U.S.C. 553 because the changes it makes either are non-substantive or merely reflect statutory changes.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document does not contain new provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only individual VA beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Number

The Catalog of Federal Domestic Assistance program number for this document is 64.201.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Veterans.

Approved: May 27, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. In § 1.620, revise paragraphs (e) and (h) to read as follows:

§ 1.620 Eligibility for burial.

* * * * *

(e) The spouse, surviving spouse, minor child, or unmarried adult child of a person eligible under paragraph (a), (b), (c), (d), or (g) of this section. For purposes of this section—

(1) A surviving spouse includes a surviving spouse who had a subsequent remarriage;

(2) A minor child means an unmarried child under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution; and

(3) An unmarried adult child means a child who became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution.

* * * * *

(h) Any person who:

(1) Was a citizen of the United States or an alien lawfully admitted for permanent residence in the United States at the time of their death; and

(2) Resided in the United States at the time of their death; and

(3) Either was a—

(i) Commonwealth Army veteran or member of the organized guerillas—a person who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including organized guerilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and who died on or after November 1, 2000; or

(ii) New Philippine Scout—a person who enlisted between October 6, 1945, and June 30, 1947, with the Armed Forces of the United States with the consent of the Philippine government, pursuant to section 14 of the Armed Forces Voluntary Recruitment Act of 1945, and who died on or after December 16, 2003.

(Authority: 38 U.S.C. 107, 501, 2402)

[FR Doc. 04–14799 Filed 6–30–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL49

Copayments for Extended Care Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends VA's medical regulations by modifying provisions regarding the methodology of computing copayments for extended care services provided to veterans. This final rule enhances the protection of veterans' spouses by not counting certain assets as available resources for computing these copayments. Other non-substantive changes are made for purposes of clarification.

DATES: *Effective Date:* The final rule is effective August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Eileen Downey, Chief Business Office (161), at (202) 254–0347 and Daniel Schoeps, Geriatrics and Extended Care (114), at (202) 273–8540. Both are officials in the Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on October 16, 2003 (68 FR 59557), we proposed to amend VA's medical regulations by modifying provisions regarding the methodology of computing copayments for extended care services provided to veterans either directly by VA or by contract. These changes are as follows: We are revising the formulas to clarify what resources veterans have available for purposes of determining the appropriate copayment. We are excluding from the definition of "available resources" contained in paragraph (d)(1) of § 17.111 income, assets, expenses and allowance of legally separated spouses. We are removing from the definition of "veterans allowance" the inclusion of expenses because we are now including expenses in the definition of "available resources" contained in paragraph (d)(1) of § 17.111. We are also changing the definition of "expenses," to include (1) insurance premiums of the veteran and the veteran's spouse and dependents and (2) personal property taxes, not just income taxes. Further, we are clarifying that the definition of "liquid assets," includes art, rare coins, stamp collections, and collectibles and changing that definition to exclude household and personal items such as

furniture, clothing, and jewelry when the veteran's spouse or the veteran's dependents are living in the community or the veteran is receiving noninstitutional extended care services. We are adding at paragraph (d)(2)(vi) of § 17.111 a definition of "spousal resource protection amount" to permit a spouse to maintain some liquid assets while they live in the community. Lastly, we are clarifying that a veteran must report a change in marital status to a VA medical facility within 10 days of the change.

The public comment period ended on December 15, 2003, without any comment. Based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without any changes.

Paperwork Reduction Act

The Office of Management and Budget has approved the collections of information requirements related to this rulemaking proceeding under OMB control number 2900–0629.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: May 28, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. In § 17.111, paragraphs (d) through (g) and the authority citation at the end of the section are revised to read as follows:

§ 17.111 Copayments for extended care services.

* * * * *

(d) *Effect of the veteran's financial resources on obligation to pay copayment.* (1) A veteran is obligated to pay the copayment to the extent the veteran and the veteran's spouse have available resources. For veterans who have been receiving extended care services for 180 days or less, their available resources are the sum of the income of the veteran and the veteran's spouse, minus the sum of the veterans allowance, the spousal allowance, and expenses. For veterans who have been receiving extended care services for 181 days or more, their available resources are the sum of the value of the liquid assets, the fixed assets, and the income of the veteran and the veteran's spouse, minus the sum of the veterans allowance, the spousal allowance, the spousal resource protection amount, and (but only if the veteran—has a spouse or dependents residing in the community who is not institutionalized) expenses. When a veteran is legally separated from a spouse, available resources do not include spousal income, expenses, and assets or a spousal allowance.

(2) For purposes of determining available resources under this section:

(i) *Income* means current income (including, but not limited to, wages and income from a business (minus business expenses), bonuses, tips, severance pay, accrued benefits, cash gifts, inheritance amounts, interest income, standard dividend income from non tax deferred annuities, retirement income, pension income, unemployment payments, worker's compensation payments, black lung payments, tort settlement payments, social security payments, court mandated payments, payments from VA or any other Federal programs, and any other income). The amount of current income will be stated in frequency of receipt, *e.g.*, per week, per month.

(ii) *Expenses* means basic subsistence expenses, including current expenses for the following: rent/mortgage for primary residence; vehicle payment for one vehicle; food for veteran, veteran's spouse, and veteran's dependents; education for veteran, veteran's spouse, and veteran's dependents; court-ordered payments of veteran or veteran's spouse (*e.g.*, alimony, child-support); and including the average monthly expenses during the past year for the following: utilities and insurance for the primary residence; out-of-pocket medical care costs not otherwise covered by health insurance; health insurance premiums for the veteran, veteran's spouse, and veteran's dependents; and taxes paid on income and personal property.

(iii) *Fixed Assets* means:

(A) Real property and other non-liquid assets; except that this does not include—

(*1*) Burial plots;

(*2*) A residence if the residence is:

(*i*) The primary residence of the veteran and the veteran is receiving only noninstitutional extended care service; or

(*ii*) The primary residence of the veteran's spouse or the veteran's dependents (if the veteran does not have a spouse) if the veteran is receiving institutional extended care service.

(*3*) A vehicle if the vehicle is:

(*i*) The vehicle of the veteran and the veteran is receiving only noninstitutional extended care service; or

(*ii*) The vehicle of the veteran's spouse or the veteran's dependents (if the veteran does not have a spouse) if the veteran is receiving institutional extended care service.

(B) [Reserved]

(iv) *Liquid assets* means cash, stocks, dividends received from IRA, 401K's and other tax deferred annuities, bonds, mutual funds, retirement accounts (*e.g.*, IRA, 401Ks, annuities), art, rare coins, stamp collections, and collectibles of the veteran, spouse, and dependents. This includes household and personal items (*e.g.*, furniture, clothing, and jewelry) except when the veteran's

spouse or dependents are living in the community.

(v) *Spousal allowance* is an allowance of $20 per day that is included only if the spouse resides in the community (not institutionalized).

(vi) *Spousal resource protection* amount means the value of liquid assets but not to exceed $89,280 if the spouse is residing in the community (not institutionalized).

(vii) *Veterans allowance* is an allowance of $20 per day.

(3) The maximum amount of a copayment for any month equals the copayment amount specified in paragraph (b)(1) of this section multiplied by the number of days in the month. The copayment for any month may be less than the amount specified in paragraph (b)(1) of this section if the veteran provides information in accordance with this section to establish that the copayment should be reduced or eliminated.

(e) *Requirement to submit information.* (1) Unless exempted under paragraph (f) of this section, a veteran must submit to a VA medical facility a completed VA Form 10–10EC and documentation requested by the Form at the following times:

(i) At the time of initial request for an episode of extended care services;

(ii) At the time of request for extended care services after a break in provision of extended care services for more than 30 days; and

(iii) Each year at the time of submission to VA of VA Form 10–10EZ.

(2) When there are changes that might change the copayment obligation (*i.e.*, changes regarding marital status, fixed assets, liquid assets, expenses, income (when received), or whether the veteran has a spouse or dependents residing in the community), the veteran must report those changes to a VA medical facility within 10 days of the change.

(f) *Veterans and care that are not subject to the copayment requirements.* The following veterans and care are not subject to the copayment requirements of this section:

(1) A veteran with a compensable service-connected disability;

(2) A veteran whose annual income (determined under 38 U.S.C. 1503) is less than the amount in effect under 38 U.S.C. 1521(b);

(3) Care for a veteran's noncompensable zero percent service-connected disability;

(4) An episode of extended care services that began on or before November 30, 1999;

(5) Care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, or post-Persian Gulf War combat-exposed veterans;

(6) Care for treatment of sexual trauma as authorized under 38 U.S.C. 1720D; or

(7) Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck.

(g) VA *Form 10–10EC.*

BILLING CODE 8320–01–P

OMB Number: 2900-0629
Estimated Burden: 75 min.
Expiration date: 5/31/2005

Department of Veterans Affairs

APPLICATION FOR EXTENDED CARE SERVICES

SECTION I - GENERAL INFORMATION

1 VETERAN'S NAME *(Last, First, MI)*	2 SOCIAL SECURITY NUMBER

SECTION II - INSURANCE INFORMATION

ANSWER YES OR NO WHERE APPLICABLE *(OTHERWISE PROVIDE THE REQUESTED INFORMATION)*

3 ARE YOU ELIGIBLE FOR MEDICAID? ☐ YES ☐ NO	3A ARE YOU ENROLLED IN MEDICARE PART A *(Hospital Insurance)* ☐ YES ☐ NO	3B EFFECTIVE DATE *(If "Yes")*

4. ARE YOU ENROLLED IN MEDICARE PART B *(Medical Insurance)* ☐ YES ☐ NO	4A. EFFECTIVE DATE *(If "Yes")*	4B. MEDICARE CLAIM NUMBER *(If applicable)*

5 ARE YOU COVERED BY HEALTH INSURANCE *(including coverage through a spouse)? (If "YES", provide the following information for all insurance company(s) providing coverage to you.)* ☐ YES ☐ NO

6 NAME OF INSURANCE COMPANY	6A ADDRESS OF INSURANCE COMPANY	6B PHONE NUMBER OF INSURANCE COMPANY

6C NAME OF POLICY HOLDER	6D RELATIONSHIP OF POLICY HOLDER	6E POLICY NUMBER	6F GROUP NAME AND OR NUMBER

7 NAME OF INSURANCE COMPANY	7A ADDRESS OF INSURANCE COMPANY	7B PHONE NUMBER OF INSURANCE COMPANY

7C NAME OF POLICY HOLDER	7D RELATIONSHIP OF POLICY HOLDER	7E POLICY NUMBER	7F GROUP NAME AND OR NUMBER

8 NAME OF INSURANCE COMPANY	8A ADDRESS OF INSURANCE COMPANY	8B PHONE NUMBER OF INSURANCE COMPANY

8C NAME OF POLICY HOLDER	8D RELATIONSHIP OF POLICY HOLDER	8E POLICY NUMBER	8F GROUP NAME AND OR NUMBER

SECTION III - SPOUSE/DEPENDENT INFORMATION

9 CURRENT MARITAL STATUS *(Check one)* ☐ MARRIED ☐ NEVER MARRIED ☐ LEGALLY SEPARATED ☐ WIDOWED ☐ DIVORCED	9A SPOUSE'S NAME *(Last, First, MI)*

9B SPOUSE RESIDING IN THE COMMUNITY? *(Provide address and phone number if different from veteran)* ☐ YES ☐ NO *(If "No", explain)*	9C SPOUSE'S SOCIAL SECURITY NUMBER

10 DEPENDENT'S NAME *(Last, First, MI)*	10A DEPENDENT'S DATE OF BIRTH	10B DEPENDENT'S SOCIAL SECURITY

10C DEPENDENT RESIDING IN THE COMMUNITY? *(Provide address and phone number if different from veteran)* ☐ YES ☐ NO *(If "No", explain)*

11 DEPENDENT'S NAME *(Last, First, MI)*	11A DEPENDENT'S DATE OF BIRTH	11B. DEPENDENT'S SOCIAL SECURITY

11C DEPENDENT RESIDING IN THE COMMUNITY? *(Provide address and phone number if different from veteran)* ☐ YES ☐ NO *(If "No", explain)*

We need to collect information regarding income, assets and expenses for you and your spouse. If you do not wish to provide this information you must sign agreeing to make copayments and will be charged the maximum copayment amount for all services. See the top of page 2, read, sign and date.

VA FORM DEC 2002 **10-10EC**

APPLICATION FOR EXTENDED CARE SERVICES, Continued	VETERAN'S NAME	SOCIAL SECURITY NUMBER

I do not wish to provide my detailed financial information. I understand that I will be assessed the maximum copayment amount for extended care services and agree to pay the applicable VA copayment as required by law.

SIGNATURE	DATE

SECTION IV - FIXED ASSETS *(VETERAN AND SPOUSE)*	VETERAN	SPOUSE
1. Primary Residence *(Market value minus mortgages or liens. Exclude if veteran receiving only non-institutional extended care services or spouse or dependent residing in the community). If the veteran and spouse maintain separate residences, and the veteran is receiving institutional (inpatient) extended care services, include value of the veteran's primary residence.)*	$	$
2. Other Residences/Land/Farm or Ranch *(Market value minus mortgages or liens. This would include a second home, vacation home, rental property.)*	$	$
3. Vehicle(s) *(Value minus any outstanding lien. Exclude primary vehicle if veteran receiving only non-institutional extended care services or spouse or dependent residing in community. If the veteran and spouse maintain separate residences and vehicles, and the veteran is receiving institutional (inpatient) extended care services, include value of the veteran's primary vehicle.)*	$	$
SECTION V - LIQUID ASSETS *(VETERAN AND SPOUSE)*		
1. Cash, Amount in Bank Accounts *(e.g., checking and savings accounts, certificates of deposit, individual retirement accounts, stocks and bonds).*	$	$
2. Value of Other Liquid Assets *(e.g., art, rare coins, stamp collections, collectibles)* Minus the amount you owe on these items. *Exclude household effects, clothing, jewelry, and personal items if veteran receiving only non-institutional extended care services or spouse or dependent residing in the community.*	$	$
SUM OF ALL LINES FIXED AND LIQUID ASSETS — **TOTAL ASSETS**	$	$

SECTION VI - CURRENT GROSS INCOME OF VETERAN AND SPOUSE

CATEGORY	VETERAN		SPOUSE	
	HOW MUCH	HOW OFTEN	HOW MUCH	HOW OFTEN
1. Gross annual income from employment *(e.g., wages, bonuses, tips, severances pay, accrued benefits)*	$		$	
2. Net income from your farm/ranch, property or business.	$		$	
3. List other income amounts *(e.g., social security, Retirement and pension, interest, dividends)* Refer to instructions.	$		$	

SECTION VII - DEDUCTIBLE EXPENSES

ITEMS	AMOUNT
1. Educational expenses of veteran, spouse or dependent *(e.g., tuition, books, fees, material, etc.)*	$
2. Funeral and Burial *(spouse or child, amount you paid for funeral and burial expenses, including prepaid arrangements)*	$
3. Rent/Mortgage *(monthly amount or annual amount)*	$
4. Utilities *(calculate by average monthly amounts over the past 12 months)*	$
5. Car Payment for one vehicle only *(exclude gas, automobile insurance, parking fees, repairs)*	$
6. Food *(for veteran, spouse and dependent)*	$
7. Non-reimbursed medical expenses paid by you or spouse *(e.g., copayments for physicians, dentists, medications, Medicare, health insurance, hospital and nursing home expenses)*	$
8. Court-ordered payments *(e.g., alimony, child support)*	$
9. Insurance *(e.g., automobile insurance, homeowners insurance) Exclude Life Insurance*	$
10. Taxes *(e.g., personal property for home, automobile) Include average monthly expense for taxes paid on income over the past 12 months.*	$
TOTALS	$

SECTION VIII - CONSENT FOR ASSIGNMENT OF BENEFITS

I hereby authorize the Department of Veterans Affairs to disclose any such history, diagnostic and treatment information from my medical records to the contractor of any health plan contract under which I am apparently eligible for medical care or payment of the expense of care or to any other party against whom liability is asserted. I understand that I may revoke this authorization at any time, except to the extent that action has already been taken in reliance on it. Without my express revocation, this consent will automatically expire when all action arising from VA's claim for reimbursement for my medical care has been completed. I authorize payment of medical benefits to VA for any services for which payment is accepted.

SIGNATURE	DATE

APPLICATION FOR EXTENDED CARE SERVICES, Continued	VETERANS NAME	SOCIAL SECURITY NUMBER

SECTION IX - CONSENT TO AGREEMENT TO MAKE COPAYMENTS

Completion of this form with signature of the Veteran or veteran's representative is certification that the veteran/representative has received a copy of the Privacy Act Statement and agrees to make appropriate copayments.

I certify the foregoing statement(s) are true and correct to the best of my knowledge and belief and agree to make the applicable copayment for extended care services as required by law.

SIGNATURE	DATE

SECTION X- PAPERWORK PRIVACY ACT INFORMATION

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 90 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form. If you have comments regarding this burden estimate or any other aspect of this collection, call 202.273.8247 for mailing information on where to send your comments.

Privacy Act Information: The VA is asking you to provide the information on this form under Title 38, United States Code, sections 1710, 1712, 1722 and 1729 in order for VA to determine your eligibility for extended care benefits and to establish financial eligibility, if applicable, when placed in extended care services. The information you supply may be verified through a computer-matching program. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act systems of records notices and in accordance with the VHA Notice of Privacy Practices. You do not have to provide the information to VA, but if you don't, VA will be unable to process your request and serve your medical needs. Failure to furnish the information will not have any affect on any other benefits to which you may be entitled. If you provide VA your Social Security Number, VA will use it to administer your VA benefits. VA may also use this information to identify veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.

ADDITIONAL COMMENTS

* * * * *

(Authority: 38 U.S.C. 101(28), 501, 1701(7), 1710, 1710B, 1720B, 1720D, 1722A)

[FR Doc. 04–14798 Filed 6–30–04; 8:45 am]

BILLING CODE 8320–01–C

POSTAL SERVICE

39 CFR Part 265

Release of Information, Privacy of Information

AGENCY: Postal Service.

ACTION: Corrected final rule.

SUMMARY: This rule amends the Postal Service regulations on the release of information to correct errors in two exhibits contained in a previous document.

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jane Eyre at 202–268–2608.

SUPPLEMENTARY INFORMATION: On June 23, 2004, the Postal Service published a document amending its rules dealing with records and information (69 FR 34932). Inspection of the notice disclosed the presence of minor errors in two exhibits in 39 CFR part 265. Accordingly, the Postal Service makes the following corrections effective immediately.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

PART 265—[AMENDED]

■ 1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

* * * * *

§ 265.6 [Amended]

■ 2. In § 265.6, following paragraph (g), remove the exhibits and insert the two forms as set forth below:

§ 265.6 Availability of records.

* * * * *

(g) * * *

BILLING CODE 7710–12–P

Change of Address or Boxholder Request Format—Process Servers

Postmaster Date_____

_____

City, State, ZIP Code

.

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

.

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name:_____

Address:_____

.

Note: The name and last known address are required for change of address information. The name, if known, and post office box address are required for boxholder information.

.

The following information is provided in accordance with 39 CFR 265.6(d)(5)(ii). There is no fee for providing boxholder or change of address information.

.

1. Capacity of requester (e.g., process server, attorney, party representing self): _____

2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party acting pro se - except a corporation acting pro se must cite statute):

_____

_____

3. The names of all known parties to the litigation: _____

4. The court in which the case has been or will be heard: _____

5. The docket or other identifying number if one has been issued: _____

6. The capacity in which this individual is to be served (e.g., defendant or witness): _____

WARNING

THE SUBMISSION OF FALSE INFORMATION TO OBTAIN AND USE CHANGE OF ADDRESS INFORMATION OR BOXHOLDER INFORMATION FOR ANY PURPOSE OTHER THAN THE SERVICE OF LEGAL PROCESS IN CONNECTION WITH ACTUAL OR PROSPECTIVE LITIGATION COULD RESULT IN CRIMINAL PENALTIES INCLUDING A FINE OF UP TO $10,000 OR IMPRISONMENT OF NOT MORE THAN 5 YEARS, OR BOTH (TITLE 18 U.S.C. SECTION 1001).

.

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation.

Signature _____ Address _____

Printed Name _____ City, State, ZIP Code _____

POST OFFICE USE ONLY

_____No change of address order on file.
_____Moved, left no forwarding address.
_____No such address.

NEW ADDRESS OR BOXHOLDER'S NAME AND STREET ADDRESS

_____
_____
_____

POSTMARK

Address Information Request Format—Government Agency

(Required Format Referenced at Paragraph 265.6(d)(5)(i) & (7))

(AGENCY LETTERHEAD)

To: Postmaster

_____

Agency Control Number _____

Date _____

ADDRESS INFORMATION REQUEST

Please furnish this agency with the new address, if available, for the following individual or verify whether or not the address given below is one at which mail for this individual is currently being delivered. If the following address is a post office box, please furnish the street address as recorded on the boxholder's application form.

Name: _____

Last Known Address: _____

I certify that the address information for this individual is required for the performance of this agency's official duties.

_____
(Signature of Agency Official)

_____
(Title)

FOR POST OFFICE USE ONLY

[ ] MAIL IS DELIVERED TO ADDRESS GIVEN NEW ADDRESS

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 04–14902 Filed 6–30–04; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA217–4230a; FRL–7777–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to the 1-Hour Ozone Maintenance Plan for the Pittsburgh-Beaver Valley Area to Reflect the Use of MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision amends Pennsylvania's ten-year plan to maintain the 1-hour ozone national ambient air quality standard (NAAQS) in the Pittsburgh-Beaver Valley ozone maintenance area (the Pittsburgh area). The maintenance plan is being amended to revise the volatile organic compound (VOC) and nitrogen oxides (NO_x) motor vehicle emission budgets (MVEBs) to reflect the use of MOBILE6. The intended effect of this action is to approve a SIP revision that will better enable the Commonwealth of Pennsylvania to maintain attainment of the 1-hour ozone NAAQS in the Pittsburgh area. This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 30, 2004 without further notice, unless EPA receives adverse written comment by August 2, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by PA217–4230, by one of the following methods:

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

B. *E-mail: budney.larry@epa.gov.*

C. *Mail:* Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch, Mail code 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. PA217–4230. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through regulations.gov or e-mail that you consider to be CBI or otherwise protected. The federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Larry Budney, (215) 814–2184, or by e-mail at *budney.larry@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 19, 2001 (66 FR 53094), EPA redesignated the Pittsburgh area to attainment for the 1-hour ozone NAAQS and approved the maintenance plan submitted by the Pennsylvania Department of Environmental Protection (DEP) as a revision to the Pennsylvania SIP. The Pittsburgh area consists of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties. The approved maintenance plan demonstrates that the area will maintain the 1-hour ozone NAAQS for ten years from the date of its approval (through 2011). The plan includes VOC and NO_x emission inventories for all

(point, area, highway and non-road mobile) source sectors for the years 1990, 1999, 2007 and 2011. The highway, or on-road, portion of the mobile inventories also constitute the MVEBs for each year. These MVEBs are to be used to demonstrate conformity when performing analyses of transportation plans. The MVEBs in the maintenance plan approved on October 19, 2001 are based upon the MOBILE5 emissions model.

II. Summary of SIP Revision

On April 22, 2004, the Pennsylvania DEP submitted a formal revision to its SIP. The revision amends the ten-year maintenance plan for the 1-hour ozone NAAQS in the Pittsburgh area. The maintenance plan is being amended to revise the highway mobile emissions, and, therefore, the MVEBs to reflect the use of the MOBILE6 emissions model. The MOBILE6 model is an updated version of the MOBILE model used for calculating highway mobile source emissions of the ozone precursors VOC and NO_X. The remaining sectors of the VOC and NO_X emission inventories (point, area and non-road mobile) are unchanged from those in the original maintenance plan approved by EPA on October 19, 2001. The 1-hour ozone NAAQS, the maintenance plan approved by EPA on October 19, 2001 demonstrated continued attainment of the 1-hour ozone NAAQS by showing that total emissions (from all emission source sectors) projected to 2011 would remain below the total emissions in the 1999 attainment year. The year 1999 was chosen as it was one the three years of consecutive air quality data used to demonstrate attainment of the 1-hour ozone NAAQS. The year 2007 was chosen as an interim year between 2001 and 2011.

The following table presents the revised highway mobile emissions, and, therefore, MVEBs for the Pittsburgh area based upon MOBILE6. Emissions are presented in tons per Summer day:

	2004	2007	2011
VOC	74.03	60.42	45.68
NO_X	140.63	110.37	77.09

In the following tables, the revised MOBILE6-based highway emissions are entered in place of the original MOBILE5-based highway mobile emissions. The tables show the same VOC and NO_X emission levels for each of the other emission inventory sectors as those of the maintenance plan approved by EPA on October 19, 2001. When the Pittsburgh area maintenance plan's original MOBILE5 based highway mobile emissions are replaced with the revised MOBILE6 based highway mobile emissions, the tables indicate that attainment will continue to be maintained through 2011. All emissions are presented in tons per Summer day:

VOC source sectors	1999	2007	2011
Point	34	36	38
Area	130	136	142
Non-road	64	42	37
Highway	104.25	60.42	45.68
Total	332.25	274.42	262.68

NO_X source sectors	1999	2007	2011
Point	282	199	199
Area	10	10	10
Non-road	75	67	60
Highway	182.73	110.37	77.09
Total	549.73	386.37	346.09

III. Final Action

EPA is approving Pennsylvania's April 22, 2004 SIP revision. The revision amends the Pittsburgh-Beaver Valley area maintenance plan for the 1-hour ozone NAAQS by updating the highway mobile emission inventories and, therefore, the MVEBs to reflect the use of the MOBILE6 emissions model. The revised plan for the Pittsburgh-Beaver Valley area continues to demonstrate maintenance of the 1-hour NAAQS for ozone through 2011.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 30, 2004 without further notice unless EPA receives adverse comment by August 2, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place

of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. 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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve a revision to the Pittsburgh-Beaver Valley area's maintenance plan for the 1-hour NAAQS 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 10, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(226) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(226) Revisions to Pennsylvania's 1-hour ozone maintenance plan for the Pittsburgh-Beaver Valley area to revise the highway mobile emissions and, therefore, the motor vehicle emission budgets to reflect the use of MOBILE6. These revisions were submitted by the Commonwealth of Pennsylvania's Department of Environmental Protection on April 22, 2004.

(i) Incorporation by reference.

(A) Letter of April 22, 2004 from the Pennsylvania Department of Environmental Protection transmitting a revision to Pennsylvania's 1-hour ozone maintenance plan for the Pittsburgh-Beaver Valley area.

(B) Document entitled, "Revision to the State Implementation Plan for the Pittsburgh-Beaver Valley Area—Revised Highway Vehicle Emissions Budgets' dated April, 2004. The document revises the Pittsburgh-Beaver Valley 1-hour ozone maintenance plan, establishing revised motor vehicle emission budgets of 74.03 tons/day of volatile organic compounds (VOC) and 140.63 tons/day of nitrogen oxides (NO_X) for 2004, 60.42 tons/day of VOC and 110.37 tons/day of NO_X for 2007, and 45.68 tons/day of VOC and 77.09 tons/day of NO_X for 2011.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revision listed in paragraph (c)(226)(i) of this section.

[FR Doc. 04–14823 Filed 6–30–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ69–276, FRL–7776–5]

Conditional Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for a Specific Source in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is conditionally approving a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. This SIP revision consists of a source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen from the sodium nitrite manufacturing plant operated by Repauno Products, LLC. This action conditionally approves the source-specific RACT determination that was made by New Jersey in accordance with provisions of its regulation to help meet the national ambient air quality standard for ozone. The intended effect of this final rule is to conditionally approve source-specific emission limitations required by the Clean Air Act.

EFFECTIVE DATE: This rule is effective on August 2, 2004.

ADDRESSES: The official public rulemaking file is available for public viewing during normal business hours at the EPA, Region 2 Office, Air Programs Branch, 290 Broadway, New York, New York 10007–1866. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours at the New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625. Copies of documents related to the docket are also available at the EPA, Air and Radiation Docket and Information Center, Air Docket (6102T), 1301 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Air Programs Branch, Environmental Protection Agency Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4014, *Ruvo.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

Overview

EPA is conditionally approving the New Jersey State Department of Environmental Protection's (New Jersey's) source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen (NO_X) from the sodium nitrite manufacturing plant operated by Repauno Products, LLC (Repauno).

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

I. What Action Is EPA Taking Today?

EPA is conditionally approving New Jersey's revision to the ozone State Implementation Plan (SIP) submitted to EPA on July 1, 1999 and supplemented on September 12, 2002, September 26, 2002, April 3, 2003 and May 8, 2003. This SIP revision relates to New Jersey's NO_X RACT determination for Repauno's sodium nitrite manufacturing plant located in Gibbstown, Gloucester County.

EPA published in the **Federal Register** on April 7, 2004 (69 FR 18323) a proposal to conditionally approve New Jersey's SIP revision. The April 7, 2004 proposed rule contains additional information regarding New Jersey's SIP revision, EPA's rationale for conditionally approving New Jersey's SIP revision, and describes in detail the deficiencies that New Jersey must address in order for EPA to fully approve this SIP revision. The two deficiencies are to:

1. Reassess as part of the RACT analysis, the technical and economic feasibility of installing selective catalytic reduction (SCR) technology and,

2. Provide recent continuous emissions monitoring (CEM) data in order to determine an appropriate NO_X RACT emission limitation.

In a letter dated May 14, 2004, New Jersey committed to correct the two deficiencies discussed in the April 7, 2004 proposed rule, and to submit a new SIP revision within one year of the effective date of this rule. Once New Jersey submits a new SIP revision to address these deficiencies, EPA can take action to fully approve the SIP revision. If New Jersey does not submit approvable revisions within one year of the effective date of this rule, this conditional approval will automatically revert to a disapproval of New Jersey's SIP revision. EPA will publish a document in the **Federal Register** indicating whether the conditional approval was satisfied or became a disapproval.

II. What Comments Did EPA Receive on the Proposal?

EPA's April 7, 2004 proposed rule provided a 30-day public comment period. During this period, EPA received one comment letter on the proposal to conditionally approve New Jersey's NO_X RACT determination. EPA's response immediately follows a summary of the public comment.

Comments: A concerned citizen commented in support of lower NO_X emissions in New Jersey and in support of clean air in general. The comments were not directed at Repauno as a specific source or any specific NO_X emission limitation at Repauno. In addition, the comments did not include any supporting information or justification.

Response: EPA acknowledges the citizen's support for clean air, however no specific information or supporting justification relevant to the NO_X RACT determination for Repauno was provided for EPA to reconsider the proposed conditional approval. For the reasons in this section, and in the April 7, 2004 proposal, EPA is conditionally approving the NO_X emission limitation for Repauno, consistent with the RACT requirements of the Clean Air Act.

III. What Is EPA's Conclusion?

EPA is conditionally approving the New Jersey SIP revision for a source-specific RACT determination for Repauno's sodium nitrite manufacturing plant. This SIP revision contains source-specific NO_X emission limitations for Repauno. EPA is conditionally approving New Jersey's SIP revision, since New Jersey committed to correct the two deficiencies discussed in the April 7, 2004 proposal, and to submit them to EPA as a SIP revision within one year of the effective date of this final rule. EPA received one adverse comment letter on the April 7, 2004 proposal, however the comments did not provide specific information necessary for EPA to reconsider the proposed conditional approval. EPA has determined that until such time that New Jersey corrects the two deficiencies and submits them to EPA as a SIP revision, the NO_X emission limits identified in New Jersey's Conditions of Approval document represents RACT for Repauno's sodium nitrite manufacturing process.

IV. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 9, 2004.

Anthony Cancro,

Acting Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart FF—New Jersey

■ 2. Section 52.1570 is amended by adding new paragraph (c)(77) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

* * * * *

(77) Revisions to the State Implementation Plan submitted by the New Jersey Department of Environmental Protection on July 1, 1999 and supplemented on September 12, 2002, September 26, 2002, April 3, 2003 and May 8, 2003.

(i) Incorporation by reference:

Conditions of Approval Document: Conditions of Approval Document issued by New Jersey on July 1, 1999 to Repauno Products, LLC's sodium nitrite manufacturing plant, Gibbstown, Gloucester County.

(ii) Additional information—Documentation and information to support NO_X RACT facility-specific emission limits in SIP revision addressed to Regional Administrator Jeanne M. Fox from New Jersey Commissioner Robert C. Shinn, Jr.:

(A) July 1, 1999 SIP revision,

(B) September 12, 2002, September 26, 2002, April 3, 2003 and May 8, 2003 supplemental information to the SIP revision,

(C) May 14, 2004 commitment letter from New Jersey.

[FR Doc. 04–14821 Filed 6–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY68–277, FRL–7776–4]

Conditional Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for a Specific Source in the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is conditionally approving a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New York. This SIP revision consists of a source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen from the sodium nitrite manufacturing plant operated by General Chemical Corporation. This action conditionally approves the source-specific RACT determination that was made by New York in accordance with provisions of its regulation to help meet the national ambient air quality standard for ozone. The intended effect of this final rule is to conditionally approve source-specific emission limitations required by the Clean Air Act.

DATES: Effective Date: This rule is effective on August 2, 2004.

ADDRESSES: The official public rulemaking file is available for public viewing during normal business hours at the EPA, Region 2 Office, Air Programs Branch, 290 Broadway, New York, New York 10007–1866. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours at the New York Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233. Copies of documents related to the docket are also available at the EPA, Air and Radiation Docket and Information Center, Air Docket (6102T), 1301 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Air Programs Branch, Environmental Protection Agency Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4014, *Ruvo.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

Overview

EPA is conditionally approving the New York State Department of Environmental Conservation's (New York's) source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen (NO_X) from the sodium nitrite manufacturing plant operated by General Chemical Corporation (General Chemical).

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

I. What Action Is EPA Taking Today?

EPA is conditionally approving New York's revision to the ozone State Implementation Plan (SIP) submitted to EPA on April 12, 2000 and supplemented on May 12, 2000, May 16, 2000, October 10, 2002 and February 24, 2003. This SIP revision relates to New York's NO_X RACT determination for General Chemical's sodium nitrite manufacturing plant located in Solvay, Onondaga County.

EPA published in the **Federal Register** on April 7, 2004 (69 FR 18319) a proposal to conditionally approve New York's SIP revision. The April 7, 2004 proposed rule contains additional information regarding New York's SIP revision, EPA's rationale for conditionally approving New York's SIP revision, and describes in detail the deficiencies that New York must address in order for EPA to fully approve this SIP revision. The three deficiencies are to:

1. Reassess as part of the RACT analysis, the technical and economic feasibility of installing selective catalytic reduction (SCR) technology, switching from soda ash to sodium hydroxide for the entire manufacturing process, and correcting Director Discretion provisions in any permit conditions;

2. Demonstrate compliance with the NO_2 National Ambient Air Quality Standard, based on a cumulative air quality modeling analysis, consistent with EPA Guidance, as provided under section 110 of the Act; and,

3. Provide recent continuous emissions monitoring (CEM) data in order to determine an appropriate NO_X RACT emission limitation.

In a letter dated May 7, 2004, New York committed to correct the three deficiencies discussed in the April 7, 2004 proposed rule, and to submit a new SIP revision within one year of the effective date of this rule. Once New York submits a new SIP revision to address these deficiencies, EPA can take action to fully approve the SIP revision. If New York does not submit approvable revisions within one year of the effective date of this rule, this conditional approval will automatically revert to a disapproval of New York's SIP revision. EPA will publish a document in the **Federal Register** indicating whether the conditional approval was satisfied or became a disapproval.

II. What Comments Did EPA Receive on the Proposal?

EPA's April 7, 2004 proposed rule provided a 30-day public comment period. EPA did not receive any comments.

III. What Is EPA's Conclusion?

EPA is conditionally approving the New York SIP revision for a source-specific RACT determination for General Chemical's sodium nitrite manufacturing plant. This SIP revision contains source-specific NO_X emission limitations for General Chemical. EPA is conditionally approving New York's SIP revision, since New York committed to correct the three deficiencies discussed in the April 7, 2004 proposal, and to submit them to EPA as a SIP revision within one year of the effective date of this final rule. EPA received no comments on the April 7, 2004 proposal, therefore EPA is finalizing the conditional approval. EPA has determined that until such time that New York corrects the three deficiencies and submits them to EPA as a SIP revision, the NO_X emission limits identified in New York's special permit conditions represents RACT for General Chemical's sodium nitrite manufacturing process.

IV. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 9, 2004.

Anthony Cancro,

Acting Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(104) to read as follows:

§ 52.1670 Identification of plans.

* * * * *

(c) * * *

(104) Revisions to the State Implementation Plan submitted by the New York State Department of Environmental Conservation on April 12, 2000, and supplemented on May 12, 2000, May 16, 2000, October 10, 2002, and February 24, 2003.

(i) Incorporation by reference:

Special Permit Conditions: Special permit conditions issued by New York State on December 16, 1997, to General Chemical Corporation's sodium nitrite manufacturing plant, Solvay, Onondaga County, are incorporated for the purpose of establishing NO_X emission limits consistent with part 212.

(ii) Additional information—Documentation and information to support NO_X RACT facility-specific emission limits in SIP revision addressed to Regional Administrator Jeanne M. Fox from New York Deputy Commissioner Carl Johnson:

(A) April 12, 2000, SIP revision,

(B) May 12, 2000, May 16, 2000, October 10, 2002, and February 24, 2003, supplemental information to the SIP revision,

(C) May 7, 2004, commitment letter from New York.

[FR Doc. 04–14820 Filed 6–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA215–4229; FRL–7777–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Warren County SO_2 Nonattainment Areas and the Mead and Clarendon Unclassifiable Areas to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request by the Commonwealth of Pennsylvania to redesignate the sulfur dioxide (SO_2) nonattainment areas of Conewango Township, Pleasant Township, Glade Township, and the City of Warren in Warren County from nonattainment to attainment of the national ambient air quality standards (NAAQS) for SO_2. In addition, EPA is approving the Commonwealth's request to change the status of Mead Township and Clarendon Borough in Warren County from unclassifiable to attainment of the NAAQS for SO_2. EPA is also approving the maintenance plan for these areas submitted by the Commonwealth as a revision to the Pennsylvania State Implementation Plan (SIP). This plan provides for the maintenance of the NAAQS for SO_2 for the next ten years. These actions are being taken in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on August 2, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 9, 2004 (69 FR 18853), EPA proposed to approve the Commonwealth of Pennsylvania's (the Commonwealth's) request to redesignate the areas of Conewango Township, Pleasant Township, Glade Township, and the City of Warren in Warren County, Pennsylvania, from nonattainment to attainment of the NAAQS for SO_2. EPA's April 9, 2004 notice of proposed rulemaking (NPR) also proposed approval of the Commonwealth's request to change the status of Mead Township and Clarendon Borough in Warren County from unclassifiable to attainment of the NAAQS for SO_2. Finally, EPA's NPR published on April 9, 2004 proposed to approve the maintenance plan for these areas submitted by the Pennsylvania Department of Environmental Protection (PADEP) as a SIP revision.

EPA proposed approval of these requests on April 9, 2004 under a procedure called parallel processing, whereby EPA proposes its rulemaking action on a SIP revision concurrently with a state's procedures for amending its SIP. The PADEP submitted its redesignation requests and proposed SIP revision to EPA on March 15, 2004 for parallel processing. No comments were submitted to EPA on the NPR it published on April 9, 2004 proposing to approve the Commonwealth's March 15, 2004 submittal. The Commonwealth concluded its SIP revision procedures, and the PADEP submitted the formal SIP revision along with the redesignation requests to EPA on May 7, 2004. That final version of the submittal had no substantive changes from the proposed version submitted to EPA on March 15, 2004. A detailed description of Pennsylvania's submittal and EPA's rationale for its proposed approval of the redesignation requests and maintenance plan were presented in the NPR published on April 9, 2004, and will not be restated here.

II. Final Action

EPA is redesignating the areas of Conewango Township, Pleasant Township, Glade Township, and the City of Warren, in Warren County, Pennsylvania from nonattainment to attainment of the NAAQS for SO_2, and is changing the status of Mead Township and Clarendon Borough in Warren County, Pennsylvania, from unclassifiable to attainment of the NAAQS for SO_2. EPA is also approving a maintenance plan for these areas submitted by the PADEP on May 7, 2004 as a revision to the Pennsylvania SIP.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this

rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. 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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 2004. Filing a petition for reconsideration by the Administrator of this final rule, which redesignates Conewango Township, Pleasant Township, Glade Township, and the City of Warren, in Warren County, Pennsylvania, to attainment of the NAAQS for SO_2, changes the status of Clarendon Borough and Mead Township in Warren County from unclassifiable to attainment for SO_2, and approves a maintenance plan for these areas as a SIP revision, 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: June 14, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(224) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(224) The SO_2 Redesignation Request and Maintenance Plan for Conewango Township, Pleasant Township, Glade Township, and the City of Warren in Warren County, Pennsylvania, submitted on May 7, 2004, by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of May 7, 2004 from the Pennsylvania Department of Environmental Protection transmitting the redesignation request and the maintenance plan for the SO_2 nonattainment areas of Conewango Township, Pleasant Township, Glade Township, and the City of Warren, in Warren County, Pennsylvania.

(B) The Conewango Township, Pleasant Township, Glade Township, and City of Warren, Warren County Sulfur Dioxide Maintenance Plan, dated May, 2004.

(ii) Additional Material.

(A) Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(224)(i) of this section.

(B) Letter of March 15, 2004 from the Pennsylvania Department of Environmental Protection, transmitting the redesignation request and maintenance plan for the Conewango Township, Pleasant Township, Glade Township, and the City of Warren, and the request to change the status of Mead Township and Clarendon Borough.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.339, the table for "Pennsylvania—SO_2" is amended by revising the entry for Warren County to read as follows:

§ 81.339 Pennsylvania

* * * * *

PENNSYLVANIA–SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
VI. Northwest Pennsylvania Intrastate AQCR:				
(A) WarrenCounty:				
Conewango Twp				X
Mead Twp				X
Clarendon Boro				X
Warren Boro				X
Pleasant Township				X
Glade Township				X
* * * * * * *				

* * * * *

[FR Doc. 04–14822 Filed 6–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 63 (§§ 63.1200 to 63.1439), revised as of July 1, 2003, on page 575, in § 63.1427, the first equation in paragraph (e)(2) is corrected to read as follows:

§ 63.1427 Process vent requirements for processes using extended cookout as an epoxide emission reduction technique.

* * * * *

(e) * * *

(2) * * *

$$R_{batchcycle} = \left[1 - \frac{P_{epox,f}}{P_{epox,i}}\right] * 100 \qquad \text{[Equation 11]}$$

* * * * *

In the same title and volume, in the tables to subpart PPP, the headings of Table 2 and Table 7 to Subpart PPP are corrected to read as follows:

* * * * *

Table 2 to Subpart PPP of Part 63—Applicability of Subparts F, G, H, and U to Subpart PPP Affected Sources

* * * * *

Table 7 to Subpart PPP of Part 63—Operating Parameters For Which Monitoring Levels Are Required To Be Established for Process Vents Streams

* * * * *

[FR Doc. 04–55516 Filed 6–30–04; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 154, 158, 159, 168, and 178

[OPP–2004– 0216; FRL–7368–4]

Office of Pesticide Programs Address Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is issuing this technical amendment to update the regulations of the Office of Pesticide Progams (OPP) to change several addresses and mail codes for OPP that have been changed in recent months.

DATES: This final rule is effective on July 1, 2004.

ADDRESSES: EPA has established a docket for this action under Docket identification number OPP–2004–0216. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5944; e-mail address:*frane.jean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency has not included in this technical amendment a list of those who may be potentially affected by this

action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET at *http://www.epa.gov/edocket/*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR parts 152, 154, 158, 159, 168, and 178 are available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. What Does this Technical Amendment Do?

In recent months the addresses and some mail codes for the Office of Pesticide Programs have changed. This technical amendment effects the changes necessary to conform 40 CFR parts 152, 154, 158, 159, 168, and 178 to the new addresses and mail code.

III. Why is this Technical Amendment Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment. EPA has determined that these amendments are technical and non-substantive in nature because these amendments only correct address related information. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

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

EPA is issuing this document under its general rulemaking authority, Reorganization Plan No. 3 of 1970 (5 U.S.C. app.).

V. Statutory and Executive Order Reviews

This final rule implements technical amendments and corrections to provisions that appear in 40 CFR parts 152, 154, 158, 159, 168, and 178 to reflect changes in the Agency's official address, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (0MB) has determined that a technical amendment and/or correction is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735. October 4, 1993). Nor does this rule contain any information collection requirements that require review and approval by 0MB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et. seq.*).

Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et. seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–94). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. entitled *Federalism* (64 FR 43255, August 10. 1999). Similarly, this rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, and does not involve impacts to children, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866, nor is it expected to adversely affect energy supply, distribution, or use.

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

This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

VI. Congressional Review Act

The Congressional Review Act (CRA) (5 U.S.C. 801 et seq.), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each house of the Congress and to the Comptroller General of the United States. CRA section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA, if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must Be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 1, 2004. 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 action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 152, 159, and 178

Environmental protection, Administrative practice and procedure, pesticides and pests, reporting and recordkeeping.

40 CFR Part 154

Environmental protection, Administrative practice and procedure, pesticides and pests.

40 CFR Part 158

Environmental protection, Confidential business information, pesticides and pests, reporting and recordkeeping.

40 CFR Part 168

Environmental protection, Administrative practice and procedure, Advertising, pesticides and pests.

Dated: June 28, 2004.

Susan B. Hazen,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR parts 152, 154, 158, 159, 168, and 178 are amended as follows:

PART 152—[AMENDED]

■ 1. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y; Subpart U is also issued under 31 U.S.C. 9701.

§§152.55 and 152.414 [Amended]

■ 2. Sections 152.55 and 152.414 are amended by changing the phrase "TS–767C" to read "7505C".

PART 154—[AMENDED]

■ 3. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 136a, d, and w.

■ 4. Section 154.15 is amended by revising paragraph (f)(1)(ii) to read as follows:

§ 154.15 Docket for the Special Review.

* * * * *

(f) * * *

(1) * * *

(ii) The docket and index will be available at the Program Management and Support Division, in Rm. 236, Crystal Mall #2, 1801 South Bell St., Arlington, VA, from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays.

* * * * *

PART 158—[AMENDED]

■ 5. The authority citation for part 158 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

■ 6. Section 158.45 is amended by revising paragraph (d) to read as follows:

§ 158.45 Waivers.

* * * * *

(d) *Availability of waiver decisions.* Agency decisions under this section granting waiver requests will be available to the public at the Office of Pesticide Programs Reading Room, Rm. 236, Crystal Mall #2, 1801 South Bell St., Arlington, VA 22202 from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. Any person may obtain a copy of any waiver decision by written request in the manner set forth in 40 CFR part 2.

PART 159—[AMENDED]

■ 7. The authority citation for part 159 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

■ 8. Section 159.156 is amended by revising paragraph (b) to read as follows:

§ 159.156 How information must be submitted.

* * * * *

(b) Be delivered in person or by courier service or by such other methods as the Agency deems appropriate to the following address, or to such other address as the Agency may subsequently specify in writing: Document Processing Desk-6(a)(2), Office of Pesticide Programs, Room 266A, Crystal Mall #2, 1801 South Bell St., Arlington, Virginia 22202.

* * * * *

PART 168—[AMENDED]

■ 9. The authority citation for part 168 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

■ 10. Section 168.65 is amended by revising paragraph (b)(1)(iii)(A)(*2*)(*i*) and (*iii*) to read as follows:

§ 168.65 Pesticide export label and labeling requirements.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) * * *

(*2*) * * *

(*i*) The change in color must result only from the addition of a dye included on the list of the chemicals exempted from the requirement of a tolerance at 40 CFR 180.910, 180.920, 180.930, and 180.950, and the dye must not be a List 1 inert. (List 1 inerts are those inerts which the Agency has identified as presenting toxicological concerns. The classification of inerts is explained in EPA's Policy Statement on Inert Ingredients in Pesticide Products, which can be obtained from the Office of Pesticide Programs public docket, Room 119, Crystal Mall # 2, 1801 South Bell St., Arlington, Virginia 22202.)

* * * * *

(*iii*) The change in fragrance must not result in a pesticide product containing a food or food-like fragrance. (See "Food Fragrances in Pesticide Formulations," EPA's Office of Pesticide Programs Policy and Criteria Notice number 2155.1, November 20, 1975 which can be obtained from the Office of Pesticide Programs public docket, Room 119, Crystal Mall #2, 1801 South Bell St., Arlington, Virginia 22202.)

* * * * *

PART 178—[AMENDED]

■ 11. The authority citation for part 178 continues to read as follows:

Authority: 7 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

■ 12. Section 178.25 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 178.25 Form and manner of submission of objections.

* * * * *

(b) * * *

(1) Mailed submissions should be addressed to: Office of the Hearing Clerk (1900L), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(2) For personal delivery, the Office of the Hearing Clerk is located at: Suite 350, 1099 14th St., NW., Washington, DC.

[FR Doc. 04–15059 Filed 6–29–04; 1:40 p.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 27, 90, and 95

[WT Docket No. 02–8; FCC 03–204]

License Services in the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission addresses three petitions for reconsideration and two petitions for clarification of the *Report and Order* in this proceeding to govern the licensing of 27 MHz of electromagnetic spectrum in the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, which were reallocated for non-Government use. The Commission also on its own motion corrects certain rules adopted in the *Report and Order,* and adopts further rule amendments codifying decisions made in the *Report and Order.*

DATES: Effective August 30, 2004.

FOR FURTHER INFORMATION CONTACT:

Technical information: Brian Marenco, *brian.marenco@fcc.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233.

Legal information: Scot Stone, *scot.stone@fcc.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Order, FCC 03–204, adopted on August 7, 2003, and released on August 19, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. The Order (a) declines to require that each 1392–1395 MHz band station register with the American Society of Health Care Engineering of the American Hospital Association (ASHE) upon initiating operations, as such a requirement would be contrary to the regulatory flexibility that is inherent with a geographic area license; (b) instructs ASHE and the Land Mobile Communications Council to present a joint coordination plan for the 1427–1432 MHz band, which is used by both Wireless Medical Telemetry Service (WMTS) and site-based non-medical telemetry, within one year of the release date of the Order (c) declines to impose coordination procedures on the 1432–1435 MHz band licensees that operate within a hundred miles of 1435–1525 MHz flight test sites; and (d) modifies the channel plans that were adopted in the *Report and Order* for the 217–220 MHz and 1427–1432 MHz bands so that licensees can employ 25 kHz or 50 kHz bandwidths with center frequencies that require no more than three decimal places of accuracy (*e.g.*, 217.025 MHz), rather than five to six decimal places of accuracy (*e.g.*, 217.015625 MHz).

I. Procedural Matters

A. Paperwork Reduction Act

3. The Order does not contain any new or modified information collection.

B. Supplemental Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act ("RFA"), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the Report and Order, 67 FR 41847. In view of the fact that we have adopted further rule amendments in this Order, we have included this Supplemental Final Regulatory Flexibility Analysis (SFRFA). This present SFRFA conforms to the RFA.

Need for, and Objectives of the Order

5. In this Order, on our own motion, we correct certain rules that were adopted in the *Report and Order*, and adopt further rule amendments that the Commission inadvertently failed to adopt in the *Report and Order*. In the *Report and Order*, the Commission adopted rules for the licensing and operation of fixed and mobile services in the 216–220 MHz, 1390–1395 MHz, 1427–1429.5 MHz, 1429.5–1432 MHz, 1432–1435 MHz, 1670–1675 MHz and 2385–2390 MHz bands pursuant to the provisions of the Communications Act of 1934, as amended, the Omnibus Budget Reconciliation Act of 1993 (OBRA–93), and the Balanced Budget Act of 1997 (BBA–97). The transfer of these bands to non-Government use should enable the development of new technologies and services, provide additional spectrum relief for congested private land mobile frequencies, and fulfill our obligations as mandated by Congress to assign this spectrum for non-Government use.

6. The *Report and Order* established competitive bidding rules and small business definitions for the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, and the paired 1392–1395 MHz and 1432–1435 MHz bands similar to those applied to the WCS 2.3 GHz band and the 700 MHz Guard Bands. Consistent with the Commission's responsibility under section 309(j) to promote opportunities for, and disseminate licenses to, a wide variety of applicants, the *Report and Order* adopted small business size standards and bidding preferences for qualifying bidders that will provide such bidders with opportunities to compete successfully against large, well-financed entities. Specifically, with respect to the aforementioned bands, we define a "small business" as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, and a "very small business" as any entity with average annual gross revenues for the three preceding years not exceeding $15 million. Correspondingly, the Commission adopted a bidding credit of 15 percent for "small businesses" and a bidding credit of 25 percent for "very small businesses." This bidding credit structure is consistent with the Commission's standard schedule of bidding credits, which may be found at § 1.2110(f)(2) of the Commission's rules.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA

7. We received no comments in response to the FRFA in the *Report and Order*. We continue to believe that the policies and rules adopted in this *Report and Order* will better enable small entities to compete for licenses in the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, and the paired 1392–1395 MHz and 1432–1435 MHz bands.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

8. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities.

9. *Wireless Service Providers.* The SBA has developed a definition for small business within the two separate categories of cellular and other wireless telecommunications or paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's *Telephone Trends Report* data, 1,495 companies reported that they were engaged in the provision of wireless service. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do

not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 989 or fewer small wireless service providers that may be affected by the rules adopted in this proceeding. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules adopted in this proceeding. Except as noted, these services are associated with the above SBA small business size standard.

10. With respect to the 1390–1392 MHz band, the Commission will award a single 2 MHz license in each of fifty-two Major Economic Areas (MEAs). For the 1670–1675 MHz, and 2385–2390 MHz bands, the Commission will award a single nationwide license in each band. For the paired 1392–1395 MHz and 1432–1435 MHz bands, the Commission will award a pair of 1.5 MHz licenses in each of six Economic Area Groupings (EAGs). For the 1432–1435 MHz band, the Commission will award licenses on a site by-site basis. The Commission does not yet know how many applicants or licensees in any of these bands will be small entities.

11. Existing services in other bands include entities that might be affected by the rules, either as existing licensees or potential applicants or licensees. Incumbent services in the 1427–1429.5 MHz and 1429.5–1432 MHz bands include wireless medical telemetry (WMTS) and general telemetry.

12. *Telemetry.* Incumbent non-medical telemetry operators in the 1427–1429.5 MHz and 1429.5–1432 MHz bands include Itron, Inc., Pueblo Service Company of Colorado and E Prime, Inc., and large manufacturers such as Deere and Company, Caterpillar, and General Dynamics. None of these licensees are likely to be small businesses. Itron, Inc. is the primary user of the 1427–1429.5 MHz and 1429.5–1432 MHz bands. Itron, Inc., with an investment of $100 million in equipment development, is not likely to be a small business. One licensee, Zytex, a manufacturer of high-speed telemetry systems, may be a small business. The Commission does not yet know how many applicants or licensees in these bands will be small entities.

13. *WMTS.* Users of medical telemetry are hospitals and medical care facilities, some of which are likely to be small businesses. The broad category of Hospitals consists of the following categories and the following small business providers with annual receipts of $29 million or less: General Medical and Surgical Hospitals, Psychiatric and Substance Abuse Hospitals, and Specialty Hospitals. For all these health care providers, census data indicate that there is a combined total of 330 firms that operated in 1997, of which 237 or fewer had revenues of less than $25 million. An additional 45 firms had annual receipts of $25 million to $49.99 million. We therefore estimate that most Hospitals are small, given SBA's size categories.

14. The broad category of Nursing and Residential Care Facilities consists of the following categories and the following small business size standards. The category of Nursing and Residential Care Facilities with annual receipts of $6 million or less consists of: Residential Mental Health and Substance Abuse Facilities, Homes for the Elderly, and Other Residential Care Facilities. The category of Nursing and Residential Care Facilities with annual receipts of $8.5 million or less consists of Residential Mental Retardation Facilities. The category of Nursing and Residential Care Facilities with annual receipts of less than $11.5 million consists of: Nursing Care Facilities and Continuing Care Retirement Communities. For all of these health care providers, census data indicate that there is a combined total of 18,011 firms that operated in 1997. Of these, 16,165 or fewer firms had annual receipts of below $5 million. In addition, 1,205 firms had annual receipts of $5 million to $9.99 million, and 450 firms had receipts of $10 million to $24.99 million. We therefore estimate that a great majority of Nursing and Residential Care Facilities are small, given SBA's size categories.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. The Order imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this proceeding.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

17. Regarding our affirmation in the Order of the Commission's decision in the *Report and Order* to require frequency coordination for primary and secondary telemetry operations in the 1427–1429.5 MHz and 1429.5–1432 MHz bands, we do not anticipate any adverse impact on small entities. Although there are certain costs associated with filing an application through an FCC-certified frequency coordinator, on balance, the benefits of frequency coordination, especially the avoidance of harmful interference, outweigh any costs. An alternative to this approach would have been to not require frequency coordination, but this is unacceptable because of high congestion, primary incumbent operations that must be protected, and the fact that licensees in these bands must share frequencies. Our amendment to the channel plans for telemetry operations in the 217–220 MHz and 1427–1432 MHz bands will benefit small entities by requiring less precise, and thus, less expensive equipment.

Report to Congress

18. The Commission will send a copy of the Order, including this SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and SFRFA (or summaries thereof) will also be published in the **Federal Register**.

III. Ordering Clauses

19. Accordingly, parts 1, 27, 90, and 95 of the Commission's Rules are amended effective August 30, 2004.

20. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, and § 1.429 of the Commission's Rules, 47 CFR 1.429, that the petition for reconsideration filed by Aerospace and Flight Test Radio Coordinating Council on July 22, 2002 is denied in part to the extent set forth above.

21. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, and § 1.429 of the Commission's Rules, 47 CFR 1.429, that the petition for reconsideration filed by

the American Society for Health Care Engineering of the American Hospital Association on July 22, 2002 is denied.

22. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, and § 1.429 of the Commission's Rules, 47 CFR 1.429, that the petition for reconsideration filed by Celtronix Telemetry, Inc. on July 22, 2002 is granted to the extent set forth above.

23. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, that the petition for clarification filed by Final Analysis Communication Services, Inc. on July 22, 2002 is partially granted and partially denied to the extent set forth above.

24. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, and § 1.429 of the Commission's Rules, 47 CFR 1.429, that the petition for reconsideration filed by Itron, Inc. on July 22, 2002 is dismissed.

25. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, that the petition for clarification filed by the Ornithological Council on November 5, 2002 is granted.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Radio.

47 CFR Part 27

Communications common carriers, Radio.

47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, 47 CFR parts 1, 27, 90, and 95 are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e).

■ 2. Section 1.1307(b)(1) is amended by revising the entry in Table 1 for the "Wireless Communications Service (Part 27)" to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assignments (EAs) must be prepared.

* * * * *

(b) * * *

(1) * * *

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
* * * * * * *	
Wireless Communications Service (Part 27)	(1) for the 1390–1392 MHz, 1392–1395 MHz, 1432–1435 MHz 1670–1675 MHz and 2385–2390 MHz bands: Non-building-mounted antennas: Height above ground level to lowest point of antenna < 10 m and total power of all channels > 2000 W ERP (3280 W EIRP). Building-mounted antennas: Total power of all channels > 2000 W ERP (3280 W EIRP). (2) for the 698–746 MHz, 746–764 MHz, 776–794 MHz, 2305–2320 MHz, and 2345–2360 MHz bands. Total power of all channels > 1000 W ERP (1640 W EIRP).
* * * * * * *	

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 3. The authority citation for part 27 continues to read as follows:

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

■ 4. Section 27.11 is amended by revising paragraphs (e) through (h) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(e) *1390–1392 MHz band.* Initial authorizations for the 1390–1392 MHz band shall be for 2 megahertz of spectrum in accordance with § 27.5(d). Authorizations will be based on Major Economic Areas (MEAs), as specified in § 27.6(d).

(f) *The paired 1392–1395 MHz and 1432–1435 MHz bands.* Initial authorizations for the paired 1392–1395 MHz and 1432–1435 MHz bands shall be for 3 megahertz of paired spectrum in accordance with § 27.5(e). Authorization for Blocks A and B will be based on Economic Areas Groupings (EAGs), as specified in § 27.6(e).

(g) *1670–1675 MHz band.* Initial authorizations for the 1670–1675 MHz band shall be for 5 megahertz of spectrum in accordance with § 27.5(f). Authorizations will be on a nationwide basis.

(h) *2385–2390 MHz band.* Initial authorizations for the 2385–2390 MHz band shall be for 5 megahertz of spectrum in accordance with § 27.5(g). Authorizations will be on a nationwide basis.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 5. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

§ 90.175 [Amended]

■ 6. Section 90.175 is revised by removing paragraph (j)(13) and redesignating paragraphs (j)(14) through (17) as (j)(13) through (16).

■ 7. Section 90.209 is amended by revising the entry for "216–2205" in the

table in paragraph (b)(5) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(5) * * *

STANDARD CHANNEL SPACING/BANDWIDTH

Frequency band (MHz)	Channel spacing (kHz)	Authorized bandwidth (kHz)
* * * * * * *		
216–2205	6.25	20/11.25/6[5]
* * * * * * *		

[5] Licensees will be allowed to combine contiguous channels up to 50 kHz, and more than 50 kHz only upon a showing of adequate justification per § 90.259(b)(10).

* * * * *

■ 8. Section 90.259 is amended by revising paragraphs (a)(7), (a)(8), (b)(7), (b)(9), and (c)(3) to read as follows:

§ 90.259 Assignment and use of frequencies in the bands 216–220 MHz and 1427–1432 MHz.

(a) * * *

(7) Frequencies will be assigned with a 6.25 kHz, 12.5 kHz, 25 kHz or 50 kHz channel bandwidth. Frequencies may be assigned with a channel bandwidth exceeding 50 kHz only upon a showing of adequate justification.

(8) Assignable 6.25 kHz channels will occur in increments of 6.25 kHz from 217.00625 MHz to 219.99375 MHz. Assignable 12.5 kHz channels will occur in increments of 12.5 kHz from 217.0125 MHz to 219.9875 MHz. Assignable 25 kHz channels will occur in increments of 25 kHz from 217.025 MHz to 219.975 MHz. Assignable 50 kHz channels will occur in increments of 50 kHz from 217.025 MHz to 219.975 MHz.

* * * * *

(b) * * *

(7) For primary operations base, mobile, operational fixed and temporary fixed operations are permitted.

(i) At the locations specified in paragraph (b)(4) of this section, primary operations are performed in the 1427–1429 MHz and 1431.5–1432 MHz bands. The maximum ERP limitations are as follows:

Operation	Frequency range (MHz)			
	1427–1428	1428–1428.5	1428.5–1429	1431.5–1432
Fixed (watts)	61.1	6.11	0.611	0.611
Mobile (watts)	0.611	0.611	0.015	0.015
Temporary fixed (watts)	0.611	0.611	0.611	0.611

(ii) For all other locations, primary operations are performed in the 1429.5–1432 MHz band. The maximum ERP limitations are as follows:

Operation	Frequency range (MHz)			
	1429.5–1430	1430–1430.5	1430.5–1431.5	1431.5–1432
Fixed (watts)	0.611	0.611	6.11	61.1
Mobile (watts)	0.015	0.611	0.611	0.611
Temporary fixed (watts)	0.611	0.611	0.611	0.611

* * * * *

(9) Assignable frequencies occur in increments of 12.5 kHz from 1427.00625 MHz to 1431.99375 MHz.

* * * * *

(c) * * *

(3) Except for the transmissions that are permitted under § 90.248(f) of this chapter, airborne use is prohibited.

* * * * *

PART 95—PERSONAL RADIO SERVICES

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

Authority: Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

■ 10. Section 95.630 is revised to read as follows:

§ 95.630 WMTS Transmitter frequencies.

WMTS transmitters may operate in the frequency bands specified as follows:

608–614 MHz

1395–1400 MHz

1427–1429.5 MHz except at the locations listed in § 90.259(b)(4) where WMTS may operate in the 1429–1431.5 MHz band.

[FR Doc. 04–14480 Filed 6–30–04; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1201, MM Docket No. 01–43, RM–10041]

Digital Television Broadcast Service; Jackson, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of CivCo, Inc., grants the petition for reconsideration of the *Report and Order,* which dismissed CivCo's request seeking the substitution

of DTV channel 9 for station WLBT–TV's assigned DTV channel 51. *See* 68 FR 19240 (2003). The Commission grants CivCo's request to substitute DTV channel 9 for DTV channel 51 at Jackson. DTV channel 9 can be allotted to Jackson, Mississippi, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 32–12–49 N. and 90–22–56 W. with a power of 3.2, HAAT of 610 meters and with a DTV service population of 639 thousand. With this action, this proceeding is terminated.

DATES: Effective July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–43, adopted April 29, 2004, and released May 7, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. The Commission will send a copy of this Memorandum Opinion and Order to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* U.S.C.801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Mississippi, is amended by removing DTV channel 51 and adding DTV channel 9 at Jackson.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–15001 Filed 6–30–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1347, MB Docket No. 04–16, RM–10840]

Digital Television Broadcast Service; Roswell, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Eastern New Mexico University, allots DTV channel *31 for noncommercial use at Roswell, New Mexico. *See* 69 FR 6238, February 10, 2004. DTV channel *31 can be allotted to Roswell, New Mexico, in compliance with the principal community coverage and the minimum geographic spacing requirements of Sections 73.625(a) and 73.623(d) at reference coordinates 33–19–56 N. and 104–48–17 W. Since the community of Roswell is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–16, adopted May 13, 2004, and released May 28, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under New Mexico, is amended by adding DTV channel *31 at Roswell.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–14999 Filed 6–30–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1345, MB Docket No. 03–229, RM–10795]

Digital Television Broadcast Service; Anniston, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of TV Alabama, Inc., substitutes DTV channel 9 for station WJSU's assigned DTV channel 58 at Anniston. *See* 68 FR 64578, November 14, 2003. DTV channel 9 can be allotted to Anniston, Alabama, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 33–36–24 N. and 86–25–03 W. with a power of 15.6, HAAT of 359 meters and with a DTV service population of 1319 thousand. With this action, this proceeding is terminated.

DATES: Effective August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No.03–229, adopted May 13, 2004, and released May 21, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Alabama, is amended by removing DTV channel 58 and adding DTV channel 9 at Anniston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–14998 Filed 6–30–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 126
Thursday, July 1, 2004

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Change in Official or Senior Executive Officer in Credit Unions That Are Newly Chartered or Are in Troubled Condition

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA is proposing to revise its rule concerning the requirement that federally-insured credit unions that are newly chartered or troubled file notice with NCUA before adding or replacing a board or committee member or employing or changing the duties of a senior executive officer. The proposed amendments will clarify the relationship between the prior notice provision and the commencement of service provision, so as to eliminate any potential confusion. In addition, the amendments reorganize the requirements in the current rule to make it easier to understand.

DATES: The NCUA must receive comments on or before August 30, 2004.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Proposed Rule 701.14, Change in Official in Newly Chartered or Troubled Credit Unions" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Section 212 of the Federal Credit Union Act and § 701.14 of NCUA's regulations require newly chartered and troubled credit unions to seek NCUA approval before the appointment or employment of directors and senior management officials. 12 U.S.C. 1790a; 12 CFR 701.14. Section 701.14 sets out the substantive and procedural requirements for credit unions seeking approval of an individual. The rule was adopted in 1990 and has had one substantive revision since that time. 55 FR 43084 (October 26, 1990); 64 FR 28715 (May 27, 1999).

The NCUA Board has a policy of continually reviewing NCUA regulations to "update, clarify and simplify existing regulations and eliminate unnecessary and redundant and unnecessary provisions." NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. As a result of NCUA's 2003 review, the Board determined that the Change in Official or Senior Executive Officer rule should be updated.

Summary of Proposed Changes

The only substantive proposed change to the rule is to § 701.14(e), the provision dealing with commencement of service. As currently written, this provision states a proposed director, committee member or senior executive officer may serve temporarily until the credit union and the individual are notified in writing of NCUA's approval or disapproval. This provision conflicts with the prior notice requirement in § 701.14(c).

Section 701.14(c) requires at least 30 days prior notice to NCUA before the addition of a board or committee member or the employment of a senior executive officer. There are some exceptions to the prior notice requirement but they are addressed in other sections of the rule. 12 CFR 701.14(d)(2) and (3). To resolve this inconsistency, the Board proposes adopting language in the commencement of service provision that is similar to regulations of the Federal Deposit Insurance Corporation and the other financial regulators. 12 CFR 303.103(b).

The revised provision is redesignated § 701.14(d). It provides for commencement of service at the expiration of the 30-day period or any additional time under paragraph (c)(3)(iii) of the section, unless NCUA disapproves the notice before the end of the period.

The proposed rule reorganizes the paragraph structure so that it is easier to read. All of the notice requirements are moved to current paragraph (d) *Procedures for Notice of Proposed Change in Official or Senior Executive Officer.* This paragraph is redesignated paragraph (c) and now includes in paragraph (c)(1) the prior notice requirements from current paragraph (c). Current paragraph (d)(2) *Waiver of prior notice requirements* is redesignated (c)(2)(i) and (iii). Current paragraph (d)(3) *Election of directors or credit committee members* is retitled *Automatic waiver* and redesignated (c)(2(ii).

Current paragraph (d)(1) *Filing and acceptance* is retitled *Filing Procedures*, redesignated (c)(3), and broken into three subparts: (i) *Where to file*; (ii) *Contents*; and (iii) *Processing.*

The final change is the redesignation of paragraph (f) as paragraph (e).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The proposal clarifies the relationship between the waiver of prior notice provision and the temporary service provision, so as to elimininate any potential confusion. The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit

unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). NCUA currently has OMB clearance for § 701.14's collection requirements (OMB No. 3133–0121).

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule will apply to all federally insured credit unions. NCUA has determined that the proposed amendments will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit unions, Senior executive officials.

By the National Credit Union Administration Board on June 24, 2004.

Becky Baker,

Secretary of the Board.

Accordingly, the National Credit Union Administration proposes to amend 12 CFR Part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS 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.

2. Amend § 701.14 by removing paragraphs (c) (d) and (e), adding new paragraphs (c) and (d), and redesignating paragraph (f) as paragraph (e) to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or in troubled condition.

* * * * *

(c) *Procedures for Notice of Proposed Change in Official or Senior Executive Officer*—(1) *Prior Notice Requirement.* An insured credit union must give NCUA written notice at least 30 days before the effective date of any addition or replacement of a member of the board of directors or committee member or the employment or change in responsibilities of any individual to a position of senior executive officer if:

(i) The credit union has been chartered for less than two years; or

(ii) The credit union meets the definition of troubled condition in paragraph (b)(3) or (4) of this section.

(2) *Waiver of Prior Notice*—(i) *Waiver requests.* Parties may petition the appropriate Regional Director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the credit union or the public interest.

(ii) *Automatic waiver.* In the case of the election of a new member of the board of directors or credit committee member at a meeting of the members of a federally insured credit union, the prior 30-day notice is automatically waived and the individual may immediately begin serving, provided that a complete notice is filed with the appropriate Regional Director within 48 hours of the election. If NCUA disapproves a director or credit committee member, the board of directors of the credit union may appoint its own alternate, to serve until the next annual meeting, contingent on NCUA approval.

(iii) *Effect on disapproval authority.* A waiver does not affect the authority of NCUA to issue a Notice of Disapproval within 30 days of the waiver or within 30 days of any subsequent required notice.

(3) *Filing procedures*—(i) *Where to file.* Notices will be filed with the appropriate Regional Director or, in the case of a corporate credit union, with the Director of the Office of Corporate Credit Unions. All references to Regional Director will, for corporate credit unions, mean the Director of Office of Corporate Credit Unions. State-chartered federally insured credit unions will also file a copy of the notice with their state supervisor.

(ii) *Contents.* The notice must contain information about the competence, experience, character, or integrity of the individual on whose behalf the notice is submitted. The Regional Director or his or her designee may require additional information. The information submitted must include the identity, personal history, business background, and experience of the individual, including material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which the individual is a party and any criminal indictment or conviction of the individual by a state or federal court. Each individual on whose behalf the notice is filed must attest to the validity of the information filed. At the option of the individual, the information may be forwarded to the Regional Director by the individual; however, in such cases, the credit union must file a notice to that effect.

(iii) *Processing.* Within ten calendar days after receiving the notice, the Regional Director will inform the credit union either that the notice is complete or that additional, specified information is needed and must be submitted within 30 calendar days. If the initial notice is complete, the Regional Director will issue a written decision of approval or disapproval to the individual and the credit union within 30 calendar days of receipt of the notice. If the initial notice is not complete, the Regional Director will issue a written decision within 30 calendar days of receipt of the original notice plus the amount of time the credit union takes to provide the requested additional information. If the additional information is not submitted within 30 calendar days of the Regional Director's request, the Regional Director may either disapprove the proposed individual or review the notice based on the information provided. If the credit union and the individual have submitted all requested information and the Regional Director has not issued a written decision within the applicable time period, the individual is approved.

(d) *Commencement of Service.* A proposed director, committee member, or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (c)(3)(iii) of

this section, unless the NCUA disapproves the notice before the end of the period.

* * * * *

[FR Doc. 04–14764 Filed 6–30–04; 8:45 am]
BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 723

Member Business Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to revise the collateral and security requirements of its member business loans (MBL) rule to enable credit unions subject to the rule to participate more fully in Small Business Administration (SBA) guaranteed loan programs.

DATES: Comments must be received on or before August 30, 2004.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Proposed Rule 723, Member Business Loans" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

Last year, NCUA amended its MBL rule and other rules related to business lending to enhance credit unions' ability to meet their members' business loans needs. 68 FR 56537 (October 1, 2003).

In addition to comments on the proposed amendments, NCUA received other suggestions as to how it could improve the MBL rule. Among the most significant of these, commenters suggested NCUA amend the MBL rule "so that it could be better aligned with lending programs offered by the Small Business Administration" such as the SBA's Basic 7(a) Loan Program. *Id.* at 56538. While NCUA recognized the merits of this suggestion, NCUA could not include it in the final rulemaking because it addressed issues outside the scope of the proposed rule. The Administrative Procedure Act generally prohibits federal government agencies from adopting rules without affording the opportunity for public comment. 5 U.S.C. 553. NCUA noted in the final rule, however, that it would review this suggestion to determine if it would be appropriate to act on it in a subsequent rulemaking.

B. Regulatory Amendments

NCUA proposes to amend the MBL rule to permit credit unions to make SBA guaranteed loans under SBA's less restrictive lending requirements instead of under the more restrictive MBL rule's lending requirements. NCUA has reviewed the SBA's loan programs in which credit unions can participate and believes they provide reasonable criteria for credit union participation and compliance within the bounds of safety and soundness. Additionally, these SBA programs are ideally suited to the mission of many credit unions to satisfy their members' business loans needs.

NCUA recognizes that the collateral and security requirements for MBLs, including construction and development loans, are generally more restrictive than those of the SBA's guaranteed loan programs and could hamper a credit union's ability to participate fully in SBA loan programs. As a result, the MBL rule's collateral and security requirements could prevent a credit union from making a particular loan that it could otherwise make under SBA's requirements. NCUA believes the proposal will provide relief from these more restrictive requirements and will help enable credit unions to better serve their members' business loans needs.

C. Clarification of Existing Authority

Recently, NCUA's Office of General Counsel in Legal Opinion #03–0911, dated May 20, 2004, clarified that NCUA's general lending rule and the Federal Credit Union Act (Act) permit federal credit unions (FCUs) to make MBLs under the terms of the SBA's guaranteed loan programs to the extent the terms and conditions under which the guarantee is provided are consistent with the requirements and limitations in the MBL rule. 12 CFR 701.21(e); 12 U.S.C. 1757(5)(A)(iii). Specifically, the opinion identified loan maturity limits, usury ceilings and prepayment penalties as terms of the SBA's guaranteed loan programs that an FCU could use in lieu of corresponding terms in NCUA's rules. The opinion stated, however, that a credit union could not rely on the exception for government guaranteed loan programs in NCUA's general lending rule and the Act with regard to collateral requirements for MBLs. 12 CFR 701.21(e); 12 U.S.C. 1757(5)(A)(iii). The opinion explained the MBL rule expressly sets collateral requirements for MBLs, in the form of maximum loan-to-value ratios. The collateral requirements of the SBA's guaranteed loan programs are not consistent with those of the current MBL rule and, therefore, cannot be used. The proposed amendments will remove that impediment by exempting SBA guaranteed loans from the MBL rule's collateral requirements.

There could be circumstances where a business loan made under an SBA loan program would not be subject to the MBL rule. For example, a $40,000 business loan with an SBA guarantee to a member who has no other loans with the originating credit union would be too small to meet the definition of an MBL. Thus, the credit union in this example can rely on the authority provided by § 701.21(e) of NCUA's rules and make a business loan as part of an SBA loan program under all of the terms and conditions required or permitted by the program.

The MBL rule applies to all FCUs and to most federally-insured state credit unions (FISCUs). A FISCU is exempt from the MBL rule only if, after August 7, 1998, the enactment of the Credit Union Membership Access Act, Public Law 105–21, its state supervisory authority (SSA) has adopted its own business loan rule, with the approval of the NCUA Board, for use instead of NCUA's MBL rule. The proposed regulatory amendments regarding collateral requirements apply to all credit unions subject to the MBL rule, but it is important to note that legal opinion OGC 03–0911 applies only to FCUs, not FISCUs. NCUA does not object to a FISCU using the exception for government guaranteed loan programs in NCUA's general lending rule if its SSA has determined the FISCU has authority to do so under relevant state law.

While NCUA believes many credit unions would greatly benefit from participating in these SBA programs, NCUA also believes that programs of this type can create some additional

safety and soundness concerns. For example, the loans being guaranteed are often more risky than other loans made by credit unions. In fact, most credit unions would not make these kinds of loans without the security the SBA guarantees provide. NCUA is aware that SBA guarantee programs generally place stringent requirements on participating lenders to comply with program requirements or face losing the guarantee. Accordingly, NCUA recommends that, before a credit union becomes a participating lender, it makes certain it fully understands the terms of the program and has procedures in place to assure its compliance with all program requirements. Although this rulemaking only pertains to SBA guaranteed loan programs, NCUA will consider other government programs as the need arises.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under ten million dollars in assets). The proposed rule permits credit unions to more fully participate in SBA loan programs, without imposing any additional regulatory burden. The proposed rule would 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 the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on June 24, 2004.

Becky Baker,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR part 723 as follows:

PART 723—MEMBER BUSINESS LOANS

1. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

2. Revise the introductory sentence of § 723.3 to read as follows:

§ 723.3 What are the requirements for construction and development lending?

Except as provided in § 723.4 or unless your Regional Director grants a waiver, loans granted for the construction or development of commercial or residential property are subject to the following additional requirements.

* * * * *

3. Revise § 723.4 to read as follows:

§ 723.4 What other regulations apply to member business lending?

(a) The provisions of § 701.21(a) through (g) of this chapter apply to member business loans granted by federal credit unions to the extent they are consistent with this part. Except as required by part 741 of this chapter, federally insured state-chartered credit unions are not required to comply with the provisions of § 701.21(a) through (g) of this chapter.

(b) If a federal credit union makes a member business loan as part of a Small Business Administration guaranteed loan program with loan requirements that are less restrictive than those required by NCUA, then the federal credit union may follow the loan requirements of the relevant Small Business Administration guaranteed loan program to the extent they are consistent with this part. A federally insured state-chartered credit union that is subject to this part and makes a member business loan as part of a Small Business Administration guaranteed loan program with loan requirements that are less restrictive than those required by NCUA may follow the loan requirements of the relevant Small Business Administration guaranteed loan program to the extent they are consistent with this part if its state supervisory authority has determined that the credit union has authority to do so under state law.

(c) The collateral and security requirements of § 723.3 and § 723.7 do not apply to member business loans made as part of a Small Business Administration guaranteed loan program.

4. Revise § 723.7(a) introductory text to read as follows:

§ 723.7 What are the collateral and security requirements?

(a) Except as provided in § 723.4 or unless your Regional Director grants a waiver, all member business loans, except those made under paragraphs (c), (d), and (e) of this section, must be secured by collateral as follows:

* * * * *

[FR Doc. 04–14763 Filed 6–30–04; 8:45 am]

BILLING CODE 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF11

Small Business Size Standards; Restructuring of Size Standards

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule; withdrawal.

SUMMARY: SBA is hereby withdrawing its March 19, 2004, proposed rule to restructure small business size standards. SBA intends to issue an Advance Notice of Proposed Rulemaking to obtain more data before deciding what further actions to take to restructure small business size standards.

DATES: This proposed rule is withdrawn as of July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Assistant Administrator for Size Standards, (202) 205–6464 or *gary.jackson@sba.gov.*

SUPPLEMENTARY INFORMATION: On March 19, 2004, SBA published a proposed rule (69 FR 13130) to restructure its small business size standards. The rule proposed to simplify size standards by establishing number of employees as a common standard for all industries and by reducing the number of individual size standard levels from 37 to 10. The current 37 standards are based either on monetary amounts or on number of employees. The proposed rule also included several other revisions to simplify the size standards and provided a 60-day public comment period closing on May 18, 2004. Because of the significant level of interest generated by the proposed rule, on May 17, 2004, SBA published a notice extending the comment period to July 2, 2004 (69 FR 27865).

To date, SBA has received well over 3,700 public comments. SBA intends to issue an Advance Notice of Proposed Rulemaking (ANPRM) to collect additional information to review the issues raised by the comments on the proposed rule. Although many of those comments support aspects of the proposal, a number have raised concerns about SBA's methodology for developing the proposed size standards, the impact the proposed size standards will have on existing small businesses, the determination of the employee size of a business, and SBA's proposed overall approach to simplifying the size standards. Further review of these issues may result in substantive changes from the proposal. By withdrawing the March 19, 2004, proposed rule, SBA commits to issue a new proposed rule prior to final rulemaking, ensuring that the public has sufficient notice and opportunity to comment on such changes.

Therefore, by this notice, SBA is withdrawing the March 19, 2004, proposed rule. Once SBA completes its review of the comments received in response to March 19, 2004, proposed rule and the comments it may receive in response to the planned ANPRM, it will decide what further actions are necessary and issue any appropriate notices of proposed rulemaking.

Hector V. Barreto,

Administrator.

[FR Doc. 04–15080 Filed 6–30–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18496; Directorate Identifier 2004–NE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (Formerly AlliedSignal Inc. and Garrett Turbine Engine Co.). TFE731–2 and –3 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.) TFE731–2 and –3 series turbofan engines with certain part numbers (P/Ns) and serial numbers (SNs) of low pressure (LP) 1st and 2nd stage turbine rotor discs initially installed as new parts before April 1, 1991. This proposed AD would require replacement of those LP 1st and 2nd stage turbine rotor discs. This proposed AD results from a report of an uncontained failure of an LP 2nd stage turbine rotor disc that caused an in-flight engine shutdown. We are proposing this AD to prevent LP turbine rotor disk separation, which could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by August 30, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Honeywell Engines and Systems (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.) Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial Aviation), fax: (602) 365–5577 (General Aviation), (602) 365–2832 (Commercial Aviation).

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood CA 90712–4137; telephone: (562) 627–5246; fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

We have implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, we posted new AD actions on the DMS and assigned a DMS docket number. We track each action and assign a corresponding Directorate identifier. The DMS docket No. is in the form "Docket No. FAA–200X–XXXXX." Each DMS docket also lists the Directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–18496; Directorate Identifier 2004–NE–04–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Honeywell International Inc. has made the FAA aware that a problem may exist with LP 1st and 2nd stage turbine rotor discs manufactured from 1981 through 1984 that were heat treated in an oil fired furnace. This heat treat process might have resulted in turbine rotor disc material with nonuniform microstructure, which is susceptible to cracking and/or separation. On March 22, 1995, we issued AD 95–07–02 (60 FR 19343, April 18, 1995) that requires removing suspect LP turbine rotor discs due to their suspect heat treatment and susceptibility to creep fatigue. At that time, a total of five LP 2nd stage turbine rotor discs had failed.

Since AD 95–07–02 was issued, a sixth LP 2nd stage turbine rotor disc failed, causing an in-flight engine shutdown. Analysis revealed that the disc was from a manufacturing lot that was originally not suspect for defects, and revealed that the disc had nonuniform microstructure similar to the LP turbine rotor disc lots identified by AD 95–07–02. This condition, if not corrected, could result in LP turbine rotor disk separation, which may result in an uncontained engine failure and damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of Honeywell International Inc. Service Bulletin (SB) No. TFE731–72–3682, dated November 26, 2002, that describes procedures for replacement of specific serial numbered LP 1st and 2nd stage turbine rotor discs manufactured before April 1, 1991.

Differences Between the Proposed AD and the Manufacturer's Service Information

There are differences between this proposed AD and SB No. TFE731–72–3682, dated November 26, 2002, in identifying the suspect serial numbers with respect to the engine model number. These differences result from LP 1st and 2nd stage turbine rotor discs previously identified in AD 95–07–02.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require the following for Honeywell International Inc. TFE731–2 and –3 series turbofan engines:

- The following actions are applicable to the P/Ns of LP 1st and 2nd stage turbine rotor discs listed in the applicability section of the proposed AD that were initially installed as new parts before April 1, 1991, and that have SNs listed in Tables 1, 2, and 3 of Honeywell International Inc. Service Bulletin (SB) No. TFE731–72–3682, dated November 26, 2002.
- For TFE731–2–2J, TFE731–2–2N, TFE731–2A–2A, and TFE731–3–1J engines, within 100 hours time-in-service (TIS) after the effective date of this proposed AD, replace discs that are listed by SN in Tables 1 and 3 of Honeywell International Inc. SB No. TFE731–72–3682, dated November 26, 2002.
- For TFE731–2 series engines except TFE731–2–2J, TFE731–2–2N, and TFE731–2A–2A engines, replace discs that are listed by SN in Tables 1 and 2 of Honeywell International Inc. SB No. TFE731–72–3682, dated November 26, 2002, at the next Major Periodic Inspection (MPI) or next access to the turbine discs after the effective date of this AD, but within 2,200 hours TIS since the last disc inspection, whichever occurs first.
- For TFE731–3 series engines except TFE731–3–1J, replace discs that are listed by SN in Table 3 of Honeywell International Inc. SB No. TFE731–72–3682, dated November 26, 2002, at the next MPI or next access to the turbine discs after the effective date of this AD, but within 1,500 hours TIS since the last disc inspection, whichever occurs first.
- After the effective date of this proposed AD, do not install any LP 1st and 2nd stage turbine rotor disc that has a SN listed in Table 1, 2, or 3 of SB No. TFE731–72–3682, dated November 26, 2002, and determined to be manufactured before April 1, 1991.

Costs of Compliance

There are about 56 Honeywell International Inc. TFE731–2 and –3 series turbofan engines of the affected design in the worldwide fleet. We estimate that 24 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 4 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $30,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $726,240.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.): Docket No. FAA–2004–18496; Directorate Identifier 2004–NE–04–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 30, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.) TFE731–2 and –3 series turbofan engines with the following low pressure (LP) 1st and 2nd stage turbine rotor disc part numbers (P/Ns), with serial numbers (SNs) listed in Tables 1, 2, and 3 of Honeywell International Inc. SB No. TFE731–72–3682, dated November 26, 2002, initially installed as new parts before April 1, 1991:

3072069-All
3072070-All
3072351-All
3072542-All
3073013-All
3073014-All
3073113-All
3073114-All
3074103-All
3074105-All

(All denotes all dash numbers installed)

These engines are installed on, but not limited to, the following airplanes:

Avions Marcel Dassault Mystere-Falcon 10 and 50 series
Cessna Model 650, Citation III, and Citation VI
Gulfstream Aerospace LP (formerly IAI) 1125 Westwind Astra series
Israel Aircraft Industries (IAI) 1124 series
Learjet 31, 35, 36, and 55 series
Lockheed-Georgia 1329–25 series (731 Jetstar, Jetstar II)
Raytheon Corporate Jets (formerly British Aerospace) DH/HS/BH–125 series;
Sabreliner NA–265–65 (Sabreliner 65)

Unsafe Condition

(d) This AD results from a report of an uncontained failure of an LP 2nd stage turbine rotor disc that caused an in-flight engine shutdown. We are issuing this AD to prevent LP turbine rotor disk separation, which could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Removal From Service of LP 1st and 2nd Stage Turbine Rotor Discs

(f) For TFE731–2–2J, TFE731–2–2N, TFE731–2A–2A, and TFE731–3–1J engines, replace discs that are listed by SN in Tables 1 and 3 of SB No. TFE731–72–3682, dated November 26, 2002, within 100 hours time-in-service (TIS) after the effective date of this AD.

(g) For TFE731–2 series engines except TFE731–2–2J, TFE731–2–2N, and TFE731–2A–2A engines, replace discs that are listed by SN in Tables 1 and 2 of SB No. TFE731–72–3682, dated November 26, 2002, at the next Major Periodic Inspection (MPI) or next access to the turbine discs after the effective date of this AD, but within 2,200 hours TIS since the last disc inspection, whichever occurs first.

(h) For TFE731–3 series engines except TFE731–3–1J, replace discs that are listed by SN in Table 3 of SB No. TFE731–72–3682, dated November 26, 2002, at the next MPI or next access to the turbine discs after the effective date of this AD, but within 1,500 hours TIS since the last disc inspection. whichever occurs first.

(i) Information on replacing affected discs can be found in Honeywell International Inc. SB No. TFE731–72–3682, dated November 26, 2002.

(j) After the effective date of this AD, do not install any LP 1st and 2nd stage turbine rotor disc that has a SN listed in Table 1, 2, or 3 of SB No. TFE731–72–3682, dated November 26, 2002, and determined to be manufactured before April 1, 1991.

Definitions

(k) For the purposes of this AD, access to the turbine discs is the level of disassembly that has removed the tie-shaft nut.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(m) None.

Related Information

(n) None.

Issued in Burlington, Massachusetts, on June 24, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–14946 Filed 6–30–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18515; Directorate Identifier 2004–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) 250–B and 250–C Series Turbofan and Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce Corporation (RRC) 250–B and 250–C series turbofan and turboshaft engines with certain part numbers (PNs) of compressor adaptor couplings manufactured by Alcor Engine Company (Alcor), EXTEX Ltd. (EXTEX), RRC, and Superior Air Parts (SAP) installed. This proposed AD would require operators to remove from service affected compressor adaptor couplings. This proposed AD results from nine reports of engine shutdown caused by compressor adaptor coupling failure. We are proposing this AD to reduce the risk of failure of the compressor adaptor coupling and subsequent loss of all engine power.

DATES: We must receive any comments on this proposed AD by August 30, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5245, fax: (562) 627–5210, for questions about Alcor, EXTEX, or SAP compressor adaptor couplings; and John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–8180; fax (847) 294–7834, for questions about RRC compressor adaptor couplings.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

We have implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, we posted new AD actions on the DMS and assigned a DMS docket number. We track each action and assign a corresponding Directorate identifier. The DMS docket No. is in the form "Docket No. FAA–200X–XXXXX." Each DMS docket also lists the Directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2004–18515; Directorate Identifier 2004–NE–12–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The FAA has received reports of nine RRC 250–B and 250–C series turbofan and turboshaft engines that have experienced failure of the compressor adaptor coupling in service. Each failure has resulted in total loss of engine power, with three of the events resulting in accidents. The engines are installed in mostly single-engine helicopters, along with several turboprop airplanes. Alcor, EXTEX, and SAP each independently manufactured compressor adaptor couplings, under Parts Manufacturer Approval (PMA) authority. RRC manufactured compressor adaptor couplings under type and production certificate authority.

While the precise mechanism of coupling failure is still under investigation, enough evidence has been collected to conclude that the four individual part designs could have unsatisfactory rates of failure in service, and should be removed from service as recommended and substantiated by each individual part manufacturer.

Each of the four manufacturers is responsible for its own independent component design, design substantiation, component manufacture, and development of a field management plan for its fleet. EXTEX is handling field management of affected couplings made by SAP, under an agreement between the two manufacturers.

Compliance requirements in this proposed AD have been developed based on the FAA's consideration of those individual field management plans and corresponding substantiation. The condition described previously, if not corrected, could result in failure of the compressor adaptor coupling and subsequent loss of all engine power.

With respect to the field management plans, design and production approval holders are expected to have a comprehensive understanding of the system that the component is installed in and the consequences of failure of that specific component design. Also, design and production approval holders are expected to effectively collect and review service data and assess risk to support continued operational safety of their components in service. The different manufacturers of compressor adaptor couplings have conducted their own independent data reviews and risk assessments, with varying outcomes. These varying outcomes have generated different compliance requirements in this proposed AD, for users of each manufacturer's compressor adaptor coupling.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information available from field reports and from the four manufacturers' safety assessments and have identified an unsafe condition that is likely to exist or develop in other RRC 250–B17, –B17B, –B17C, –B17D, –B17E, 250–C20, –C20B, –C20F, –C20J, –C20S, and –C20W series turbofan and turboshaft engines that have any of the following compressor adaptor couplings installed:

- Alcor: P/Ns 23039791AL and 23039791AL–1/–2/–3.
- EXTEX: P/Ns A23039791, E23039791, E23039791–1/–2/–3, EH23039791, and EH23039791–1/–2/–3.
- RRC: P/Ns 23039791–1/–2/–3.
- SAP: P/N A23039791.

We are proposing this AD, which would:

- Remove from service affected Alcor compressor adaptor couplings using the schedule specified in the compliance section of this proposed AD. The related Alcor safety assessment and recommendations are based on a significant number of service part inspections and engineering judgment.
- Remove from service affected EXTEX and SAP compressor adaptor couplings using the schedule specified in the compliance section of this proposed AD. The related EXTEX and SAP safety assessments and recommendations are based on a significant number of service part inspections and engineering judgment.
- Remove from service affected RRC compressor adaptor couplings using the schedule specified in the compliance section of this proposed AD. The related RRC safety assessment and recommendations are based on a significant number of service part inspections, component tests, and

manufacturing and overhaul assembly analysis, and engineering analysis.

Costs of Compliance

There are about 9,000 RRC 250–B and 250–C series turbofan and turboshaft engines of the affected design in the worldwide fleet. We estimate that 6,000 engines installed on helicopters and airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 3 work hours per engine to perform the proposed actions when done at time of rotor disassembly, and that the average labor rate is $65 per work hour. Required parts would cost about $1,601 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $10,776,000.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison): Docket No. FAA–2004–18515; Directorate Identifier 2004–NE–12–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 30, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) 250–B17, –B17B, –B17C, –B17D, –B17E, 250–C20, –C20B, –C20F, –C20J, –C20S, and –C20W series turbofan and turboshaft engines with the compressor adaptor couplings installed listed in the following Table 1:

TABLE 1.—AFFECTED COMPRESSOR ADAPTOR COUPLINGS

Manufacturer	Affected part numbers
Alcor Engine Company (Alcor)	P/Ns 23039791AL; 23039791AL–1/–2/–3;
EXTEX Ltd. (EXTEX)	A23039791; E23039791; E23039791–1/–2/–3; EH23039791; EH23039791–1/–2/–3.
Rolls-Royce Corporation (RRC)	23039791–1/–2/–3
Superior Air Parts (SAP).	A23039791

These engines are installed on, but not limited to, the aircraft in the following Table 2:

TABLE 2.—APPLICABLE AIRCRAFT

Helicopters
Agusta Models
A109, A109A, A109A II Bell Models
206A, 207B, 206L Enstrom Models
TH–28, 480, 480B Eurocopter France Models
AS355E, AS355F, AS355F1, AS355F2
Eurocopter Deutschland Models
BO–105C, BO–105S
MDHI Models
369D, 369E, 369H, 369HM, 369HS, 369HE
Schweizer Model 269D

TABLE 2.—APPLICABLE AIRCRAFT—Continued

Airplanes
B–N Group Ltd. Model BN–2T

Unsafe Condition

(d) This AD results from nine reports of engine shutdown caused by compressor adaptor coupling failure.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Alcor Compressor Adaptor Couplings

(f) Remove Alcor compressor adaptor couplings, P/Ns 23039791AL, 23039791AL–1, –2, and –3 from service as follows:

(1) For couplings with 600 or more operating hours-since-new as of the effective date of this AD, or the operating hours are unknown and cannot be determined, remove couplings from service at next access but not to exceed 50 additional operating hours.

(2) For couplings with fewer than 600 operating hours-since-new on the effective date of this AD, remove couplings from service at next access but not to exceed 649 operating hours-since-new.

EXTEX and SAP Compressor Adaptor Couplings

(g) Remove EXTEX and SAP compressor adaptor couplings, P/Ns A23039791, E23039791, E23039791–1, –2, and –3, EH23039791, and EH23039791–1, –2, and –3, from service as follows:

(1) For couplings with operating hours that are unknown and cannot be determined, remove couplings from service at next access but not to exceed 50 additional operating hours.

(2) For couplings with 600 or more operating hours-since-new as of the effective date of this AD, remove couplings from service at next access but not to exceed 100 additional operating hours.

(3) For couplings with fewer than 600 operating hours-since-new on the effective date of this AD, remove couplings from service at next access but not to exceed 150 additional operating hours.

RRC Compressor Adaptor Couplings

(h) Remove RRC compressor adaptor couplings, P/Ns 23039791–1, –2, and –3 from service at next access but not later than March 1, 2012.

Installation Requirements for Compressor Adaptor Couplings

(i) Machine the compressor impeller as follows:

(1) Machine the inside diameter (ID) to accept the next larger size outside diameter (OD) compressor adaptor coupling.

(2) For example, if a −1 coupling was removed, a −2 coupling must be installed.

(3) If a −3 coupling is removed, a new impeller is required.

(4) A fit of 0.0000 to −0.0018 inch must be achieved. No fretting is allowed on the impeller after machining.

(5) Due to previous fretting, an impeller with a −1 coupling removed might have to be machined for a −3 coupling. Plating of the impeller ID is not allowed.

(6) Fluorescent penetrant inspect the impeller.

(7) Install a new compressor adaptor coupling, P/N 23076559–2 or −3; or

(8) If a new impeller is installed, then install compressor adaptor coupling, P/N 23076559–1.

(9) Heating of the impeller per the engine overhaul manual is required to install the coupling to achieve the target fit specified in the following Table 3:

TABLE 3.—IMPELLER-TO-COUPLING TARGET FIT

Impeller ID	New Adaptor	Adaptor OD	Fit (Interference)
(i) 0.900 to 0.899 inch	23076559–1	0.9000 to 0.9008 inch	0.0000 to −0.0018 inch.
(ii) 0.902 to 0.901 inch	23076559–2	0.9020 to 0.9028 inch	0.0000 to −0.0018 inch.
(iii) 0.904 to 0.903 inch	23076559–3	0.9040 to 0.9048 inch	0.0000 to −0.0018 inch.

Definition

(j) For the purposes of this AD, next access is defined as when the compressor module is separated from the engine and disassembled for any reason.

Alternative Methods of Compliance

(k) The Manager, Los Angeles Aircraft Certification Office, has the authority to approve alternative methods of compliance for Alcor, EXTEX, and SAP adaptor couplings addressed in this AD if requested using the procedures found in 14 CFR 39.19. The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for RRC adaptor couplings addressed in this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(l) None.

Related Information

(m) Alcor SLB No. 814–3–1, Revision C, dated April 28, 2004, EXTEX Alert Service Bulletin T–081, Revision B, dated May 4, 2004, and RRC CEB–A–1392 and CEB–A–1334, dated September 9, 2003, pertain to the subject of this AD.

Issued in Burlington, Massachusetts, on June 25, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–14945 Filed 6–30–04; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 38

Execution of Transactions: Regulation 1.38 and Guidance on Core Principle 9

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing a number of amendments to its rules concerning trading off the centralized market, including the addition of guidance on contract market block trading rules. The Commission is proposing these rule amendments and requesting comment as part of its continuing efforts to update its regulations in light of the Commodity Futures Modernization Act of 2000 ("CFMA").

DATES: Comments must be received by August 30, 2004.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to 202–418–5521 or, by e-mail to *secretary@cftc.gov*. Reference should be made to "Proposed Rules for Trading Off the Centralized Market." Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following comment submission instructions.

FOR FURTHER INFORMATION CONTACT: Riva Spear Adriance, Associate Deputy Director for Market Review, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone 202–418–5494; e-mail *radriance@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Commission Regulation Section 1.38 (17 CFR 1.38) sets forth a requirement that all purchases and sales of a commodity for future delivery or a commodity option on or subject to the rules of a designated contract market ("DCM") should be executed by open and competitive methods. This "open and competitive" requirement is modified by a proviso that allows transactions to be executed in a "non-competitive" manner if the transaction is in compliance with DCM rules specifically providing for the non-competitive execution of such transactions, and such rules have been submitted to, and approved by, the Commission.

Since Regulation 1.38 was promulgated,[1] the CFMA was enacted.[2] Federal regulation of commodity futures and option markets was significantly changed by the CFMA, which replaced "one-size-fits-all" regulation with broad, flexible core principles.[3] At the same time, the CFMA modified Section 3 of the Act, such that the purpose of the Act is now, among other things, "to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets * * *"[4] The CFMA also specifically expanded the types of transactions that could lawfully be executed off the centralized market. Specifically, the CFMA permits DCMs to establish trading rules that: (1) Authorize the exchange of futures for swaps; or (2) allow a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of a contract market or derivatives clearing organization.[5]

[1] Regulation 1.38 was originally adopted in 1953 by the Commodity Exchange Authority, the predecessor of the Commission. *See* 18 FR 176 (Jan. 19, 1953). For subsequent amendments, *see* 31 FR 5054 (Mar. 29, 1966), 41 FR 3191 (Jan. 21, 1976, eff. Feb. 20, 1976), and 46 FR 54500 (Nov. 3, 1981, eff. Dec. 3, 1981).

[2] Pub. L. 106–554, 114 Stat. 2763 (2000). Under the CFMA, such rules may be effected by the certification procedures set forth in section 5c(c) of the Act and 40.6 of the Commission's regulations.

[3] The CFMA was intended, in part, "to promote innovation for futures and derivatives." *See* § 2 of the CFMA. It was also intended "to reduce systemic risk," and "to transform the role of the [Commission] to oversight of the futures markets." *Id.*

[4] 7 U.S.C. 5 (2000).

[5] *See* section 7(b)(3) of the Act.

The Commission promulgated regulations implementing provisions of the CFMA relating to trading facilities in 2001, which established procedures relating to trading facilities, interpreted certain of the CFMA's provisions and provided guidance on compliance with various of its requirements.[6] Later, the Commission promulgated amendments to those regulations in response to issues that had arisen in administering the rules, noting that the Commission would consider "additional amendments to the rules implementing the CFMA based upon further administrative experience." [7] Consistent with that rationale, the Commission now proposes to amend: (i) Commission Regulation 1.38; and (ii) Commission guidance concerning Core Principle 9 as it relates to Commission Regulation 1.38, to include changes that the Commission believes necessary based upon its experience administering those provisions.[8]

II. Discussion of the Proposed Rule Amendment and Guidance

A. Proposed Amendments to Regulation 1.38

At the time that the Commission promulgated its first rules implementing the CFMA, it retained Regulation 1.38 as applicable to DCMs. The Commission now proposes to rearrange and amend Regulation 1.38 in light of further consideration of the implications of the CFMA and administrative experience. The proposed amendments simplify the text and update the requirements of Regulation 1.38, including language specifically expanding types of transactions that may lawfully be executed off of a DCM's centralized market in accordance with the CFMA.

For instance, the Act, as amended by the CFMA, specifically allows the exchange of futures for swaps,[9] and since the CFMA was enacted, several DCMs have adopted rules that allow the exchange of futures for swaps,[10] or for another derivatives position.[11] The Commission is proposing, therefore, to update the language of Regulation 1.38 by substituting the phrase "the exchange of futures for a commodity or for a derivatives position" for the phrase "the exchange of futures for cash commodities or the exchange of futures in connection with cash commodity transactions." [12] Furthermore, as the CFMA implemented the rule certification procedures of Section 5c(c)(1) of the Act,[13] the proposed changes to Regulation 1.38 would add transactions carried out pursuant to certified rules to the transactions that are allowed to be executed away from the centralized market.[14]

B. Amendments to Guidance on Core Principle 9

The Commission proposes to rearrange and amend its guidance for compliance with Core Principle 9 in light of consideration of the implications of the CFMA and further administrative experience. The proposed guidance separates guidance provided for DCM transactions on the centralized market from guidance provided for DCM transactions off the centralized market. The current proposal also provides more detailed information concerning acceptable practices regarding the execution of transactions off the centralized market. Specifically, given the Commission's growing experience with markets in which block trades are permitted, this release proposes amending the guidance to provide more detail regarding acceptable block trading rules. Additionally, the proposed guidance describes under what circumstances the exchange rules can permit arm's length block trades between affiliated parties.

1. General Guidance

Current Commission Regulation 1.38(b) provides that every person handling, executing, clearing, or carrying trades, transactions or positions that are not competitively executed, must identify and mark by appropriate symbol or designation all such transactions or contracts and all associated orders, records, and memoranda. As well as updating the language of Regulation 1.38(b), the proposed amendments add this requirement to the guidance under Core Principle 9, to provide consolidated guidance regarding recordkeeping practices pertaining to transactions off the centralized market.

The guidance for Core Principle 9 also addresses the testing and review of automated trading systems. Currently, the guidance states that acceptable testing of automated systems should be "objective," and calls for the provision of "objective" test results.[15] The proposed guidance would also call for the provision to the Commission of test results of any "non-objective" testing carried out by or for a DCM (*i.e.*, in-house reviews) regarding the system functioning capacity or security of any automated trading systems. Although the results of "non-objective" testing would be of more limited use, the Commission believes that test results of any "non-objective" testing carried out by or for the DCM should also be provided to the Commission.

2. Block Trade Rules

The Commission is proposing to provide guidance to DCMs with respect to their rules for block transactions. The guidance provides block trade standards that would be acceptable to the Commission. These acceptable block trade standards adopt elements of block trade rules previously approved by the Commission. For example, under proposed Appendix B(9)(b)(2)(ii)(B) to Part 38, block trade parties generally are required to be eligible contract participants ("ECPs"), although commodity trading advisors ("CTA") and investment advisors having over $25 million in assets under management [16] are allowed to carry out

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[6] *See* 66 FR 14262 (Mar. 9, 2001) and 66 FR 42256 (Aug. 10, 2001).

[7] *See* 67 FR 20702 (Apr. 26, 2002) and 67 FR 62873 (Oct. 9, 2002).

[8] Core Principle 9 (7 U.S.C. 5(d)(9) (Execution of transactions) states that "The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions."

[9] *See* section 5(b)(3) of the Act (7 U.S.C. 7(b)(3)).

[10] *See, e.g.* (Chicago Board of Trade ("CBOT") Rule 444.04, INET Futures Exchange, LLC ("INET") Rule 606, Merchants Exchange ("ME") Rule 418(b), New York Board of Trade ("NYBOT") Rule 4.13, New York Mercantile Exchange, Inc. ("NYMEX") Rule 6.21A and U.S. Futures Exchange, LLC ("USFE") Rule 417.

[11] *See, e.g.*, (i) rules allowing the exchange of futures for options NQLX LLC Futures Exchange ("NQLX") Rule 420 (Exchange for Physical Trades) and USFE Rule 418 (Volatility ("VOLA") Trading Facility—Exchange of Futures for Options)); (ii) rules allowing for the exchange of futures over-the-counter ("OTC") derivatives (Kansas City Board of Trade ("KCBT") Rule 1129 (Exchange For Risk ("EFR") Transactions) and CBOT Rule 444.06 (Exchange of Futures for, or in Connection with, OTC Agricultural Option Transactions)); and (iii) rules allowing the exchange of futures for any derivative, by-product or related product (NYMEX Rule 6.21 (Exchange of Futures for, or in Connection with, Product).

[12] The Commission observes that although this language retains the phrase "futures for [a] commodity," it does not retain the phrase "in connection with [a] commodity." The Commission also notes that the phrase "exchange of futures for a commodity or for a derivatives position" does not include elements of these exchanges. Instead, essential elements of bona fide exchange of futures trades have been provided in the guidance to Core Principle 9 below. *See infra* section III.B.4. *See also* proposed Appendix B(9)(b)(2)(iii) to Part 38.

[13] Under section 5c(c)(1) of the Act as amended by the CFMA, DCMs are allowed to implement any new rule or rule amendment, except for material changes to enumerated agricultural products, by providing a written certification to the Commission that the new rule, or rule amendment complies with this Act and the Commission's regulations.

[14] *See* proposed Regulation 1.38(b). Current Regulation 1.38 limits transactions that can be executed away from the centralized market to those transactions carried out pursuant to rules approved by the Commission.

[15] Appendix B (a)(1)(iii) and (b)(1)(ii)(B), both to Part 38.

[16] Including foreign persons performing equivalent roles.

block trades for non-ECP customers. The Commission originally approved a comparable requirement in CX and Chicago Mercantile Exchange ("CME") block-trading rules.[17]

Under proposed Appendix B(9)(b)(2)(ii)(A) to Part 38, a DCM must determine a minimum size for block transactions. An acceptable minimum size would be no smaller than the customary size of large transactions in any relevant markets.[18] Aggregation of orders for different accounts in order to satisfy the minimum size requirement would be prohibited except in appropriate circumstances.[19] Under the proposal, the aggregation of orders would be acceptable only if done by certain registered persons having discretion to trade customer accounts.[20]

A majority of exchanges that permit block trading prohibit persons from effecting block trades on behalf of customers unless the person receives a customer's explicit instruction or prior consent to do so.[21] The proposed guidance incorporates this prohibition as an acceptable practice.

Under the proposed guidance, acceptable block trade rules would require parties to, and members facilitating, a block trade to keep appropriate records.[22] Appropriate block trade records would comply with the requirements of Core Principle 10 and Core Principle 17. Records kept in accordance with the requirements of Statement No. 133 ("Accounting for Derivative Instruments and Hedging Activities"), issued by the Financial Accounting Standards Board ("FASB"), would be satisfactory.[23] Acceptable block trade rules would require that block orders be recorded by the member and time-stamped with both the time the order was received by the member and the time the order was executed. This guidance is based on CME and USFE block trading rules that have been approved by the Commission.[24] When requested during an investigation, parties to, and members facilitating, a block trade should provide records to document that the block trade is executed in accordance with contract market rules.

Proposed Appendix B(9)(b)(2)(ii)(F) to Part 38 requires reporting of the block trade to the DCM within a reasonable period of time once the transaction is executed. Reporting periods previously approved by the Commission, when executed under comparable circumstances, would be considered reasonable time periods for reporting a block transaction to the DCM.[25]

The proposed guidance also identifies publication of block trade details by DCMs immediately upon receipt of block trade reports as an acceptable practice.[26] This proposed acceptable practice would also require the DCM to identify block trades on its trade register.[27]

Under the proposed guidance, acceptable block trade rules would require that the block trades be at a price that is fair and reasonable.[28] Consideration of whether a block transaction price is fair and reasonable could take into account: (i) The size of the block; and (ii) the price and size of other trades in any relevant markets at the applicable time, or the circumstances of the market or the parties to the block trade.[29] Relevant markets could include, without limitation, the DCM itself, the underlying cash markets and/or other related futures markets.

If a DCM rule requiring a fair and reasonable price included the "circumstances" of the parties or of the market within its parameters, a block trade participant could execute a block transaction at a price that was away from the market provided that the participant retained documentation to demonstrate that the price was indeed fair and reasonable under the participant's legitimate trading objectives or the market's particular circumstances. Analysis of whether a block trade price outside the bid/ask spread or prices of contemporaneous transactions in the futures market is fair and reasonable, however, should consider how the block trade price reflects commercial realities. A price that is away from any market may raise suspicion concerning the legitimacy of the trade.

As a result, inclusion of the "circumstances" of the parties or of the market within the parameters of the fair and reasonable price guidance provides flexibility to market participants while allowing the DCM to later review the price of the block trade, as the exchange would have the ability to obtain trade participant documentation if necessary.

3. Block Trades Between Affiliated Parties

Under the proposed guidance, acceptable block trade rules would

[17] *See* CX Rule 305–A and CME Rule 523. CX's and CME's original block trade rules both called for the CTA or investment advisor to have $50 million in assets under management. Subsequently, CME submitted a rule change that lowered the amount of assets required to be under management to $25 million for CTAs and investment advisors. This requirement is currently found in CME, CBOE Futures Exchange ("CFE"), CBOT, NYBOT, OneChicago Futures Exchange ("OCX") and USFE block trading rules (Rules: 523(I), 415(a)(ii), 331.05(c), 4.31, 417(ii) and 415(b); all respectively). Although BTEX trading operations have been suspended, its block trading rules also included this requirement. This requirement is not included in NQLX and INET block trading rules (Rules 419(a) and 704(a), respectively), as those rules limit block trades to members and wholesale customers.

[18] *See* proposed Appendix B(9)(b)(2)(ii)(A) to Part 38.

[19] *See* proposed Appendix B(9)(b)(2)(ii)(C) to Part 38.

[20] Appropriate registered persons include a CTA registered pursuant to section 4m of the Act, or a principal thereof, including any investment advisor who satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or a foreign person performing a similar role or function and subject as such to foreign regulation, where such CTA, investment advisor or foreign person has more than $25,000,000 in total assets under management. This requirement is currently found in CME, CBOT, CFE, NYBOT, OCX and USFE block trading rules ((Rules: 523(I), 331.05(c), 415(a)(ii), 4.31(a)(i), 417(ii) and 415(f); all respectively)). BTEX and CX block trading rules also included this requirement. INET Rule 704(c) and NQLX Rule 419(c)(2) each include a similar rule that allows aggregation only for advisers with discretion over multiple discretionary accounts of appropriate customers ("wholesale customers" or "block trader" respectively).

[21] *See* CME Rule 526(C), CFE Rule 415(a)(i), CBOT Rule 331.05(a), NYBOT Rule 4.31(a)(ii)(A), OCX Rule 417(a)(i), and USFE Rule 415(c). BTEX's block trading rules also tracked this requirement.

[22] Proposed Appendix B(9)(b)(2)(ii)(E) to Part 38.

[23] FASB Statement No. 133 provides guidance on the use of accounting for corporate hedge activity involving derivative transactions. The statement includes guidance on documenting the hedging relationship.

[24] Rules 536.A and 415(c), respectively. BTEX block trading rules also tracked this requirement.

[25] Currently, NYBOT block trading rule requires reporting of block trades within two minutes. *See* Rule 4.31(a)(v). CBOT, CME (generally), and INET rules require reporting of a block trade within five minutes, although CME allows 15 minutes for reporting block trades in Eurodollars. *See* Rules 331.05(d), 526.F., and 704(e)(iv), respectively. NQLX rules require reporting of a block trade to the DCM within eight minutes. *See* Rule 419(g)(2). The OCX rule, in comparison, requires that parties report the block trade "without delay" and also prohibits carrying out offsetting trades until after the block trade has been reported to and disseminated by the exchange. *See* Rules 417(e) and (f). Finally, the USFE rule requires that the block trade buyer enter the details of the block trade into the USFE trading system immediately upon agreement to enter into the trade, to which the seller must respond within 15 minutes confirming the block transaction on the electronic trading system. *See* Rule 415(h). By the seller's confirmation of the block transaction on the trading system, USFE is immediately, and automatically, notified of the block trade.

[26] Proposed Appendix B(9)(b)(2)(ii)(G) to Part 38. *See also*, CME, CFE, CBOT, INET, NYBOT, OCX and USFE block trading rules. This is also an element of compliance with Designation Criterion 3 (Fair and Equitable Trading) and Core Principle 8 (Daily Publication of Trading Information).

[27] Proposed Appendix B(9)(b)(2)(ii)(H) to Part 38.

[28] Proposed Appendix B(9)(b)(2)(ii)(I) to Part 38.

[29] A similar "fair and reasonable" price parameter is found in Commission memoranda on block trading, in versions of Part 38 regulations adopted prior to the passage of the CFMA (*see* 65 FR 77962, *see also* 65 FR 82272 (withdrawing regulations due to enactment of the CFMA)) as well as current CBOT, CFE, CME, and NYBOT block trading rules, Rules 331.05(b), 415(c), 526.D., 4.31(a)(iii), respectively.

require that block trades be arm's length transactions.[30] For exchanges that desire to allow block trading between affiliated parties, however, the proposed Appendix B(9)(b)(2)(ii)(J) to Part 38, would also provide guidance on acceptable rules for affiliate block trades, which when carried out consistent with the guidance would be presumed to be arm's length transactions. Specifically, the proposed guidance provides that block transactions between parties that have an arm's length organizational structure will be presumed to be at arm's length. Under the guidance, an "arm's length organizational structure" is one in which the counterparties (whether affiliated or not), each have a separate account controller, with its own responsibility to review and evaluate the terms and conditions and the potential risks and benefits of prospective transactions. Alternatively, block transactions between affiliated parties will be presumed to be at arm's length if they are executed during trading hours and are carried out at an arm's length price, as provided by the guidance.[31]

In addition to the requirements previously discussed, acceptable DCM rules for affiliate block trades would require: (*i*) Execution during the contract's trading hours; (*ii*) transaction prices that fall within the bid/ask spread on electronic trading systems or prices of contemporaneous related trading floor transactions, although if the contract does not have a bid/ask spread or any floor transactions at the time of the block transaction, then the contemporaneous bid/ask spread or price of transactions on related futures or cash markets could be used; and (*iii*) identification of the trade on the order ticket and to the DCM as a trade that was between affiliated parties.

The proposed price parameters for affiliate block trades (a prevailing bid-ask spread or price of contemporaneous related floor transactions) would be a narrower subset of the fair and reasonable price parameter proposed for block trades between parties that are not affiliated.[32] Block transactions between affiliated parties raise concerns that such block trades may be susceptible to abuse. Under the Commission's proposal, only block trade prices between affiliated parties that fall within a price parameter using concrete prices (contemporaneous bid-ask spread or prices in contemporaneous market(s)) would be assumed to be at arm's length. Such a pricing parameter provides an objective method for determining whether the price of an affiliated party block trade was fairly negotiated and absent any pricing abuse, and, consequently, warranting a presumption that the block trade was carried out at arm's length.

The Commission expects that the proposed guidance will benefit DCMs that are interested in allowing affiliate block transactions, as well as participants that desire to take advantage of such rules as the guidance provides participants with alternative means to comply with the requirement that block transactions be carried out at arm's length.[33] Affiliate block trades that are not carried out according to this guidance could be subject to greater scrutiny. Such scrutiny would not be based on a presumption of illegitimacy, but on lack of information about the trade. Firms that execute affiliate block transactions outside of the guidance, therefore, should preserve records (in addition to those they are required to keep in any event) in order to answer any questions regarding the trade.

4. Exchange of Futures for a Commodity or for a Derivatives Position

The essential elements of bona fide exchange of futures trades have been provided in the guidance to Core Principle 9 below.[34] The elements proposed are found in current contract market EFP, EFS, EFR and EFO rules and are based on the essential elements for bona fide EFPs detailed in the 1987 EFP Report prepared by the Commission's then Division of Trading and Markets.[35] The elements include separate but integrally related transactions, an actual transfer of ownership of the commodity or derivatives position, and both legs transacted between the same two parties. The Commission notes that the determination whether an actual transfer of ownership has occurred will depend upon the facts and circumstances of each transaction. In each instance where an exchange of futures for a commodity or for a derivatives position is linked to another offsetting transaction, the particular facts and circumstances may warrant a determination that there was not an actual-ownership transfer of each leg of the commodity or derivatives position.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act[36] requires federal agencies, in proposing rules, to consider the impact of those rules on small businesses. The rule amendments adopted herein will affect DCMs, FCMs, CTAs and large traders. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[37] The Commission has previously determined that DCMs,[38] registered FCMs,[39] and large traders[40] are not small entities for the purpose of the RFA. With respect to CTAs, the Commission has determined to evaluate within the context of a particular rule proposal whether CTAs would be considered "small entities" for purposes of the Regulatory Flexibility Act and, if so, to analyze the economic impact on the affected entities of any such rule at that time.[41] The Commission believes that the instant proposed rules will not place any new burdens on entities that would be affected hereunder, and the Commission does not expect the proposed amendments to cause persons to change their current methods of doing business in most cases. This is because requirements under the instant proposal, if adopted, would be similar to most existing DCM requirements.

Accordingly, the Commission does not expect the rules, as proposed herein, to have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on this finding and on its proposed determination that the trading facilities covered by these rules would not be small entities for purposes of the Regulatory Flexibility Act.

[30] Proposed Appendix B(9)(b)(2)(ii)(J) to Part 38.

[31] *See* proposed Appendix B(9)(b)(2)(ii)(J) to Part 38.

[32] *See* proposed Appendices B(9)(b)(2)(ii)(J)(2) and B(9)(b)(2)(ii)(I) to Part 38.

[33] *See* proposed Appendix B(9)(b)(2)(ii)(J) to Part 38.

[34] *See* proposed Appendix B(9)(b)(2)(iii) to Part 38.

[35] *See generally*, Division of Trading and Markets, Report on Exchanges of Futures for Physicals (1987). *See also*, CBOT Rules 444.01, 444.01B, 444.04 and 444.06; CBOE Rule 414; CME Rule 538; INET Rules 705 and 706; KCBT Rules 1128.00, 1128.02, 1129.00, and 1129.02; ME Rule 418; MGE Rule 719; NQLX Rule 420; NYBOT Rules 4.12 and 4.13, NYMEX Rules 6.21, 6.21A and 6.21E, and OCX Rule 416.

[36] 5 U.S.C. 601 *et seq.*

[37] 47 FR 18618–21 (Apr. 30, 1982).

[38] *Id.* at 18618–19.

[39] *Id.* at 18619–20.

[40] *Id.* at 18620.

[41] 47 FR at 18618, 18620.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed rule amendments do not require a new collection of information on the part of any entities subject to these rules. Accordingly, for purposes of the Paperwork Reduction Act of 1995, the Commission certifies that these rule amendments do not impose any new reporting or recordkeeping requirements.

C. Cost-Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation. The Commission understands that, by its terms, Section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed regulation be analyzed in isolation when that regulation is a component of a larger package of regulations or of rule revisions. Rather, section 15 simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five enumerated areas of concern and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest, to effectuate any of the provisions, or to accomplish any of the purposes of the Act.

The proposed amendments constitute a package of amendments to Regulation 1.38 and to guidance that the Commission originally promulgated to implement the CFMA. The amendments are proposed in light of past experience with the implementation of the CFMA, and are intended to facilitate increased flexibility and consistency. Some sections of the proposed amendments merely clarify or make explicit past Commission decisions concerning transactions off the centralized market. As most provisions incorporate rules previously approved by the Commission, the proposed amendments would not, in most cases, impose new costs on DCMs or market participants. Most current DCM rules already meet the acceptable practices proposed, furthermore, these amendments incorporate standards that the Commission has previously determined protect market participants and the public,[42] the financial integrity or price discovery function of the markets, and sound risk management practices. Moreover, the additional clarification of acceptable practices provides a benefit to markets and market participants. In addition, the amendments are expected to benefit efficiency and competition by providing more detailed guidance as to acceptable means of meeting the applicable designation criteria and core principles, allowing a greater degree of legal certainty to the markets and market participants.

After considering the five factors enumerated in the Act, the Commission has determined to propose the rules and rule amendments set forth below. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposed rules with their comment letters.

List of Subjects in 17 CFR Parts 1 and 38

Block transactions, Commodity futures, Contract markets, Transactions off the centralized market, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C.

2. Section 1.38 is proposed to be revised to read as follows:

§ 1.38 Execution of transactions.

(a) *Transactions on the centralized market.* All purchases and sales of any commodity for future delivery, and of any commodity option, on or subject to the rules of a contract market, shall be executed openly and competitively by open outcry, or posting of bids and offers, or by other equally open and competitive methods, in a place provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity or commodity option.

(b) *Trades off the centralized market; requirements.* Notwithstanding paragraph (a) of this section, transactions may be executed away from a centralized market, including by transfer trades, office trades, block trades, or trades involving the exchange of futures for a commodity or for a derivatives position, if transacted in accordance with written rules of a contract market that provide for execution away from the centralized market and that have been certified to or approved by the Commission. Every person handling, executing, clearing, or carrying the trades, transactions or positions described in this paragraph shall comply with the rules of the appropriate contract market and derivatives clearing organization, including to identify and mark by appropriate symbol or designation all such transactions or contracts and all orders, records, and memoranda pertaining thereto.

PART 38—DESIGNATED CONTRACT MARKETS

3. The authority section for Part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

4. In Appendix B to Part 38 Core Principle 9 is proposed to be revised to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 9 of section 5(d) of the Act: EXECUTION OF TRANSACTIONS—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.

(a) Application guidance—(1) Transactions on the centralized market. (i) All purchases and sales of any commodity for future delivery, and of any commodity option, on or subject to the rules of a contract market shall be executed openly and competitively by open outcry, or posting of bids and offers, or by other equally open and competitive methods, in a place provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity or commodity option.

(ii) A competitive and open market and mechanism for executing transactions includes a board of trade's methodology for entering orders and executing transactions.

[42] *See, e.g.* proposed Appendix B(9)(b)(2)(ii)(B) to Part 38. *See also, supra* notes 14–15 and accompanying text.

(iii) Appropriate objective testing and review of a contract market's automated systems should occur initially and periodically to ensure proper system functioning, adequate capacity and security. A designated contract market's analysis of its automated system shall address compliance with appropriate principles for the oversight of automated systems, ensuring proper system functionality, adequate capacity and security.

(2) *Transactions off the centralized market.* (i) Transactions may be executed off the centralized market if transacted in accordance with written rules of a contract market that have been certified to or approved by the Commission and that specifically provide for execution of such transactions away from the centralized market.

(ii) Every person handling, executing, clearing, or carrying the trades, transactions or positions that are not executed on the centralized market, including transfer trades, office trades, block trades, or trades involving the exchange of futures for a commodity or for a derivatives position, shall comply with the rules of the applicable designated contract market and derivatives clearing organization.

(iii) A designated contract market that determines to allow trades off the centralized market shall ensure that such trading does not operate in a manner that compromises the integrity of prices or price discovery on the centralized market.

(b) Acceptable practices—(1) Matters relating to trade execution facilities. (i) *General provisions.* [Reserved]

(ii) *Electronic trading systems.* (A) The guidelines issued by the International Organization of Securities Commissions (IOSCO) in 1990 (which have been referred to as the "Principles for Screen-Based Trading Systems"), and adopted by the Commission on November 21, 1990 (55 FR 48670), as supplemented in October 2000, are appropriate guidelines for a designated contract market to apply to electronic trading systems.

(B) Any objective testing and review of the system should be performed by a qualified independent professional. A professional that is a certified member of the Information Systems Audit and Control Association experienced in the industry is an example of an acceptable party to carry out testing and review of an electronic trading system.

(C) Information gathered by analysis, oversight, or any program of testing and review of any automated systems regarding system functioning, capacity and security must be made available to the Commission upon request.

(iii) *Pit trading.* [Reserved]

(2) Transactions off the centralized market—(i) *General provisions.* (A) Types of allowable trades off the centralized market.—Acceptable transactions off the centralized market include: transfer trades, office trades, block trades, or trades involving the exchange of futures for a commodity or for a derivatives position, if transacted in accordance with written rules of a contract market appropriately providing for execution away from the centralized market, that have been certified to or approved by the Commission.

(B) *Reporting.* Acceptable contract market rules would require reporting of transactions off the centralized market to the contract market within a reasonable period of time.

(C) *Publication.* Acceptable contract market rules would require the contract market to publicize details about transactions off the centralized market immediately upon the receipt of the transaction report.

(D) *Trade register.* Acceptable contract market rules would require the contract market to identify transactions off the centralized market on its trade register.

(E) *Recordkeeping.* Acceptable contract market rules would require parties to, and members facilitating, transactions off the centralized market to keep appropriate records. Appropriate records for transactions off the centralized market would comply with Core Principle 10 and Core Principle 17.

(F) *Identification of trades.* Section 1.38(b) of this chapter establishes the guidance regarding the identification of all trades off the centralized market. It requires contract market rules to require every person handling, executing, clearing, or carrying trades, transactions or positions that are executed off the centralized market, including transfer trades, office trades, block trades or trades involving the exchange of futures for a commodity or for a derivatives position, to identify and mark by appropriate symbol or designation all such transactions or contracts and all orders, records, and memoranda pertaining thereto.

(ii) *Block transactions.* (A) Include an acceptable minimum block size. An acceptable minimum block size would be no smaller than the customary size of large transactions in any relevant markets. A "large" transaction is one that may affect the quality of the transaction price due to the significant impact of such a large order on the centralized market. An acceptable minimum block size, for example, would be a transaction size that is greater than 90 percent of the trades in a relevant market. The relevant market should be the subject futures or options market, any related derivatives market, and/or the underlying cash market, as appropriate. If a contract market chooses to allow block participants to meet the minimum block size requirement by aggregating the component legs of a spread or combination position executed as a block trade, the acceptable size for each leg should be the size of a large transaction in the relevant market (that is, a size that is greater than 90 percent of the trades in the relevant market). For markets where transaction data in the relevant market(s) are unavailable, inadequate to conduct an analysis, or for markets where there is no underlying cash market, an acceptable minimum block size should be set initially at 100 contracts and adjusted thereafter as transaction data in the relevant market(s) become available.

(B) *Restrict access to appropriate parties.* Acceptable block trade parties would be eligible contract participants. However, contract market rules could also allow a commodity trading advisor registered pursuant to section 4m of the Act, or a principal thereof, including any investment advisor who satisfied the criteria of § 4.7(a)(2)(v) of this chapter, or a foreign person performing a similar role or function and subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants, if such commodity trading advisor, investment advisor or foreign person has total assets under management that exceed $25,000,000.

(C) *Aggregation of orders.* Acceptable contract market rules would prohibit aggregation of orders for different accounts in order to satisfy the minimum size requirement except in appropriate circumstances. Aggregation of orders for different accounts in order to satisfy the minimum size requirement would be acceptable if done by a commodity trading advisor registered pursuant to section 4m of the Act, or a principal thereof, including any investment advisor who satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or a foreign person performing a similar role or function and subject as such to foreign regulation, where such commodity trading advisor, investment advisor or foreign person has more than $25,000,000 in total assets under management.

(D) *Acting for a customer.* Acceptable contract market rules would prohibit a person from effecting a block trade on behalf of a customer, unless the person has received an instruction or prior consent to do so from the customer;

(E) *Recordkeeping.* Acceptable contract market rules would require parties to, and members facilitating, a block trade to keep appropriate records. Appropriate block trade records would comply with Core Principle 10 and Core Principle 17. Records kept in accordance with the requirements of FASB Statement No. 133 ("Accounting for Derivative Instruments and Hedging Activities") would be acceptable records. Block trade orders must be recorded by the member and time-stamped with both the time the order was placed and the time the order was executed, and must indicate when block trades are between affiliated parties. When requested during an investigation, parties to, and members facilitating, a block trade shall provide records to document that the block trade is executed in conformance with contract market rules.

(F) *Reporting.* Acceptable contract market rules would require reporting of the block trade to the contract market within a reasonable period of time. Reporting periods previously approved by the Commission would be considered reasonable time periods for reporting a block transaction to the contract market once the transaction is executed.

(G) *Publication.* Acceptable contract market rules would require the contract market to publicize details about the block trade immediately upon its being reported to the contract market.

(H) *Identification of trades.* Acceptable contract market rules would require the contract market to identify block trades as such on its trade register, and to identify when block trades are between affiliated parties.

(I) *Pricing.* Acceptable contract market rules would require that the block trades be

at a price that is fair and reasonable. Consideration of whether a block transaction price is fair and reasonable could take into account: (i) The size of the block; and (ii) the price and size of other trades in any relevant markets at the applicable time, and the circumstances of the market or the parties to the block trade. Relevant markets could include, without limitation, the contract market itself, the underlying cash markets and/or other related futures markets. If a contract market rule requiring a fair and reasonable price includes the "circumstances" of the parties or of the market within its parameters, a block trade participant could execute a block transaction at a price that was away from the market provided that the participant retains documentation to demonstrate that the price was indeed fair and reasonable under the participant's or market's particular circumstances.

(J) *Arm's length transactions.* Acceptable contract market rules would require that block trades be arm's length transactions. The following block trades will be presumed to be carried out at "arm's length" (1) Block trades transacted between separate counterparties (whether affiliated or not), where each counterparty has a separate account controller with its own responsibility to review and evaluate the terms and conditions and the potential risks and benefits of prospective transactions would be presumed to be carried out at "arm's length;" and (2) Block trades between affiliated parties if transacted under contract market rules that require, along with the requirements of paragraphs (b)(2)(i)(A)–(H) of this appendix: (*i*) execution during the contract's trading hours; and (*ii*) transaction prices that fall within the bid/ask spread on electronic trading systems or prices of contemporaneous related trading floor transactions, however, if the contract does not have a bid/ask spread or any floor transactions at the time of the block transaction, then the contemporaneous bid/ask spread or price of transactions on related futures or cash markets could be used.

(iii) *Exchange of futures for a commodity or for a derivatives position.* Acceptable contract market rules for exchange of futures for a commodity or for a derivatives position would require that such trades include the following elements:

(A) Separate but integrally related transactions, involving (1) the same or a related commodity; (2) price correlation of legs; and (3) quantitative equivalence;

(B) A buyer of futures who is the seller of the corresponding commodity or derivatives position and a seller of futures who is the buyer of the corresponding commodity or derivatives position; and

(C) An actual transfer of ownership, involving (1) separate parties; (2) possession, right of possession, or right to future possession of each leg prior to the trade; (3) an ability to perform; and (4) a transfer of title.

(iv) *Office trades.* [Reserved]

(v) *Transfer trades.* [Reserved]

* * * * *

Issued in Washington, DC, on June 24, 2004, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–14815 Filed 6–30–04; 8:45 am]

BILLING CODE 6357–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 81

[Docket No. FR–4790–N–02]

RIN 2501–AC92

HUD's Proposed Housing Goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) for the Years 2005–2008 and Amendments to HUD's Regulation of Fannie Mae and Freddie Mac Extension of Public Comment Period

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice announces an extension of the public comment period on HUD's proposed rule regarding new housing goals for Fannie Mae and Freddie Mac, the government-sponsored enterprises (GSEs), published on May 3, 2004. The May 3, 2004, proposed rule provided for a 60-day public comment period, which would close the public comment period on July 2, 2004. This notice advises that the public comment period has been extended to July 16, 2004.

DATES: Comments must be submitted on or before July 16, 2004.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. All communications should refer to the above docket number and title. Facsimile (FAX) comments and e-mail comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Sandra Fostek, Director, Office of Government Sponsored Enterprises, Office of Housing, Room 3150, telephone 202–708–2224. For questions on data or methodology, contact John L. Gardner, Director, Financial Institutions Regulation Division, Office of Policy Development and Research, Room 8212, telephone (202) 708–1464. For legal questions, contact Kenneth A. Markison, Assistant General Counsel for Government Sponsored Enterprises/RESPA or Paul S. Ceja, Deputy Assistant General Counsel for Government Sponsored Enterprises/RESPA, Office of the General Counsel, Room 9262, telephone 202–708–3137. The address for all of these persons is Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Persons with hearing and speech impairments may access the phone numbers via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION: On May 3, 2004 (69 FR 24228), HUD published its proposed rule that would establish new housing goals levels for the GSEs for years 2005 through 2008. The new housing goal levels are proposed in accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) and govern the purchase by Fannie Mae and Freddie Mac of mortgages financing low- and moderate-income housing, special affordable housing, and housing in central cities, and rural areas and other underserved areas. In the May 3, 2004, rule, HUD also proposed to revise the existing regulations to provide enhanced requirements to ensure GSE data integrity.

The May 3, 2004, proposed rule provided for a 60-day public comment period. In addition to the 60-day public comment period, HUD had also posted the rule on its website on April 7, 2004, in advance of publication in the **Federal Register**. In response to recent requests for additional time to submit public comments, and since the original public comment deadline coincides with the July 4th holiday weekend, HUD is announcing through this notice that it is extending the public comment period on the May 3, 2004, proposed rule for an additional two-week period. The new public comment deadline is July 16, 2004.

Dated: June 28, 2004.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 04–14948 Filed 6–28–04; 12:59 pm]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter 1

No Child Left Behind Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Replacement of Federal representative.

SUMMARY: The Secretary of the Interior has appointed Lisa Lance as a Federal representative for the No Child Left Behind Negotiated Rulemaking Committee, replacing Michael Rossetti. Ms. Lance will serve for the remainder of the Committee's duration. Ms. Lance is an attorney-advisor in the Office of the Solicitor, Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Catherine Freels, Designated Federal Official, No Child Left Behind Negotiated Rulemaking Project Management Office, P.O. Box 1430, Albuquerque, NM 87103–1430; telephone (505) 248–7240 or fax (505) 248–7242.

SUPPLEMENTARY INFORMATION: For information on negotiated rulemaking under the No Child Left Behind Act, see the **Federal Register** notices published on December 10, 2002 (67 FR 75828) and May 5, 2003 (68 FR 23631) or the Web site at *http://www.oiep.bia.edu* under "Negotiated Rulemaking."

Dated: June 22, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–15006 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–6W–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 550

[Docket No. BOP–1109–P]

RIN 1120–AB07

Drug Abuse Treatment Program: Subpart Revision and Clarification

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to amend its regulations on the drug abuse treatment program. We intend this amendment to streamline and clarify these regulations, eliminating unnecessary text and obsolete language, and removing internal agency procedures that need not be in rules text. In this proposed rule, we add escape and attempted escape to the list of reasons an inmate may be expelled from the Residential Drug Abuse Program (RDAP). With regard to our incentive program, offered by some institutions in their discretion, we clarify that inmates must meet their financial program responsibility obligations and GED responsibilities before being able to receive an incentive for RDAP participation. Furthermore, in our regulation on considering inmates for early release, we delete obsolete language; clarify that inmates sentenced under provisions other than 18 U.S.C. 227, are ineligible for early release; add as ineligible for early release inmates with a prior felony or misdemeanor conviction for arson or kidnaping; and clarify that inmates cannot earn early release twice.

DATES: Please submit comments only on this rulemaking by August 30, 2004.

ADDRESSES: Comments should be submitted to Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. To ensure proper handling, please reference Docket No. BOP–1109–P on your correspondence. You may view an electronic version of this proposed rule at *www.regulations.gov*. You may also comment via the Internet to BOP at *BOPRULES@BOP.GOV* or by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include Docket No. BOP–1109–P in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105, e-mail *BOPRULES@BOP.GOV*.

SUPPLEMENTARY INFORMATION: The Bureau proposes to amend its regulations on drug abuse treatment programs (28 CFR 550) to streamline and clarify these regulations, eliminating unnecessary text and obsolete language, and removing internal agency procedures that need not be in rules text. We are also making some substantive changes to be more inclusive and to clarify existing policy and procedure.

Below, you will find a section-by-section explanation of how we are revising our previous regulations in Subpart F on the Drug Abuse Treatment Programs. *To identify the rules, we will refer first to the section number of the old rule as it currently exists in 28 CFR, and then we will explain what we did to change that rule.* Where we are creating a new rule or provision, we will simply refer to it as new.

Section-by-Section Explanation

Sections 550.50 Purpose and Scope, and 550.51 Institutional Organization/ Staff Roles and Responsibilities

We consolidated these two sections into a new § 550.50, Purpose and Scope. The new regulation merely simplifies language in the previous regulation.

Sections 550.52 Admission and Orientation Program, and 550.53 Screening and Referral

We deleted these sections because they related to internal agency management procedures and do not benefit or impose a requirement on the public or our inmates.

Specifically, with regard to § 550.52, Admission and Orientation program, these procedures are already in the Bureau's Program Statement on Admission and Orientation, which requires institutions to provide inmates with "an awareness of" the "institution's program opportunities." The Drug Abuse Treatment Program (DATP) is an institution program explained to inmates as part of our Admission and Orientation procedures.

Section 550.53 Screening and referral, relates to internal agency management procedures particularly because it is our simple direction to Bureau psychologists, drug abuse treatment specialists, case managers and staff to interview newly-admitted inmates for drug abuse problems. While we remove this rule from the CFR, its substance will remain in our DATP policy as instruction to staff.

Section 550.54 Drug Abuse Education Course

We previously published a proposed rule on September 20, 2000 (65 FR 5684; BOP 1093; RIN 1120–AA88), in which we proposed to revise this section. The Bureau intends to publish a final rule based on BOP 1093 in the future. When we publish the final BOP 1093 rule, we expect to clarify and alter the substantive provisions of the rule. In this proposed rule (BOP 1109), we do not substantively change the provisions of section 550.54, but we are merely redesignating it as the new section 550.51.

Section 550.55 Non-Residential Drug Abuse Treatment Program

We redesignate this rule as § 550.52 and simplify its language. We also clarify that non-residential drug abuse treatment services are available to inmates who voluntarily decide to participate, and we remove several

eligibility requirements for the program to make it more inclusive. We do not impose any new requirements by changing this rule.

For instance, the rule previously required that inmates have a *verifiable* documented drug abuse problem. Under the new rule, we will accept self-reported information as evidence of a drug problem, without further verification for the purposes of the non-residential drug abuse program. We also removed previous eligibility criteria requiring inmates to have "no serious mental impairment which would substantially interfere with or preclude full participation in the program," and requiring an inmate to "sign an agreement acknowledging his/her program responsibility."

Section 550.56 Institution Residential Drug Abuse Treatment Program

We redesignate this section as § 550.53. "Institution residential drug abuse treatment program (RDAP)." We broke the introductory paragraph of current § 550.56 down into subparts to more clearly describe the different components of the program. We also added language to the admissions criteria clarifying that we will only admit to the program inmates who, upon the expiration of their sentences, will be released within the United States, or to other such places within the United States as authorized and approved.

Research indicates that combining community based treatment with in-prison treatment programs results in the best outcomes. The rates of relapse to drug use and recidivism to crime are significantly lower if the inmate continues treatment after returning to the community. The Bureau, therefore, adopts this approach consistent with the latest research findings in the drug addiction field.

The current § 550.56(a)(4) states that the "security level of the residential program institution must be appropriate for the inmate." We removed this provision because it is an obvious statement and need not be in regulation, as it relates to internal agency practice and procedure. In addition, our DATP policy document, which provides guidance to staff and is accessible by inmates and the public, will retain this language. This will ensure that our staff understand that, as with all of our inmates, those that participate in DATP must do so consistent with safety and security of the institution.

To clarify language describing "completion" of RDAP, we separated what was previously a block paragraph into further subdivisions. We also removed language on awarding certificates of achievement because it is internal agency practice and procedure and need not be rules text. This language also remains part of our staff guidance in our DATP policy, along with other suggestions for incentives and rewards for participating in the program.

We also clarified language describing "withdrawal/expulsion" by reorganizing and breaking block paragraphs into smaller subdivisions. We further revised this section to provide that an inmate will be immediately expelled, if he/she is found by the Disciplinary Hearing Officer (DHO) to have committed a prohibited act involving escape or attempted escape. We added escape or attempted escape as a prohibited act warranting immediate expulsion because (1) escape is viewed as a serious prohibited act in correctional environments; and (2) immediate expulsion is intended to deter others from attempting escape.

Section 550.57 Incentives for RDAP Participation

We redesignated this section as § 550.54. In both the current version and the new version of this section, we require inmates to meet financial program responsibility obligations under 28 CFR part 545 before being able to receive an incentive for RDAP participation. In our new § 550.54, we also require that inmates meet their GED responsibilities under 28 CFR part 544, subpart H before they can receive an incentive for RDAP participation under this section.

This change does not in any way limit an inmate's ability to participate in RDAP. This change merely conditions receiving incentives on fulfilling GED responsibilities.

Vocational and educational improvement for RDAP participants is critical. The RDAP program incorporates a comprehensive lifestyle change philosophy, including elimination of any obstacles that could lead an inmate to relapse or recidivism. Therefore, improvements in education and vocational skills for the drug involved offender are likely to increase his or her chance to lead a productive and drug-free lifestyle.

Section 550.58 Consideration for Early Release

We redesignate this section as § 550.55. In this section, we made the following changes:

Old rule (550.58), Introductory paragraph: In the new § 550.55, we redesignated the introductory paragraph as (a), "Eligibility," and broke the paragraph into subparagraphs which more clearly set forth eligibility criteria. The new subparagraph (a) does not add eligibility criteria, but merely restates former eligibility criteria.

Old rule, subparagraph (a) Additional early release criteria: In the new § 550.55, we redesignated this as subparagraph (b), "Inmates not eligible for early release," as this was a more accurate description of the substance of this subparagraph.

Arson and kidnaping. We also add language to make inmates with a prior felony or misdemeanor conviction of arson or kidnaping ineligible for early release. In implementing the early release incentive program over the past five years, we concluded that arson and kidnaping are serious offenses which we had not previously identified. Also, the Federal Bureau of Investigations (FBI) Uniform Crime Reporting Program (UCR), which tracks all of the other offenses listed in new subparagraph (b)(5), lists arson and kidnaping as serious "Group A" offenses. (*See http://www.fbi.gov/ucr/faqs.htm* for more information on the Uniform Crime Reporting Program.)

Furthermore, in *Lopez* v. *Davis, et al.*, 121 S.Ct. 714 (2001), the Supreme Court upheld the Director's discretion under 18 U.S.C. 3621(e) in identifying inmates not eligible for early release. We are, therefore, adding these offenses to this category of inmates not eligible for early release.

New rule: New subparagraph (b)(5)(i): Prior felony or misdemeanor conviction for homicide. We also clarify that inmates will be precluded from receiving early release consideration if they have a prior felony or misdemeanor conviction for homicide, including deaths caused by recklessness, but not including deaths caused by negligence or justifiable homicide. In doing so, we clarify the type of past conviction for homicide that will preclude early release consideration. This is not a new requirement. It is merely a clarification of our existing policy and philosophy.

In addition to murder and non-negligent manslaughter, homicides also include those caused by recklessness. Often, homicides caused by recklessness are general intent crimes. Because of the serious nature of this crime, the Director chooses to preclude these offenses from early release consideration. Inmates will still be eligible for early release, however, if they committed homicides found to be negligent or justifiable.

New rule: New subparagraph (b)(7): Inmates who have been convicted of an attempt, conspiracy, or other crime which involved an underlying offense to commit any crime listed in Section

(b)(5) and (b)(6). By adding this new provision, we intend to mirror the common theory in law that an individual is accountable when he or she has planned with others to commit a particular crime or tried but did not succeed in committing a crime.

New rule: New subparagraph (b)(9): Inmates who have previously earned an early release under 18 U.S.C. 3621(e): In the new rule, we added this subparagraph to exempt from early release consideration inmates who previously earned early release under 18 U.S.C. 3621(e).

Congress created the early release incentive to motivate drug addicted inmates to enter residential drug abuse treatment who would not do so without this incentive. However, in our discretion, it is not appropriate to provide this incentive for inmates who completed RDAP, gained early release, but failed to remain drug and crime free. To provide this incentive to the same inmate twice would be counter to our drug treatment philosophy that inmates must be held accountable for their actions when released to the community.

This is not a new requirement. It is merely a clarification of our existing policy and philosophy. In fact, since implementation of the early release statute in June 1995, we have not granted early release to an inmate more than once.

Old rule, subparagraph (a)(2): When we first implemented the early release incentive in June 1995, we anticipated that a few inmates who had completed BOP residential drug abuse programs before 1989 would apply for early release. We therefore developed this subparagraph to explain their eligibility. Also, because the 18 U.S.C. 3621(e) statute defined minimum standards for residential drug program completion, we wanted to ensure that inmates who did complete residential drug programs before 1989 met the statutory definition of residential treatment and, subsequently, were of uniform good behavior. We therefore developed and implemented regulations, as necessary before we could grant early release to this group of inmates (*see* old rule, 550.58 (a)(2)(i–iv).

Since then, there has not been a case where an inmate who completed a residential drug program before October 1, 1989 applied for early release. Therefore, rules language that divided an inmate's participation either before or after October 1, 1989 is no longer necessary. We therefore delete this subparagraph.

Old rule, subparagraph (b), Application Procedures: In the new rule, we delete this subparagraph on application procedures because application procedures in early release are no longer necessary. The procedures in the old rule related to the 1989 division (see previous paragraph). This subparagraph is unnecessary because we currently have policy, procedures, and forms in place to automatically review the early release status before an inmate is placed on the waiting list.

Old rule, subparagraph (c), Length of Reduction: In the new rule, § 550.55, we designate this subparagraph as (c), "Length of Reduction of Sentence." We also delete former (c)(2), which read: "If the inmate has less than 12 months to serve after completion of all required transitional services, the amount of reduction may not exceed the amount of time left on service of sentence."

We view it as self-evident that we cannot reduce an inmate's sentence beyond the time the inmate has left to serve. We therefore delete this provision as unnecessary.

In the new § 550.55(c)(2), we add new language explaining that, under the Director's discretion allowed by 18 U.S.C. 3621(e), we may limit the amount of reduction in sentence based upon the length of sentence imposed by the Court.

Section 550.59 Community Transitional Drug Treatment Services

We redesignate this section as § 550.56. To clarify our transitional drug abuse treatment (TDAT), we reorganized and separated what was previously several block paragraphs into further subdivisions. We also eliminated unnecessary and complex language. We do not intend to modify the substance of this section or any requirements imposed by this section.

Section 550.60 Inmate Appeals

We redesignate this section as § 550.57. In the new § 550.57, we clarify language that currently appears in § 550.60(a) which generally states that an inmate may seek formal review of a complaint relating to any aspect of an inmate's confinement (including the operation of the drug abuse treatment programs) by using the Administrative Remedy Program (28 CFR part 542, subpart B).

Also, current § 550.60(b) states that, to expedite staff response, inmates previously found eligible for early release must indicate in the first sentence of the Administrative Remedy request that the request affects the inmate's early release. In the new § 550.57, we delete this provision, as it appears to dictate how inmates should write their appeals. We remove this requirement to afford inmates broader latitude in composing and drafting their Administrative Remedy request as they wish.

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

We will consider comments we receive during the comment period before we take final action. We will try to consider comments we receive after the end of the comment period. In light of comments we receive, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments we receive remain on file for public inspection at the above address.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

In particular, the Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. Clarifying and streamlining this rule and eliminating unnecessary text and obsolete language will have the benefit of easier readability and improved understanding of our drug treatment programs. We strengthen the program by calculated revisions designed to allow inmates to succeed in drug treatment while avoiding expending resources unnecessarily.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation.

By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 550:

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend part 550 in subchapter C of 28 CFR, chapter V as follows.

Subchapter C—Institutional Management

PART 550—DRUG PROGRAMS

1. Revise the authority citation for part 550 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; Title V, Pub. L. 91–452, 84 Stat. 933 (18 U.S.C. Chapter 223).

Subpart F—Drug Abuse Treatment Program

2. Revise Subpart F to read as follows:

Sec.

§ 550.50 Purpose and scope.

The purpose of this subpart is to describe the Bureau's drug abuse treatment programs. All Bureau institutions have a drug abuse treatment specialist who, under the Drug Abuse Program Coordinator's supervision, provides drug abuse education and non-residential drug abuse treatment services to the inmate population. Institutions with residential drug abuse treatment programs (RDAP) should have additional drug abuse treatment specialists to provide treatment services in the residential drug abuse treatment program unit.

§ 550.51 Drug abuse education course.

(a) *Purpose of the Drug Abuse education course.* All institutions provide a drug abuse education course to:

(1) Inform inmates of the consequences of drug/alcohol abuse and addiction; and

(2) Motivate inmates needing drug abuse treatment to apply for further drug abuse treatment, both while incarcerated and after release.

(b) *Course Placement.* (1) Staff give primary consideration for course placement to an inmate sentenced or returned to custody as a violator after September 30, 1991, when unit and/or drug abuse treatment staff determine, through interviews and file review that:

(i) There is evidence that alcohol or other drug use contributed to the commission of the inmate's offense;

(ii) Alcohol or other drug use was a reason for violation either of supervised release, including parole, or Bureau community status for which the inmate is now incarcerated;

(iii) The inmate was recommended for drug programming (or an evaluation for drug programming) during incarceration by the sentencing judge;

(iv) There is evidence of a history of alcohol or other drug use.

(2) Staff may also consider for course placement an inmate who requests to participate in the drug abuse education program but who does not meet the criteria of paragraph (b)(1) of this section.

(3) Staff may not consider an inmate for course placement if the inmate:

(i) Does not have enough time remaining to serve to complete the course;

(ii) Volunteers for, enters or otherwise completes a residential drug abuse treatment program (RDAP), or

(iii) Completes a structured drug abuse treatment program at one of the Bureau's Intensive Confinement Centers (ICC).

(c) *Inmate Consent.* We will only admit inmates to the drug abuse education course if they agree to comply with all Bureau requirements for the program.

(d) *Completion.* To complete the drug abuse education course, an inmate must attend and participate during course sessions and pass a final course exam. We will ordinarily give inmates at least three chances to pass the final course exam before the inmate loses privileges or we invoke effects of non-participation (see paragraph (e) of this section).

(e) *Effects of non-participation.* (1) If an inmate considered for placement under paragraph (b)(1) of this section refuses participation, withdraws, is expelled, or otherwise fails to meet attendance and examination requirements, that inmate:

(i) Is not eligible for performance pay above maintenance pay level, or for bonus pay, or vacation pay;

(ii) Is not eligible for a Federal Prison Industries work program assignment (unless the Warden makes exception on the basis of work program labor needs);

(iii) Is not eligible for community programs.

(2) The Warden may make exceptions to the provisions of this section for good cause with reasons for such exceptions documented in writing.

§ 550.52 Non-residential drug abuse treatment services

All institutions must have non-residential drug abuse treatment services, provided through the institution's Psychology Services department. These services are available to inmates who voluntarily decide to participate.

§ 550.53 Institution Residential Drug Abuse Treatment Program (RDAP).

(a) *RDAP.* The institution RDAP, available at some Bureau institutions, has the following components:

(1) *Unit-based component:* Inmates must complete a course of activities provided by drug abuse treatment specialists and the Drug Abuse Program Coordinator in a treatment unit set apart from the general prison population. This component must last at least 500 hours over a six to twelve-month period.

(2) *Follow-up services.* If time allows between completion of the unit-based

component of the program and transfer to a community-based program, the inmate must participate in the follow-up services to the unit-based component of the residential drug abuse treatment program.

(3) *Transitional drug abuse treatment (TDAT) program component.* Inmates must complete drug abuse treatment in a community-based program.

(b) *Admission Criteria.* An inmate must meet all of the following criteria to be admitted into RDAP.

(1) The inmate must have a verifiable, documented substance use disorder.

(2) The inmate must sign an agreement acknowledging his/her program responsibility.

(3) Upon the expiration of his/her sentence, the inmate will be released within the United States, or to other such place within the United States as authorized and approved.

(c) *Application to RDAP.* An inmate may apply for the RDAP by submitting a request to a staff member (ordinarily, a member of the inmate's unit team or the Drug Abuse Program Coordinator).

(d) *Referral to RDAP.* Unit or drug treatment staff may identify an inmate for referral and evaluation for RDAP.

(e) *Placement in RDAP.* The Drug Abuse Treatment Coordinator decides whether to place an inmate in RDAP based on the criteria set forth in paragraph (b) of this section.

(f) *Completing the unit-based component of RDAP.* To complete the unit-based component of RDAP, an inmate must:

(1) Have satisfactory attendance and participation in all RDAP activities; and

(2) Pass each RDAP testing procedure. Ordinarily, we will allow an inmate who fails any RDAP exam to retest one time.

(g) *Expulsion from RDAP.* (1) The Drug Abuse Program Coordinator may remove an inmate from the program because of disruptive behavior related to the program or unsatisfactory progress in treatment.

(2) Ordinarily, staff must provide an inmate with at least one formal warning before removing the inmate from RDAP. A formal warning is not necessary when the inmate's documented lack of compliance with program standards is of such magnitude that his or her continued presence would create an immediate and ongoing problem for staff and inmates.

(3) Staff will remove an inmate from RDAP immediately if the DHO finds that the inmate has committed a prohibited act involving:

(i) Alcohol or drugs;

(ii) Violence or threats of violence;

(iii) Escape or attempted escape; or

(iv) Any 100-level series incident.

(h) *Effects of non-participation.* (1) If an inmate refuses to participate in RDAP after being selected by the Drug Abuse Program Coordinator for treatment at an institution that authorizes enhanced incentives under § 550.54(a)(2), or withdraws or is otherwise removed from RDAP, the inmate is not eligible for:

(i) A furlough (other than possibly an emergency furlough);

(ii) More than 90 days community-based program placement;

(iii) Performance pay above maintenance pay level, bonus pay, or vacation pay; and/or

(iv) A Federal Prison Industries work program assignment (unless the Warden makes exception on the basis of work program labor needs).

(2) Where applicable, staff will notify the United States Parole Commission of the inmate's need for treatment and the inmate's failure to participate in the residential drug abuse treatment program.

§ 550.54 Incentives for RDAP participation.

(a) An inmate may receive incentives for his or her satisfactory participation in the RDAP. Institutions may offer the basic incentives described in paragraph (a)(1) of this section. Bureau-authorized institutions may also offer enhanced incentives as described in paragraph (a)(2) of this section.

(1) *Basic incentives.* (i) Limited financial awards, based upon the inmate's achievement/completion of program phases.

(ii) Consideration for the maximum period of time (currently 180 days) in a community-based treatment program, if the inmate is otherwise eligible.

(iii) Local institution incentives such as preferred living quarters or special recognition privileges.

(iv) Early release, if eligible under § 550.55.

(2) *Enhanced incentives.* (i) Tangible achievement awards as permitted by the Warden and allowed by the regulations governing personal property (see 28 CFR part 553).

(ii) Photographs of treatment ceremonies may be sent to the inmate's family.

(iii) Formal consideration for a nearer release transfer for medium and low security inmates.

(b) An inmate must meet his/her financial program responsibility obligations (see 28 CFR part 545) and GED responsibilities (*see* 28 CFR part 544, subpart H) before being able to receive an incentive for his/her RDAP participation.

(c) If an inmate withdraws from or is otherwise removed from RDAP, that inmate may lose incentives he/she previously achieved.

§ 550.55 Eligibility for early release.

(a) *Eligibility.* An inmate may be eligible for early release by a period not to exceed 12 months if that inmate:

(1) Was sentenced to a term of imprisonment under 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense;

(2) Is determined by Bureau staff to have a substance abuse problem; and

(3) Completes a residential drug abuse treatment program successfully, as defined by the Bureau, during his or her current commitment.

(b) *Inmates not eligible for early release.* As an exercise of the Director's discretion, the following categories of inmates are not eligible for early release:

(1) BICE detainees;

(2) Pretrial inmates;

(3) Contractual boarders (for example, State, or military inmates);

(4) Inmates sentenced under provisions other than 18 U.S.C. Chapter 227;

(5) Inmates who have a prior felony or misdemeanor conviction for:

(i) Homicide (including deaths caused by recklessness, but not including deaths caused by negligence or justifiable homicide),

(ii) Forcible rape,

(iii) Robbery,

(iv) Aggravated assault,

(v) Arson,

(vi) Kidnaping; or

(vii) A crime that by its nature or conduct involves sexual abuse offenses committed upon minors;

(6) Inmates who have a current felony conviction for:

(i) A crime that has as an element, the actual, attempted, or threatened use of physical force against the person or property of another,

(ii) A crime that involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or

(iii) A crime that by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or

(iv) A crime that by its nature or conduct involves sexual abuse offenses committed upon minors;

(7) Inmates who have been convicted of an attempt, conspiracy, or other crime which involved an underlying offense to commit any crime listed in paragraph (b)(5) and/or (b)(6) of this section.

(8) Inmates who are not eligible for participation in a community-based program as determined by the Warden on the basis of his or her professional discretion; or

(9) Inmates who have previously earned an early release under 18 U.S.C. 3621(e).

(c) *Length of reduction of sentence.* (1) An inmate approved for early release may receive a reduction of up to 12 months of the term of incarceration, except as provided in paragraphs (c)(2) and (3) of this section.

(2) Under the Director's discretion allowed by 18 U.S.C. 3621(e), we may limit the length of reduction in sentence based upon the length of sentence imposed by the Court.

(3) If the inmate cannot fulfill his or her community-based treatment obligations by the presumptive release date, the Community Corrections Regional Administrator may adjust the provisional release date by the least amount of time necessary to allow the inmate to fulfill his or her treatment obligations.

§ 550.56 Community Transitional Drug Abuse Treatment Program (TDAT).

(a) For an inmate to successfully complete all components of RDAP, the inmate must participate in TDAT in the community. If an inmate refuses or fails to complete TDAT, that inmate fails the RDAP and is disqualified for any additional incentives.

(b) We may require an inmate with a documented drug abuse problem who did not choose to volunteer for RDAP to participate in TDAT as a condition of participation in a community-based program, with the approval of the Transitional Drug Abuse Treatment Coordinator.

(c) An inmate who successfully completes a RDAP and who participates in TDAT at an institution must participate in TDAT for at least one hour per month.

§ 550.57 Inmate appeals.

You may seek formal review of a complaint regarding the operation of DATP by using administrative remedy procedures in 28 CFR part 542, subpart B.

[FR Doc. 04–14975 Filed 6–30–04; 8:45 am]
BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA217–4230b; FRL–7777–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to the 1-Hour Ozone Maintenance Plan for the Pittsburgh-Beaver Valley Area To Reflect the Use of MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of amending Pennsylvania's ten-year plan to maintain the 1-hour ozone national ambient air quality standard (NAAQS) in the Pittsburgh-Beaver Valley maintenance area. The maintenance plan is being amended to revise the volatile organic compound (VOC) and nitrogen oxides (NO_X) motor vehicle emission budgets (MVEBs) to reflect the use of MOBILE6. In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 2, 2004.

ADDRESSES: Submit your comments, identified by PA217–4230 by one of the following methods:

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

B. E-mail: *budney.larry@epa.gov*.

C. Mail: Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch, Mail Code 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. PA217–4230. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal *regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Larry Budney, (215) 814–2184, or by e-mail at *budney.larry@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 10, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

[FR Doc. 04–14824 Filed 6–30–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1671, MB Docket No. 04–225, RM–10695]

Digital Television Broadcast Service; Santa Ana, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network proposing the substitution of DTV channel 33 for station KTBN-TV's assigned DTV channel 23c at Santa Ana, California. DTV Channel 33 can be allotted to Santa Ana at coordinates 34–13–27 N. and 118–03–44 W. with a power of 1000, a height above average terrain HAAT of 890 meters. Since the community of Santa Ana is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment.

DATES: Comments must be filed on or before August 16, 2004, and reply comments on or before August 31, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc. will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Colby M. May, 205 3rd Street, SE., Washington, DC 20003 (Counsel for Trinity Christian Center of Santa Ana).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–225, adopted June 9, 2004, and released June 25, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 301–816–2820, facsimile 301–816–0169, or via e-mail *joshir@erols.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under California is amended by removing DTV channel 23c and adding DTV channel 33 at Santa Ana.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–15003 Filed 6–30–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1607, MB Docket No. 03–233, RM–10699]

Digital Television Broadcast Service; Pocatello, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: The Commission, by this document, dismisses a petition for rule making filed by Compass Communications of Idaho, Inc., proposing the allotment of DTV channel 38 at Pocatello, Idaho. *See* 68 FR 66781, November 28, 2003. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–233, adopted June 2, 2004, and released June 9, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because this proposed rule was dismissed.)

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–15000 Filed 6–30–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 69, No. 126
Thursday, July 1, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–040–1]

Availability of an Environmental Assessment for a Biological Control Agent for Old World Climbing Fern

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to the control of Old World climbing fern, *Lygodium microphyllum*. The environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous moth, *Cataclysta camptozonale*, for the biological control of Old World climbing fern in Florida. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before August 2, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–040–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–040–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–040–1" on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

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

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Flanders, Branch Chief, Biological and Technical Services, Pest Permit Evaluations, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–5930.

SUPPLEMENTARY INFORMATION:

Background

Old World climbing fern, *Lygodium microphyllum* (Cav.) R. Br. (Lygodiaceae), is a climbing fern that has a large native range that extends through much of the Old World tropics. It has become established in central and southern peninsular Florida where it grows in a number of wetland and mesic (having a moderate supply of moisture) habitats including hammocks, cypress swamps, flatwoods, bayheads, and disturbed sites.

The climbing fern is a highly invasive, exotic weed that climbs over plants, including tall trees, to form massive walls of vegetation. It also forms thick mats on the ground that smother native plants. New infestations can arise great distances from existing populations because the weed produces millions of spores that are spread by wind and other physical carriers. A single spore is capable of starting a new infestation.

In Florida, the potential distribution of this weed includes all habitats from Lake Okeechobee south. It also has the potential to invade the Gulf Coast of Mexico and southern Texas.

The Plant Protection and Quarantine (PPQ) program of the Animal and Plant Health Inspection Service (APHIS) has received a permit application for the release of a nonindigenous moth, *Cataclysta camptozonale* (Hampson) (Lepidoptera: Crambidae), for the biological control (biocontrol) of Old World climbing fern in Florida. The purpose of the proposed release is to reduce the severity of infestations of *L. microphyllum* in Florida.

The proposed biocontrol agent, *C. camptozonale*, is a moth in the insect family Crambidae and is native to Australia. The moth is self-replicating. The adult moth lays eggs in small clusters on leaflets of the target weed, *L. microphyllum*, and the eggs hatch in 6 to 7 days. Larvae feed on the leaves of *L. microphyllum* for approximately 11 to 12 days. Older larvae spin a loose web of silk on leaves of the weed and pupate. Pupae develop to adults in 7 to 9 days.

The moth is also host specific. Host specificity tests conducted in Australia and Florida indicate that *C. camptozonale* is specific to a few *Lygodium* species.

Therefore, APHIS is considering issuing a permit for the release of *C. camptozonale* into the continental United States in order to reduce the severity and extent of Old World climbing fern infestation. APHIS' review and analysis of the proposed action and its alternatives are documented in detail in an environmental assessment (EA) entitled, "Field Release of *Cataclysta camptozonale* (Lepidoptera: Crambidae), an Insect for Biological Control of Old World Climbing Fern (*Lygodium microphyllum*), in the Continental United States" (April 2004). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/*. In the middle of that page, click on "Document/Forms Retrieval System." At the next screen, click on the triangle beside "Permits—Environmental Assessments." A list of documents will appear; the EA for Old World climbing fern is document number 0038. You may request paper copies of the EA by calling or writing to the person listed

under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the EA when requesting copies. The EA is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 25th day of June 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–14981 Filed 6–30–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, Grasslands, and the Regional Office of the Northern Region to publish legal notices for public comment and decisions subject to appeal and predecisional administrative review under 36 CFR 215, 217, and 218. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after July 1, 2004. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Appeals and Litigation Group Leader; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3696.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review and Lewiston Morning Tribune.

Regional Forester decisions in North Dakota: Bismarck Tribune.

Regional Forester decisions in South Dakota: Rapid City Journal.

Beaverhead/Deerlodge—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribute
Custer—Billings Gazette (Montana) Rapid City Journal (South Dakota)
Dakota Prairie National Grasslands—Bismarck Tribune (North and South Dakota)
Flathead—Daily Inter Lake
Gallatin—Bozeman Chronicle
Helena—Independent Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Inter Lake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: June 25, 2004.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 04–14927 Filed 6–30–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Southwest Oregon Provincial Advisory Committee

SUMMARY: The Siskiyou Resource Advisory Committee will meet on Tuesday, July 27, 2004 for (1) updates from working groups; (2) a report on the May NW Forest Plan Implementation monitoring field review on the Umpqua NF; (3) a presentation from the Oregon Caves National Monument; (4) an overview of the National Fire Plan; and (5) an update on interagency fire management plans. The meeting will be held at the Rogue River-Siskiyou National Forest's Illinois Valley Ranger District office in Cave Junction. It begins at 9 a.m., ends at 5 p.m., and the open public forum begins at 11:30 a.m. with a 4-minute limitation per individual presentation. Written comments may be submitted prior to the meeting and delivered to Designated Federal Official Scott Conroy at the Rogue River-Siskiyou National Forest, PO Box 520, Medford, OR 97501.

FOR FURTHER INFORMATION CONTACT: Rogue River-Siskiyou National Forest Public Affairs Officer Mary T. Marrs at (541) 858–2211, e-mail: *mmarrs@fs.fed.us*, or USDA Forest Service, PO Box 520, 333 West 8th Street, Medford, OR, 97501.

Dated: June 24, 2004.

Virginia Grilley,

Deputy Forest Supervisor, Rogue River-Siskiyou National Forest.

[FR Doc. 04–14928 Filed 6–30–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability for Section 525 Technical and Supervisory Assistance (TSA) Grants

Announcement Type: Initial Notice of Funds Availability (NOFA) inviting applications from qualified organizations for Fiscal Year 2004 funding.

Catalog of Federal Domestic Assistance Number (CFDA): 10.441.

SUMMARY: The Rural Housing Service (RHS) announces it is soliciting competitive applications under its Technical and Supervisory Assistance (TSA) grant program. Grants will be awarded to eligible applicant organizations to conduct programs of technical and supervisory assistance for low-income rural residents to obtain and/or maintain occupancy of adequate housing.

DATES: The deadline for receipt of preapplication proposals by Rural Development State Offices is the close of business on August 2, 2004. Preapplications received after August 2, 2004 will not be considered for funding. Within 30 days after the closing date, each State Director will forward to the National Office the original preapplication(s) and supporting documents of the selected applicant. State Directors will be advised of the National Office's action on their selected preapplications.

FOR FURTHER INFORMATION CONTACT: Donn Appleman, Senior Loan Specialist, USDA Rural Development,

Single Family Housing Direct Loan Division, Special Programs and New Initiatives Branch, Mail Stop 0783, Room 2209-S, 1400 Independence Avenue SW., Washington, DC 20250–0783, phone: (202) 690–0510 or (202) 720–1474, e-mail: *donn.appleman@usda.gov*, or FAX: (202) 690–9909.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this Notice have received temporary emergency clearance by the Office of Management and Budget (OMB) under Control Number 0575–0188. However, in accordance with the Paperwork Reduction Act of 1995, RHS will seek standard OMB approval of the reporting requirements contained in this Notice and hereby opens a 60-day public comment period.

Title: Technical and Supervisory Assistance Grants.

Type of Request: New collection.

Abstract: RHS is authorized under Section 525 of Title V of the Housing Act of 1949, as amended, to make grants to or to enter into contracts to pay part or all of the cost of developing, conducting, administering or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from Federal, State and local housing programs in rural areas.

Recipient public or private nonprofit corporations, agencies, institutions, organizations, Indian tribes and other associations assist low-income individuals by providing homeownership and financial counseling to reduce both the potential for delinquency by loan applicants and the level of payment delinquency by present Rural Development borrowers. RHS refers to this program as Technical and Supervisory Assistance. This NOFA sets forth the eligibility and application requirements.

Information will be collected from applicants and grant recipients by Rural Development staff in its Local, Area, State and National offices. This information will be used to determine applicant eligibility for a grant, to determine project feasibility, to select grants for funding, and to monitor performance of selected grantees. If an applicant's proposal is selected for funding, it will be notified of the selection and given the opportunity to submit a formal application.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.7 hours per response.

Respondents: Public and private nonprofit corporations, agencies, institutions, organizations, and Indian tribes.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 13.7.

Estimated Number of Responses: 684.

Estimated Total Annual Burden on Respondents: 1,185 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Overview

This notice is published as required by 7 CFR 1944.525(b) and 1944.528, which states the RHS Administrator must provide annual notice in the **Federal Register** on the distribution of appropriated TSA funds, the number of preapplications to be submitted to the National Office from the State Offices, the maximum grant amount per project, and the dates governing the review and selection of TSA grant preapplications.

Complete agency regulations for the TSA program are contained in RD Instruction 1944-K, accessible online at *http://rdinit.usda.gov/regs*, or in 7 CFR part 1944, subpart K.

Up to $2,000,000 in competitive grants will be awarded to eligible applicants. No single award will exceed $100,000, except single awards for TSA programs conducted in multiple states or by multiple groups. Funding to any state or territory will be limited to 10 percent of available funds, including any portion of a multi-state award.

In accordance with 7 CFR 1944.525, the Administrator of RHS will distribute a portion of the funds to those States with the highest degree of substandard housing and persons in poverty in rural areas eligible to receive RHS housing assistance. These States are: Texas, California, North Carolina, Georgia, Mississippi, Louisiana, Kentucky, Alabama, Florida, and Pennsylvania. Up to $1,000,000 will be targeted to eligible TSA programs in these States. Remaining funds will be available for national competition.

No more than one grant per State will be awarded from targeted funds. Additional projects in targeted States may be considered for funding from non-targeted funds. Multi-state awards will not be made from targeted funds.

Applications for multi-state programs must designate the portion of funds to be spent and services to be provided in each state. No single multi-state program may be awarded more than $200,000.

The State Director may submit multiple preapplications, ranked in order of preference, to the National Office for consideration.

The performance period of grant activities will be two years from the date the grant agreement is executed.

Reimbursement of pre-award costs is not allowed.

To be eligible for a grant, the applicant must be a nonprofit corporation, agency, institution, organization, Indian tribe or other association. A private nonprofit corporation, which is owned and controlled by private persons or interests, must have local representation from the area being served, be organized and operated by private persons or interests for purposes other than making gains or profits for the corporation, and be legally precluded from distributing any gains or profits to its members. Faith-based organizations that meet these requirements may apply. Cost sharing is not required but is encouraged. In the selection of grant recipients, the Agency will consider the extent to which the project will make use of other financial and contribution-in-kind resources for both technical and supervisory assistance and housing development and supporting facilities. Applications and complete program instructions are available at any Rural Development Area Office, listed on the

Internet at *www.rurdev.usda.gov*. Federal grant application forms are available in electronic format at *www.whitehouse.gov/omb/grants/grants_forms.html*.

Program Administration

I. Funding Opportunity Description

Under section 525 (a) of the Housing Act of 1949, 42 U.S.C. 1490e(a), Rural Development provides funds to eligible applicants to conduct programs of technical and supervisory assistance (TSA) for low-income rural residents to obtain and/or maintain occupancy of adequate housing. Any processing or servicing activity involving authorized assistance to Rural Development employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of 7 CFR part 1900, subpart D. Applicants for this assistance are required to identify any known relationship or association with a Rural Development employee. This financial assistance may pay part or all of the cost of developing, conducting, administering, or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from Federal, State, and local programs in rural areas. Rural Development will provide technical and supervisory grant assistance to applicants without discrimination because of race, color, religion, sex, national origin, age, marital status, or physical or mental disability.

Policy: The policy of Rural Development is to provide technical and supervisory assistance to eligible applicants to do the following:

(1) Provide homeownership and financial counseling to reduce both the potential for delinquency by loan applicants and the level of payment delinquency by present Rural Development housing loan borrowers; and

(2) Facilitate the delivery of housing programs to serve the most needy low-income families in rural areas of greatest need for housing.

Rural Development intends to fund projects which include counseling and delivery of housing programs.

State Directors are given a strong role in the selection of grantees so this program can complement Rural Development's policies of targeting Rural Development resources to areas of greatest need within their States.

Objectives: The objectives of the TSA Grant Program are to assist low-income rural families in obtaining adequate housing to meet their family's needs and/or to provide the necessary guidance to promote their continued occupancy of already adequate housing. These objectives will be accomplished through the establishment or support of housing delivery and counseling projects run by eligible applicants. This program is intended to make use of any available housing program which provides the low-income rural resident access to adequate rental properties or homeownership.

Definitions: References to Local, Area, State, National and Finance Offices and to State Director, and Administrator refer to Rural Development offices and officials and should be read as prefaced by Rural Development. Terms used here have the following meanings:

Adequate housing. A housing unit of adequate size and design to meet the specific needs of low-income families and the requirements governing the particular housing program providing the services or financial assistance.

Applicant or grantee. Any eligible organization which applies for or receives TSA funds under a grant agreement.

Grant agreement. The contract between Rural Development and the applicant which sets forth the terms and conditions under which TSA funds will be made available.

Low-income family. Any household, including those with one member, whose adjusted annual income, computed in accordance with 7 CFR 3550.54 (c), does not exceed the Housing and Urban Development (HUD) established low-income limit (generally 80 percent of the median income adjusted for household size) for the county or Metropolitan Statistical Area where the property is or will be located.

Organization. Public or private nonprofit corporations, agencies, institutions, Indian tribes and other associations. A private nonprofit corporation, which is owned and controlled by private persons or interests, must have local representation from the area being served, be organized and operated by private persons or interests for purposes other than making gains or profits for the corporation, and be legally precluded from distributing any gains or profits to its members. Faith-based organizations may meet these requirements;

Rural area. The definition in 7 CFR 3550.10 applies.

Sponsored applicant. An eligible applicant which has a commitment of financial and/or technical assistance to apply for the TSA program and to implement such a program from a state, county, municipality, or other governmental entity or public body.

Supervisory assistance. Any type of assistance to low-income families which will assist those families in meeting the eligibility requirements for, or the financial and managerial responsibilities of, homeownership or tenancy in an adequate housing unit. Such assistance must include, but is not limited to, the following activities: (1) Assisting individual Rural Development borrowers with financial problems to overcome delinquency and/or prevent foreclosure and assisting new low-income applicants avoid financial problems through:

(i) Financial and budget counseling including advice on debt levels, credit purchases, consumer and cost awareness, debt adjustment procedures, and availability of other financial counseling services;

(ii) Monitoring payment of taxes and insurance;

(iii) Home maintenance and management; and

(iv) Other counseling based on the needs of the low-income families..

(2) Contacting and assisting low-income families in need of adequate housing by:

(i) Implementing an organized outreach program using available media and personal contacts;

(ii) Explaining available housing programs and alternatives to increase the awareness of low-income families and to educate the community as to the benefits which can accrue from improved housing;

(iii) Assisting low-income families to locate adequate housing;

(iv) Providing construction supervision, training, and guidance to low-income families not involved in Mutual Self-Help programs who are otherwise being assisted by the TSA project;

(v) Organizing local public or private nonprofit groups willing to provide adequate housing for low-income families; and

(vi) Providing assistance to families and organizations in processing housing loan and/or grant applications generated by the TSA program, including developing and packaging such applications for new construction, rehabilitation, or repair to serve low-income families.

Technical assistance. Any specific expertise necessary to carry out housing efforts by or for low-income families to improve the quantity and/or quality of housing available to meet their needs. Such assistance should be specifically related to the supervisory assistance provided by the project, and may

include, as appropriate, the following activities:

(1) Develop, or assist eligible applicants to develop, multi-housing loan and/or grant applications for new construction, rehabilitation, or repair to serve low-income families.

(2) Market surveys, engineering studies, cost estimates, and feasibility studies related to applications for housing assistance to meet the specific needs of the low-income families assisted under the TSA program.

Grant purposes: Grant funds are to be used for a housing delivery system and counseling program to include a comprehensive program of technical and supervisory assistance as set forth in the grant agreement and any other special conditions as required by Rural Development. Uses of grant funds may include, but are not limited to:

(1) The development and implementation of a program of technical and supervisory assistance as defined in 7 CFR 1944.506 (h) and (i).

(2) Payment of reasonable salaries of professional, technical, and clerical staff actively assisting in the delivery of the TSA project.

(3) Payment of necessary and reasonable office expenses such as office supplies and office rental, office utilities, telephone services, and office equipment rental.

(4) Payment of necessary and reasonable administrative costs such as workers' compensation, liability insurance, audit reports, travel to and attendance at Rural Development approved training sessions, and the employer's share of Social Security and health benefits. Payments to private retirement funds are prohibited unless prior written authorization is obtained from the Administrator.

(5) Payment of reasonable fees for necessary training of grantee personnel. This may include the cost of travel and per diem to attend regional training sessions when authorized by the State Director.

(6) Other reasonable travel and miscellaneous expenses necessary to accomplish the objectives of the specific TSA grant which were anticipated in the individual TSA grant proposal and which have been included as eligible expenses at the time of grant approval.

Ineligible Activities: Grant funds may not be used for:

(1) Acquisition, construction, repair, or rehabilitation of structures or acquisition of land, vehicles, or equipment.

(2) Replacement of or substitution for any financial support which would be available from any other source.

(3) Duplication of current services in conflict with the requirements of 7 CFR 1944.514(c).

(4) Hiring personnel to perform construction.

(5) Buying property of any kind from families receiving technical or supervisory assistance from the grantee under the terms of the TSA grant.

(6) Paying for or reimbursing the grantee for any expenses or debts incurred before Rural Development executes the grant agreement.

(7) Paying any debts, expenses, or costs which should be the responsibility of the individual families receiving technical and supervisory assistance.

(8) Any type of political activities.

(9) Other costs including contributions and donations, entertainment, fines and penalties, interest and other financial costs, legislative expenses and any excess of cost from other grant agreements.

Advice and assistance may be obtained from the National Office where ineligible costs are proposed as part of the TSA project or where a proposed cost appears ineligible.

The grantee may not charge fees or accept compensation or gratuities from TSA recipients for the grantee's assistance under this program.

Comprehensive TSA programs include: Outreach to the community and education of low-income families as to the benefits which can accrue from improved housing, including counseling on affording a home, obtaining a housing loan, and understanding predatory lending practices; loan packaging and assistance in the homebuying process, including reviewing client credit history, screening for housing loan eligibility for Rural Development Section 502 loans or similar loans, assisting clients to complete applications, advising clients on home selection and matters related to home financing, and providing post-purchase counseling; and, assisting individual Rural Development borrowers with financial problems to overcome delinquency and/or prevent foreclosure.

II. Award Information

Up to $2,000,000 in competitive grants will be awarded to eligible applicants. It is estimated that 25 grants will be awarded with these funds.

TSA projects will be funded under one Grant Agreement for two years commencing on the date of execution of the Agreement by the State Director. The Grant Agreement is contained as Exhibit A to RD Instruction 1944–K (available in any Rural Development office).

Performance of the grant program should begin within 60 days of award notification.

Applications for renewal or supplementation of existing TSA programs are eligible to compete with applications for new awards.

III. Eligibility Information

Grants provide funds to eligible applicant organizations to conduct programs of technical and supervisory assistance (TSA) for low-income rural residents to obtain and/or maintain occupancy of adequate housing.

Applicant eligibility. To be eligible to receive a grant, the applicant must:

(1) Be an organization as defined in 7 CFR 1944.506(e).

(2) Have the financial, legal, administrative, and operational capacity to assume and carry out the responsibilities imposed by the grant agreement. To meet this requirement of actual capacity, it must either:

(i) Have necessary background and experience with proven ability to perform responsibly in the field of low-income rural housing development and counseling, or other business management or administrative experience which indicates an ability to provide responsible technical and supervisory assistance; or

(ii) Be assisted by an organization which has such background experience and ability and which agrees in writing that it will provide, without charge, the assistance the applicant will need to carry out its responsibilities.

(3) Legally obligate itself to administer TSA funds, provide an adequate accounting of the expenditure of such funds, and comply with the grant agreement and Rural Development regulations;

(4) Demonstrate an understanding of the needs of low-income rural families;

(5) Have the ability and willingness to work within established guidelines; and

(6) If the applicant is engaged in or plans to become engaged in any other activities, it must be able to provide sufficient evidence and documentation that it has adequate resources, including financial resources, to carry on any other programs or activities to which it is committed without jeopardizing the success and effectiveness of its TSA project.

Cost sharing or matching. There is no cost sharing or matching requirement. However, applicants who submit evidence of cost sharing will receive points under *Selection Criteria,* paragraph (2)(iv).

Other administrative requirements. The following policies and regulations

apply to grants made under this program:

(1) The policies and regulations contained in 7 CFR part 1901, subpart E regarding equal opportunity requirements.

(2) The policies and regulations contained in 7 CFR part 1901, subpart F regarding historical and archaeological properties.

(3) The policies and regulations contained in 7 CFR part 1940, subpart G regarding Environmental Assessments.

IV. Application and Submission Information

The Federal government requires that all applicants for Federal grants and cooperative agreements with the exception of individuals other than sole proprietors, have a DUNS number. The Federal government will use the DUNS number to better identify related organizations that are receiving funding under grants and cooperative agreements, and to provide consistent name and address data for electronic grant application systems. More information on this policy and how to obtain a DUNS number is available at *http://www.whitehouse.gov/omb/grants/grants_forms.html.*

Preapplication submission

(1) All applicants will file an original and two copies of the preapplication, including supporting information detailed below, with the appropriate State Office serving the proposed TSA area. Pre-applications will consist of: Standard Form 424 (Form SF–424), "Application for Federal Assistance;" Form SF–424A, "Budget Information—Non-Construction Programs;" Form SF–424B, "Assurances—Non-Construction Programs;" and supporting documentation as detailed below. The applicant organization's DUNS number must be provided.

If the TSA area encompasses more than one State Office, the preapplication will be filed at the State Office which serves the area in which the grantee will provide the greatest amount of TSA efforts. Additional informational copies of the preapplication will be sent by the applicant to the other affected State Office(s). Applications for multi-state projects must designate the portion of funds and services to be provided to each state.

Preapplication packages must be received prior to the deadline at a Rural Development State Office. State Office addresses and contacts are:

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3618, TDD (334) 279–3495, Mr. Vann L. McCloud.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7705, ext. 740, TDD (907) 761–8905, Deborah Davis.

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8755, TDD (602) 280–8706, Don Irby.

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 968–3831, TDD (501) 301–3063, Lawrence McCullough.

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5816, TDD (530) 792–5848, Robert P. Anderson.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2918, TDD (800) 659–2656, Donald Pierce.

Connecticut—Served by Massachusetts State Office.

Delaware & Maryland State Office, 4607 South DuPont Highway, P.O. Box 400, Camden, DE 19934–9998, (302) 697–4319, TDD (302) 697–4303, Mr. Stacey Slacum.

Florida & Virgin Islands State Office, 4440 NW 25th Place, Gainesville, FL 32606–6563, (352) 338–3436, TDD (352) 338–3499, Daryl Cooper.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2169, TDD (706) 546–2034, Joseph Walden.

Guam—Served by Hawaii State Office.

Hawaii State Office (Services all Hawaii, American Samoa and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309, TDD (808) 933–8321, Ms. Robin Sato.

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5627, TDD (208) 378–5644, Ms. Roni Atkins.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 ext. 413, TDD (317) 290–3343, Paul Neumann.

Iowa State Office, 210 Walnut Street, Room 873, Des Moines, IA 50309, (515) 284–4663, TDD (515) 284–4858, Bruce McGuire.

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700, TDD (785) 271–2767, Tim Rogers.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7416, TDD (859) 224–7422, Mr. Denver Parks.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920, TDD (318) 473–7655, Debbie Redfearn.

Maine State Office, 967 Illinois Ave., Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9118, TDD (207) 942–7331, Dale Holmes.

Maryland—Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Suite 2, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–4590, Don Colburn.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip Wolak.

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55101, (651) 602–7835, TDD (651) 602–7830, Lance Larson.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, John Jones.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9301, TDD (573) 876–9480, Mr. Randy Griffith.

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2551, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5574, TDD (402) 437–5093, Mike Buethe.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222, TDD (775) 885–0633, William Brewer.

New Hampshire State Office—Served by Vermont State Office.

New Jersey State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7731, TDD (856) 787–7784, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4973, TDD (505) 761–4938, Bill Culbertson.

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. VonPless.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2041, TDD (919) 873–2003, Mr. Melchior Ellis.

North Dakota State Office, Federal Building, Room 208, 220 East Rosser,

P.O. Box 1737, Bismarck, ND 58502, (701) 530–2044, TDD (701) 530–2113, Don Warren.

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2401, TDD (614) 255–2554, Gerald Arnott.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1073, TDD (405) 742–1007, Mr. Jerry Efurd.

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3339, TDD (503)414–3387, Sharon Shaffer.

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2279, TDD (717) 237–2261, Frank Wetherhold.

Puerto Rico State Office, IBM Building, Suite 601, Munoz Rivera Ave., #654, San Juan, PR 00918, (787) 766–5095, TDD (787) 766–5332, Pedro Gomez.

Rhode Island—Served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3655, TDD (803) 765–5697, Herbert R. Koon, Jr.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1135, TDD (605) 352–1147, Roger Hazuka.

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Ben Lasater.

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9765, TDD (254) 742–9712, Mike Meehan.

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4323, TDD (801) 524–3309, Dave Brown.

Vermont & New Hampshire State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6015, TDD (802) 223–6365, Robert McDonald.

Virgin Islands—Served by Florida State Office.

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1603, TDD (804) 287–1753, James Reid.

Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7704, TDD (360) 704–7742, Karen Bailor.

Western Pacific Territories—Served by Hawaii State Office.

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4867, TDD (304) 284–4836, Dianne Goff Crysler.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600, TDD (715) 345–7614, Peter Kohnen.

Wyoming State Office, 100 East B, Federal Building, Room 1005, P.O. Box 820, Casper, WY 82602, (307) 233–6715, TDD (307) 261–6333, Jack Hyde.

(2) All preapplications shall be accompanied by the following information which will be used to determine the applicant's eligibility to undertake a TSA program and to determine whether the applicant might be funded:

(i) A narrative presentation of the applicant's proposed TSA program, including:

(A) The technical and supervisory assistance to be provided;

(B) The time schedule for implementing the program;

(C) The staffing pattern to execute the program and salary range for each position, existing and proposed;

(D) The estimated number of low-income and low-income minority families the applicant will assist in obtaining affordable adequate housing;

(E) The estimated number of Rural Development borrowers who are delinquent or being foreclosed that the applicant will assist in resolving their financial problems relating to their delinquency;

(F) The estimated number of households which will be assisted in obtaining adequate housing in the TSA area through new construction and/or rehabilitation;

(G) Annual estimated budget for each of the two years based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, contracts, and other costs categories, detailing those costs for which the grantee proposes to use the TSA grant separately from non-TSA resources, if any;

(H) The accounting system (cash or accrual) to be used;

(I) The method of evaluation proposed to be used by the applicant to determine the effectiveness of its program;

(J) The sources and estimated amounts of other financial resources to be obtained and used by the applicant for both TSA activities and housing development and/or supporting facilities; and,

(K) Any other information necessary to explain the manner of delivering the TSA assistance proposed.

(ii) Complete information about the applicant's previous experience and capacity to carry out the objectives of the proposed TSA program;

(iii) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; the names and addresses of the applicant's members, directors, and officers; and, if another organization is a member of the applicant-organization, its name, address, and principal business.

(iv) For a private nonprofit entity, a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant. If the applicant is an organization being assisted by another private nonprofit organization, the same type of financial statement should also be provided by that organization.

(v) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and actual number of both low-income and low-income minority families and substandard housing), the need for the type of technical and supervisory assistance being proposed, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts (as related to paragraph (a)(2)(i) of this section), and any other information necessary to specifically address the selection criteria in 7 CFR 1944.529.

(vi) A list of other activities the applicant is engaged in and expects to continue and a statement as to any other funding and whether it will have sufficient funds to assure continued operation of the other activities for at least the period of the TSA grant agreement.

(3) An applicant should submit written statements from the county, parish, or township governments of the area affected that the project is beneficial and does not duplicate current activities. If the local governmental units will not provide

such statements, the applicant will prepare and include with its preapplication a summary of its analysis of alternatives considered under 7 CFR 1944.514 (c). However, Indian nonprofit organization applicants should obtain the written concurrence of the Tribal governing body in lieu of the concurrence of the county governments.

(4) Sponsored applicants should submit a written commitment for financial and/or technical assistance from their sponsoring entity.

(5) Rural Development will deal only with authorized representatives designated by the applicant. The authorized representatives must have no pecuniary interest in any of the following as they would relate in any way to the TSA grant: the award of any engineering, architectural, management, administration, or construction contracts; purchase of the furnishings, fixtures or equipment; or purchase and/or development of land. (**Note:** Rural Development has designated the Area Office as the primary point of contact for all matters relating to the TSA program and as the office responsible for the *administration* of approved TSA projects.)

Intergovernmental Review. This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

V. Application Review Information

Within 30 days of the closing date for receipt of preapplications, the State Director will forward to the National Office the original preapplication(s) and supporting documents of the selected applicant(s), including any comments received in accordance with 7 CFR part 3015, "Intergovernmental Review of Agriculture Programs and Activities," (*See* RD Instruction 1940–J, available in any Rural Development Office) and the comments and recommendations of the Local Office(s), Area Office(s), and the State Office. The State Office may submit multiple preapplications, ranked in order of preference, to the National Office for consideration.

Concurrently the State Office will send a copy of the selected applicant's Form SF–424 and relevant documents to the Regional Office of the General Counsel (OGC) requesting a legal determination be made of the applicant's legal existence and authority to conduct the proposed program of technical and supervisory assistance.

The State Office will notify other applicants that their preapplications were not selected and advise them of their appeal rights under 7 CFR part 11.

Selection Criteria

(1) Proposals must meet the following criteria:

(i) Provide a program of supervisory assistance as defined in 7 CFR 1944.506(h); and,

(ii) Serve areas with a concentration of substandard housing and low-income and low-income minority households.

(2) For proposals meeting the requirements listed in paragraph (1) above, Rural Development will use the weighted criteria in this paragraph in the selection of grant recipients. Each preapplication and its accompanying narrative will be evaluated and the applicant's proposal will be numerically rated on each criterion. The highest-ranking proposals will be selected for funding according to award information, described above. The criteria considered, the method of measurement, and the points to be awarded are:

(i) The extent to which the program serves areas with concentrations of Rural Development single family housing loan borrowers who are delinquent in their housing loan payments and/or threatened with foreclosure. Measured by whether the applicant proposes to offer delinquency counseling services for Rural Development borrowers. Program will offer delinquency counseling services: 5 points.

(ii) The capability and past performance demonstrated by the applicant in administering its programs, the effectiveness of current efforts by the applicant to assist low-income families in obtaining adequate housing, the extent to which the proposed staff and salary ranges will meet the objective of the program, the anticipated capacity of the applicant to implement the proposed time schedule for starting and completing the TSA program and each phase thereof, and the adequacy of records and practices (including personnel procedures and practices) that will be established and maintained by the applicant during the term of the agreement. Measured on whether the applicant organization or members of the applicant organization's staff conducting the proposed TSA program have, in the last two years, successfully conducted a TSA or similar program to assist low-income families in becoming successful homeowners. Have conducted a similar program, not TSA: 5 points; OR, have conducted a TSA program, 10 points.

(iii) The extent to which the program will provide or increase the delivery of housing resources to low-income and low-income minority families in the areas who are not currently occupying adequate housing.

(A) Measured by the county Poverty Rate, as reported in Census 2000 Summary File 3 (SF 3) Report GCT–P14, "Income and Poverty in 1999:2000." This information may be obtained on the Internet from the U.S. Census Bureau Web site, "American Fact Finder," at *factfinder.census.gov.*

(*1*) 25.1% or higher: 30 points.

(*2*) 14.7% to 25.0%: A total of 2.86 points, rounded to the nearest whole number, for each percentage point above 14.6%.

(*3*) 14.6% or less: 0 points.

Example: According to Census 2000, the service area Poverty Rate is 18.0 percent. This is 3.4 points above the National Non-Metropolitan Area Average of 14.6 percent. This proposal would be scored with 10 points ($3.4 \times 2.86 = 9.7$).

(B) Measured by the degree of deficient housing, based on the combination of the county's percentage of housing units lacking complete plumbing facilities plus percentage of housing units lacking complete kitchen facilities (referred to as deficient housing factor), as reported in Census 2000 SF 3 Report GCT–H7, "Structural and Facility Characteristics of All Housing Units: 2000." This information may be obtained on the Internet from the U.S. Census Bureau Web site, "American Fact Finder," at *factfinder.census.gov.*

(*1*) Deficient housing factor 13.0 or greater: 30 points.

(*2*) Factor 5.1 to 13.0: A total of 3.75 points, rounded to the nearest whole number, for each point above 5.0.

(*3*) Factor 5.0 or lower: 0 points.

Example: Of the total housing units in the service area, 5.0 percent lack complete plumbing and 4.5 percent lack complete kitchen facilities, according to Census 2000. Adding these two percentages provides a "deficient housing index" of 9.5. This is 4.5 points above the National Non-Metropolitan Area Average of 5.0. This would result in a score of 17 points ($9.5 - 5.0 = 4.5 \times 3.75 = 16.875$).

(C) For programs serving multi-county areas, scoring will be determined based upon the combined totals for the counties entire service area. County data (not smaller areas) will be used for evaluation.

(iv) The extent to which the program will make use of other financial and contribution-in-kind resources and be cost effective. The cost, both direct and indirect, per person benefiting from the program will be measured by the proposed total number of low-income participants who obtain suitable housing within the period of the grant as a result of participation in the

comprehensive TSA program, compared to amount of the TSA grant. Scoring will be based on the TSA grant funds expended per participant who purchases suitable housing.

(A) $1,000 or less: 30 points

(B) More than $1,000: $1,500 divided by amount expended per participant, multiplied by 20 points.

Example: The applicant organization's program of homebuyer training and loan packaging proposes to produce 60 homeowners during the two-year grant. Funding for the program includes a $75,000 TSA grant, $20,000 from a State grant and $10,000 of contribution-in-kind from the organization for office assistance. The TSA cost per homeowner produced is $75,000 / 60 = $1,250. Point calculation—$1,500 / $1,250 = 1.2 × 20 = 24 points.

(v) The extent to which the program will be cost effective in personnel to be hired to the cost of the program. Measured by the number of full-time employees or equivalents of the applicant organization working on the program. One or more employees, 5 points.

(vi) The extent to which the program is effective in providing expected benefits to low-income families. Measured by the proposed total number of low-income participants who obtain suitable housing within the period of the grant as a result of participation in the comprehensive TSA program. More than 25 new homeowners: 5 points, OR more than 50 new homeowners: 10 points.

(vii) The services the applicants will provide are not presently available in the proposed service area to assist low-income families in obtaining or maintaining occupancy of adequate housing and the extent of duplication of technical and supervisory assistance activities currently provided for low-income families. Measured by comments received. Proposed services not duplicated in the area: 10 points.

(viii) The extent of citizen and local government participation and involvement in the development of the preapplication and the project and coordination with other Federal, State or local technical and/or supervisory assistance programs. Measured by letter(s) or similar documentation from local government officials, businesses and individuals detailing participation and coordination in the project by groups other than the applicant. Evidence of participation in the project by groups other than the applicant: 10 points.

(ix) For programs proposed by nonprofit entities, whether the applicant has a commitment of financial and/or technical assistance to apply for the TSA program and to implement such a program from a State, county, municipality, or other government entity or public body. Measured by letter(s) or similar documentation from government entities or public body committing financial and/or technical assistance. Applicant is a government entity or public body OR is a nonprofit entity with evidence of commitment of financial and/or technical assistance from a government entity or public body: 10 points.

VI. Award Administration Information

Upon notification that the applicant has been tentatively selected for funding, the State Office will notify the applicant and provide instructions for preparation of a formal application. The applicant will submit all completed forms required for a formal application and provide whatever additional information is requested to the Area Office within 30 days.

The Area Office will assemble a formal application docket, which will include the following:

(1) Form SF–424 and the information submitted in accordance with 7 CFR 1944.526 (a)(2) (pre-application package);

(2) Any comments received in accordance with 7 CFR part 3015, subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." *See* RD Instruction 1940–J, available in any Rural Development Office.

(3) OGC legal determination made pursuant to 7 CFR 1944.526 (c)(3).

(4) Grant Agreement.

(5) Form RD 1940–1, "Request for Obligation of Funds."

(6) Form RD 400–1, "Equal Opportunity Agreement."

(7) Form RD 400–4, "Nondiscrimination Agreement."

(8) Form AD–1047, "Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions."

(9) Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements (Grants), Alternative I—For Grantees Other Than Individuals."

(10) Form RD 1940–20, "Request for Environmental Information."

(11) Form RD 1940–22, "Environmental Checklist for Categorical Exclusions," Form RD 1940–21, "Environmental Assessment for Class I Actions" or Exhibit G of 7 CFR part 1940, subpart G entitled, "Environmental Assessment for Class II Actions."

(12) The historical and archaeological assessment.

(13) The detailed budget for the agreement period based upon the needs outlined in the proposal and the comments and recommendations by Rural Development.

(14) Verification of Debarment Listing check and Federal Debt Listing check.

(15) Form RD 2006–38, "Civil Rights Impact Analysis."

Reporting requirements. Form SF–269, "Financial Status Report," and a project performance report will be required of all grantees on a quarterly basis. All grantees shall submit an original and two copies of these reports to the Area Office. The project performance reports will be submitted not later than January 15, April 15, July 15, and October 15 of each year.

As part of the grantee's preapplication submission required by 7 CFR 1944.526(a)(2)(i), the grantee established the objectives of its TSA program including the estimated number of low-income families to be assisted by the TSA program and established its method of evaluation to determine the effectiveness of its program. The project performance report should relate the activities during the report period to the project's objectives and analyze the effectiveness of the program. The grantee will complete a final Form SF–269 and a final performance report upon termination or expiration of the grant agreement.

Grant monitoring. Each grant will be monitored by Rural Development to ensure that the grantee is complying with the terms of the grant and that the TSA project activity is completed as approved. Ordinarily, this will involve a review of quarterly and final reports by Rural Development and review by the appropriate Area Office.

Additional grants. An additional grant may be made to an applicant that has previously received a TSA grant and has achieved or nearly achieved the goals established for the previous grant by submitting a new proposal for TSA funds. The additional grant application will be processed as if it were an initial application.

Management assistance. The Area Office will see that each TSA grantee receives management assistance to help achieve a successful program.

(1) TSA employees who will be contacting and assisting families will receive training in packaging single family housing and Rural Rental Housing loans when, or very shortly after, they are hired so that they can work effectively.

(2) TSA employees who will provide counseling, outreach, and other technical and supervisory assistance will receive training on Rural Development policies, procedures, and requirements appropriate to their

positions and the type of assistance the grantee will provide at the outset of the grant.

(3) Training will be provided by Rural Development employees and/or outside sources approved by Rural Development when the technical and supervisory assistance involves rural housing programs other than Rural Development programs. Appropriate training of TSA employees should be anticipated during the planning stages of the grant and the reasonable cost of such training included in the budget.

(4) The Area Office, in cooperation with the appropriate Local Office(s), should coordinate the management assistance given to the TSA grantee in a manner which is timely and effective. This will require periodic meetings with the grantee to discuss problems being encountered and offer assistance in solving these problems; to discuss the budget, the effectiveness of the grant, and any other unusual circumstances affecting delivery of the proposed TSA services; to keep the grantee aware of procedural and policy changes, availability of funds, etc.; and to discuss any other matters affecting the availability of housing opportunities for low-income families.

(5) The Area and/or Local Office will advise the grantee of the options available to bring the delinquent borrowers' accounts current and advise the grantee that the appropriate approval authority for any resolution of the delinquent accounts and all other authority currently available to remedy delinquent accounts.

Grant evaluation, closeout, suspension, and termination. Grant evaluation will be an ongoing activity performed by both the grantee and Rural Development. The grantee will perform self-evaluations by preparing periodic project performance reports in accordance with 7 CFR 1944.541. Rural Development will also review all reports prepared and submitted by the grantee in accordance with the grant agreement and 7 CFR part 1944, subpart K.

Within forty-five (45) days after the grant ending date, the grantee will complete closeout procedures as specified in the grant agreement.

The grant can also be terminated before the grant ending date for the causes specified in the grant agreement. No further grant funds will be disbursed when grant suspension or termination procedures have been initiated in accordance with the grant agreement.

VII. Agency Contacts

Donn Appleman, Senior Loan Specialist, USDA Rural Development, Single Family Housing Direct Loan Division, Special Programs and New Initiatives Branch, Mail Stop 0783, Room 2209–S, 1400 Independence Avenue SW., Washington, DC 20250–0783, phone: (202) 690–0510 or (202) 720–1474, e-mail: *donn.appleman@usda.gov*, or FAX: (202) 690–9909.

VIII. Other Information

Information about TSA grants and other Rural Development Housing Programs can be obtained at the Rural Development Web site at *www.rurdev.usda.gov*. Questions can also be sent by e-mail to *agsec@usda.gov*.

Dated: June 15, 2004.

James C. Alsop,

Acting Administrator, Rural Housing Service.

[FR Doc. 04–14909 Filed 6–30–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of July 2004, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceedings	
Belarus: Solid Urea, A–822–801	7/1/03–6/30/04
Brazil:	
Industrial Nitrocellulose, A–351–804	7/1/03–6/30/04
Silicon Metal, A–351–806	7/1/03–6/30/04
Chile:	
Fresh Atlantic Salmon, A–337–803	7/1/03–6/30/04
IQF Red Raspberries, A–337–806	7/1/03–6/30/04
Estonia: Solid Urea, A–447–801	7/1/03–6/30/04
France: Stainless Steel Sheet and Strip in Coils, A–427–814	7/1/03–6/30/04
Germany:	
Industrial Nitrocellulose, A–428–803	7/1/03–6/30/04
Stainless Steel Sheet and Strip in Coils, A–428–825	7/1/03–6/30/04
India: Polyethylene Terephthalate (Pet) Film, A–533–824	7/1/03–6/30/04
Iran: In-Shell Pistachio Nuts, A–507–502	7/1/03–6/30/04
Italy:	
Certain Pasta, A–475–818	7/1/03–6/30/04
Stainless Steel Sheet and Strip in Coils, A–475–824	7/1/03–6/30/04
Japan:	
Cast Iron Pipe Fittings, A–588–605	7/1/03–6/30/04
Clad Steel Plate, A–588–838	7/1/03–6/30/04
Industrial Nitrocellulose, A–588–812	7/1/03–6/30/04

	Period
Polyvinyl Alcohol, A–588–861	6/27/03–6/30/04
Stainless Steel Sheet and Strip in Coils, A–588–845	7/1/03–6/30/04
Lithuania: Solid Urea, A–451–801	7/1/03–6/30/04
Mexico: Stainless Steel Sheet and Strip in Coils, A–201–822	7/1/03–6/30/04
Republic of Korea:	
Industrial Nitrocellulose, A–580–805	7/1/03–6/30/04
Stainless Steel Sheet and Strip in Coils, A–580–834	7/1/03–6/30/04
Romania: Solid Urea, A–485–601	7/1/03–6/30/04
Russia:	
Ferrovanadium and Nitrided Vanadium, A–821–807	7/1/03–6/30/04
Russia: Solid Urea, A–821–801	7/1/03–6/30/04
Tajikistan: Solid Urea, A–842–801	7/1/03–6/30/04
Taiwan: Stainless Steel Sheet and Strip in Coils, A–583–831	7/1/03–6/30/04
Thailand:	
Butt-Weld Pipe Fittings, A–549–807	7/1/03–6/30/04
Canned Pineapple, A–549–813	7/1/03–6/30/04
Furfuryl Alcohol, A–549–812	7/1/03–6/30/04
The People's Republic of China:	
Bulk Aspirin, A–570–853	7/1/03–6/30/04
Butt-Weld Pipe Fittings, A–570–814	7/1/03–6/30/04
Industrial Nitrocellulose, A–570–802	7/1/03–6/30/04
Persulfates, A–570–847	7/1/03–6/30/04
Saccharin, A–570–878	12/27/02–6/30/04
Sebacic Acid, A–570–825	7/1/03–6/30/04
Industrial Nitrocellulose, A–412–803	7/1/03–6/30/04
Stainless Steel Sheet and Strip in Coils, A–412–818	7/1/03–6/30/04
Turkmenistan: Solid Urea, A–843–801	7/1/03–6/30/04
Turkey: Certain Pasta, A–489–805	7/1/03–6/30/04
Ukraine: Solid Urea, A–823–801	7/1/03–6/30/04
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Countervailing Duty Proceedings	
European Economic Community: Sugar, C–408–046	1/1/03–12/31/03
India: Polyethylene Terephthalate (Pet) Film, C–533–825	1/1/03–12/31/03
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Turkey: Certain Pasta, C–489–806	1/1/03–12/31/03
Suspension Agreements	
Brazil: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, C–351–829	1/1/03–12/31/03
Russia: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, A–821–809	1/1/03–12/31/03

In accordance with § 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *www.ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of July 2004. If the Department does not receive, by the last day of July 2004, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 25, 2004.

Holly A. Kuga,

Senior Office Director, Office for Import Administration.

[FR Doc. 04–14982 Filed 6–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year ("Sunset") reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping duty order and antidumping duty finding listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review*, which covers the same antidumping duty order and antidumping duty finding.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce at (202) 482–5050, or Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating sunset reviews of the following antidumping duty order and antidumping duty finding.

DOC case No.	ITC case no.	Country	Product
A–489–602	731–TA–364	Turkey	Aspirin.
A–588–046	AA1921–129	Japan	Polychloroprene Rubber.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/*.

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset Web site for any updates to the appropriate service list before filing any submissions. The Department will make additions to and/or deletions from the service lists provided on the sunset Web site based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the relevant service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102(b) and section 771 (9)(C), (D), (E), (F), and (G) of the Act) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, with regard to each order identified above, if we do not receive an order-specific notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order or finding without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Dated: June 25, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–14984 Filed 6–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Notice of Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: In November 2002, the Department of Commerce (the Department) revoked, in part, the antidumping duty order on sebacic acid from the People's Republic of China (PRC) related to subject merchandise exported by Tianjin Chemicals Import and Export Corporation (Tianjin) and produced by Hengshui Dongfeng Chemical Co., Ltd. (Hengshui). The Department has received an allegation from SST Materials, Inc. d/b/a/ Genesis Chemicals, Inc. (Genesis), a domestic interested party in this proceeding, that Tianjin has resumed dumping of sebacic acid produced by Hengshui in the United States, as described below. Genesis requests that the Department reinstate the antidumping duty order on Tianjin's sales of Hengshui-produced sebacic acid to the United States. The Department finds that the information submitted provides a sufficient basis to warrant the initiation of a changed circumstances review of the antidumping duty order on sebacic acid from the PRC. In this review, we will consider whether the Department should reinstate the order with respect to subject merchandise produced by Hengshui and exported to the United States by Tianjin.

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, Office 9, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3434.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1994, the Department published in the **Federal Register** the antidumping duty order on sebacic acid from the PRC. *See Antidumping Duty Order: Sebacic Acid From the People's Republic of China,* 59 FR 35909 (July 14, 1994). In the 2000–2001 administrative review of sebacic acid from the PRC, we found that one of the respondent companies, Tianjin, and its supplier, Hengshui, qualified for revocation, in part, of the antidumping duty order on sebacic acid under 19 CFR 351.222(b)(2) and (3). The Department found that Tianjin did not sell subject merchandise at less than normal value (NV) during the three-year period that formed the basis for the revocation request. Consequently, the Department revoked the order in part, with respect to Tianjin's sales of subject merchandise produced by Hengshui. *See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part,* 67 FR 69719, 69720 (Nov. 19, 2002) (*2001–2002 Final Results*).

As part of Tianjin's request for revocation, pursuant to 19 CFR 351.222(b)(2)(i)(B), Tianjin agreed to the immediate reinstatement of the antidumping duty order if the Department concludes that, subsequent to the revocation, Tianjin sold the subject merchandise at less than NV. *Id.*

On February 10, 2004, Genesis submitted an allegation, including supporting documentation, that Tianjin has resumed dumping sebacic acid in the United States since revocation of the order in part.[1] Genesis requested that the Department reinstate the antidumping duty order on Tianjin's exports to the United States of sebacic acid that is produced by Hengshui.

On February 17, 2004, Tianjin submitted a letter to the Department in which it argued that Genesis' request should be rejected because: (1) It is outside the scope of the 2002–2003 administrative review; and (2) it was untimely filed in that segment of the proceeding. Tianjin argued that Genesis' allegation should instead be considered in the context of a changed circumstances review, pursuant to 19 CFR 351.216.

Scope of the Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500 ppm maximum ash, 25 maximum APHA color), Purified Grade (1000 ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500 ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review. Genesis contends that the information it submitted to the Department demonstrates that, since revocation of the order in part, Tianjin's average U.S. import price during the period July 2002 through June 2003 has decreased while the NV for sebacic acid sold by Tianjin and produced by Hengshui has increased during the same period. Based on the information submitted by Genesis, we find that there is sufficient basis to initiate a changed circumstances review to determine whether in fact Tianjin has resumed dumping of sebacic acid in the Unites States. *See* the "Export Price" and "Normal Value" sections of this notice, below.

Allegation of Resumption of Dumping

Genesis argued that Tianjin's U.S. import prices have decreased during the period July 2002 through June 2003 (*i.e.*, the period of review (POR) for the ongoing 2002–2003 administrative review), as evidenced by publicly available import data for the POR from the U.S. Census Bureau. According to Genesis, this data shows a decline in the average import prices of sebacic acid

[1] Genesis submitted this document as part of the ongoing 2002–2003 administrative review of the order on sebacic acid from the PRC. We have placed this document on the record of this changed circumstances review.

from the PRC relative to data from the same source for the period July 2000 through June 2001 (*i.e.*, the POR for the 2000–2001 administrative review in which Tianjin/Hengshui was revoked from the order).

To derive the specific import prices charged by Tianjin, Genesis removed from this data the volume and value of U.S. imports made by the respondent in the 2002–2003 administrative review (*i.e.*, Guangdong Chemicals Import and Export Corporation (Guangdong)), and concluded that the remaining volume and value data constituted the entirety of Tianjin's U.S. sales during the POR.[2] Genesis calculated Tianjin's U.S. price based on the average unit value (AUV) of the remaining data and deducted amounts for foreign inland freight and foreign brokerage and handling to determine Tianjin's net U.S. sales price.

In order to assess the reasonableness of this methodology, we examined proprietary import data from U.S. Customs and Border Protection concerning imports into the United States of sebacic acid sold by Tianjin. *See* the June 25, 2004, memorandum from Greg Kalbaugh to the file entitled, "Calculations Performed for Assessing the Reasonableness of SST Materials, Inc.'s Allegation of the Resumption of Dumping by Tianjin Chemicals Import and Export Corporation (Tianjin) and its Producer Hengshui Dongfeng Chemical Co., Ltd. (Hengshui) for the Changed Circumstances Review of Sebacic Acid from the PRC," (Initiation Memorandum) at Attachment I. We confirmed that Genesis' allegation of the resumption of dumping did not undervalue the AUV of these imports.

Normal Value

Genesis argued that, in conjunction with a decrease in U.S. price, there has been a corresponding increase in NV. In the most recently completed administrative review (*i.e.*, covering 2000–2001), the Department valued castor oil using a surrogate value obtained from *The Economic Times of India*. *See* the July 31, 2002, memorandum from Gregory Kalbaugh to the File entitled, "Preliminary Valuation of Factors of Production," in the 2000–2001 administrative review of sebacic acid from the PRC.[3] (This document has been placed on the record of this changed circumstances review.) As part of its allegation of the resumption of dumping, Genesis submitted updated surrogate value information for castor oil from *The Economic Times of India* for the 2002–2003 POR. In comparison, the updated surrogate value for castor oil submitted by Genesis shows an increase of greater than fifteen percent in the price of castor oil (*i.e.*, an increase in the price of castor oil from $685.54 per metric ton to $790.01 per metric ton between the 2000–2001 and 2002–2003 administrative review periods.) Moreover, based upon the factors of production and surrogate value data submitted during the 2000–2001 POR, as a percentage of the cost of manufacture, castor oil constitutes, by far, the largest material input into sebacic acid. *See* the proprietary version of the November 7, 2002, memorandum from Patrick Connolly to the File entitled, "Tianjin Chemicals Import and Export Corporation U.S. Price and Factors of Production Adjustments for the Final Results." (This document has been placed on the record of this changed circumstances review.)

To calculate NV, Genesis used proprietary factor value information and publicly available surrogate value information which are on the record in the 2002–2003 administrative review. We examined Genesis' calculated NV in order to assess its reasonableness. We confirmed that Genesis used Hengshui's reported factors of production for the 2002–2003 administrative review. *See* the Initiation Memorandum at Attachment II.

Regarding the factor values, we noted that, in its calculation of the alleged weighted-average dumping margin, Genesis valued castor oil using Hengshui's market economy purchase of this material input rather than the updated surrogate value it placed on the record of the 2002–2003 review, as noted above. However, because Hengshui purchased this input from a country that has been found to have broadly-available export subsidies, it is not appropriate to rely on this purchase. Therefore, to value castor oil, we have relied on the updated surrogate value information from *The Economic Times of India* placed on the record by Genesis in its February 10, 2004, submission. In addition, Genesis miscalculated freight expenses on packing factors. For example, Genesis calculated freight on certain jumbo bags to be more than seven times the calculated factor value for the bags themselves. However, after adjusting NV to use the revised surrogate value for castor oil and excluding packing expenses in their entirety from the margin calculation, we found the alleged dumping margin in this case to be above *de minimis*. For the specifics of these calculations, see the Initiation Memorandum.

Furthermore, we tested the reasonableness of Genesis' NV using two additional methodologies: (1) In addition to valuing castor oil using the updated castor oil surrogate value from *The Economic Times of India* submitted by Genesis, we also valued the remaining components of NV by inflating forward the 2000–2001 costs to be contemporaneous with the 2002–2003 administrative review period; and (2) using the updated castor oil surrogate value, we performed the same calculations except that we based NV on the factors of production currently reported by Hengshui in the ongoing 2002–2003 administrative review. While these two NVs were lower than Genesis' NV, all calculated NVs in this case were significantly higher than the net U.S. prices. (*See* the "Basis for Reinstatement" section below.) For further discussion, see the Initiation Memorandum at page 2 and Attachments IV and V.

Basis for Reinstatement

Section 351.222(b)(2) of the Department's regulations provides that the Department may revoke an antidumping duty order in part if the Secretary concludes, *inter alia*, that one or more exporters or producers covered by the order have sold the merchandise at not less than NV for a period of at least three consecutive years. To obtain a company-specific revocation under § 351.222(b)(2), for any exporter or producer that the Department previously determined to have sold the subject merchandise at less than normal value, that exporter or producer must agree to immediate reinstatement in the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the revocation, that exporter or producer sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2)(i)(B). In addition, § 351.222(b)(3) provides that for any exporter that is not a producer of subject merchandise, the Department will normally revoke the order only with respect to subject merchandise produced or supplied by those companies that supplied the exporter. Thus, under the Department's regulations, as long as an antidumping duty order remains in force, an entity

[2] Genesis asserted that this was appropriate because: (1) With a 243.40 percent PRC country-wide antidumping duty rate on imports of subject merchandise from the PRC, the commercial reality must be that Tianjin and Guangdong account for virtually all imports; and (2) the Web site for Garvey Schubert Barer, counsel for Tianjin and Guangdong, notes that Tianjin is "one of two Chinese exporters that continues to export sebacic acid to the United States." *See* Genesis' February 10, 2004, submission at Exhibit 7.

[3] The surrogate value for castor oil was unchanged in the final results of review.

previously granted a conditional revocation may be reinstated in that order if it is established that the entity has resumed dumping of subject merchandise.

In this case, another producer or exporter remains subject to the antidumping duty order on sebacic acid from the PRC. *See 2001–2002 Final Results.* In addition, Tianjin was previously found to have sold the subject merchandise at less than NV. *See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 64 FR 69503, (December 13, 1999). Accordingly, the Department granted Tianjin conditional revocation because of its past dumping behavior and based upon its agreement to immediate reinstatement in the antidumping duty order if the Department were to find that the company resumed dumping of sebacic acid from the PRC. *See 2001–2002 Final Results* at 69720.

In this case, Genesis has alleged that Tianjin has resumed dumping at a rate of 49.9 percent based upon its calculated net U.S. price and NV for the period July 2002 through June 2003. Genesis argues, therefore, that the Department should reinstate the antidumping duty order on sebacic acid from the PRC with respect to Tianjin's sales of subject merchandise produced by Hengshui.

As described in the "Export Price" and "Normal Value" sections, above, we have examined Genesis' margin calculation in order to assess its reasonableness. We discovered minor discrepancies in Genesis' margin calculation; however, with adjustments, we find that Genesis' allegation of resumption of dumping has merit and warrants initiation of a change circumstances review because it provides a reasonable indication that Tianjin's overall dumping margin for the review period is greater than *de minimis.* Accordingly, consistent with 19 CFR 351.216, we are initiating a changed circumstances review to determine whether in fact Tianjin has resumed dumping of sebacic acid from the PRC. *See* the Initiation Memorandum at page 2 and Attachments IV and V.

Concurrent with the date of publication of this notice, we will issue a partial section A and a sections C and D antidumping questionnaire to Tianjin.[4] At this time, we are not requiring Tianjin to answer questions related to separate rates. Because we found in the 2000–2001 administrative review that Tianjin was a company that merited a separate rate, and no administrative review has been initiated that would require Tianjin to substantiate, once again, a *de facto* and *de jure* absence of government control of its export activities, we will not examine the issue of whether Tianjin continues to merit a separate rate, absent information indicating otherwise. Accordingly, we shall only examine Tianjin's entitlement to a separate rate in the context of any future administrative review in which Tianjin may participate.

Although Genesis submitted its allegation on the record of the ongoing administrative review, we find that a changed circumstances review is the proper vehicle in which to make a determination based on Genesis' request. Accordingly, we have removed Genesis' allegation from the record of the administrative review and have placed it on the record of this newly initiated changed circumstances review.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. In the event that the Department preliminarily finds that Tianjin has resumed dumping sebacic acid produced by Hengshui, and thus should be reinstated in the existing antidumping duty order on sebacic acid from the PRC, we will order Customs and Border Protection to suspend liquidation of entries for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the preliminary determination. The Department will also issue its final results of review within 270 days of the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register.**

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: June 25, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–14983 Filed 6–30–04; 8:45 am]

BILLING CODE 3510–DS–P

[4] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under this review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the factors of production of the merchandise under investigation. Section E requests information on further manufacturing.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of Public Meetings To Gather Input on the Next Generation of the Manufacturing Extension Partnership (MEP) Program and the Recompetition of MEP Centers

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces a series of public meetings intended to gather input and comments on the Next Generation of the Manufacturing Extension Partnership (MEP) program and the recompetition of MEP centers. The National Academy of Public Administration (NAPA) has recently released a report which evaluates various alternate business models on the MEP program and provides seven recommendations for its improvement. One of the recommendations states the need to create a strategic plan, which articulates the "next generation of MEP." In order to gather input on this strategic plan, respond to the recommendations incorporated in the report and gather information regarding the MEP recompetition process, NIST MEP will be holding a series of regional roundtables and web casts to solicit public comment. There will be 8 regional meetings, as well as 3 web casts. Interested parties need to register via the internet for the meeting or web cast they wish to attend, and for those parties unable or unwilling to attend one of the public forums, they can submit comments on-line at *http://www.mep.nist.gov/competition/intro.htm.*

DATES: Meetings will be held as follows: Tuesday, July 13, 2004, 1 p.m. to 5 p.m., Philadelphia, PA; Monday, July 19, 2004, 1 p.m. to 5 p.m., Cleveland, OH; Tuesday, July 20, 2004, 1 p.m. to 5 p.m., Detroit, MI; Wednesday, July 21, 2004, 1 p.m. to 5 p.m., Minneapolis, MN; Monday, July 26, 2004, 1 p.m. to 5 p.m., Orlando, FL; Tuesday, July 27, 2004, 1 p.m. to 5 p.m., Dallas, TX; Wednesday, July 28, 2004, 1 p.m. to 5 p.m., Los

Angeles, CA; Monday, August 2, 2004, 1 p.m. to 5 p.m., Washington, DC.

Web casts will be held as follows: Wednesday, July 14, 2004, 1 p.m. to 5 p.m.; Friday, July 23, 2004, 1 p.m. to 5 p.m.; Tuesday, August 3, 2004, 1 p.m. to 5 p.m.

ADDRESSES: The meetings will be held in the following locations:

Tuesday, July 13, 2004, 1 p.m. to 5 p.m.

Wyndham Franklin Plaza Hotel, 17th and Race St, Philadelphia, PA 19103.

Monday, July 19, 2004, 1 p.m. to 5 p.m.

Marriott Cleveland Downtown at Key Center, 127 Public Square, Cleveland, OH 44114.

Tuesday, July 20, 2004, 1 p.m. to 5 p.m.

Marriott Detroit at the Renaissance Center, Renaissance Center, Detroit, MI 48243.

Wednesday, July 21, 2004, 1 p.m. to 5 p.m.

Marriott Minneapolis City Center, 30 South 7th Street, Minneapolis, MN, 55402.

Monday, July 26, 2004, 1 p.m. to 5 p.m.

Marriott Orlando Airport, 7499 Augusta National Drive, Orlando, FL 32822.

Tuesday, July 28, 2004, 1 p.m. to 5 p.m.

Hyatt Regency DFW, Inside DFW International Airport, DFW Airport, TX 75261.

Wednesday, July 28, 2004, 1 p.m. to 5 p.m.

Renaissance Los Angeles Hotel, 9620 Airport Boulevard, Los Angeles CA 90045.

Thursday, August 5, 2004, 1 p.m. to 5 p.m.

National Association of Manufacturers, 1331 Pennsylvania Ave., NW, Suite 600, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Susan Hayduk by e-mail at *susan.hayduk@nist.gov* or by telephone at (301) 975–5020.

Dated: June 24, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–14949 Filed 6–30–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, DOC.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, July 13, 2004, from 9 a.m. to 5 p.m. and Wednesday, July 14, 2004, from 9:30 a.m. to 3:30 p.m. These times and the agenda topics described below may be subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

Place: The meeting will be held both days at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA.

Status: The meeting will be open to public participation with a 30-minute time period set aside on Wednesday, July 14, for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by July 6, 2004, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after July 6, 2004, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters to be Considered: The meeting will include the following topics: (1) NOAA Research Review, (2) Report of the U.S. Commission on Ocean Policy, (3) Reports of Cooperative/Joint Institute reviews, (4) Ocean Modeling review, (5) Global Observations, (6) National Polar-orbiting Operational Environmental Satellite System, (7) Climate Monitoring Working Group and Climate and Global Change Working Group Reports, (8) NOAA Strategic Plan, (9) NOAA Social Science Research Initiative, (10) NOAA 5-year Research Plan, (11) NOAA Organic Act and (12) public statements.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, e-mail: *Michael.Uhart@noaa.gov)*; or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: June 25, 2004.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 04–14966 Filed 6–30–04; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0077]

Federal Acquisition Regulation; Information Collection; Quality Assurance Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0077).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning quality assurance requirements. The clearance currently expires on September 30, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on

valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 30, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0077, Quality Assurance Requirements, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Acquisition Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Supplies and services acquired under Government contracts must conform to the contract's quality and quantity requirements. FAR Part 46 prescribes inspection, acceptance, warranty, and other measures associated with quality requirements. Standard clauses related to inspection require the contractor to provide and maintain an inspection system that is acceptable to the Government; give the Government the right to make inspections and test while work is in process; and require the contractor to keep complete, and make available to the Government, records of its inspection work.

B. Annual Reporting Burden

Respondents: 950.
Responses Per Respondent: 1.
Total Responses: 950.
Hours Per Response: .25.
Total Burden hours: 237.5 (238).

C. Annual Recordkeeping Burden

Recordkeepers: 58,060.
Hours Per Recordkeeper: .68.
Total Burden Hours: 39,481.
Total Annual Burden: 238 + 39,481 = 39,719.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0077, Quality Assurance Requirements, in all correspondence.

Dated: June 17, 2004.

Ralph J. De Stefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 04–14848 Filed 6–30–04; 8:45 am]
BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0102]

Federal Acquisition Regulation; Information Collection; Prompt Payment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0102).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to a currently approved information collection requirement concerning prompt payment. The clearance currently expires September 30, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 30, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Office of Acquisition Policy, GSA (202) 208–3810.

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 32 of the FAR and the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, require that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/supplier. Part 32 of the FAR and the clause at 52.232–27, Prompt Payment for Construction Contracts, further require that contractors on construction contracts—

(a) Notify subcontractors/suppliers of any amounts to be withheld and furnish a copy of the notification to the contracting officer;

(b) Pay interest to subcontractors/suppliers if payment is not made by 7 days after receipt of payment from the Government, or within 7 days after correction of previously identified deficiencies;

(c) Pay interest to the Government if amounts are withheld from subcontractors/suppliers after the Government has paid the contractor the amounts subsequently withheld, or if the Government has inadvertently paid the contractor for nonconforming performance; and

(d) Include a payment clause in each subcontract which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days after such amounts are paid to the contractor, include an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty if payments are not made in a timely manner, and include a clause requiring each subcontractor to include these clauses in each of its subcontractors and to require each of its subcontractors to include similar clauses in their subcontracts.

These requirements are imposed by Pub. L. 100–496, the Prompt Payment Act Amendments of 1988.

Contracting officers will be notified if the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts withheld. The contracting officer must then charge the

contractor interest on the amounts withheld from subcontractors/suppliers. Federal agencies could not comply with the requirements of the law if this information were not collected.

B. Annual Reporting Burden

Respondents: 38,194.
Responses Per Respondent: 11.
Total Responses: 420,134.
Hours Per Response: .11.
Total Burden Hours: 46,215.

C. Annual Recordkeeping Burden

Recordkeepers: 34,722.
Hours Per Recordkeeper: 18.
Total Recordkeeping Burden Hours: 624,996.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

Dated: June 17, 2004.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 04–14849 Filed 6–30–04; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0088]

Federal Acquisition Regulation; Information Collection; Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0088).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning travel costs. The clearance currently expires September 30, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 30, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Office of Acquisition Policy, GSA (202) 208–3810.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel as set forth in the Federal Travel Regulations for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel is Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardized Regulations, section 925, "Maximum Travel Per Diem Allowances for Foreign Areas." The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used.

B. Annual Reporting Burden

Respondents: 5,800.
Responses Per Respondent: 10.
Total Responses: 58,000.
Hours Per response: .25.
Total Burden Hours: 14,500.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405; telephone (202) 501–4755. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondence.

Dated: June 17, 2004.

Ralph J. Destefano,

Acting Director. Acquisition Policy Division.

[FR Doc. 04–14850 Filed 6–30–04; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0138]

Federal Acquisition Regulation; Information Collection; Contract Financing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0138).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to a currently approved information collection requirement concerning contract financing. The clearance currently expires on September 30, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 30, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F

Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0138, Contract Financing, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Office of Acquisition Policy, GSA (202) 208–3810.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act (FASA) of 1994, Pub. L. 103–355, provided authorities that streamlined the acquisition process and minimize burdensome Government-unique requirements. Sections 2001 and 2051 of FASA substantially changed the statutory authorities for Government financing of contracts. Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and sections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items.

Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These paragraphs authorize the Government to provide contract financing with certain limitations.

Sections 2001(b) and 2051(b) also amended the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, DOD, NASA, and GSA amended the FAR by revising Subparts 32.0, 32.1, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232.

The coverage enables the Government to provide financing to assist in the performance of contracts for commercial items and provide financing for non-commercial items based on contractor performance.

B. Annual Reporting Burden

Respondents: 1,000.
Responses Per Respondent: 5.
Total Responses: 5,000.
Hours Per Response: 2.
Total Burden Hours: 10,000.

The annual reporting burden for performance-based financing is estimated as follows:

Respondents: 500.
Responses Per Respondent: 12.
Total Responses: 6,000.
Hours Per Response: 2.
Total Burden Hours: 12,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0138, Contract Financing, in all correspondence.

Dated: June 17, 2004.

Ralph J. De Stefano,

Acting Director,Acquisition Policy Division.

[FR Doc. 04–14901 Filed 6–30–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

Navy Case No. 84,430: A Data Structure and Associated Algorithms for Assessing Dispersion in Complex Geometry.

Navy Case No. 84,431: CT–Analyst, A Software System for Zero-Latency, High-Fidelity Emergency Assessment of Airborne Chemical, Biological and Radiological (CBR) Threats.

Navy Case No. 95,906: Reagentless and Reusable Biosensors with Tunable Differential Binding Affinities.

ADDRESSES: Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: June 25, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–14929 Filed 6–30–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Trojan Defense, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Trojan Defense, Inc., a revocable, nonassignable, exclusive license to practice in the field of intermodal sea containers in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent Application No. 10/693,847 entitled "Neutron Sensitive Integrated Circuit", Navy Case No. 84,355 and U.S. Patent Application Serial No. 10/693,846 entitled "Semiconductor Substrate Incorporating a Neutron Conversion Layer", Navy Case No. 84,785.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 16, 2004.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–3083. Due to U.S. Postal delays, please fax (202) 404–7920, E-mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: June 25, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–14930 Filed 6–30–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information: Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities—Research on Accessible Reading Assessments; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.324F

Dates: Applications Available: July 2, 2004.

Deadline for Transmittal of Applications: August 23, 2004.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes and tribal organizations.

Estimated Available Funds: $4,800,000.

Estimated Average Size of Awards: $960,000.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months unless the application involves a consortium of organizations, or any other group of eligible parties that meets the requirements of 34 CFR 75.127–75.129, and a compelling rationale is provided. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To produce, and advance the use of, knowledge to improve the results of education and early intervention for infants, toddlers, and children with disabilities.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 661(e)(2) and 672 of IDEA).

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: *Research on Accessible Reading Assessments.*

Background: The purpose of this priority is to support research to make large-scale assessments of reading proficiency more accessible for students who have disabilities that affect reading. This research will contribute to the ultimate goal of making large-scale assessments more "universally designed", *i.e.*, designed from the beginning to be accessible and valid for the widest possible range of students, including students with disabilities.

Note: For additional background information and a complete list of the references for this priority, applicants are encouraged to review this material in the application package for this competition.

Priority: This priority is for projects to conduct systematic programs of research and development to make large-scale assessments of reading proficiency more accessible for students who have disabilities that affect reading. Projects may focus on one or more of the categories of disabilities that affect reading. Given a sufficient number of approved high quality applications, the Department intends to fund projects that, in combination, address the assessment of students with a full range of disabilities that affect reading, including particularly blindness and other visual impairments, deafness and other hearing impairments, learning disabilities, and mental retardation. The Department intends to fund at least one project that addresses the assessment of students working toward alternate achievement standards, as defined in 34 CFR Part 200 as amended by the regulations published in the **Federal Register**, December 9, 2003, pp. 68698–68708.

Each project must complete the goals described below:

Goal One: In collaboration with the other projects funded under this priority, formulate a definition of the construct of "reading proficiency" that can be used by all of the projects as a basis for research and development for accessible large-scale tests of reading proficiency (as discussed above) that (consistent with the requirements of the No Child Left Behind Act of 2001 (NCLB)) provide (a) a valid measure of proficiency against academic standards, and (b) individual interpretive, descriptive, and diagnostic reports for the full range of students with disabilities that affect reading. In collaboration with the other projects funded under this priority: (1) Develop documentation that supports the definition on the basis of research and theory, including reports of the National Reading Panel and the Rand Corporation's report on reading comprehension; [1] (2) analyze the definition in relation to current State and national academic standards, and the characteristics of the populations under study by the projects; (3) obtain input from relevant outside groups, such as experts in assessment, reading, special education, disabilities; and (4) refine the definition as needed on the basis of input from external sources and research conducted under this priority.

Goal Two: Conduct a program of research on the assessment of reading proficiency (as defined under Goal One) to determine the effects of various factors of test development, design, and administration (item development, field test methods, presentation modes, formats, schedules, etc.) on accessibility, validity, and comparability for students with disabilities that affect reading. The program of research must be designed to produce an empirical base, in combination with other available research findings, for developing accessible reading assessments that can provide (a) a valid measure of proficiency against academic standards, and (b) individual interpretive, descriptive, and diagnostic reports for students with disabilities that affect reading. The research may include investigations of technology-based assessments, vertical scaling, and other approaches for allowing tests to accommodate wide variations in student proficiency and other characteristics.

The research must employ sound methodologies. It cannot simply be designed to demonstrate performance increments for students with disabilities, but must be designed to demonstrate increased access while validity and comparability are maintained. One possible research design is based on experimental research on assessment accommodations. This design is based on an "interaction" model in which accommodations produce a "differential boost" in the performance of students with specific disabilities in comparison to the performance of students without those disabilities who also receive the accommodations.[2] This research is discussed in several recent summaries.[3]

[1] Snow, C. E. (2002). Reading for understanding: toward a research and development program in reading comprehension. Santa Monica, CA: RAND Corporation.

[2] Phillips, S.E. (1994). High-stakes testing accommodations: Validity versus disabled rights. Applied Measurement in Education, 7, 93–120.

[3] Chiu, C., & Pearson, P.D. (June 1999). Synthesizing the Effects of Test Accommodations for Special Education and Limited English Proficiency Students. Paper presented at the National Conference on Large Scale Assessment

Continued

For the purposes of this priority, this design may be adapted to test specific features of accessible reading assessments. Other research approaches, for example research based on item response theory or factor analysis, may also be important components of the program of research supported under this priority. For all research designs, the project must provide sufficient sample sizes and research rigor to produce conclusive findings.

Goal Three: In collaboration with the other projects funded under this priority, develop research-based principles and guidelines for making large-scale assessments of reading proficiency more accessible for students who have disabilities that affect reading. The principles and guidelines must address all phases of test design and development, including definitions of constructs, development of items and formats, field testing and revision, etc. To the greatest possible degree, the principles and guidelines developed under this goal must be compatible extensions of the Standards for Educational and Psychological Testing.[4] These principles and guidelines must be in formats that allow for their use in developing and evaluating assessments, as well as in focusing future research.

Goal Four: In collaboration with the other projects funded under this priority, and based on the definition formulated under Goal One and the research conducted under Goal Two, develop instruments and/or methods for assessing reading proficiency that are suitable for large-scale administration for school accountability purposes, that are accessible to students who have disabilities that affect reading, that maintain validity and comparability of scores, and that can provide (a) a valid measure of proficiency against academic standards, and (b) individual interpretive, descriptive, and diagnostic reports for the full range of students with disabilities that affect reading.

In collaboration with the other projects funded under this priority, a project must conduct a large-scale field test on the instruments and methods to determine the degree to which they provide for accessibility, validity, and comparability. The projects must provide sufficient sample size and diversity, as well as sound data collection and analysis procedures to ensure conclusive field test findings.

It is anticipated that the projects will complete Goals 1 through 3 during the first three years of operation, and that Goal 4 will be completed during years 4 and 5. In deciding whether to continue each project for the fourth and fifth years for the completion of Goal 4, we will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the first half of the project's third year in Washington DC. Projects must budget for staff travel associated with this review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project;

(c) The degree to which the project is making a positive contribution to providing research findings for making large-scale assessments of reading proficiency more accessible for students who have disabilities that affect reading;

(d) The degree to which the project is collaborating effectively with other projects funded under this priority and producing a cohesive set of products and findings; and

(e) The quality of plans and arrangements for conducting the field test called for under Goal 4.

General Requirements: Each project must—

(a) Form a general advisory committee on which representation is invited from the National Center for Education Statistics; the National Assessment Governing Board; the National Center on Educational Outcomes; the National Center for Research on Evaluation, Standards, and Student Testing; organizations representing test developers, reading educators, and researchers; disability groups; and other appropriate projects and organizations. The primary purposes of this advisory committee are to review and advise on the general plans of the project and to provide liaison with significant stakeholder groups;

(b) Form a technical advisory committee consisting of experts in reading, assessment, and research. The purpose of this technical advisory committee is to review and provide technical input on the specific research and development plans and activities of the project;

(c) Disseminate the project's findings. Dissemination must include the use of a Web site that meets all relevant standards for accessibility;

(d) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project; and

(e) In addition to the annual two-day Project Directors' meeting in Washington, DC provided for in paragraph (d), budget for another annual two-day trip to Washington, DC to meet with Federal officials and the other projects funded under this priority, to discuss plans, findings, and methods of dissemination.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the APA inapplicable to the absolute priority in this notice.

Program Authority: 20 U.S.C. 1461 and 1472.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $4,800,000.

Estimated Average Size of Awards: $960,000.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months unless the application involves a consortium of organizations, or any other group of eligible parties that meet the requirements of 34 CFR 75.127–75.129, and a compelling rationale is provided. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

(Snowbird, UT June 1999). American Institutes for Research in the Behavioral Sciences, Palo Alto, CA.

Sireci, S.G., Li, S., & Scarpati, S. (2003). The effects of test accommodations on test performance: A review of the literature. Center for Educational Assessment Research, Report No. 485. Amherst, MA: School of Education, University of Massachusetts Amherst.

Thompson, S., Blount, A., & Thurlow, M. (2002). A summary of research on the effects of test accommodations: 1999 through 2001 (Technical Report 34). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.

[4] American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (1999). Standards for Educational and Psychological Testing. Washington, DC.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.324F.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, the letters of support, or the appendix. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 2, 2004.

Deadline for Transmittal of Applications: August 23, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the APA (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities Program—Research on Accessible Reading Assessments competition—CFDA Number 84.324F is one of the competitions included in the pilot project. If you are an applicant under the Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities Program—Research on Accessible Reading Assessments competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424)

to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities Program—Research on Accessible Reading Assessments competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities Program—Research on Accessible Reading Assessments competition at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing indicators and measures that will yield information on various aspects of the quality of the Research and Innovation To Improve Services and Results for Children With Disabilities program. Included in these indicators and measures will be those that assess the quality and relevance of newly funded research projects. Two indicators will address the quality of new projects. First, an external panel of eminent senior scientists will review the quality of a randomly selected sample of newly funded research applications, and the percentage of new projects that are deemed to be of high quality will be determined. Second, because much of the Department's work focuses on questions of effectiveness, newly funded applications will be evaluated to identify those that address causal questions and then to determine what percentage of those projects use randomized field trials to answer the causal questions. To evaluate the relevance of newly funded research projects, a panel of experienced education practitioners and administrators will review descriptions of a randomly selected sample of newly funded projects and rate the degree to which the projects are relevant to practice.

Other indicators and measures are still under development in areas such as the quality of project products and long-term impact. Data on these measures will be collected from the projects funded under this notice. Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

We will notify grantees of the performance measures once they are developed.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Dave Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., room 4078, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7427.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 205–8207.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: June 28, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–14987 Filed 6–30–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–341–000]

Algonquin Gas Transmission Company; Notice of Tariff Filing

June 25, 2004.

Take notice that on June 23, 2004, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the revised tariff sheets identified in Appendix A to the filing, to be effective on November 24, 2003, March 1, 2004 and April 1, 2004.

Algonquin states that the purpose of this filing is to modify certain tariff sheets in its currently effective tariff to reflect provisions previously accepted by Commission orders in various Algonquin tariff proceedings.

Algonquin states that copies of its filing have been served upon all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1453 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–341–000]

Algonquin Gas Transmission Company; Notice of Tariff Filing

June 25, 2004.

Take notice that on June 23, 2004, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the revised tariff sheets identified in Appendix A to the filing, to be effective on November 24, 2003, March 1, 2004, and April 1, 2004.

Algonquin states that the purpose of this filing is to modify certain tariff sheets in its currently effective tariff to reflect provisions previously accepted by Commission orders in various Algonquin tariff proceedings.

Algonquin states that copies of its filing have been served upon all affected customers of Algonquin and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1454 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARMTENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–24–006]

Algonquin Gas Transmission Company; Notice of Refund Report

June 24, 2004.

Take notice that on June 18, 2004, Algonquin Gas Transmission Company (Algonquin) tendered for filing a refund report that describes the disbursement of refunds relating to service on Algonquin's Manchester Street and Brayton Point facilities between October 10, 2003, and March 1, 2004.

Algonquin states that these refunds are credited to customers, in compliance with the "Order Granting Motion to Withdraw Pleadings and Terminate Proceeding, and Accepting Tariff Revisions and Negotiated Rate Contracts, Subject to Conditions" issued by the Commission in the captioned docket on May 19, 2004 (107 FERC ¶ 61,173 (2004)).

Algonquin states that copies of its filing have been served on all affected customers of Algonquin and interested state commissions, as well as to all parties appearing on the Commission's official service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

Protest Date: July 1, 2004.

[FR Doc. E4–1460 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–263–002]

Algonquin Gas Transmission Company; Notice of Compliance Filing

June 24, 2004.

Take notice that on June 18, 2004, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, to be effective as of October 10, 2003.

Algonquin states that the purpose of this filing is to comply with the Commission's order issued on May 19, 2004 in Docket Nos. RP04–24 and RP04–263. Specifically, by the filing, Algonquin states that it proposes to implement revised tariff sheets that reflect the rates for transportation service rendered by Algonquin on the Manchester Street and Brayton Point facilities during the period from October 10, 2003 to February 29, 2004.

Algonquin states that copies of its filing have been served all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1461 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–016]

CenterPoint Energy—Mississippi River; Transmission Corporation; Notice of Negotiated Rate Filing

June 25, 2004.

Take notice that on June 23, 2004, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing and approval a negotiated rate agreement between MRT and CenterPoint Energy Gas Services, Inc. MRT requests that the Commission accept and approve the transaction to be effective July 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1450 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–015]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Negotiated Rate Filing

June 24, 2004.

Take notice that on June 17, 2004, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing and approval a negotiated rate agreement between MRT and Laclede Energy Resources, Inc. MRT requests that the Commission accept and approve the transaction to be effective July 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1459 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–363–000]

Columbia Gas Transmission Corporation; Notice of Application

Issued June 24, 2004.

Take Notice that on June 18, 2004, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia, filed in Docket No. CP04–363–000 an abbreviated application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, seeking authorization to reclassify a well in Columbia's Hunt Storage Field in Kanawha County, West Virginia, from observation status to an active withdrawal well, and to construct approximately 0.6 mile of 2-inch pipeline and appurtenances. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online at *FERCOnlineSupport@ferc.gov* or toll free, (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to counsel for Columbia, Frederic J. George, at (304) 357–2359, FAX (304) 357–3206.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file on or before the date listed below with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 15, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1469 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–338–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes In Ferc Gas Tariff

June 24, 2004.

Take notice that on June 22, 2004, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, revised tariff sheets to implement cash out surcharge rate of $0.0033 per dekatherm, proposed to be effective July 1, 2004, designed to recover the under-recovered balance in its cash out accountat March 31, 2004.

Eastern Shore states that Section 35, of the General Terms & Conditions (GT & C) of its FERC Gas Tariff, newly entitled Cash Out Refund/Surcharge, provides that Eastern Shore will refund or surcharge for each annual billing period any difference between the revenues received and the costs incurred under the cash out provisions of its tariff. Eastern Shore also states that the annual billing period referenced above shall be the twelve-month period commencing April 1st and ending the following March 31st.

Eastern Shore further states that it, subsequent to the end of each such annual billing period, Eastern Shore shall compare the revenues received by it under the cash-out procedures to the costs incurred. Eastern Shore notes that, if the revenues received exceed the costs incurred, then Eastern Shore shall refund, within sixty (60) calendar days of the end of the annual billing period, the net over-recoveries to firm transportation customers on a pro rata basis in accordance with the transportation quantities Eastern Shore has delivered during the annual billing period. Eastern Shore also states that, if the revenues received are less than the costs incurred, then Eastern Shore shall recover the net under recoveries by means of a surcharge applicable to each dekatherm delivered to all firm and interruptible transportation customers. Eastern Shore notes that such surcharge, to be effective July 1 of each year, shall be calculated by dividing the net under recovered balance by the total transportation quantities delivered by Eastern Shore during the annual billing period.

Eastern Shore states that copies of its filing have been mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1468 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–36–000]

Enbridge Pipelines (KPC); Notice of Extension of Time

June 25, 2004.

On June 21, 2004, Enbridge Pipelines (KPC) filed a motion for an extension of time to file an answer to intervenors' concerns as directed by the Commission's Letter Order issued June 2, 2004, in the above-docketed proceeding, 107 FERC ¶ 61,244 (2004). The motion states that due to the unavailability of key personnel, additional time is needed for the preparation of a response. The motion further states that the Missouri Public Service Commission, the Kansas Corporation Commission, Missouri Gas Energy and Kansas Gas Service, Inc. do not oppose the motion for additional time.

Upon consideration, notice is hereby given that an extension of time for the filing of a response is granted to and including July 22, 2004, as requested by Enbridge KPC.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1448 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–337–000]

Florida Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

June 24, 2004.

Take notice that on June 18, 2004, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets effective July 1, 2004:

Sixty-Fourth Revised Sheet No. 8A;
Fifty-Sixth Revised Sheet No. 8A.01;
Fifty-Sixth Revised Sheet No. 8A.02;
Sixteenth Revised Sheet No. 8A.04;
Fifty-Ninth Revised Sheet No. 8B;
Fifty-Second Revised Sheet No. 8B.01;
Ninth Revised Sheet No. 8B.02.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. FGT explains that pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date.

FGT states that it is filing a flex adjustment of 0.50%, resulting in a cumulative flex adjustment for the current Summer Period of 0.36%. FGT states that this cumulative flex adjustment, combined with the Base FRCP of 3.14%, results in an Effective FRCP of 3.50%. FGT also states that this filing is necessary due to FGT currently experiencing higher fuel usage than will be recovered by the currently Effective FRCP of 3.00%. Increasing the FRCP will reduce FGT's under-recovery of fuel and reduce the Unit Fuel Surcharge in the next Summer Period. FGT asserts that the instant filing complies with its tariff provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1467 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–334–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes To FERC Gas Tariff

June 24, 2004.

Take notice that on June 16, 2004, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its Sixth Revised Volume No. 1 FERC Gas Tariff, the following tariff sheets, to become effective July 19, 2004:

Second Revised Sheet No. 1407;
Second Revised Sheet No. 1408;
Second Revised Sheet No. 1409;
Second Revised Sheet No. 1410;
Third Revised Sheet No. 1411;
Third Revised Sheet No. 1412;
Third Revised Sheet No. 1413;
Second Revised Sheet No. 1414.

Gulf South is proposing certain clarifications to Sections 7.4 and 7.5 of the General Terms and Conditions of its tariff. Gulf South states that the proposed changes will not modify the basic structure of Gulf South's queue process or posting and bidding requirements; however, it will eliminate certain inconsistencies, clarify certain practices, and provide increased flexibility.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission

strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1464 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–339–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 24, 2004.

Take notice that on June 22, 2004, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective August 1, 2004.

Kern River states that the purpose of this filing is to remove all references to the Gas Research Institute and related surcharges from Kern River's tariff, to reflect the elimination of the GRI surcharges in accordance with the terms and conditions of the GRI Settlement Agreement approved by the Commission in 1998.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1456 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–336–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

June 24, 2004.

Take notice that on June 17, 2004, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, the sheets listed in Appendix A of the filing, to be effective August 1, 2004.

KMIGT states that the purpose of this filing is to update, simplify, clarify and improve the storage provisions in KMIGT's tariff. KMIGT states that the proposed tariff changes would substitute inventory-based ratchets for the existing date-based ratchets in KMIGT's tariff, which provides more flexibility for shippers and enhances KMIGT's storage services.

KMIGT further states that a copy of this filing has been served upon KMIGT's customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1466 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–266–001]

Midwestern Gas Transmission Company; Notice of Compliance Filing

June 24, 2004.

Take notice that on June 22, 2004, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective June 1, 2004:

Substitute Fourth Revised Sheet No. 247 and Original Sheet No. 247A.

Midwestern states that this filing is made to comply with Paragraph(s) 9 and 11 of the Commission's Order issued on May 28, 2004 in Docket No. RP04–266–000 (107 FERC ¶ 61,218).

Midwestern states that copies of this filing have been sent to all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings.

See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1463 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–398–000 and RP04–155–000 (Consolidated)]

Northern Natural Gas Company; Notice of Comment Period

June 25, 2004.

On May 21, 2004, Northern Natural Gas Company (Northern) filed reply comments in the above-docket proceeding. Included in the reply comments was a proposal by Northern to modify its gas quality proposal that had been the topic of the April 20, 2004, technical conference ordered in this proceeding. 106 FERC ¶ 61,195.

By this notice, parties are being given an opportunity to file comments on the proposal. Notice is hereby given that parties may file comments on Northern's proposal on or before July 2, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1451 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–398–009]

Northern Natural Gas Company; Notice of Compliance Filing

June 25, 2004.

Take notice that on June 23, 2004, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2003:

2 Substitute Third Revised Sheet No. 125A;
Substitute First Revised Sheet No. 142B;
2 Substitute Seventh Revised Sheet No. 226;
Substitute Fourth Revised Sheet No. 227;
Substitute Third Revised Sheet No. 228;
Substitute Original Sheet No. 228A;
Ninth Revised Sheet No. 286;
Second Revised Sheet No. 306.

Northern states that the filing is being made in compliance with the Commission's June 2, 2004 Order on Rehearing, Clarification and Compliance in this proceeding.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1452 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–364–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

June 25, 2004.

Take notice that on June 21, 2004, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP04–364–000 an application pursuant to Northern's blanket authority granted on September 1, 1982, at Docket No. CP82–401–000 and Sections 157.205, 157.208 and 157.216 of the Commission's Regulations for authorization to replace, operate, and relocate certain facilities of the Marquette branchline and up-rate the maximum allowable operating pressure (MAOP) on the pipeline, all located in Marquette County, Michigan, as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to (1) replace and operate approximately 14.4 miles of its existing 12-inch Marquette branchline (MIM10101); (2) relocate a regulator setting and replace a receiver barrel; and (3) up-rate the maximum allowable operating pressure (MAOP) on approximately 17 miles of the Marquette branchline and operate such pipeline at the higher MAOP. Northern states that authorization to replace and operate the 12-inch Marquette branchline is necessary in order to remediate anomalies discovered during a caliper pig run.

Northern proposes to replace the existing 12-inch branchline with 12-inch pipeline starting at MP 227.35 in Section 32, T47N, R29W, and ending at MP 241.73 in Section 27, T47N, R27W. With the exception of approximately 11,200 feet of pipeline that will be installed in new right-of-way, the new replacement pipeline will primarily be installed parallel and adjacent to the existing pipeline. The offset will generally be 35 feet from the existing pipeline.

Northern states that the facilities will be financed with internally generated funds. The total estimated cost of the proposed project is $12,000,000. Northern states that it will account for the retirement of the replaced segments of pipeline in accordance with Gas Plant Instruction No. 10 in 18 CFR part 201.

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Donna Martens, Senior Regulatory Analyst, at (402) 398–7138.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 855.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed, therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comment Date: August 9, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1455 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–335–000]

Portland General Electric Company; Notice of Tariff Filing

June 24, 2004.

Take notice that on June 17, 2004, Portland General Electric Company (Portland) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 147, to be effective July 17, 2004.

Portland asserts that the purpose of the filing is to remove the Index of Customers from Portland's tariff pursuant to Section 154.111(a) of the Commission's regulations. 18 CFR 154.111(a) (2003).

Portland asserts that it is submitting its quarterly electronic Index of Customers to the Commission. In addition, Portland states that pursuant to Section 284.13(c), the Index of Customers has been posted on Portland's Web site. Therefore Portland asserts that it has modified First Revised Sheet No. 147 to delete the Index of Customers and to reserve the sheet for future use.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1465 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2493–006]

Puget Sound Energy, Inc.; Notice Granting Late Intervention

June 25, 2004.

On October 20, 1992, the Commission issued a notice of Puget Sound Power & Light Company's [1] application for a new license for the Snoqualmie Falls Project No. 2493, located on the Snoqualmie River, in the city of Snoqualmie, King County, Washington. The notice established December 23, 1992, as the deadline for filing motions to intervene in the proceeding.

On May 26, 2004, American Whitewater Affiliation filed a motion for late intervention in the proceeding. Granting the late motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to Rule 214,[2] the motion to intervene filed in this proceeding by American Whitewater Affiliation is granted, subject to the Commission's rules and regulations.

[1] Subsequently, on March 19, 1997, Puget Sound Power & Light Company advised the Commission that it had changed its name to Puget Sound Energy, Inc.

[2] 18 CFR 385.214 (2004).

This notice constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the issuance of this notice, pursuant to 18 CFR 385.713.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1449 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL03–3–005, AD03–7–005, ER03–1271–000, CP01–418–000, CP03–7–001, CP03–301–000, RP03–245–000, RP99–176–089, RP99–176–094, RP02–363–002, Docket No. RP03–398–000, RP03–533–000, RP03–70–002, RP03–70–003, CP01–421–000, CP01–421–001, RP03–540–000, ER04–439–001 (Not Consolidated)]

Price Discovery in Natural Gas and Electric Markets, Natural Gas Price Formation; Aquila, Inc., B-R Pipeline Company, Colorado Interstate Gas Company, Colorado Interstate Gas Company, et al., Kinder Morgan Interstate Gas Transmission LLC, Natural Gas Pipeline Company of America, North Baja Pipeline LLC, Northern Natural Gas Company, Northern Natural Gas Company, PG&E Gas Transmission, Northwest Corporation, Portland General Electric Company, Transcontinental Gas Pipe Line Corporation, PacifiCorp; Updated Agenda for the June 25, 2004, Conference on Market Liquidity, Energy Price Discovery, and Natural Gas and Electricity Price Indices

June 24, 2004.

Attached is an updated agenda reflecting certain changes in the panels for the Staff technical conference on Friday, June 25, 2004, from 9 a.m. to 5 p.m. e.s.t. (please note time change from the May 14 notice), at the Commission's headquarters, 888 First Street, NE., Washington, DC, in the Commission's meeting room (Room 2C).

Other than the changes reflected on the attached updated agenda, all other information for the conference in prior notices remains the same. For additional information, please contact Ted Gerarden of the Office of Market Oversight & Investigations at 202–502–

6187 or by e-mail at *Ted.Gerarden@ferc.gov.*

Magalie R. Salas,

Secretary.

Updated Conference Agenda, June 25, 2004

Welcome and Opening Remarks, 9–9:30 a.m.

William Hederman, Director Office of Market Oversight & Investigations.

Stephen Harvey, Deputy Director, Market Oversight and Assessment.

Michael Gorham, Director, Division of Market Oversight, Commodity Futures Trading Commission.

Panel 1—Reaction to Staff Report and Recommendations for Indices Used in Pipeline or Utility Tariffs, 9:30–10:30 a.m.

Panelists:

• Bruce Henning, Regulatory and Market Analysis, Energy and Environmental Analysis, Inc. (American Gas Association).

• Eugene V. Rozgony, Vice President and Chief Risk Officer, AGL Resources.

• Donald Santa, President, Interstate Natural Gas Association of America.

• Alexander Strawn, Proctor & Gamble Company and Chairman of the Process Gas Consumers.

• James Allison, Regional Risk Manager, ConocoPhilips.

Issues:

—Should the Commission adopt Staff's recommendation that any index used in a tariff provide volume and number of transactions for each reported price? Should other data be required?

—Are Staff's recommended volumes (25,000 MMBtu/day or 4000 MWh/day) or transactions (five for daily, eight for weekly, ten for monthly indices) sufficient to indicate adequate liquidity?

—Should the Commission require all pipelines and utilities to amend their tariffs by a date certain if indices currently used in tariffs do not meet adopted criteria?

—What conclusions can be drawn from the responses to the Commission's surveys on price reporting?

—How does trading on electronic platforms and price data collected from electronic trading, clearing, and settlement relate to index development and use of indices in jurisdictional tariffs?

Break, 10:30–10:40 a.m.

Panel 2—Price Reporting, Confidence in Indices, and Options for Future Commission Action, 10:40 a.m.–12:15 p.m.

Panelists:

• Scott Nauman, Manager, Americas Gas Marketing, ExxonMobil Gas & Power Marketing Company (Natural Gas Supply Association).

• Nathan L. Wilson, Vice President, Conectiv Energy (Electric Power Supply Association).

• Michael Novak, Assistant General Manager, Federal Regulatory Affairs, National Fuel Gas Distribution Corporation (American Gas Association).

• Alonzo Weaver, Vice President Operations, Memphis Light Gas & Water (American Public Gas Association).

• Jeff Walker, Senior Vice President and Chief Risk Officer, ACES Power Marketing (National Rural Electric Cooperative Association).

• Al Musur, Director, Energy and Utility Programs, Abbott Laboratories and Chairman of the Industrial Energy Consumers of America.

• Alexander Strawn, Proctor & Gamble Company and Chairman of the Process Gas Consumers.

Issues:

—What incentives will encourage companies to begin or increase price reporting?

—Are process improvements by reporting companies (public code of conduct, independent source, audit of processes) adequate or are there further improvements that can increase the accuracy of price indices?

—Has industry confidence in prices reported in indices increased to a satisfactory level?

—What steps can be taken to improve transparency of price indices?* What further information should price indices provide to market participants?

—Has sufficient progress been made under the Policy Statement?

—Should the Commission adopt further requirements for price reporters and/or index developers? If so, what requirements are appropriate?

—Should some form of mandatory reporting be required? If so, what is the desirable scope of such reporting? (Who should be required to report? Should reporting be to existing index developers, to an intermediary or depository, or to the Commission? What data should be required to be reported?)

—Would mandatory reporting materially improve the quality of price data available to market participants?

Lunch Break, 12:15–1:15 p.m.

Panel 3—Index Developers' Response to Industry Views and Staff Report, 1:15–2:45 p.m.

Panelists:

• C. Miles Weigel, Senior Vice President, Argus Media, Inc.

• Brad Johnson, Global Energy Business Manager, Bloomberg.

• Ernest Onukogo, Manager Newswire Indexes, DowJones.

• Richard Sansom, Markets Editor, Jo Energy LLC.

• Bobette Riner, President, Powerdex.

• Tom Haywood, Editor, Energy Intelligence Group.

• Dexter Steis, Executive Publisher, Intelligence Press.

• Chuck Vice, Chief Operating Officer, IntercontinentalExchange.

• Larry Foster, Global Editorial Director, Power, Platts.

Issues:

—What improvements in data collection and price reporting have index developers seen since issuance of the Policy Statement?

—How have index developers responded to the call for greater transparency of indices?

—What plans do price index developers have to provide more information and more transparency to energy market participants?

—Do price index developers meet the standards of the Policy Statement? Did the Staff report accurately depict the extent to which index developers have adopted Policy Statement standards?

—Do price index developers support the criteria proposed by Staff for use of indices in jurisdictional tariffs?

—How can price index developers facilitate tariff compliance by pipelines and utilities?

—Will price index developers provide FERC with access to data in the event of an investigation of suspected false reporting or price manipulation?

Break, 2:45–2:55 p.m.

Panel 4—Market Liquidity, 2:55–4:15 p.m.

Panelists:

• Martin Marz, Compliance Manager, North American Gas and Power, BP America, Inc.

• Christopher Edmonds, Senior Vice President, ICAP Energy LLC (Energy Brokers Association).

• Pankaj Sahay, Partner, Energy Risk Management, PriceWaterhouseCoopers.

• Tom Jepperson, Division Counsel, Questar Market Resources, Inc.

• Vince Kaminski , Managing Director, Sempra Energy Trading.

Issues:

—Is there adequate trading activity at enough locations to develop reliable price signals for market participants?

—What are the characteristics that make for a good trading hub?

—What steps can the Commission take to encourage the development of active trading hubs?

—What role can electronic trading, confirmation/settlement, and clearing play in improving market liquidity?

—Can improvements in price indices restore confidence in price formation given the present levels of trading?

—Are there standard procedures that can play a role in improving price indices and industry confidence in price formation?

Audience Questions and Comments, 4:15–4:45 p.m.

Concluding Remarks, 4:45–5 p.m.

[FR Doc. E4–1458 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–265–000]

Northern Natural Gas Company; Notice of Technical Conference

June 24, 2004.

The Commission, in its order issued May 21, 2004,[1] directed that a technical conference be held to discuss and resolve Northern Natural Gas' proposal to modify the rate schedules to allow shippers to consolidate multiple Firm Deferred Delivery ("FDD") agreements into one operating agreement and transfer account balances between rate schedules FDD, Interruptible Deferred Delivery ("IDD") and Preferred Deferred Delivery ("PDD") without incurring injection or withdrawal fees.

Take notice that a technical conference will be held on Tuesday, July 27, 2004 at 10 a.m. (e.s.t.), in room 3M–A/B at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and staff are permitted to attend. For further information please contact: Melissa Mitchell at (202) 502–6038.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1462 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–58–000, et al.]

Sound Energy Solutions; Notice of Site Visit and Technical Conference

June 24, 2004.

On Tuesday, July 13, 2004, staff of the Federal Energy Regulatory Commission's (Commission) Office of Energy Projects and the Port of Long Beach (POLB) will visit the site of Sound Energy Solutions' (SES) proposed liquefied natural gas (LNG) import terminal and storage facility in Long Beach, California with the project sponsor. This site visit will be open to the public. Anyone interested in participating should meet in front of the Administration Building at 925 Harbor Plaza in the POLB at 9:30 a.m. (P.s.t.) on Tuesday, July 13, 2004. Participants must provide their own transportation to the site. For additional information concerning the site visit, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

On Wednesday, July 14, 2004, at 9 a.m. (P.s.t.), staff of the Office of Energy Projects will convene a cryogenic design and technical conference regarding SES' proposed LNG import terminal and storage facility. The cryogenic conference will be held in the Board Room of the Administration Building at 925 Harbor Plaza in the POLB. In view of the nature of security issues to be explored, the cryogenic conference will not be open to the public. Attendance at this conference will be limited to existing parties to the proceeding (anyone who has specifically requested to intervene as a party) and to representatives of interested federal, state, and local agencies. Any person planning to attend the July 14th cryogenic conference *must register* by close of business on Monday, July 12, 2004. Registrations may be submitted either online at *www.ferc.gov/whats-new/registration/cryo-tech-conf-0714-form.asp* or by faxing a copy of the form to 202–208–2106. All attendees must sign a non-disclosure statement prior to entering the conference. For additional information regarding the cryogenic conference, please contact Steven Busch at *steven.busch@ferc.gov* or call 202–502–6353.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1457 Filed 6–30–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Northern Natural Gas Company, 107 FERC ¶ 61,178 (2004).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7781–2]

Symposium on Field Monitoring of Genetically Modified Crop Plants

AGENCY: Environmental Protection Agency.

ACTION: Notice announcing a public symposium.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that the National Center for Environmental Assessment (NCEA) within the Office of Research and Development is sponsoring a three-day public symposium entitled, Symposium on Field Monitoring of Genetically Modified Crop Plants.

DATES: The symposium will be held Tuesday, August 3, 2004, through Thursday, August 5, 2004, from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The symposium will be held at the Sheraton Hotel in Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202; telephone: 703–769–3946. A limited number of rooms will be available at the Sheraton Hotel through July 3, 2004, for the special meeting rate of $150 per night. The meeting location is within walking distance of the Crystal City Metro Stop on the Blue and Yellow Lines. TN & Associates, an EPA contractor, is organizing, convening, and conducting the symposium. To attend the symposium, please preregister by July 30, 2004, by calling Holly Stoddard (contractor) at (678) 355–5550 x0, register on line at *hstoddard@tnainc.com*. On site registration will be accommodated on a space available basis.

A preliminary program agenda will be available on the NCEA Web page at *http://www.epa.gov/ncea*. A conference report of the symposium will be made available on the NCEA Web page shortly after the meeting.

FOR FURTHER INFORMATION CONTACT: For symposium information, registration, and logistics, contact Holley Stoddard, TN & Associates, Inc.; telephone: 678–355–5550; facsimile: 678–355–5545; e-mail: *hstoddard@tnainc.com*.

For further information the EPA contact is Dr. Robert Frederick, telephone: 202–564–3207; e-mail: *frederick.bob@epa.gov*.

SUPPLEMENTARY INFORMATION: There is concern that the large scale adoption of crops with Plant Incorporated Protectants (PIPs) may have a significant environmental impact. Monitoring for resistant insects has been performed since 1991 to address the concern of developing insect resistance to specific PIPs. Other science based monitoring programs to assess possible environmental impacts of PIP crops have been limited. The National Center for Environmental Assessment (NCEA), a part of the U.S. Environmental Protection Agency's (EPA) Office of Research and Development, is sponsoring a three-day public symposium on recently published scientific research and current theory on monitoring for environmental effects from plants with incorporated protectants. The focus of the symposium will be to review the state of the science of environmental monitoring with particular focus on PIP crops, and to discuss the strengths/weaknesses of these approaches. The symposium will also address criteria for selecting ecological indicators, the use of statistical analysis for developing monitoring strategies, and the feasibility

of large scale monitoring plans for PIP plants. The symposium is expected to be of interest to public interest groups, regulators, academics, and industry representatives involved in the field of genetically modified plants.

At the end of each speaker's presentation, there will be a limited period for related questions from the audience. Members of the public may attend the symposium as observers and participate in question periods. Space is limited, and registrations will be accepted on a first-come, first-served basis. The focus of the symposium is the state of the science of environmental monitoring of genetically modified plants.

Dated: June 25, 2004.

George W. Alapas,

Director, National Center for Environmental Assessment.

[FR Doc. 04–14995 Filed 6–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7780–8]

Fifth Meeting of the World Trade Center Expert Technical Review Panel To Continue Evaluation on Issues Relating to Impacts of the Collapse of the World Trade Center Towers

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The World Trade Center Expert Technical Review Panel will hold its fifth meeting intended to provide for greater input from individuals on ongoing efforts to monitor the situation for New York residents and workers impacted by the collapse of the World Trade Center. The panel members will help guide the EPA's use of the available exposure and health surveillance databases and registries to characterize any remaining exposures and risks, identify unmet public health needs, and recommend any steps to further minimize the risks associated with the aftermath of the World Trade Center attacks. The panel will meet several times over the course of approximately two years. These panel meetings will be open to the public, except where the public interest requires otherwise. Information on the panel meeting agendas, documents (except where the public interest requires otherwise), and public registration to attend the meetings will be available from an Internet Web site. EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003.

DATES: The fifth meeting of this panel will be held on July 26, 2004 from 9:30 a.m. to 5:15 p.m., eastern daylight savings time. On-site registration will begin at 9:00 a.m.

ADDRESSES: The meeting will be held at St. John's University, Saval Auditorium, 101 Murray Street (between Greenwich Street and West Side Highway), New York City (Manhattan). The auditorium is located on the second floor of the building and is handicap accessible. A government-issued identification (*e.g.*, driver's license) is required for entry.

FOR FURTHER INFORMATION CONTACT: For meeting information, registration and logistics, please see the Web site *http://www.epa.gov/wtc/panel* or contact ERG at (781) 674–7374. The meeting agenda and logistical information will be posted on the Web site and will also be available in hard copy. For further information regarding the technical panel, contact Ms. Lisa Matthews, EPA Office of the Science Advisor, telephone (202) 564–6669 or e-mail: *matthews.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Information

Eastern Research Group, Inc., (ERG), an EPA contractor, will coordinate the meeting. To attend the meeting as an observer, please register by visiting the Web site at: *http://www.epa.gov/wtc/panel.* You may also register for the meeting by calling ERG's conference registration line between the hours of 9 a.m. and 5:30 p.m. e.d.s.t. at (781) 674–7374 or toll free at 1–800–803–2833, or by faxing a registration request to (781) 674–2906 (include full address and contact information). Pre-registration is strongly recommended as space is limited, and registrations are accepted on a first-come, first-served basis. The deadline for pre-registration is July 21, 2004. Registrations will continue to be accepted after this date, including on-site registration, if space allows. There will be a limited time at the meeting for oral comments from the public. Oral comments will be limited to five (5) minutes each. If you wish to make a statement during the observer comment period, please check the appropriate box when you register at the Web site. Please bring a copy of your comments to the meeting for the record or submit them electronically via e-mail to *meetings@erg.com,* subject line: WTC.

II. Background Information

Immediately following the September 11, 2001, terrorist attack on New York City's World Trade Center, many federal agencies, including the EPA, were called upon to focus their technical and scientific expertise on the national emergency. EPA, other federal agencies, New York City, and New York State public health and environmental authorities focused on numerous cleanup, dust collection and ambient air monitoring activities to ameliorate and better understand the human health impacts of the disaster. Detailed information concerning the environmental monitoring activities that were conducted as part of this response is available at the EPA Response to 9–11 Web site at *http://www.epa.gov/wtc/*

In addition to environmental monitoring, EPA efforts also included toxicity testing of the dust, as well as the development of a human exposure and health risk assessment. This risk assessment document, *Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster,* is available on the Web at *www.epa.gov/ncea/wtc.htm).* Numerous additional studies by other Federal and State agencies, universities, and other organizations have documented impacts to both the outdoor and indoor environments, and to human health.

While these monitoring and assessment activities were ongoing, and the cleanup at Ground Zero itself was occurring, EPA began planning for a program to clean and monitor residential apartments. From June 2002 until December 2002, residents impacted by World Trade Center dust and debris in an area of about 1 mile by 1 mile south of Canal Street were eligible to request either federally-funded cleaning and monitoring for airborne asbestos or monitoring of their residences. The cleanup continued into the summer of 2003, by which time the EPA had cleaned and monitored 3,400 apartments and monitored 800 apartments. Detailed information on this portion of the EPA response is also available at *http://www.epa.gov/wtc/.*

A critical component of understanding long-term human health impacts is the establishment of health registries. The World Trade Center Health Registry is a comprehensive and confidential health survey of those most directly exposed to the contamination resulting from the collapse of the World Trade Center towers. It is intended to give health professionals a better picture of the health consequences of 9/11. It was established by the Agency for Toxic Substances and Disease Registry (ATSDR) and the New York City Department of Health and Mental Hygiene (NYCDHMH) in cooperation with a number of academic institutions,

public agencies and community groups. Detailed information about the registry can be obtained from the registry Web site at: *http://www.nyc.gov/html/doh/html/wtc/index.html.*

In order to obtain individual advice on the effectiveness of these programs, unmet needs and data gaps, the EPA has convened a technical panel of experts who have been involved with World Trade Center assessment activities. Dr. Paul Gilman, EPA Science Advisor, serves as Chair of the panel, and Dr. Paul Lioy, Professor of Environmental and Community Medicine at the Environmental and Occupational Health Sciences Institute of the Robert Wood Johnson Medical School-UMDNJ and Rutgers University, serves as Vice Chair. A full list of the panel members, a charge statement and operating principles for the panel are available from the panel Web site listed above. Panel meetings typically will be one-or two-day meetings, and they will occur over the course of approximately a two-year period. Panel members will provide individual advice on issues the panel addresses. These meetings will occur in New York City and nearby locations. All of the meetings will be announced on the Web site and by a **Federal Register** Notice, and they will be open to the public for attendance and brief oral comments. The focus of the fifth meeting is to review concepts for a sampling and testing program to determine the geographic extent of World Trade Center contamination, to review plans for a World Trade Center signature validation study, and also to begin briefing the panel members on current public health studies related to World Trade Center impacts. Further information on panel meetings can be found at the Web site identified earlier: *http://www.epa.gov/wtc/panel.*

III. How to Get Information on E-DOCKET

EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752; facsimile: (202) 566–1753; or e-mail: *ORD.Docket@epa.gov.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Dated: June 25, 2004.

Paul Gilman,

EPA Science Advisor and Assistant Administrator for Research and Development.

[FR Doc. 04–14996 Filed 6–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0208; FRL–7368–2]

Fipronil; Cancellation Order for Certain Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing cancellation orders announcing its approval of the requests submitted by Bayer CropScience to voluntarily cancel the registrations of certain pesticide products containing fipronil for use on rice or rice seed. This cancellation order is effective July 1, 2004. Any distribution, sale or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provision of this cancellation order.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6502; e-mail address: *sibold.ann@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this order, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0208. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall# 2, 1801 Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

EPA is issuing cancellation orders approving the requests submitted by Bayer CropScience to voluntarily cancel the registrations of three pesticide products registered under section 3 of

FIFRA. These registrations constitute all registrations held by Bayer Crop Science containing fipronil for use on rice or rice seed. In a letter dated April 20, 2004, Bayer CropScience requested voluntary cancellation of these product registrations. Notice of receipt of this request was published in the **Federal Register** on May 7, 2004 (69 FR 25577) (FRL–7358–1). One comment, submitted by the USA Rice Federation, requested an extension of the public notice period to July 1, 2004, so that they could continue discussions with Bayer CropScience to withdraw the request for voluntary cancellation. As the Icon registrations were time limited, with an expiration date of July 1, 2004, the Agency determined that an extension to the expiration date of July 1, 2004 would make the extension meaningless. In a notice published in the **Federal Register** on June 9, 2004 (69 FR 32345) (FRL–7363–7), the Agency agreed to extend the comment period to June 21, 2004 so that any comments could be considered before the expiration date.

After considering the comments received, EPA has decided to accept the voluntary cancellation requests. Accordingly, the Agency is issuing an Order canceling the three registrations identified in Table 1. This cancellation order is effective July 1, 2004. Any distribution, sale or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provision of this cancellation order. These registrations are listed in sequence by registration number in Table 1 of this unit:

TABLE 1.— APPROVED REGISTRATION CANCELLATIONS

Registration No.	Product name	Chemical name
264–576	Icon 80WG	fipronil
264–577	Icon 6.2FS	fipronil
264–580	Icon 6.2SC	fipronil

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
264	Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709

III. Cancellation Order

Pursuant to Section 6(f) of FIFRA, EPA hereby approves the requested cancellations of the fipronil product registrations identified in Table 1 of this order. Accordingly, the Agency orders that the fipronil product registrations identified in Table 1 are hereby canceled as of July 1, 2004.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

V. What Comments Did the Agency Receive?

In response to the **Federal Register** Notice of June 9, 2004 (69 FR 32345), Bayer CropScience submitted a comment that they had sent a letter to the USA Rice Federation informing them that Bayer CropScience was not interested in selling or licensing Icon, and that the Agency should continue with cancellation of the Icon registrations. In addition, the USA Rice Federation submitted a comment dated June 21, 2004 stating that they had received a final negative response from Bayer CropScience. No other timely substantive comments were received.

VI. Provisions for Disposition of Existing Stocks

The registrant is permitted to sell or distribute existing stocks for 1 year after the date the cancellation request was received, until April 21, 2005. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation order, July 1, 2004. Existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 25, 2004.

Deborah McCall,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 04–15047 Filed 6–30–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7781–1]

Neurotoxicity of Tetrachloroethylene (Perchloroethylene): Workshop Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a final report titled, *Summary Report of the Peer Review Workshop on the Neurotoxicity of Tetrachloroethylene (Perchloroethylene) Discussion Paper* (EPA/600/R–04/041), which is being published by the U.S. Environmental Protection Agency's, National Center for Environmental Assessment (NCEA) within the Office of Research and Development (ORD).

ADDRESSES: The document will be made available electronically through the NCEA Web site (*www.epa.gov/ncea*).

FOR FURTHER INFORMATION CONTACT: The Technical Information Staff, National Center for Environmental Assessment (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–3261; fax: (202) 565–0050.

SUPPLEMENTARY INFORMATION: EPA is developing a human health effects toxicological review document on tetrachloroethylene. As part of the document development process, EPA brought together recognized scientific experts to engage in a public discussion on the neurological effects of inhalation of tetrachloroethylene, as well as a review of studies that focus on these effects. The workshop was held February 25, 2004, and was organized and convened by Versar, Inc. under contract to EPA. Expert information gathered at the workshop will help in EPA's development of the draft assessment of tetrachloroethylene health effects.

The *Summary Report of the Peer Review Workshop on the Neurotoxicity of Tetrachloroethylene (Perchloroethylene) Discussion Paper,* prepared by Versar, Inc., summarizes the discussions at the February 25, 2004, workshop. The expert consultants based their discussion on an October 2003 External Review Draft EPA paper entitled, *Neurotoxicity of Tetrachloroethylene (Perchloroethylene) Discussion Paper* (EPA/600/P–03/005A), which was provided both to the expert consultants and to the public prior to the workshop meeting. At the workshop, the external experts provided EPA with their individual opinions on science issues related to the neurotoxicological effects of tetrachloroethylene.

Dated: June 25, 2004.

George W. Alapas,

Director, National Center for Environmental Assessment.

[FR Doc. 04–14994 Filed 6–30–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

June 21, 2004.

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, 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: Written comments should be submitted on or before August 2, 2004. 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 contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*, and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Leslie.Smith@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 *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has requested approval of these two information collections under the emergency processing provisions of the PRA by July 16, 2004.

OMB Control Number: 3060–0095.

Title: Multi-Channel Video Progamming Distributors Annual Employment Report, FCC Form 395–A.

Type of Review: Revision of currently approved collection.

Form Number: FCC 395–A.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,500.

Estimated Time per Response: 53 minutes (0.88 hours).

Frequency of Response: Recordkeeping; Annual reporting requirement.

Total Annual Burden: 2,200 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 395–A, "The Multi-Channel Video Programming Distributor Annual Employment Report," is a data collection device used to assess industry employment trends and provide reports to Congress. The report identifies employees by gender and race/ethnicity in fifteen job categories. FCC Form 395–A contains a grid which collects data on full and part-time employees and requests a list of employees by job title, indicating the job category and full or part-time status of the position. Every cable entity with 6 or more full-time employees and all Satellite Master Antenna Television Systems (SMATV) serving 50 or more subscribers and having 6 or more full-time employees must complete Form 395–A in its entirety and file it by September 30 each year. However, cable entities with 5 or fewer full-time employees are not required to file but if they do, they need to complete and file only Sections I, II and VIII of the FCC Form 395–A, and thereafter need not file again unless their employment increases. In addition, cable entities with 6 or more full-time employees will file a Supplemental Investigation Sheet once every 5 years.

On June 4, 2004, the FCC released the Third Report and Order and Fourth Notice of Proposed Rulemaking (3rd R&O), *In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies,* MM Docket No. 98–204, FCC 04–103, in which it considers issues relating to the Annual Employment Report forms, including FCC Form 395–A, "The Multi-Channel Video Programming Distributor Annual Employment Report." In the 3rd R&O, the Commission is adopting revised rules for MVPDs to file FCC Form 395–A, which cable and other MVPDs will use to file annual employment reports. The intent of this 3rd R&O is to update rules for MVPDs to file Form 395–A consistent with new rules adopted in the 2nd R&O. The intent of the Fourth Notice of Proposed Rulemaking is to provide time for cable and other MVPDs and the public to address the issue of whether the Commission should keep these forms confidential after they are filed. With the effective date of the rule revisions adopted in the 3rd R&O, MVPDs and broadcasters must start keeping records of their employees so they can prepare their annual employment reports due to be filed on September 30, 2004.

OMB Control Number: 3060–0390.

Title: Broadcast Station Annual Employment Report, FCC Form 395–B.

Form Number: FCC Form 395–B.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 14,000.

Estimated Time per Response: 0.88 hours.

Frequency of Response: Annual reporting requirement.

Total annual burden: 12,320 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 395–B, "The Broadcast Station Annual Employment Report," is used to assess industry employment trends and provide reports to Congress. Licensees with five or more full-time employees are required to file Form 395–B on or before September 30th of each year. The

form is a data collection device used to compile statistics on the workforce employed by broadcast licensees/permittees. The report identifies each staff member by gender and race/ethnicity in each of the nine major job categories. On June 4, 2004, the FCC released the Third Report and Order and Fourth Notice of Proposed Rulemaking (3rd R&O), *In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98–204, FCC 04–103, in which it considers issues relating to the Annual Employment Report forms, including Form 395–B, "The Broadcast Station Annual Employment Report." In the 3rd R&O, the Commission is adopting revised rules requiring broadcasters and multichannel video programming distributors (MVPDs) to file annual employment reports. Radio and television broadcasters will use Form 395–B to file annual employment reports. The intent of this 3rd R&O is to reinstate and update requirements for broadcasters and MVPDs to file annual employment reports. The intent of the Fourth Notice of Proposed Rulemaking is to provide time for MVPDs, broadcast licensees, and the public to address the issue of whether the Commission should keep these forms confidential after they are filed. With the effective date of the rule revisions adopted in the 3rd R&O, MVPDs and broadcasters must start keeping records of their employees so they can prepare their annual employment reports due to be filed on or before September 30, 2004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15002 Filed 6–30–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 04–227, FCC 04–136]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document solicits information from the public for use in preparing the competition report that is to be submitted to Congress in December 2004. The document will provide parties with an opportunity to submit comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Comments are due on or before July 23, 2004, and reply comments are due on or before August 25, 2004.

ADDRESSES: Federal Communications Commission, Portals II, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION, CONTACT: Anne Levine, Media Bureau, (202) 418–2330, TTY (202) 418–7172 or by e-mail at *anne.levine @fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry (NOI)* in MB Docket No. 04–227, FCC 04–136, adopted June 10, 2004, and released June 17, 2004. The full text of this *NOI* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, Best Company and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, by e-mail *fcc@bcpiweb.com*, or via its Web site *http://www.bcpiweb.com*. Persons with disabilities who need assistance in the FCC Reference Information Center may contact Bill Cline at (202) 418–2555 TTY, or *bcline@fcc.gov*. To request materials in accessible formats for people with disabilities (electronic files, large print, audio format and Braille), send an e-mail to *fcc504@fcc.gov*, or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), 418–7365 (TTY).

Synopsis of Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. This *Notice of Inquiry (NOI)* solicits data and information on the status of competition in the market for the delivery of video programming for our eleventh annual report (2004 Report). We request information, comments, and analyses that will allow us to compare video delivery technologies and to evaluate the status of competition on the industry groups involved and on consumers.

2. Comments submitted in this proceeding will be augmented with information from publicly available sources. We emphasize the importance of the information provided by industry participants with the best knowledge of the questions and issues raised. If we continue to find that we do not get the necessary data from industry participants, we may pursue options for a mandatory data collection process to ensure that we have appropriate information to fulfill our statutory mandate to provide Congress with an annual assessment of the status of competition in the video marketplace. The accuracy and the usefulness of the 2004 Report are directly related to the information we receive from commenters.

3. The Commission will report on the current state of competition and report on changes in the competitive environment since our 2004 Report. To the extent feasible, we request data as of June 30, 2004, to facilitate our analysis of competitive trends over time.

Competition in the Market for the Delivery of Video Programming

4. Video programming distributors include cable systems, direct broadcast satellite (DBS) providers, home satellite dish (HSD) providers, broadband service providers (BSPs), private cable or satellite master antenna television (PCO) systems, open video systems (OVS), multichannel multipoint distribution or wireless cable systems (wireless cable), local exchange carrier (LEC) systems, utilities, and over-the-air broadcast television stations. Video programming is also distributed on videocassettes and DVDs through retail distribution outlets and over the Internet.

5. We seek information and statistical data for each type of video programming distributor including: The number of homes capable to receiving service via each wired (*e.g.*, an incumbent cable system, BSP, OVS provider) or wireless technology (*e.g.*, DBS, wireless cable, PCO); the number of subscribers and penetration rates to different levels of service for each service (*e.g.*, basic cable service, cable programming service tier or "CPST," premium, pay-per-view, video-on-demand); channel capacities and the number, type, and identity of video programming channels offered, prices charged for various programming packages; cost of programming inputs; industry and individual firm financial information, such as total revenue and revenue by individual company segments or services, cash flow, and expenditures; information on how video programming distributors compare in terms of relative size and financial

resources; data that measure the audience reach of video programming distribution firms as well as relative control over the video distribution market; and information on the ability of, and the competitive advantages to, video distributor expansion into new markets such as local telephony, and high-speed Internet access, and the take rates for these services.

6. We also request information that will allow us to evaluate horizontal concentration in the video marketplace, vertical integration between programming distributors and programming services, and other issues relating to the programming available to consumers. We request information on technical issues, including equipment and emerging services such as video-on-demand and personal video recorders. We further ask for comments regarding developments in foreign markets, as they may contribute to our understanding of domestic markets.

7. We seek comment on competition among multichannel video programming distributors (MVPDs). In particular, we are interested in data and information on the number of homes capable of choosing among MVPD services. We seek data and comment on the number of households subscribing to more than one MVPD. We also request information on the number of customers switching from one technology to another and the factors responsible for switching among MVPDs as well as the percent of those customers that drop MVPD service altogether. We further request comment on any factors that are unique to competition in multiple dwelling units (*e.g.*, apartments).

8. In addition, we seek comments and information on the consequences for consumers of competition in the market for video programming. To what extent does competition continue to result in lower prices, more programming, better quality of service, or more advanced services, both video and non-video? We also request comment on whether there are any statutes or regulations that should be modified in light of changes in the video industry and competition over the past decade.

9. We seek data on relative prices in order to evaluate substitution between MVPD technologies (*i.e.*, what are the prices of similar cable, DBS, and BSP services). In addition, we are interested in investigating methods for measuring and comparing prices for products that vary in quality (*e.g.*, how to compare the price of a 50-channel package with the price of a 30-channel package).

10. We seek comment on barriers to entry and the impact of the regulatory environment on competition, including the ability of MVPDs to gain access to programming networks, rights-of-way, pole attachments, conduits, and ducts for the delivery of their services to consumers. Although we are primarily concerned with the effect of regulation on competition, we also request comment on other barriers to entry and competition.

11. We seek information on existing, planned, and terminated or merged programming services to assess the changes in the amount and type of video programming available that have occurred in the past year, ownership of programming networks, genre of service and transmission format (*i.e.*, analog, standard digital (SD), or high definition (HD) format), language (*e.g.*, English or foreign language). This year, we seek to identify the ownership of non-broadcast networks by any media entity, not just cable operators as we have done in the past. We further request information on the ability of programming networks to sell their services, especially comments on the experiences of start-up networks. We also seek information on how video programming distributors package and market their programming. To what extent do MVPDs offer service to consumers on an "a la carte" or "mini-tier" basis rather than the traditional tiering of programming services? We request comment regarding public, educational, and governmental (PEG) access and leased access channels, and the programming provided by DBS operators in compliance with their public interest obligations. We further request information regarding the accessibility of closed captioning and video description to persons with disabilities.

12. We seek information and statistics on the advanced service offerings (*e.g.*, high-speed Internet access services, telephony, interactive television, electronic programming guides) and new ways of offering service (*e.g.*, personal video recorders, video-on-demand, streaming video) that are being deployed by video programming distributors. We specifically seek comment on the development and deployment of electronic programming guides (EPGs), video-on-demand (VOD), and interactive television (ITV) services. We request information on the impact that the availability of non-video services offered by video programming providers has had and continues to have on the nature of competition in the video marketplace.

13. We further seek information and comment regarding issues specific to video programming distribution in rural and smaller markets. How do MVPD choices for consumers differ in these markets compared to larger, more urban markets? What percent of cable systems in rural or smaller markets have capacity of less than 750 MHz? We request information on the programming offered in rural and smaller markets and any differences between these offerings and those available in larger markets.

14. We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. How does customer premises equipment design, function, and/or availability affect consumer choice and competition between firms in the video programming market?

Cable Television Service

15. We seek to update and refine our Report on the performance of the cable television industry and request comment on the current state of competition in this segment of the market. Specifically, we request information regarding the investments that cable operators have made to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services, and the various technical methods being used to increase capacity. How is bandwidth allocated among analog and digital video tiers and what factors influence that decision? To what extent is new capacity used for non-video services? Further, we request information on cable operator plans to convert their systems to all-digital transmission.

16. We also seek comment on the level of large-scale consolidation in the MVPD industry. We request comment on the practice of clustering, whereby operators concentrate their operations in specific geographic areas. We request data regarding the effect of clustering by cable operators on competition in the video programming distribution market.

17. We seek comment on whether cable operators are changing the way they package programming. Are cable operators restructuring their tiers by shifting programming from one tier to another? We seek comment on relevant trends in pricing of cable tiers.

18. Commenters are asked to provide information specific to the advanced service offerings by cable operators and particularly video-on-demand, traditional circuit-switched telephone service and Internet Protocol (IP) telephony, and high-speed data access services.

19. We also seek updated information regarding the development of specifications for interoperable set-top boxes (*i.e.*, set-top boxes that can be

moved from one cable franchise area to another and function with any given cable provider's local system). We also solicit updated information on PacketCable, a CableLabs project intended to develop interoperable interface specifications for delivering advanced, real-time multimedia services over two-way cable plant. Furthermore, we request information on how many products are currently available with plug-and-play functionality, or are soon to be available.

20. Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70% of households within the United States and are subscribed to by 70% of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources. We request comment and supporting data that would be useful for an accurate determination of whether the criteria have been met, and, if so, whether the Commission should promulgate additional rules to promote diversity of information sources.

21. We request comment on the "tier buy-through" option mandated by section 623(b)(8) of the Communications Act? What portion of subscribers is taking advantage of this option that permits consumers to purchase programming on a per-channel or per-program basis without subscriptions to any tier of service other than the basic tier?

22. Under sections 614 and 615 of the Communications Act, cable operators must set aside up to one third of their channel capacity for the carriage of commercial television stations and additional channels for noncommercial stations depending on the system's channel capacity. We seek information on the extent to which cable operators currently are using all their required set-aside channels for the carriage of local broadcast signals and the percentage of broadcast stations carried on cable pursuant to retransmission consent agreements.

Direct-to-Home Satellite Services

23. For direct-to-home (DTH) satellite services (*i.e.*, DBS and large dish or HSD), we request data on the geographic locations of DBS and HSD subscribers, by state and type of area (*i.e.*, urban, suburban, rural). How have the demographics changed since DBS began operation? What percentage of new DBS subscribers are former cable subscribers or former HSD households? We request information regarding the investments that DBS operators have made or plan to make to upgrade their plant and equipment to increase channel capacity or offer advanced services.

24. We request information on the number of markets where local-into-local television service is, or will be offered in the near future, pursuant to Satellite Home Viewer Improvement Act of 1999 (SHVIA), including the number and affiliation of the stations carried. We also request data that will allow us to compare DBS and cable rates for programming packages and equipment. Furthermore, we ask commenters to provide information on the number of channels and the monthly prices of various DBS programming packages and programming available for HSD subscribers.

25. We seek information on the status of current and future plans of both satellite-delivered high-speed Internet access with a telephone return path as well as two-way satellite delivered high-speed Internet access services offered by the overall satellite industry, including fixed satellite systems (FSS), DTH and DBS providers. To what extent do DBS operators co-market advances services, such as DSL or voice services, with local exchange carriers (LECs)?

Broadband Service Providers, Open Video System Operators, and Overbuilders

26. We request information regarding the provision of video, voice, and data services by broadband service providers (BSPs), open video system (OVS) operators, and overbuilders. Further, we seek comment on the current and potential effect of BSPs, OVS, or overbuilders on the status of video competition, and the characteristics that exemplify BSP competitiveness (*e.g.*, number of subscribers, homes passed, geographical reach, business model). Are there market characteristics that make certain areas more conducive to such competition than others? What are the technical and economic factors that determine whether overbuild systems are successful? Are there still significant barriers to entry?

Broadcast Television Service

27. We seek data and comment on the role of broadcast television in the market for the delivery of video programming, including information on audience shares, advertising revenues, and compensation broadcasters receive for retransmission consent. We seek to update our information on the practice of repurposing and "time shifted" programming, and ask commenters to provide examples of repurposing programming or "time shifted" scheduling during the current television season.

28. We seek comment and data on a broad range of issues relating to the digital television (DTV) transition to examine the ways in which broadcast television stations' deployment of digital television service and the DTV programming provided by MVPDs impact competition in the video programming distribution market. We invite comment on programming content available in DTV formats, spectrum usage, over-the-air availability of DTV service and carriage of DTV programming by MVPDs, the production of DTV programming by stations and MVPDs, the equipment used to receive DTV programming, current and projected levels of consumer access to and use of DTV and related equipment, and consumer education efforts. We request information on the development of DTV, including historical, current and projected data. We ask specifically how many noncommercial educational broadcast stations are being carried, and under what terms.

Wireless Cable Systems

29. We seek information regarding the previously identified trend towards declining availability of and subscribership to MMDS-provided video, also known as wireless cable. What factors have affected the health and viability of the wireless cable industry? We seek information about the availability of advanced services, including two-way services, such as digital video, high-speed Internet access services, and telephony.

Private Cable Operators

30. We request information on the types of services offered by private cable operators, also known as satellite master antenna television ("SMATV") operators, and the price charged for those services. What factors affect the health and viability of the private cable industry? Are there competitive or legal hurdles that prevent private cable operators from working with DBS operators in MDUs?

Local Exchange Carriers and Utilities

31. We seek information regarding LECs and utility companies that provide video services. Specifically, we request information on franchised cable systems operated by LECs and DSL-based video offerings.

Home Video Sales and Rentals

32. We seek information regarding the home video sales and rental market, such as data on the number or percentage of households with

videocassette recorders, laser disc players, DVD players, and personal video recorders (PVRs). We request information on the amount of programming available in VCR, DVD, and laser disc formats for sale and rental, the cost of rentals, and how this compares with the cost of pay-per-view, video-on-demand, or near video-on-demand programming offered by MVPDs.

Internet Video

33. We seek information on the types of video services currently being offered over the Internet both in real-time and downloadable format. We also seek projections of whether and, if so, when Internet video will become a viable competitor in the market for the delivery of video programming. What criteria should determine whether Internet video is to be considered "broadcast quality" (*e.g.*, frames-per-second delivered, the size of the viewing area, the relative ease of use by the consumer, consumer habit, the type of programming offered, relative availability of programming)? How does currently available real-time Internet video compare to traditional MVPD and broadcast programming? We also solicit information on the technological, legal, regulatory, and competitive factors that may promote or impede the provision of video over the Internet.

Foreign Markets

34. Finally, we seek information regarding the status of competition in foreign markets for the delivery of video programming that would provide insights regarding the nature of competition in the United States market. Specifically, we seek information on ongoing efforts in foreign markets to provide DSL-based video, interactive video services, "a la carte" channel options, high-speed Internet access service, and the transition to DTV. We seek information regarding any differences between the United States and other markets with respect to video programming distribution and advanced services provision that would be instructive as to the efficiency of market structures and regulations within the United States. How do regulations, or lack thereof, in foreign markets compare with regulations in the United States and how might these differences yield different competitive results?

Procedural Matters

Ex Parte

35. There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

Filing of Comments and Reply Comments

36. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 23, 2004, and reply comments on or before August 25, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

37. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of 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, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

38. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

39. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

40. Parties also must serve either one copy of each filing via e-mail or two paper copies to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160, or via its Web site at *http://www.bcpiweb.com.* In addition, parties should serve one copy of each filing via email or one paper copy to Anne Levine, Media Bureau, 445 12th Street, SW., 2–C410, Washington, DC 20554. Parties should serve one copy of each filing via email or five paper copies to Linda Senecal, 445 12th Street, SW., 2–C438, Washington, DC 20554.

Authority

41. This NOI is issued pursuant to authority contained in sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 403, and 548(g).

Federal Communications Commission.

William F Caton,

Deputy Secretary.

[FR Doc. 04–14997 Filed 6–30–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (d)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 12:10 p.m. on Monday, June 28, 2004, the Corporation's Board of Directors determined, on motion of Director James E. Gilleran (Office of Thrift Supervision), seconded by Ms. Julie L. Williams, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), concurred in by Director Thomas J. Curry, Vice Chairman John M. Reich, and Chairman Donald E. Powell, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a report regarding certain supervisory matters.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject

matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: June 28, 2004.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 04–15093 Filed 6–29–04; 1:54 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 04-13514) published on page 33641 of the issue for Wednesday, June 16, 2004.

Under the Federal Reserve Bank of New York heading, the entry for The Adirondack Trust Company Employee Stock Ownership Trust, Saratoga Springs, New York, is revised to read as follows:

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. The Adirondack Trust Company Employee Stock Ownership Trust, Saratoga Springs, New York; to acquire an additional 1.67 percent of the voting shares of 473 Broadway Holding Corporation, for a total of 28.1 percent, and to acquire an additional 2.66 percent of the voting shares of The Adirondack Trust Company, both of Saratoga Springs, New York, for a total of 12.8 percent.

Comments on this application must be received by July 9, 2004.

Board of Governors of the Federal Reserve System, June 25, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–14895 Filed 6–30–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., St. Louis, Missouri; to acquire up to 24.99 percent of the voting shares of Community West Bancshares, Goleta, California, and thereby indirectly acquire voting shares of Goleta National Bank, Goleta, California.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Crosstown Holding Company, Blaine, Minnesota; to acquire 100 percent of the voting shares of State Bank of Loretto, Loretto, Minnesota.

Board of Governors of the Federal Reserve System, June 25, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–14896 Filed 6–30–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Oswego Community Bank Employee Stock Ownership Plan, Oswego, Illinois; to increase its ownership to 51 percent of the voting shares of Oswego Bancshares, Inc., Oswego, Illinois, and thereby indirectly acquire voting shares of Oswego Community Bank, Oswego, Illinois.

Board of Governors of the Federal Reserve System, June 28, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–15007 Filed 6–30–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 04-14290) published on page 35347 of the issue for Thursday, June 24, 2004.

Under the Federal Reserve Bank of Chicago heading, the entry for Associated Banc–Corp., Green Bay, Wisconsin, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Associated Banc–Corp, Green Bay, Wisconsin; to acquire First Federal Capital Corporation, Lacrosse, Wisconsin, and thereby engage in operating a savings and loan association, and in credit insurance activities, pursuant to sections 225.28 (b)(4)(ii) and (b)(11)(i) of Regulation Y.

Comments on this application must be received by July 19, 2004.

Board of Governors of the Federal Reserve System, June 25, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–14894 Filed 6–30–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 031 0155]

Robert Lewis, James Sowder, Gerald Wear, and Joel R. Yoseph; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 13, 2004.

ADDRESSES: Comments should refer to "Robert Lewis, James Sowder, Gerald Wear, and Joel R. Yoseph, File No. 031 0155," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Joe Lipinsky, FTC Northwest Regional Office, 915 Second Avenue, Suite 2896, Seattle, WA 98174, (206) 220–4473.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 14, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/06/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before July 13, 2004. Comments should refer to "Robert Lewis, James Sowder, Gerald Wear, and Joel R. Yoseph, File No. 031 0155," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential." [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Robert Lewis, James Sowder, Gerald Wear and Joel R. Yoseph. The Respondents are attorneys who provide criminal defense services to indigents in Clark County, Washington. The agreement settles charges that these parties violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing a conspiracy among 43 competing attorneys to fix prices and other terms charged for providing criminal defense services to indigents.

The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

record. After 30 days, the Commission will review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any Respondent that said Respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the complaint are summarized below.

In Clark County, Washington, criminal defense services for indigent defendants are provided by private attorneys working in individual practices or as members of small law firms, who work under contract with Clark County. Those attorneys were and are separate and independent competitors of one another in all material respects.

Near the end of 2001, Clark County started its biennial contract negotiations with the attorneys who had provided criminal indigent defense services during the preceding contract period. Early in these negotiations, the Respondents presented the County with a document titled "Indigent Defense Bar Consortium Contract" (hereinafter "Consortium Contract") signed by 43 of the attorneys who had previously signed felony contracts with the County. In that document, the Respondents and their colleagues purported to form a "Consortium" and stated their intention to authorize the Consortium, as represented by the Respondents, to be the sole negotiator on behalf of all signatories. The document further stated the signatories' collective demand to alter the payment methodology and substantially increase the payment for all homicide, attempted homicide, persistent offender and death penalty cases. The signatories also stated their intention to refuse to accept any further such cases unless the County acceded to their demands, and authorized the Consortium to take legal action against any signatory who agreed to provide criminal defense services on terms inconsistent with those demanded by the Consortium.

After receiving the document from the Respondents, Clark County agreed to a new contract adopting the payment methodology demanded by the Consortium and substantially increasing reimbursement rates for all homicide, attempted homicide, persistent offender and death penalty cases. The Respondents, by orchestrating the formation of the Consortium and threatening the County with a refusal to deal, have violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is modeled after the remedy sought by the Commission and approved by the Supreme Court in *Federal Trade Commission* v. *Superior Court Trial Lawyers Association*, 493 U.S. 411 (1990), in which the Court held that a boycott among criminal indigent defense attorneys was a per se violation of the antitrust laws, despite the lawyers' claims that the boycott was a political act ostensibly designed to improve the quality of representation by increasing their reimbursement rates. The Court observed that "[n]o matter how altruistic the motives of respondents may have been, it is undisputed that their immediate objective was to increase the price that they would be paid for their services." 493 U.S. at 427.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits the Respondents from entering into or facilitating any agreement between or among any attorneys: (1) To negotiate with payors on any attorney's behalf; (2) to deal, to refuse to deal, or to threaten to refuse to deal with payors; (3) regarding the terms of dealing with any payor; or (4) not to deal individually with any payor.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Respondents from facilitating exchanges of information between attorneys concerning whether, or on what terms, to deal with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B; and Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph II contains a proviso clarifying that the order does not prohibit rights to petition government officials, as guaranteed by the First Amendment, nor does the order prohibit the Respondents from providing information or views to the County or its representatives.

Paragraphs III, IV and V impose various obligations on Respondents to report or provide access to information to the Commission to facilitate monitoring Respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–14968 Filed 6–30–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 032 3245]

Prince Lionheart, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 21, 2004.

ADDRESSES: Comments should refer to "Prince Lionheart, Inc., *et al.*, File No. 032 3245," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Carol Jennings or Robert Frisby, FTC, Bureau of Consumer Protection, 600

Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3010 or 326–2098.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 21, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/06/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before July 21, 2004. Comments should refer to "Prince Lionheart, Inc., *et al.*, File No. 032 3245," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order by respondents Prince Lionheart, Inc., and Thomas E. McConnell, individually and as President of the corporation.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the advertising, offering for sale, sale, and distribution of an electronic mosquito repellent device called the "Love Bug." The Commission's complaint charged that respondents violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, by making representations that were false and for which they lacked a reasonable basis of substantiation. These representations concerned the following: The ability of the "Love Bug" to repel mosquitoes from a baby; the effectiveness of the "Love Bug" as an alternative to the use of chemical products formulated to repel mosquitoes; and the ability of the "Love Bug" to protect babies against contracting the West Nile virus.

Part I of the proposed order prohibits any representation that the "Love Bug," or any substantially similar product, (A) repels mosquitoes from a baby or any person; (B) is an effective alternative to the use of chemical products formulated to repel mosquitoes; or (C) protects babies or other persons against contracting the West Nile virus, unless the representation is true and respondents possess competent and reliable scientific evidence that substantiates the representation. For purposes of this part, a "substantially similar product" means any product that uses or purports to use sonic or ultrasonic technology to repel mosquitoes from the user.

Part II of the proposed order prohibits unsubstantiated representations about the benefits, performance, or efficacy of any consumer electronic product.

Part III of the proposed order requires the respondents to send a letter (Attachment A to the consent agreement), with a copy of the order, to any catalog company or other wholesale or retail seller to which respondents have sold the "Love Bug" since January 1, 2002.

Part IV of the proposed order is a record keeping provision that requires the respondents to maintain certain records for three (3) years after the last date of dissemination of any representation covered by the order. These records include: (1) All advertisements and promotional materials containing the representation; (2) all materials relied upon in disseminating the representation; and (3) all evidence in respondents' possession or control that contradicts, qualifies, or calls into question the representation or the basis for it.

Part V of the proposed order requires distribution of the order to principals, officers, directors, and managers, and to employees, agents, and representatives having responsibilities with respect to the subject matter of the order.

Part VI of the proposed order requires that the Commission be notified of any change in the corporation that might affect compliance obligations under the order. Part VII of the proposed order requires that for a period of five (5) years, the individual respondent notify the Commission of the discontinuance of his current business or employment or of his affiliation with any new business or employment.

Part VIII of the proposed order requires the respondents to file a compliance report with the Commission.

Part IX of the proposed order states that, absent certain circumstance, the order will terminate twenty (20) years from the date it is issued.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–14967 Filed 6–30–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–04–05]

Fiscal Year 2004 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to support Senior Medicare Patrol (SMP) project efforts for integration of Medicare and Medicaid fraud prevention, detection and reporting activities within states and communities.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for grant awards for up to twenty (20) projects at a federal share of approximately $50,000 to $100,000 per year for a project period of up to three years. It is estimated that approximately $1,278,000 will be available for this competition.

Legislative authority: The Older Americans Act, Public Law 106–501.

(Catalog of Federal Domestic Assistance 93.048, Title IV, and the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Pub. L. 104–191)

Purpose of grant awards: The purpose of these projects is to expand capacity of current SMP projects to better fulfill the SMP program mission of health care fraud prevention, identification and reporting, through increased awareness of older consumers.

Eligibility for grant awards and other requirements: Eligibility for grant awards is limited to existing SMP project grantees. This does not include SMP grantees operating on no-cost extensions into the current grant period. Two or three current SMP project grantees may submit a joint regional application; however, the benefits of a regional approach must be supported. Grantees are required to provide at least 25 percent of the total program costs from non-federal cash or in-kind resources in order to be considered for the award.

Executive Order 12372 is not applicable to these grant applications.

Screening criteria: All applications will be screened to assure a level playing field for all applicants. Applications that fail to meet the screening criteria described below will not be reviewed and will receive no further consideration:

1. Postmark Requirements—Applications must be postmarked by midnight of the deadline date indicated below, or hand-delivered by 5:30 p.m., Eastern Time, on that date, or submitted electronically by midnight on that date.

2. Organizational Eligibility—Only current SMP project grantees are eligible to apply under this program announcement. This does not include SMP grantees operating on no-cost extensions into the current grant period.

3. Responsiveness to Priority Area Description—Applications will be screened on whether the application is responsive to the priority area description.

4. Project Narrative—The Project Narrative section of the application must not exceed 20 pages.

Review of applications: Applications will be evaluated against the following criteria: Purpose and Need for Assistance (20 points); Approach, Work Plan and Activities (30 points); Project Outcomes, Evaluation and Dissemination (30 points); and Level of Effort (20 points).

DATES: The deadline date for the submission of applications is August 16, 2004.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Consumer Choice and Protection, Washington, DC 20201, by calling (202) 357–0139, or online at *http://www.grants.gov*.

Applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Margaret Tolson (AoA–04–05).

Applications may be delivered to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, attn: Margaret Tolson (AoA–04–05).

If you elect to mail or hand deliver your application you must submit one original and two copies of the application; an acknowledgement card will be mailed to applicants. Instructions for electronic mailing of grant applications are available at *http://www.grants.gov/*.

SUPPLEMENTARY INFORMATION: All grant applicants must obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/*.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, telephone: (202) 357–3440.

Dated: June 25, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–14904 Filed 6–30–04; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–55–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

U.S.-Mexico Border Diabetes Prevention and Control Project—Phase 2 Community Intervention Pilot Project, OMB No. 0920–0489—Reinstatement with change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). The Pan American Health Organization (PAHO), El Paso Field Office, in collaboration with the CDC-funded United States/Mexico Border Diabetes Prevention and Control Programs, and the Mexico Secretariat of Health will conduct Phase 2 of the U.S.-Mexico Diabetes Prevention and Control Project. This phase 2 is the natural follow-up to the household survey to determine the

burden of diabetes on the border population (Phase 1).

The purpose of the project is to diminish the impact of diabetes on the border population by conducting activities in two related and chronological phases (prevalence study and intervention program). Phase 1, which will assess the prevalence of diabetes, related behavioral risk factors, and assess the health services for the border population, was completed in October 2002. Phase 2 will be implemented in eleven pilot communities, where persons living with diabetes will be randomized to either intervention group participant (IGP) or delayed intervention control group participant (DICGP). The DICGP will receive usual diabetes self management education by the health care provider in a community health center setting, and the IGP will be assigned to receive diabetes self management education reinforcement and coaching social support at the community home level, by a Community Health Worker/ Promotor de Salud (CHW/PdS). These programs will be culturally and linguistically appropriate and will include the participation of community health workers (promotores) and primary healthcare providers working as a team approach.

Activities for Phase 2 will include implementation of community interventions that will provide weekly site visits to the person living with diabetes and provide follow-up and support for the participant and their family. Two family members, found with the highest risk factor ratio will also be interviewed by the CHW/PdS. The CHW/PdS will reinforce educational messages on balanced nutrition and physical activity and provide social support and coaching to the person living with diabetes and their family members. An equal number of participants will be in the delayed intervention control group. This group and their high risk family members will complete an initial household survey and a final household survey at the end of 18 months. The CHW/PdS will be trained in diabetes and community mobilization skills. The household survey will be repeated in the fifth year of the project for evaluation purposes. There is no cost to respondents. The estimated annualized burden is 3,960 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
Intervention group participants	330	2	1
IGP family members	660	2	1
Delayed intervention control group participants	330	2	1
DICGP family members	660	2	1

Dated: June 22, 2004.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14931 Filed 6–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–56–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Formative Research on Issues Related to the Use of Mass Media in African American Women—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

Women's health programs, including the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), offer low-cost or free breast cancer screening to uninsured, low-income women. In 1991, CDC established the NBCCEDP to increase breast and cervical cancer screening among uninsured, underserved, low-income women. To date, over 1.5 million women have received services from NBCCEDP-sponsored programs. Yet NBCCEDP-sponsored programs are estimated to reach only 18% of women 50 years old and older who are eligible for screening services. A research priority for the NBCCEDP is to identify effective strategies to increase enrollment among eligible women who have never received breast or cervical cancer screening. Why women do not participate in this screening is not well understood.

The purpose of this task is to conduct formative research to better understand how low-income African-American women might use TV/radio as sources of health information and identify the particular formats, programs, stations, and hours the targeted women listen. This task will examine how African-American women get information on community issues, services, and events and determine if these can be used as viable means to disseminate information on health services. The only cost to respondent is their time. The estimated annualized burden is 240 hours.

Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hrs)
Call-in Script	120	1	5/60
Eligibility Screener	120	1	5/60
Check-in and Informed Consent	120	1	5/60
Pre-discussion Information Sheet	120	1	15/60

Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hrs)
Group Discussion	120	1	1.5

Dated: June 21, 2004.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14932 Filed 6–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–58–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Survey of Veterinarians to Assess Infection Control Practices and Use of Personal Protective Equipment to Reduce Transmission of Zoonotic Diseases—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Recent outbreaks of emerging zoonotic diseases in the United States have highlighted the need to better protect the veterinary community from infectious diseases by educating them about personal protective measures. In particular, during the recent 2003 outbreak of monkeypox in the United States associated with prairie dogs and imported rodents, veterinarians or veterinary staff represented over 25% of confirmed and probable human cases. During the height of this outbreak, health officials were tasked with providing information to the medical and veterinary communities to ensure safety when examining monkeypox-infected patients; a lack of universally accepted infection control and personal protection guidelines within the veterinary community hampered the delivery of effective prevention messages to this vulnerable population.

The proposed survey asks veterinarians about infection control procedures employed in their clinics and the use of personal protective equipment to prevent zoonotic disease transmission.

The proposed study consists of a self-administered, written questionnaire mailed to veterinary clinics in the United States. The American Veterinary Medical Association has volunteered to collaborate on the survey and will provide a list of clinics through their membership mailing list. The study objectives are to describe current knowledge, attitudes, and practices of veterinarians regarding zoonotic disease risks and protection of veterinary clinic staff, and to determine what types of national guidelines on infection control practices in veterinary settings are needed. The estimated annualized burden is 417 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)
Written Questionnaires	2,500	1	10/60

Dated: June 21, 2004.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14933 Filed 6–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–57–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

NCHS Application for Vital Statistics Training Form, OMB No. 0920–0217—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). In the United States, legal authority for the registration of vital events, *i.e.*, births, deaths, marriages, divorces, fetal deaths, and induced terminations of pregnancy, resides individually with the States (as well as cities in the case of New York City and Washington, DC) and Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. These governmental entities are the full legal proprietors of vital records and the information contained therein. As a result of this State authority, the collection of registration-based vital statistics at the national level, referred to as the U.S. National Vital Statistics System (NVSS), depends on a cooperative relationship between the States and the Federal government. This data collection, authorized by 42 U.S.C. 242k, has been conducted by NCHS since it was created in 1960.

NCHS assists in achieving the comparability needed for combining data from all States into national statistics, by conducting a training program for State and local vital

statistics staff to assist in developing expertise in all aspects of vital registration and vital statistics. The training offered under this program includes courses for registration staff, statisticians, and coding specialists, all designed to bring about a high degree of uniformity and quality in the data provided by the States. This training program is authorized by 42 U.S.C. 242b, section 304(a). In order to offer the types of training that would be most useful to vital registration staff members, NCHS requests information from State and local vital registration officials about their projected needs for training. NCHS also asks individual candidates for training to submit an application form containing name, address, occupation, work experience, education, and previous training. These data enable NCHS to determine those individuals whose needs can best be met through the available training resources. There is no cost to respondents in providing these data. The estimated annualized burden is 44 hours.

Respondents	Number of respondents	Number of responses per respondents	Average burden per response (in hours)
State, local, and Territory Registration Officials	57	1	20/60
Training applicants	100	1	15/60

Dated: June 22, 2004.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14934 Filed 6–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04148]

International Union Against Tuberculosis and Lung Disease: Improving the Effectiveness of Tuberculosis Prevention and Control Programs in Resource-Limited Countries; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to improve the quality, efficiency and effectiveness of tuberculosis (TB) prevention and control programs in resource-limited countries. The Catalog of Federal Domestic Assistance number for this program is 93.116.

B. Eligible Applicant

Assistance will be provided only to the International Union Against Tuberculosis and Lung Disease (IUATLD). No other applications will be solicited or accepted.

The IUATLD is the only qualified international non-governmental organization (NGO) that has the technical and administrative capacity to conduct the specific set of activities requested to support CDC TB prevention and control activities outlined under this cooperative agreement because:

1. As the leading NGO combating TB globally, the IUATLD is uniquely positioned, in terms of legal authority, ability, track record, infrastructure, and credibility throughout the world to provide the critically needed support and technical expertise to MOH, as well as National TB Control Programs (NTPs) and locally based TB associations, to improve control and treatment of TB in their respective countries.

2. The IUATLD is the only international NGO with the required networks, connections, and working experience with MOH, NTPs and community based organizations in high TB burden countries that can compliment and support CDC's activities in these settings, including the provision of technical assistance to plan, design, implement, and evaluate TB program activities at the country level.

3. The IUATLD has a demonstrated track record and worldwide reputation in the planning, implementation and evaluation of specialized programs to develop and train networks of international and in-country technical experts, program managers, consultants, health-care providers and decision makers who can provide assistance to NTPs in high burden countries.

4. The IUATLD has an established framework and mechanisms to plan, develop and implement specialized training activities to support TB diagnosis, treatment and control activities in numerous countries, enabling it to immediately become engaged in the activities listed in this announcement.

5. Resulting from its history of collaboration and technical assistance, the IUATLD has an unprecedented level of access to all MOHs, NTPs, and related programs in high burden countries.

6. In collaboration with other international organizations (including CDC, the U.S. Agency for International Development, and the WHO), the IUATLD works to accomplish its mission by disseminating information related to TB program needs and services; recommending and advocating improved policies and programs; and providing consultation and guidance at the international, national, and local levels to prevent and control TB.

7. The IUATLD is uniquely qualified to conduct activities that have specific relevance to the TB response mission and objectives of CDC, and are considered essential by the Division of Tuberculosis Elimination (DTBE), to support its medium and long-term mission targets.

C. Funding

Approximately $170,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program technical assistance, contact: Michael Qualls, Project Officer, Division of Tuberculosis Elimination, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop E–10, Atlanta, GA 30333, Telephone: 404–639–8488, E-mail: *MQualls@cdc.gov.*

For financial, grants management, or budget assistance, contact: Steward

Nichols, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2788, E-mail: *SNichols1@cdc.gov.*

Dated: June 25, 2004.

Alan Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14935 Filed 6–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04200]

Expansion of Activities Supporting Capacity Building, Coordination, Networking, and Information Exchange Among Non-Governmental AIDS Service Organizations in the Republic of Zimbabwe; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to improve and expand capacity building, coordination, networking, and information exchange activities between and among non-governmental AIDS Service Organizations (ASOs) in Zimbabwe. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Zimbabwe AIDS Network (ZAN). No other applications are solicited.

ZAN is an indigenous non-governmental organization (NGO) that has focused on prevention and care of HIV/AIDS since its inception in the early 1990s. ZAN's inception was the result of a number of HIV/AIDS organizations coming together through the realization that they needed a network to gather and share information and resources and a point of focus for information dissemination and advocacy at the highest levels of society. ZAN currently has over 260 members. In addition to non-governmental organizations and ASOs, ZAN's membership includes organizations from the industrial private sector, commercial sector, farming communities, and churches.

ZAN is unique because of its organizational mandate to serve as the single national HIV/AIDS NGO networking organization. No other agency exists within Zimbabwe to serve this purpose.

Zimbabwe is among the countries most affected by HIV/AIDS in the world. HIV prevalence is estimated to be approximately 25 percent. There has been a ten-fold increase in the number of TB cases, and up to 35 percent of the children may be orphaned due to AIDS by the end of this decade. At the same time, the public health response to the epidemic in Zimbabwe is inadequate due in part to insufficient manpower in the Zimbabwe public health system and lack of sufficient expertise in HIV/AIDS. Now more than ever, organizations involved in HIV/AIDS work are in need of a national networking organization like ZAN that will provide expanded services in capacity building, coordination, networking, and information exchange.

C. Funding

Approximately $200,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program technical assistance, contact: Dr. Shannon Hader, MD, Director, CDC Zimbabwe, 38 Samora Machel Avenue, Second Floor, Harare, Zimbabwe, Telephone: (263) 4–796040, E-mail: *haders@zimcdc.co.zw.*

For financial, grants management, or budget assistance, contact: Ms. Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–1515, E-mail: *zbx6@cdc.gov.*

Dated: June 25, 2004.

Alan Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14937 Filed 6–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04119]

Testing for Primary HIV Infection in Seronegative Patients; Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for Testing for Primary HIV Infection in Seronegative Patients was published in the **Federal Register** on May 24, 2004, volume 69, Number 100, pages 29546–29551.

The notice is amended as follows:

- On page 29547, second column, second bullet, please change the first sentence to read: "Identify seronegative and indeterminate specimens through customary HIV testing procedures from a variety of setting types with various prevalence within their jurisdictions; at least 25,000 venipuncture specimens must be identified.
- On page 29548, second column, under "Approximate Average Award," add the following sentence within the parentheses: "Funding amounts for part 1 will vary according to volume of testing proposed."
- On page 29548, third column, under "III.3. Other," please change the second paragraph to read: "Applicants for part 1 must demonstrate that over 600 HIV-seropositive tests were conducted on venipuncture specimens and reported, as part of the CDC-funded Counseling and Testing System (CTS) in the proposed jurisdiction in the last year for which data are available. A sufficiently high level of HIV morbidity and volume is required of the participating sites in order to evaluate the feasibility of this activity at higher morbidity areas, and in order to complete this research within the required timeframe and available budget. CTS is CDC's standard surveillance system for HIV testing. Venipuncture specimens are necessary for the performance of the requisite laboratory tests.

Preference will be given to applicants with higher prevalence rates and then to those with higher testing volumes.

Dated: June 25, 2004.

Alan Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14936 Filed 6–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04199]

Rapid Expansion of HIV/AIDS Activities by National Ivorian Nongovernmental Organizations and Associations Serving Highly Vulnerable Populations in Cote d'Ivoire Under the President's Emergency Plan for AIDS Relief; Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for Rapid Expansion of HIV/AIDS Activities by National Ivorian Nongovernmental Organizations and Associations Serving Highly Vulnerable Populations in Cote d'Ivoire Under the President's Emergency Plan for AIDS Relief was published in the **Federal Register** on June 1, 2004, volume 69, Number 105, pages 30922–30927.

The notice is amended as follows:

On page 30923, under "Activities: Awardee activities for this program are as follows:" please include:

For Year 1, the grantee will focus on building on existing interventions with transactional sex workers, their partners, and other vulnerable women at sites including, but not limited to: the Clinique de Confiance, Cote d'Ivoire Properite, APROSAM."

Also on page 30923, "III.1. Eligible Applicants", please change the first sentence to read: "Applications may be submitted by international nongovernmental organizations, including faith-based organizations, that have experience in: designing and implementing HIV/AIDS activities for Highly Vulnerable Populations in general, and transactional sex workers in particular, in Africa; capacity building for African local nongovernmental organizations and associations in developing countries (including resource mobilization and administration of funds); and understanding complexities and challenges of designing and implementing activities for HVP."

Dated: June 25, 2004.

Alan Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14938 Filed 6–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 28, 2004, from 9 a.m. to 5 p.m., and on July 29, 2004, from 9 a.m. to 5 p.m.

Location: Holiday Inn, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512625. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 28, 2004, the committee will discuss, make recommendations, and vote on a premarket approval application supplement for a cardiac resynchronization device. On July 29, 2004, the committee will hear a presentation on Adverse Event Reports for Automatic External Defibrillators from 1996 to 2003.

The committee will also discuss and make recommendations on a premarket notification (510(k)) submission for an over-the-counter automated external defibrillator. Background information for the topics, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. Material for the July 28 session will be posted on July 27, 2004; material for the July 29 session will be posted on July 28, 2004.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 14, 2004. On both days, oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 14, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 24, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–14947 Filed 6–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, RFA/Ps—CA05–002, 003, 004, 006, 007 & 008.

Date: July 27–28, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, Special Review and Logistics Branch, National Center Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8053, Bethesda, MD 20892, (301) 435–1822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14957 Filed 6–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Preclinical Pharamalogical Studies of Antitumor and Other Therapeutic Agents.

Date: July 22, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, PhD. Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

This notice is being published less than 15 days prior to the meeting date to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14958 Filed 6–30–04; 8:45 am]

BILLING CODE 4141–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, Resource-Related EXPORT Program.

Date: July 14–16, 2004.

Time: 5 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Lorrita Watson, PhD, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd, Suite 800, Bethesda, MD 20892–5465, 301–594–7784, *watson@ncmhd.nih.gov.*

Dated: June 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14950 Filed 6–30–04; 8:45 am]

BILLING CODE 4140–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Naitonal Heart, Lung, and Blood Institute

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Maintenance of NHLBI Biological Specimen Repository (NHLBI–HB–05–06).

Date: July 29, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Irina Gordienko, Scientific Review Administrator, Division of Extramural Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, MSC 7924, Bethesda, MD 20892, 301–435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research, 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 23, 2004.

LaVerne Y Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14959 Filed 6–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Macrophage-derived Oxysterol and Endometriosis.

Date: July 21, 2004.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rm 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14951 Filed 6–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Statistics.

Date: July 21, 2004.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Mark Czarnolewski, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mczarnol@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Treatment for Childhood Mania.

Date: July 23, 2004.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14952 Filed 6–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; The Protein Complex of a Sperm Ion Channel.

Date: July 19, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01 Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892. 301–435–6884. *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865. Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14953 Filed 6–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Summer Research Experiences for Undergraduates.

Date: July 21, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12F, Bethesda, MD 20892, 301–594–2881, *sunshinh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14954 Filed 6–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Pharmacogenomics of Mood and Anxiety Disorders.

Date: July 21, 2004.

Time: 9:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6002 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Molecular Markers and Mechanisms of HIV-Associated Dementia.

Date: July 22, 2004.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, (301) 443–1513, *psherida@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14955 Filed 6–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Initiative for Minority Student Development.

Date: July 15–16, 2004.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: N Kent Peters, PhD., Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18K, Bethesda, MD 20892, 301–594–2048, *petersn@nigms.nih.gov.*

(Catalogue of Federal domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14956 Filed 6–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 30-day notice of information collection under review; application for travel document, Form I–131.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (CIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 13, 2004 at 69 FR 1991, allowing for a 60-day public comment period. No comments were received by CIS on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 2, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice should be directed to the Office of Management and Budget, Attn: Desk Officer for Homeland Security, Office of Management and Budget Room 10235, Washington, DC 20503; telephone 202–395–7316. The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Travel Document, Form I–131.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–131, Bureau of Citizenship and Immigration Services.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This form is used by permanent or conditional residents, refugees or asylees and aliens abroad seeking to apply for a travel document to lawfully reenter the United States or be paroled for humanitarian purposes into the United States.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 164,103 responses at 55 minutes (.9 hours) per response.

(5) *An estimate of the total public burden (in hours) associated with the collection:* 147,692 annual burden hours.

If additional information is required contact: Mr. Richard A. Sloan, Director, Regulations and Forms Services, Citizenship and Immigration Services, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536.

Dated: June 28, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services.

[FR Doc. 04–14965 Filed 6–30–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–18486]

Privacy Act of 1974: System of Records; Transportation Security Technology Testing System

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice to alter or establish systems of records; request for comments.

SUMMARY: TSA is establishing one new system of records under the Privacy Act of 1974.

DATES: Comments due on August 2, 2004.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation (DOT), Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number TSA–2004–18486 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that TSA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet at *http://dms.dot.gov*. Please be aware that anyone is able to search the electronic form of all comments received into any of these dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*. You may also review the public docket containing comments in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Privacy Act Officer, Office of Information Management Programs, TSA Headquarters, TSA–17, 601 S. 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2906.

SUPPLEMENTARY INFORMATION: TSA is establishing one new system of records under the Privacy Act of 1974, the Transportation Security Technology Testing System (DHS/TSA 016), which will be maintained to document the research, development, and testing of emerging transportation security technologies, to improve access control into transportation facilities and modes of transportation, to improve ticketing and baggage control for passengers and crew, to improve cargo tracking capabilities, and to improve transportation facility security plans.

DHS/TSA 016

SYSTEM NAME:

Transportation Security Technology Testing System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATIONS:

Records will be maintained at TSA Headquarters in Arlington, Virginia, at various TSA field offices, at transportation facilities where technology testing takes place, and at digital safe sites operated by government contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TSA employees, contractors, transportation workers, and other individuals who participate in transportation security technology testing programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include (1) individual's name; (2) demographic data to include age, gender, primary language spoken, and ethnicity; (3) administrative identification codes; (4) systems identification codes; (5) company, organization, or affiliation; (6) issue date and other enrollment information; (7) physical descriptors, biometric data, and digital photograph; (8) facility access level information; (9) job title and function; (10) expiration date; and (11) access dates and times.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114; 49 U.S.C. 44903; 49 U.S.C. 44912.

PURPOSE(S):

The records are maintained to document the research, development, and testing of emerging transportation security technologies, to improve access control into transportation facilities and modes of transportation, to improve ticketing and baggage control for passengers and crew, to improve cargo tracking capabilities, and to improve transportation facility security plans.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where TSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(2) To TSA contractors, agents, grantees, experts, consultants, or other like persons when necessary to perform a function or service related to this system of records for which they have been engaged. Such recipients are required to comply with the Privacy Act, 5 U.S.C. 552a, as amended.

(3) To airport operators, aircraft operators, and maritime and land transportation operators about individuals who are their employees, job applicants, or contractors, or persons to whom they issue identification credentials or grant clearances or access to secured areas in transportation facilities when relevant to such employment, application, contract, the issuance of such credentials or clearances, or access to such secure areas.

(4) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual.

(5) To the Department of Justice (DOJ) or other Federal agency in the review, settlement, defense, or prosecution of claims, complaints, and law suits involving matters over which TSA exercises jurisdiction or when conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) TSA, or (b) any employee of TSA in his/her official capacity, or (c) any employee of TSA in his/her individual capacity where DOJ or TSA has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and TSA determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which TSA collected the records.

(6) To the National Archives and Records Administration or other authorized Federal agency in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(7) To the United States Department of Transportation, its operating administrations, or the appropriate state or local agency when relevant or necessary to (a) ensure safety and security in any mode of transportation; (b) enforce safety-and security-related regulations and requirements; (c) assess and distribute intelligence or law enforcement information related to transportation security; (d) assess and respond to threats to transportation; (e) oversee the implementation and ensure the adequacy of security measures at airports and other transportation facilities; (f) plan and coordinate any actions or activities that may affect transportation safety and security or the operations of transportation operators; or (g) the issuance, maintenance, or renewal of a license, certificate, contract, grant, or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, bar code, magnetic stripe, optical memory stripe, disk, video, integrated circuit chip, and electronic media.

RETRIEVABILITY:

Data records contained within bar codes, magnetic stripe, optical memory stripe, disk, video, integrated circuit chip, and/or electronically stored may be retrieved by employee name, unique card number, or other personal identifier; paper records, where applicable, are retrieved alphabetically by name.

SAFEGUARDS:

Information in this system is protected from unauthorized access through appropriate administrative, physical and technical safeguards. Unauthorized personnel are denied physical access to the location where records are stored. For computerized records, safeguards are in accordance with generally acceptable information security guidelines via use of security codes, passwords, Personal Identification Numbers (PINs), and other similar safeguards.

RETENTION AND DISPOSAL:

Record disposition authority for these records is pending National Archives and Records Administration approval.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Security Technology and Chief Technology Officer, TSA Headquarters, TSA–20, 601 S. 12th Street, Arlington, VA 22202–4220.

NOTIFICATION PROCEDURE:

To determine if this system contains a record relating to you, write to the system manager at the address indicated above and provide your full name, current address, date of birth, place of birth, and a description of information that you seek, including the time frame during which the record(s) may have been generated. You may also provide your Social Security Number or other unique identifier(s) but you are not required to do so. Individuals requesting access must comply with the Department of Homeland Security's Privacy Act regulations on verification of identity (6 CFR 5.21(d)).

RECORD ACCESS PROCEDURE:

Same as "notification procedure," above.

CONTESTING RECORD PROCEDURE:

Same as "notification procedure," above.

RECORD SOURCE CATEGORIES:

TSA obtains information in this system from the individuals who are covered by the system, their employers, or the participating transportation facility.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Issued in Arlington, Virginia, on June 23, 2004.

Susan T. Tracey,

Chief Administrative Officer.

[FR Doc. 04–14876 Filed 6–30–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–43]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Grant Application for Section 202 Supportive Housing for the Elderly

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval of a revision to the currently approved information collection for selecting applicants for the Section 202 Supportive Housing for the Elderly program grants which will be part of the 2004 Notice of Funding Availability (NOFA).

Congress has introduced a new facet to the Section 202 Program authorizing Demonstration Planning Grant funding for Sponsors of projects that receive Fund Reservation Awards. This predevelopment grant funding will be for architectural and engineering work, site control, and other planning related expenses.

DATES: *Comments Due Date:* July 8, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number (2502–0267) and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Paperwork Reduction Act Compliance Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed revision to the currently approved information collection for selecting applicants for the Fair Housing Initiatives (FHIP) Program grants.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Grant Application for Section 202 Supportive Housing for the Elderly.

Description of Information Collection: This is a revision to the currently approved information collection for selecting applicants for the Section 202 Supportive Housing for the Elderly program grants which will be part of the 2004 Notice of Funding Availability (NOFA).

Congress has introduced a new facet to the Section 202 Program authorizing Demonstration Planning Grant funding for Sponsors of projects that receive Fund Reservation Awards. This predevelopment grant funding will be for architectural and engineering work, site control, and other planning related expenses.

OMB Control Number: 2502–0267.

Agency Form Numbers: HUD forms 92015–CA, 92041, 92042, plus standard grant application forms SF 424, and HUD–424B, 424C, 424CB, 424CBW, 2880, 2990, 2991, 96010, and OMB SF LLL.

Members of Affected Public: Not-for-profit institutions.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 42 hours per applicant plus 7 hours for those who also apply for the Demonstration Planning grant. The estimated number of respondents is 361. The frequency of response is once per annum. The total public burden is estimated to be 15,200 hours.

Status: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 25, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–14885 Filed 6–30–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Extension of Comment Period for the Bull Trout (*Salvelinus Confluentus*) 5-Year Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period for the bull trout 5-year review.

SUMMARY: The U.S. Fish and Wildlife Service ("we") announces an extension of the comment period for the bull trout 5-year review under section 4(c)(2)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (Act). The initial request for information was to end on July 1, 2004. We are extending the request for information to January 3, 2005. We are announcing this extension to allow the public additional time to provide information for this review. We are again requesting submission of any new information (best scientific and commercial data) on the bull trout that has become available since its original listing as a threatened species coterminously in the lower 48 States in 1999 (64 FR 58932). If the present classification of the bull trout is not consistent with the best scientific and commercial information available, we may, at the conclusion of this review, initiate a separate action to propose changes to the List of Endangered and Threatened Wildlife and Plants (List) accordingly.

DATES: To allow us adequate time to conduct the review, we must receive your information no later than January 3, 2005. We want to emphasize that the timely submission of information is critical to ensure its use in the 5-year review.

ADDRESSES: Submit information to the U.S. Fish and Wildlife Service, Bull Trout Coordinator, Attention: Bull Trout 5-year Review, 911 NE 11th Avenue, Portland, Oregon 97232. Information received in response to this notice and the results of the review will be available for public inspection by appointment, during normal business hours, at the above address. New information regarding the bull trout may also be sent electronically to *R1BullTrout5Y@r1.fws.gov*.

FOR FURTHER INFORMATION CONTACT: Rollie White at the above address, or at (503) 231–6158.

SUPPLEMENTARY INFORMATION: On April 13, 2004, we announced in a **Federal Register** notice (69 FR 19449) that we are commencing a 5-year review of the bull trout. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. The purpose of a 5-year review is to ensure that the classification of a species as threatened or endangered on the List is accurate. The 5-year review is an assessment of the best scientific and commercial data available at the time of the review that has become available since the species' original listing or its most recent status or 5-year review.

If there is no new information concerning the bull trout, no changes will be made to its classification. However, if we find that there is new information concerning the bull trout indicating a change in classification is warranted, we may propose a new rule that could either: (a) Reclassify the species from threatened to endangered; or (b) remove the species from the List.

Public Solicitation of New Information

We are publishing this extension of the comment period to allow for any new information relating to the current status of the bull trout that has become available since its original listing. In particular, we are seeking information such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends; and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 17, 2004.

David J. Wesley,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 04–14941 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for the Coastal-Puget Sound Distinct Population Segment of Bull Trout (*Salvelinus confluentus*), Volumes I and II

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service ("we") announces the availability of the Draft Recovery Plan for the Coastal-Puget Sound Distinct Population Segment of Bull Trout (*Salvelinus confluentus*) for public review and comment. Two separate volumes comprise the draft recovery plan for bull trout in this distinct population segment: the Puget Sound Management Unit is addressed in Volume I, and the Olympic Peninsula Management Unit is the focus of Volume II.

DATES: Comments on the draft recovery plan must be received on or before October 29, 2004.

ADDRESSES: Hard copies of the draft recovery plan will be available in 4 to 6 weeks for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 102, Lacey, Washington (telephone (360) 753–9440). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Ken Berg, Field Supervisor, at the above Lacey address. This plan is currently available on the World Wide Web at *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: For Volume I, the Puget Sound Management Unit, contact Jeffrey Chan, Fish and Wildlife Biologist, at the above Lacey address and telephone number. For Volume II, the Olympic Peninsula Management Unit, contact Shelley Spalding, Fish and Wildlife Biologist, at the above Lacey address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments may result in changes to the recovery plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

Bull trout (*Salvelinus confluentus*), members of the family Salmonidae, are char native to the Pacific Northwest and western Canada. Compared to other salmonids, bull trout have more specific habitat requirements, including cold water temperatures, particularly for spawning and rearing, and the presence of complex forms of cover for all life history stages, including large woody debris, undercut banks, boulders and pools. Bull trout may be resident or may exhibit one of three migratory life history forms, including adfluvial (migrating from tributary streams to a lake or reservoir to mature), fluvial (migrating from tributary streams to larger rivers to mature), or anadromous (migrating from freshwater to the ocean to grow and mature, then returning to freshwater to spawn) behaviors.

The Coastal-Puget Sound Distinct Population Segment of bull trout encompasses all Pacific coast drainages within the State of Washington, including Puget Sound. It is separated from other populations of bull trout by the Columbia River basin to the south

and the crest of the Cascade Mountain Range to the east. This population segment is highly significant to the species as a whole, since the Coastal-Puget Sound Distinct Population Segment supports all life history forms of the species, including the only known anadromous forms of bull trout in the coterminous United States. Bull trout populations in this region have been in decline as a result of both historical and current land use activities, including dams and diversions, forest management practices, fisheries management, agricultural practices, road construction and maintenance, and residential and urban development. The bull trout was listed as a threatened species in the Coastal-Puget Sound Distinct Population Segment on November 1, 1999 (64 FR 58910).

The recovery and delisting of the bull trout will depend upon the achievement of recovery goals and criteria laid out in this recovery plan. The overall recovery strategy for bull trout in the Coastal-Puget Sound Distinct Population Segment is to integrate with ongoing Tribal, State, local, and Federal management and partnerships efforts at the watershed or regional scales (*e.g.*, Shared Strategy for Puget Sound). This coordination will maximize the opportunity for complementary actions, eliminate redundancy, and make the best use of available resources for bull trout and salmon recovery. The recovery criteria for bull trout in the Coastal-Puget Sound Distinct Population Segment are designed to demonstrate the maintenance or restoration of broadly distributed populations of bull trout, with an emphasis on migratory life forms; set target levels of adult abundance; ensure stable or increasing population trends over at least two bull trout generations; and address the restoration of connectivity between populations that are currently isolated.

At the scale of the Coastal-Puget Sound Distinct Population Segment, bull trout are broadly distributed, use a variety of habitats, and are affected by a wide array of factors. In order to account for these differences and allow recovery actions to be tailored to specific areas or threats, as well as to encourage the implementation of recovery actions by local interests, we have subdivided the population segment into two separate management units, the Puget Sound and the Olympic Peninsula. Individual draft recovery plans have been prepared for each of these management units. Volume I of the Draft Recovery Plan for the Coastal-Puget Sound Distinct Population Segment of Bull Trout covers the Puget Sound Management Unit, addressing bull trout populations in all watersheds within the Puget Sound basin north of the Columbia River in Washington and the marine nearshore areas of Puget Sound; it also includes the Chilliwack River and associated tributaries flowing into British Columbia, Canada. Volume II covers the Olympic Peninsula Management Unit, including all watersheds within the Olympic Peninsula and the nearshore marine waters of the Pacific Ocean, Strait of Juan de Fuca, and Hood Canal.

Public Comments Solicited

We solicit written comments on this draft recovery plan described. All comments received by the date specified above will be considered in developing the final recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 21, 2004.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 04–14939 Filed 6–30–04; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for the Jarbidge River Distinct Population Segment of Bull Trout (*Salvelinus Confluentus*)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service ("we") announces the availability of the Draft Recovery Plan for the Jarbidge River Distinct Population Segment of Bull Trout (*Salvelinus confluentus*) for public review and comment.

DATES: Comments on the draft recovery plan must be received on or before October 29, 2004.

ADDRESSES: Hard copies of the draft recovery plan will be available in 4 to 6 weeks for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, Nevada 89502 (telephone (775) 861–6300). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Bob Williams, Field Supervisor, at the above Reno address. This plan is currently available on the World Wide Web at *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Selena Werdon, Fish and Wildlife Biologist, at the above Reno address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments may result in changes to the recovery plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

Bull trout (*Salvelinus confluentus*), members of the family Salmonidae, are char native to the Pacific Northwest and western Canada. Compared to other salmonids, bull trout have more specific habitat requirements, including cold water temperatures, particularly for spawning and rearing, and the presence of complex forms of cover for all life history stages, including large woody debris, undercut banks, boulders and pools. Bull trout may be resident or may exhibit one of three migratory life history forms.

The Jarbidge River Distinct Population Segment of bull trout occurs in the Jarbidge River and Bruneau River watersheds of northern Nevada and southwestern Idaho. Bull trout occur in

six identified local populations within these watersheds; these are primarily resident fish, with relatively low numbers of migratory fish. These fish exhibit a "fluvial" migratory behavior, migrating from tributaries to larger rivers to mature and then returning to tributaries to spawn. The total number of resident and migratory adult bull trout is estimated at fewer than 500. The bull trout was listed as a threatened species in the Jarbidge River Distinct Population Segment on April 8, 1999 (64 FR 17110).

Bull trout in the Jarbidge River Distinct Population Segment have been separated from other populations of the species for more than 100 years as the result of dams on the Bruneau and Snake Rivers. The bull trout in this population segment have persisted in isolation at the southernmost extent of the species' range, and local populations sampled exhibit a noticeable degree of genetic differentiation. Current factors limiting the recovery of bull trout in the Jarbidge River Distinct Population Segment include increasing water temperatures, livestock grazing, road construction and maintenance, fisheries harvest and incidental mortality, nonnative fish species, and forest management practices (especially the loss of large woody debris).

Persistence of bull trout in the Jarbidge River Distinct Population Segment requires that habitat quality be improved and maintained, and that sufficient opportunity exists for at least occasional gene flow between local populations. The recovery plan identifies actions needed to achieve the recovery of bull trout in this distinct population segment; at the broad scale, these include: (1) Protecting, restoring, and maintaining suitable habitat conditions; (2) preventing negative effects of nonnative fishes; (3) establishing fisheries management goals and objectives compatible with bull trout recovery; (4) characterizing, conserving, and monitoring genetic diversity and gene flow among local populations; (5) implementing adaptive management to monitor the effectiveness of recovery actions; and (6) using all available conservation programs and regulations to protect and conserve bull trout and bull trout habitats.

The recovery criteria for bull trout in the Jarbidge River Distinct Population Segment are designed to demonstrate the maintenance or restoration of broadly distributed populations of bull trout, with an emphasis on the migratory life form; set target levels of adult abundance; ensure stable or increasing population trends over at least two bull trout generations; and address the restoration of connectivity between local populations that may be currently isolated.

Public Comments Solicited

We solicit written comments on this draft recovery plan described. All comments received by the date specified above will be considered in developing the final recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 28, 2004.

Paul Henson,

Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 04–14940 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6310–PF–24 1A]

OMB Control Number 1004–0168; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On February 11, 2003, the BLM published a notice in the **Federal Register** (68 FR 6942) requesting comment on this information collection. The comment period ended on April 14, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0168), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Report of Road Use (43 CFR 2812).

OMB Control Number: 1004–0168.

Bureau Form Number(s): OR2812–6.

Abstract: The Bureau of Land Management (BLM) collects and uses the information from permittees to determine road use and maintenance fees and to monitor and verify road use authorizations. BLM also use the information to calculate road use and maintenance fees to transport timber and other forest products.

Frequency: Quarterly.

Description of Respondents: Road use permit holders (individuals, partnerships, and corporations) who wish to use BLM roads to transport timber and other forest products.

Estimated Completion Time: 1 hour.

Annual Responses: 1,600.

Application Fee Per Response: 0.

Annual Burden Hours: 1,600.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: April 5, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–14979 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[HE–952–9911–EK–24 1A]

OMB Control Number 1004–0179; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget

(OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On March 7, 2003, the BLM published a notice in the **Federal Register** (68 FR 11125) requesting comment on this information collection. The comment period ended on May 6, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0179), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: In-Kind Crude Helium Sales Contract (43 CFR 3195).

OMB Control Number: 1004–0179.

Bureau Form Number(s): None.

Abstract: The Bureau of Land Management (BLM) collects and uses the information from entities interested in purchasing and selling Federal helium. The respondents are Federal agencies and helium suppliers (contractors) who purchase major helium requirements and report to the BLM the sales information.

Frequency: Quarterly and annually.

Description of Respondents: Federal agencies and helium contractors.

Estimated Completion Time: 3 hours (1 hour for the contract and 15 minutes to 2 hours for quarterly sales information required under 43 CFR part 3195).

Annual Responses: 32.

Application Fee Per Response: 0.

Annual Burden Hours: 96.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: April 30, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–14980 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID095–04–1220–BA:GPO DBG040006]

Emergency Closure of Skinny Dipper Hot Springs

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The parking area adjacent to the Banks-Lowman Highway near mile post 4, the trail from the parking area to the Skinny Dipper Hot Springs, and all areas within 1,000 feet of the Skinny Dipper Hot Springs are being closed from sunset to sunrise each day. These public lands are administered by the Bureau of Land Management (BLM) and are located within Lot 3; Section 25, T. 9 N., R.3 E., Boise Meridian, Boise County, Idaho. The emergency closure is intended to provide for public safety. Currently, the public's safety is at high risk.

Law enforcement officers of Federal, State and County governments, while on official business of that agency, are exempt from this order. Exceptions to this closure may include vehicle use for administrative and emergency purposes. Under special circumstances, the authorized officer may issue a special permit allowing access into the area for specific purposes. The closure will go into effect on July 1, 2004 and will expire on May 24, 2009.

EFFECTIVE DATE: This Emergency Access Closure Order is effective on July 1, 2004 through May 24, 2009.

ADDRESSES: Bureau of Land Management, Four Rivers Field Office, 3948 Development Avenue, Boise, Idaho 83705

FOR FURTHER INFORMATION CONTACT: Deborah L. Epps, Acting Four Rivers Field Manager, (208) 384–3300.

SUPPLEMENTARY INFORMATION: Over the last several years there have been numerous injuries and a recent fatality from a fall resulting in the need to immediately institute this closure.

This emergency closure is being established and administered by the BLM. Authority for this action is found in 43 CFR 8360.0–3 and complies with 43 CFR 8364.1 Closure and Restriction Orders. Violation of this closure order is in accordance with 43 CFR 8360.0–7 punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: March 24, 2004.

Deborah L. Epps,

Acting Four Rivers Field Manager.

[FR Doc. 04–14882 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID090–04–1050–HF]

Emergency Closure Order in Ada County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Higby Cave and all public lands within 1000 feet of the cave, being within the S½NW¼NW¼ and N½SW¼NW¼ of Section 32, T. 1 S., R. 3 E., Boise Meridian, Ada County, Idaho, containing approximately 72 acres, are hereby closed from sunset to sunrise each day. In addition, because of recent changes in the structural integrity of the cave and the related potential hazardous conditions that exist, all persons are hereby prohibited entry into the cave at all times, except by Bureau of Land Management (BLM) special permit. This emergency closure is intended to provide for public safety and to protect valuable resource assets from further degradation.

BLM employees, authorized permittees, and other Federal, State, and county employees while on official business of their respective agencies, including associated vehicle use for administrative and emergency purposes are exempt from this order.

DATES: This Emergency Closure Order is effective immediately upon signing, and extends through May 1, 2007.

ADDRESSES: Bureau of Land Management, Four Rivers Field Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Larry Ridenhour, BLM Outdoor Recreation Planner, (208) 384–3334.

SUPPLEMENTARY INFORMATION: This emergency closure is effective immediately upon signing, and will expire on May 1, 2007. During this period, BLM will evaluate whether a permanent closure is in the public interest. In the interim, the BLM authorized officer may issue a special permit allowing access into the cave under special circumstances and for specific purposes.

Definitions: (a) "Public lands" means any lands or interests in lands owned by the United States and administered by the Secretary of the Interior through the BLM; (b) "Authorized officer" means any employee of the BLM who has been delegated the authority to perform the duties described herein; (c) "Administrative purposes" means any use by an employee or designated representative of the Federal government, or one of its agents or contractors in the course of their employment or representation; (d) "Emergency purposes" means actions related to fire, rescue, or law enforcement activities.

This emergency closure is established and administered by the BLM under the authority of 43 CFR 8360.0–3, and complies with 43 CFR 8364.1 (Closure and Restriction Orders). In accordance with 43 CFR 8360.0–7, violation of this order is punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months. Violations may also be subject to the enhanced fines provided for in Title 18 U.S.C. 3571.

Dated: May 4, 2004.

Rosemary Thomas,

Acting Four Rivers Field Manager.

[FR Doc. 04–14883 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 020–5410–G–509; NMNM 103815]

Conveyance of Mineral Interest in New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The mineral interests owned by the United States in the land described in this notice, containing approximately 10.00 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine the suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interests may be conveyed in whole or in part upon favorable mineral examination. The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Hal Knox, Realty Specialist, Taos Field Office. Located in the New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87505, 505–438–7402.

New Mexico Principal Meridian, New Mexico

T. 15 N., R. 11 E.,
Sec. 7, SE¼SE¼SW¼.
Minerals Reservation—All Minerals

SUPPLEMENTARY INFORMATION: Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private land covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon: issuance of a patent or deed to such mineral interest; upon final rejection of the application; or two years from the date of publication of this notice, whichever occurs first.

Dated: June 21, 2004.

Sam DesGeorges,

Acting Field Office Manager.

[FR Doc. 04–14942 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–800–04–1310–PB–211P]

Notice of Meetings and Hearing, Subcommittee of the Southwest Resource Advisory Council (Colorado), Public Hearing, and Open Houses

AGENCY: Bureau of Land Management, Interior, U.S. Forest Service, Agriculture.

ACTION: Notice of public meetings and hearing.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, a subcommittee of the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Resource Advisory Council (RAC), will meet three times as indicated below. In addition, one public hearing and three public open houses will be held. The public hearing, open houses, and RAC subcommittee meetings are for the purpose of obtaining public input on the Northern San Juan Basin Coal Bed Methane Environmental Impact Statement being prepared by the Bureau of Land Management and the U.S. Forest Service.

DATES: The public hearing will be held on July 14, 2004, from 6 p.m. to 10 p.m. The hearing will be held in Bayfield, Colorado. Open houses will be held on July 19, 2004, in Durango, Colorado; July 20, 2004, in Pagosa Springs, Colorado; and July 21, 2004, in Bayfield, Colorado and July 28, 2004 in Ignacio, Colorado. Each of the four open houses will be held from 4 p.m. to 7 p.m. Meetings of the subcommittee of the Southwest RAC will be held on August 11, 2004, in Bayfield, Colorado; August 17, 2004, in Pagosa Springs, Colorado; and August 19, 2004, in Durango, Colorado. Each of the RAC subcommittee meetings will be held from 6 p.m. to 9 p.m.

SUPPLEMENTARY INFORMATION: A total of six public meetings and one public hearing will be held in Southwestern Colorado to receive public input on the Northern San Juan Basin Coal Bed Methane Environmental Impact Statement (EIS) during the public comment period for the draft EIS. Three of these meetings are of a subcommittee of the Southwest RAC. This subcommittee was formed to assist the BLM in collecting and fully understanding public comment on the EIS being prepared for the proposed development of coal bed natural gas in the Northern San Juan Basin of Colorado. The subcommittee, upon collection of public comment, will report back to the Southwest RAC for the full council's consideration. The 15-member Southwest RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Colorado.

While the format of the seven sessions will vary, all are open to the public. The public will be invited to raise questions and concerns regarding the draft EIS prepared for proposed coal bed natural gas development. Comments may be presented orally or in writing, however

time constraints may result in written comments presented to the RAC subcommittee being forwarded directly to BLM without subcommittee review. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Persons interested in commenting on the EIS are encouraged to, but need not attend the hearing or six public meetings. The Bureau of Land Management and U.S. Forest Service will accept written comments on the draft EIS throughout the comment period as separately announced.

Hearing and meeting locations, dates, and time are presented below:

Meeting type	Location	Date/time
Public Hearing	Bayfield High School Cafetorium, 800 CR 501, Bayfield, CO.	Wed., July 14, 6–10 p.m.
Open House	San Juan Public Lands Center, 15 Burnett Ct. Durango, CO.	Mon., July 19, 4–7 p.m.
Open House	Archuleta County Fairgrounds, Extension Building 344, Highway 84, Pagosa Springs, CO.	Tues., July 20, 4–7 p.m.
Open House	Bayfield High School Cafetorium, 800 CR 501, Bayfield, CO.	Wed., July, 4–7 p.m.
Open House	Able Atencio Community Room, Ignacio Municipal Complex, 570 Goddard Avenue, Ignacio, CO.	Wed., July 28, 4–7 p.m.
RAC Subcommittee	Bayfield High School Cafetorium, 800 CR 501, Bayfield, CO.	Wed., Aug 11, 6–9 p.m.
RAC Subcommittee	Archuleta County Fairgrounds, Extension Building, 344 Highway 84, Pagosa Springs, CO.	Tues., Aug. 17, 6–9 p.m.
RAC Subcommittee	San Juan Public Lands Center, 15 Burnett Ct., Durango, CO.	Thurs., Aug. 19, 6–9 p.m.

Summary minutes for the RAC subcommittee meetings will be provided to the full Southwest RAC and will be maintained, along with the records of the hearing and open houses, in the San Juan Public Lands Office, 15 Burnett Ct., Durango, CO 81301, and will be available for public inspection during regular business hours within thirty (30) days following the meetings.

FOR FURTHER INFORMATION CONTACT: Ann Bond, San Juan Public Lands Center, 15 Burnett Ct., Durango, CO 81301. Phone (970) 385–1219.

Dated: June 24, 2004.

Mark W. Stiles,

San Juan Public Lands Center Manager.

[FR Doc. 04–14903 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO150–1210–PC–241A]

Notice of Public Meeting, Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior (DOI), Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Southwest Colorado RAC meeting will begin at 9 a.m. and adjourn at 4 p.m. on July 23, 2004.

ADDRESSES: The Southwest Colorado RAC meeting will be held at the Hinsdale County Administration Building, Coursey Annex Meeting Room, 311 North Henson, Lake City, Colorado.

FOR FURTHER INFORMATION CONTACT: Dave Kauffman, Associate Field Manager, BLM, Uncompahgre Field Office, 2505 South Townsend Ave., Montrose, CO; Telephone (970) 240–5340.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public lands managed by the BLM in southwestern Colorado. All meetings are open to the public.

The purpose of the meeting is to:

Discuss wilderness and wilderness study area management;

Receive program and project updates from BLM, including updates from BLM Field Managers;

Hear a briefing on the Hartman Rocks area near Gunnison, Colorado;

Discuss old RAC business.

There will be an opportunity for the public to address the RAC at approximately 1:30 p.m. for 1 hour. Written comments may be submitted for the RAC's consideration. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: June 25, 2004.

Barbara Sharrow,

Uncompahgre Field Manager.

[FR Doc. 04–14943 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–EU; NMNM–108795]

North Fork Forty Competitive Sale of Public Land in Dona Ana County, NM.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The following public land in Dona Ana County, New Mexico, has been found suitable for competitive sale under Section 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1713 and 1719), at not less than the appraised fair market value (FMV).

New Mexico Principal Meridian

T. 23 S., R. 2 E.,
Section 3, Lot 3.

Containing 39.47 "gross" acres more or less and approximately 34.13 "net usable" acres (5.34 acres are within 100-year flood zone).

DATES:

Comments on Proposed Competitive Sale

Comments regarding the proposed competitive sale must be received by BLM on or before August 16, 2004.

Sale Date

The competitive sale will be held at the Bureau of Land Management, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico, at 10 a.m., m.s.t. on August 30, 2004.

Sealed Bids

Sealed bids must be received by BLM no later than 4:30 p.m., m.s.t. August 30, 2004. Sale Bid Forms with envelopes will be provided to all prospective bidders prior to the sale. The forms are available at the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, NM 88005 or by calling (505) 525–4300. All oral bidders are required to register. Registration will be held at the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico beginning at 8 a.m. m.s.t. on the day of the sale and will end at 10 a.m., m.s.t.

Other deadline dates for receipt of payments, are specified in the proposed terms and conditions of sale, as stated herein.

ADDRESSES: Bureau of Land Management, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

Comments regarding the proposed sale, as well as sealed bids should be submitted to the above address. The Sale Bid and Certification of Qualification forms will be available prior to the sale date at the Las Cruces Field Office or by calling (505) 525–4300. More detailed information regarding the proposed sale and the land involved may be reviewed during normal business hours (7:45 a.m., to 4:30 p.m.) at 1800 Marquess.

FOR FURTHER INFORMATION CONTACT: Angel Mayes, Realty Specialist at the address above; by calling (505) 525–4376; or by e-mail at *amayes@nm.blm.gov*.

SUPPLEMENTARY INFORMATION: The land has been authorized and designated for disposal in the Mimbres Resource Management Plan, dated December 1993, and the public interest will be served by offering this land for sale. The land is hereby classified for disposal in accordance with Executive Order No. 6910, and with Section 7 of the Taylor Grazing Act, 43 U.S.C. 315F. The proposed land will be put up for sale by competitive auction on August 30, 2004.

The auction will be held in accordance with the applicable provisions of Section 203 and 209 of FLPMA (43 U.S.C. 1713 and 1719), respectively, and its implementing regulations, 43 CFR Part 2710 and 2711, at not less than the appraised EMV for the parcel. The appraised EMV of the subject property is $850,000 (eight hundred and fifty thousand dollars and no cents).

The purpose of this sale is to dispose of a tract of land that will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land. The sale of this land outweighs other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership. The sale does not affect a grazing allotment. No significant resource values will be affected by this transfer.

The locatable, salable, and leasable mineral rights will be conveyed simultaneously with the surface estate. The disposal would not generate any adverse energy impacts or limit energy production and distribution (Executive Order 13212). It has been determined that the subject parcel contains no mineral value. Acceptance of a sale offer will constitute an application for conveyance of these mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the mineral interests when remitting final payment for the parcel.

On July 1, 2004, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws and leasing under the mineral leasing laws. Upon publication of this notice and until completion of the sale, the BLM will no longer accept land use applications affecting the parcel identified for sale. The segregative effect of this notice shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

Terms and Conditions of Sale

The terms and conditions applicable to this sale are as follows:

1. Federal law requires that all bidders must be a United States citizens, 18 years of age or older; or

(a) A corporation subject to the laws of any State or of the United States, or

(b) A State, State instrumentality, or political subdivision authorized to hold property; or

(c) An entity legally capable of conveying and holding lands or interests therein under the laws of the State of New Mexico.

Certification of qualifications, including citizenship, corporation or partnership, must accompany the bid deposit. Bids must be made by the principal or his duly qualified agent. Certifications of Qualifications Forms are available at the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, NM 88005 or by calling (505) 525–4300.

2. Sealed bids shall be considered only if received at the BLM Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico no later than 4:30 p.m., m.s.t. on August 30, 2004.

Each sealed bid shall be enclosed in a sealed envelope, and include a completed sealed bid form, accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior, Bureau of Land Management for not less than 10 percent or more than 30 percent of the bid amount. Sealed bids of less than the appraised FMV will be rejected. The highest qualified sealed bid received shall be publicly declared and will become the starting point for the oral auction. In the event that two or more sealed bids are received containing valid bids of the same amount, the determination of which is to be considered the highest designated bid will be by supplemental oral bidding. If no sealed bids are received, oral bidding will begin at the appraised EMV.

The highest qualifying bid for the parcel, whether sealed or oral, will be declared the high bid. The high bidder, if an oral bidder, must submit the full deposit amount (not less than 20 percent of the amount of the successful bid) by 4:30 p.m. m.s.t. on the day of the sale in the form of cash, personal check, bank draft, cashier's check, money order or any combination thereof, made payable to the Department of the Interior, Bureau of Land Management. Should the high bidder default, the next high bidder for the parcel will be declared the high bidder.

The successful bidder, whether sealed or oral, shall submit the remainder of the full bid price prior to the expiration of 180 days from the date of the sale in the form of cash, personal check, bank draft, cashier's check, money order or any combination thereof, made payable to the Department of the Interior, Bureau of Land Management. Failure to submit the full bid price prior to, but not including the 180th day following the day of the sale, shall result in cancellation of the sale and the deposit shall be forfeited.

3. The BLM may accept or reject any or all offers, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other

applicable laws. If not sold, the parcel may be identified for sale at a later date without further legal notice.

In order to establish the EMV of the subject public land through appraisal, certain assumptions have been made of the attitudes and limitations of the land and potential effects of local regulations and policies on potential future land uses.

Through publication of this notice, BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect the subject land, including any required dedication of lands for public uses.

No warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale. Furthermore, conveyance of the subject land will not be on a contingency basis. It is also the buyer's responsibility to be aware of existing or projected use of neighboring and nearby properties. When conveyed out of Federal ownership, the land will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer.

4. A right-of-way is reserved for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

5. The parcel is subject to valid existing rights-of-way and easements.

6. The parcel is subject to those rights for a 115Kv power transmission line granted to El Paso Electric company, 8.5 miles in length by 50 feet wide, by right-of-way grant NMNM–0554552 on December 4, 1964, pursuant to the Act of March 4, 1911 (43 U.S.C. 961), converted on October 2003 to the Act of October 21, 1976, (43 U.S.C. 1761) as to lot 3, sec. 3, T. 23 S., R. 2 E.

7. The parcel is subject to those rights for a road and utility rights-of-way granted to the City of Las Cruces by right-of-way grant NMNM–104094 on January 24, 2001, pursuant to the Act of October 21, 1976, (43 U.S.C. 1761), as to lot 3, Section 3, T. 23 S., R. 2 E.

8. Pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977 and Section 203 of FLPMA of 1976 (90 Stat. 2740; 43 U.S.C. 1713 and 1719), this patent is subject to a restriction which constitutes a covenant running with the land, whereby, that portion of the land located within the 100-year flood event, may not be used for buildings, dwellings or structures for human habitation, public service installations needing high protection; permanent memorial cemeteries; and similar type use and structures. Further, uses of this area will be limited to uses consistent with nature reserves, parks, and open space. Public access will be unrestricted on the Federal parcel which is subject to a 100-year flood event described as a 5.34 acre tract:

A tract of land situated northeast of the City of Las Cruces, Dona Ana County, New Mexico, located in Section 3, T. 23 S., R. 2 E., NMPM, of the U.S.G.L.O. Surveys, and being more particularly described as follows, to wit:

Beginning at the most Northeast corner of tract, from which quarter section corner of sections 3 and 34 bears North (N).0°47′ East (E)., 638.84 feet;

Thence, South (S) 0°47′00″ West (W), a distance of 367.80 feet to an angle point;

Thence, S.45°52′03″ W., a distance of 32.49 feet to an angle point;

Thence, S.32°09′48″ W., a distance of 162.74 feet to an angle point;

Thence, S.63°08′47″ W., a distance of 206.85 feet to an angle point;

Thence, S.44°54′24″ W., a distance of 77.06 feet to an angle point;

Thence, s.89°55′10″ W., a distance of 376.21 feet to an angle point;

Thence, N. 49°52′57″ E., a distance of 158.49 feet to an angle point;

Thence, N.20°26′35″ E., a distance of 226.35 feet to an angle point;

Thence, N.59°39′04″ E., a distance of 203.95 feet to an angle point;

Thence, N.53°17′18″ E., a distance of 432.89 feet to an angle point;

Thence, n.84°29′10″ E., a distance of 6.82 feet to the point of beginning, enclosing 5.34 acres more or less.

Subject to all easements and reservations of record. The description prepared by Scanlon White, Inc., License No. 9433.

Public Comments

Interested parties may submit written comments regarding the proposed sale to the Field Manager, BLM, Las Cruces Field Office, on or before August 16, 2004. Any adverse comments will be reviewed by the BLM New Mexico State Director, who may sustain, vacate, or modify this notice in whole or in part. In the absence of any adverse comments, this notice will become the final determination of the Department of the Interior. Any comments received during this process, as well as the commenter's name and address, will be available to the public in the administrative record or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name or address made available to the public. Any determination by the BLM to release or withhold the names or addresses of those who comment will be made on a case-by-case basis. A request from a commenter to have their name or address withheld from public release will be honored to the extent permissible by law. BLM will not accept anonymous comments.

Detailed information concerning the sale, including the restrictions, reservations, sale procedures and conditions and planning and environmental documents are available for review at the BLM, Las Cruces Field Office or by calling (505) 525–4300.

Dated: May 7, 2004.

Edwin L. Roberson,

Field Manager, Las Cruces.

[FR Doc. 04–14884 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–090–9922–EK]

Supplemental Rule Requiring Permits To Enter Bureau of Land Management (BLM) Lands in Potter County, TX

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of supplementary rule.

SUMMARY: The BLM's Amarillo Field Office is issuing a supplementary recreational permit rule. This rule is being issued to protect the unique natural resources present on BLM lands known as the Cross Bar from damage through over use by the public. On those public lands administered by the BLM in Potter County, Texas (Sections 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, and 48 in Block 5 of G.M. Survey; Sections 1, 3, and 4 in Block 4 of G.M. Survey; Sections 19, 21, 27, 29, and 35 in Block 21–W of G.C.&S.F.R.R. Survey), it is prohibited for members of the public to enter without permit authorization.

FOR FURTHER INFORMATION CONTACT: Paul Tanner, Natural Resource Specialist, BLM, Amarillo Field Office, 801 S. Fillmore Street, Suite 500, Amarillo, Texas 79101–3545, (806) 356–1008.

Discussion of the Supplementary Rule

This supplemental rule is to protect the unique natural resources present on the Cross Bar from damage through over use by the public. Cross Bar is approximately 12,000 acres of BLM lands acquired from Humble Oil and

Refining Company on March 6, 1931, under the Acts of February 15, 1928, and January 25, 1929, which gave the Department of the Interior approval to acquire helium land to produce and transport helium gas. Due to the elimination of the Bureau of Mines (BOM) in 1997, the Helium Operations was transferred to the BLM. Thus management of these acquired lands and minerals then came under the authority of the Federal Land Policy and Management Act. Totally surrounded by private lands the Cross Bar BLM lands overlie an active gas field and helium storage dome. The Cross Bar property was completely closed to all public use from its 1931 acquisition until 1997 when the U.S. BOM Office in Amarillo, Texas, became part of the BLM. In spite of there being no legal physical access to the property, approximately 10,000 visitor-days use occur there each year. The Cross Bar is the only BLM-managed land in the State of Texas. Amarillo and its metropolitan area has a population of over 200,000 individuals and is only a 20-minute drive from the property. Unlimited public access to the Cross Bar property could cause unacceptable impacts by the public in a short period of time. The Cross Bar is adjacent to a highly utilized off-highway vehicle (OHV) area on the Canadian River owned by the State of Texas. The public utilizing the Canadian Riverbed for OHV purposes frequently cuts fences and drives their OHV's onto the Cross Bar lands. Large numbers of people walk onto the property from the river during a variety of hunting seasons. In order to control numbers and prevent over use of this unique area, BLM proposes to allow public access only under a closely controlled and monitored permit system.

Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This supplementary rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This supplementary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This supplementary rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues. The supplementary rule simply requires the public to acquire a permit prior to recreating on the Cross Bar BLM lands to protect natural and cultural resources.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this supplementary rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rule clearly stated?
2. Does the supplementary rule contain technical language or jargon that interferes with their clarity?
3. Does the format of the supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?
4. Is the description of the supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rule? How could this description be more helpful in making the supplementary rule easier to understand?

Please send any comments you have on the clarity of the rule to the address specified in the **FOR FURTHER INFORMATION CONTACT** section.

National Environmental Policy Act

The environmental effects of the proposed rule have been analyzed separately by Environmental Assessment 090–2004–002 dated April 2004 that anticipates this supplementary rule. In this document, BLM found that the supplementary rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The Finding of No Significant Impact was signed April 12, 2004. A detailed statement under NEPA is not required. The BLM has placed the Environmental Assessment and the Finding of No Significant Impact on file in the BLM Administrative Record at the address specified in the **FOR FURTHER INFORMATION CONTACT** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This supplementary rule simply requires the public to obtain a permit prior to recreating on the Cross Bar BLM lands to protect natural and cultural resources, and does not affect commercial or business activities of any kind. Therefore, BLM has determined under the RFA that this supplementary rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This supplementary rule is not a "major rule" as defined at 5 U.S.C. 804(2). The supplementary rule requires the public to obtain a permit prior to recreating on the Cross Bar BLM lands to protect natural and cultural resources, and does not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

This supplementary rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor does it have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rule requires the public to obtain a permit prior to recreating on the Cross Bar BLM lands to protect natural and cultural resources, and does not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rule does not represent a Government action capable of interfering with Constitutionally-protected property rights. It requires the public to acquire a permit prior to recreating on the Cross Bar BLM lands to protect natural and cultural resources, and does not affect anyone's property rights. Therefore, the Department of the Interior has determined that this rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rule will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rule does not come into conflict with any state law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that the supplementary rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that the supplementary rule does not include policies that have tribal implications. None of the lands included in this rule affects Indian lands or Indian rights.

Paperwork Reduction Act

The supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collection requirements contained in this rule are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1). Federal criminal investigations or prosecutions may result from this rule and are exempt from the Paperwork Reduction Act.

Authors

The principal author of this supplementary rule is Paul W. Tanner, Natural Resource Specialist for the Bureau of Land Management.

Supplementary Rule

Under 43 CFR 8365.1–6, the BLM will enforce the following rule on public lands in Potter County, Texas:

1. On those public lands administered by the BLM in Potter County, Texas (Sections 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, and 48 in Block 5 of G. M. Survey; Sections 1, 3, and 4 in Block 4 of G.M. Survey; Sections 19, 21, 27, 29, and 35 in Block 21–W of G.C.& S.F.R.R. Survey), it is prohibited for members of the public to enter without permit authorization.

2. Permits will be available at the BLM, Amarillo Field Office, 801 S. Fillmore St., Suite 500, Amarillo, Texas, from Monday through Friday, 7:30 a.m. to 4:30 p.m. The permits will be for day use only, but use can be for any day of the week. Until such time as legal physical access is acquired to the Cross Bar BLM lands, the permits will only cover use by the recreating public willing to walk into the property from the Canadian River.

3. This special rule is in addition to existing rules and regulations previously established under title 43 CFR, as well as other Federal laws applicable to the use of public lands.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, if you violate this supplementary rule on public lands within the boundaries established in the rule, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: May 19, 2004.

Carsten F. Goff,

Acting State Director.

[FR Doc. 04–14881 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–364 (Second Review)]

Aspirin From Turkey

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on Aspirin from Turkey.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on aspirin from Turkey would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is August 20, 2004. Comments on the adequacy of responses may be filed with the Commission by September 14, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201. subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1987, the Department of Commerce issued an antidumping duty order on imports of aspirin from Turkey (52 FR 32030). Following five-year reviews by Commerce and the Commission, effective August 20, 1999, Commerce issued a continuation of the antidumping duty order on imports of aspirin from Turkey (64 FR 45508). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–093, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Turkey.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Like Product as bulk acetylsalicylic acid (aspirin).

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Industry as producers of bulk acetylsalicylic acid (aspirin).

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 2004. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 14, 2004. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise,

a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: June 23, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–14985 Filed 6–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–129 (Second Review)]

Polychloroprene Rubber From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the multidumping finding on polychloroprene.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–092, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments

Continued

consideration, the deadline for responses is August 20, 2004. Comments on the adequacy of responses may be filed with the Commission by September 14, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts, A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On December 6, 1973, the Department of the Treasury issued an antidumping finding on imports of polychloroprene rubber from Japan (30 FR 33593). Following five-year reviews by Commerce and the Commission, effective August 6, 1999, Commerce issued a continuation of the antidumping finding on imports of polychloroprene rubber from Japan (64 FR 47765, September 1, 1999). The Commission is now conducting a second review to determine whether revocation of the finding would be likely to lead continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will access the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination and its full five-year review determination, the Commission effectively defined the Domestic Like Product as all polychloroprene rubber.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and its full five-year review determination, the Commission defined the Domestic Industry as all producers of polychloroprene rubber.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commissioner employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorize applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the FR. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be determined to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 2004. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 14, 2004. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic

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regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by proving information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping finding on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firms's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plants(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of the competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product

and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 23, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–14986 Filed 6–30–04; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on June 17, 2004, a proposed consent decree in *United States* v. *Dart Container Corporation of Pennsylvania, et al.*, Civil Action No. 04–2208, was lodged with the United State District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, in connection with the Walsh Landfill (a/k/a the Welsh Road and Barkman Landfill) Superfund Site ("Site"), the Honey Brook Township, Chester and Lancaster Counties, Pennsylvania ("Site"). The proposed consent decree will resolve the United States' claims against Dart Container Corporation of Pennsylvania, Penguin Industries, Inc., and Reeves Brothers, Inc. ("Settling Defendants") in connection with the Walsh Landfill Superfund Site. Under the terms of the proposed consent decree, the Settling Defendants will pay $413,206.00 to the Hazardous Substance Superfund in reimbursement of response costs, to address their liability for the Site and will receive a covenant not to sue by the United States with regard to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Dart Container Corporation of Pennsylvania, et al.*, D.J. Ref. 90–11–2–612/4.

The proposed consent decree may be examined at the Clerk's Office, U.S. District Court, Eastern District of Pennsylvania, U.S. Courthouse, Room 2609, 601 Market Street, Philadelphia, PA 19106–1797, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdaoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–14887 Filed 6–30–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act, Oil Pollution Act and Mississippi Air and Water Pollution Control Law

Notice is hereby given that on June 24, 2004, a proposed Consent Decree ("Decree") in *United States and The Mississippi Commission on Environmental Quality* v. *Genesis Energy, Inc., Genesis Crude Oil, L.P., and Genesis Pipeline USA, L.P.* (S.D. Miss.), Civil Action No. 2:04cv217BN, was lodged with the United States District Court for the Southern District of Mississippi.

In this action, the United States and the State of Mississippi ("State") sought the assessment of penalties under the Clean Water Act and Mississippi Air and Water Pollution Control Law "MAWPCL"), and restoration and compensation for injuries and losses to natural resources under the Oil Pollution Act and MAWPCL, due to the discharge in 1999 of approximately 336,000 gallons of crude oil from a ruptured pipeline owned and operated by Defendants and located near Soso, Jones County, Mississippi. The Decree provides for Defendants to pay a $1 million civil penalty, of which $500,000 is to be paid to the United States and $500,000 is to be paid to the State, and for Defendants to perform a land acquisition and conservation supplemental environmental project at a cost of at least $2 million. In addition, the Decree provides for Defendants to conduct natural resource restoration projects, and to pay at least $110,137.57 to Federal and State natural resource trustees for costs of associated oversight, a wood duck nesting project, and past natural resource damages assessment costs.

The Department of Justice will receive for a period of fifteen (15) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and The Mississippi Commission on Environmental Quality* v. *Genesis Energy, Inc., Genesis Crude Oil, L.P., and Genesis Pipeline USA, L.P.* (S.D. Miss.), D.J. Ref. 90–5–1–1–07553.

The Decree may be examined at the Office of the United States Attorney, 188 E. Capitol St., Jackson, Mississippi 39201, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $39.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $10.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–14976 Filed 6–30–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 22, 2004, a proposed Consent Decree in *United States* v. *Holyoke Water Power Company, et al.*, Civil Action No. 04–30119–MAP, was lodged with the United States District Court for the District of Massachusetts.

The proposed Consent Decree will settle the United States' natural resource damage claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the National Oceanic and Atmospheric Administration ("NOAA") and the Department of the Interior ("DOI") ("Federal Trustees") against Holyoke Water Power Company ("Holyoke Water Power") and the City of Holyoke Gas & Electric Department ("HG&E") ("Settling Defendants") relating to the Holyoke Gas Tar Deposits and former Holyoke Gas Works (together, the "Site"), Massachusetts priority disposal sites, located in and around Holyoke, Massachusetts.

Pursuant to the Consent Decree, the Settling Defendants will pay $500,000 as natural resource damages to the Federal Trustees and to the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts (together, the "Trustees"). Of this amount, $155,000 will be utilized to reimburse, in part, the Trustees' assessment costs and $345,000 will be utilized to carry out restoration projects.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Holyoke Water Power Company, et al.*, Civil Action No. 04–30119–MAP, D.J. Ref. 90–11–3–1455.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Massachusetts, 1550 Main Street, U.S. Courthouse, Room 310, Springfield, MA 01103. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed Consent Decree, please so note and enclose a check in the amount of $8.50 (25 cent per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–14890 Filed 6–30–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Public Comment Period for Proposed Consent Decree Addenda Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that, for a period of 30 days, the United States will receive public comments on proposed Third Addenda to Consent Decrees in *United States, et al.* v. *Motiva Enterprises LLC, Equilon Enterprises LLC, and Deer Park Refining Limited Partnership*, Civil Action No. H–01–0978, which were lodged with the United States District Court for the Southern District of Texas on June 17, 2004.

The original settlement was for civil penalties and injunctive relief pursuant to section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) (1983), *amended by*, 42 U.S.C. 7413(b) (Supp. 1991), covering nine refineries, and was lodged with the Court on March 21, 2001 and entered on August 20, 2001, as part of EPA's Petroleum Refinery Initiative. The proposed Addenda reflect the May 1, 2004 sale of the Delaware City, Delaware, refinery to the Premcor Refining Group Inc ("Premcor"). The two Addenda provide for the transition of responsibility for implementation of the injunctive relief programs at Delaware City. The proposed Addenda modify two of the Consent Decrees in this action: the Motiva Enterprises Decree, which covers injunctive relief at four Motiva refineries, including Delaware City, and the so-called "Heater and Boiler" Decree executed by Motiva, Equilon, and Deer Park Refining Limited Partnership, covering all nine refineries and pertaining to emission reductions from heaters and boilers. The Heater and Boiler Decree also contains the general settlement provisions, such as stipulated penalties, which apply to all Defendants, and Premcor.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Third Addenda to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Motiva Enterprises LLC., D.J. Ref. 90–5–2–1–07209.*

The proposed Addenda may be examined at the Office of the United States Attorney, Southern District of Texas, U.S. Courthouse, 515 Rusk, Houston, Texas 77002, and at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. During the public comment period the Third Addenda to the Consent Decrees may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.htm.* A copy of the Addenda may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–14888 Filed 6–30–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on June 21, 2004, a proposed consent decree in *United States and State of Arizona* v. *Phelps Dodge Sierrita, Inc.*, Civil Action No. 04–312 TUC FRZ, was lodged with the United States District Court for the District of Arizona.

In this action, the United States sought injunctive relief and civil penalties under sections 110 and 111 of the Clean Air Act ("CAA") against Phelps Dodge Sierrita ("PDS") for violations of the federally enforceable Arizona State Implementation Plan and the New Source Performance Standards at PDS' mine and mineral processing facility in Green Valley, Arizona. The consent decree requires PDS to comply

with all applicable CAA requirements, and pay a civil penalty of $1.4 million, to be split between the United States and the State of Arizona.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Arizona* v. *Phelps Dodge Sierrita, Inc.*, D.J. Ref. 90–5–2–1–06548.

The consent decree may be examined at the Office of the United States Attorney, 405 West Congress Street, Suite 4800, Tucson, Arizona, and at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.75 (text only) or $40.50 (including appendices) (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–14889 Filed 6–30–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Modification Under the Clean Air Act

In accordance with United States Department of Justice policy, 28 CFR 50.7, notice is hereby given that on June 21, 2004, a proposed Consent Decree Modification ("Modification") in *United States* v. *Puerto Rico Electric Power Authority* (PREPA), Civil Action No. 93–2527, we lodged with the United States District Court for the District of Puerto Rico.

The Modification resolves two Clean Air Act disputes under an existing Consent Decree with PREPA, entered by Judge Carmen C. Cerezo in March, 1999. PREPA owns and operates four electric generating plants (South Coast, Aguirre, San Juan and Palo Seco). The first dispute involves PREPA contesting EPA's interpretation of an EPA technical method (Method 9) and EPA's resulting conclusions that PREPA is not correctly applying Method 9 to observe and record the opacity of the plumes emanating from its smoke stacks, and PREPA did not correctly establish the Optimal Operating Ranges for minimizing the opacity of the emissions discharging from those smoke stacks. The second dispute involves PREPA contesting EPA's determination that a number of opacity violations recorded by PREPA's in-stack opacity monitors constitute "recurring, egregious, or persistent violations" of the opacity standard, as those terms are used in the Consent Decree.

Among other provisions, the Modification provides that PREPA shall: adhere to and not contest EPA's interpretation of Method 9; switch to using a fuel oil with a lower sulfur content; implement NO_X reduction measures; use diesel fuel for cold start up of its boilers; pay a penalty of $300,000; and pay $200,000 to further fund Additional Environmental Projects identified in the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to United States v. Puerto Rico Electric Power Authority, D.J. Ref. 90–5–2–1–1750/2.

The Modification may be examined at the Office of the United States Attorney, Federico Degeteau Federal Building, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918; the Region II Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce de Leon Avenue, Suite 417, Santurce, Puerto Rico 00907 and at the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866. During the public comment period, the Modification may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Modification may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *tonia.fleetwood@usdoj.gov*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–14886 Filed 6–30–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,766]

American Suessen Corporation, Charlotte, NC; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of American Suessen Corporation* v. *U.S. Secretary of Labor*, Court No. 03–00803.

The Department's initial negative determination for the former workers of American Suessen Corporation, Charlotte, North Carolina, a subsidiary of Spindelfabrik Suessen, Suessen, Germany (hereafter "American Suessen") for Trade Adjustment Assistance ("TAA") was issued on September 25, 2003. The Notice of determination was published in the **Federal Register** on November 6, 2003 (68 FR 62832). The determination was based on the findings that workers only serviced textile machinery parts and did not produce an article within the meaning of section 222(c)(3) of the Trade Act of 1974.

In a letter dated November 9, 2003, the Petitioner requested reconsideration of the Department's denial of certification. The Petitioner alleged that American Suessen produced modernization products through 2001 when the company returned to a component parts business. The Department denied the Petitioner's request for reconsideration on December 2, 2003 stating that the Department was unable to consider production that occurred in 2001 because it was outside the relevant one-year time period, August 28, 2002 to August 28, 2003. The Department also informed the Petitioner that reworking component parts of customer equipment did not qualify as production of an article under the Trade Act.

On December 18, 2003, the Department issued a Dismissal of Application for Reconsideration that was published in the **Federal Register** on December 29, 2003 (68 FR 74972).

The Petitioner appealed the Department's denial of his request for reconsideration to the USCIT on November 4, 2003 asserting that "[a]lthough [American Suessen] was originally established as a sales and service subsidiary of [its] parent company, [American Suessen] did engage in the production of products to more cost effectively serve a declining textile industry * * *." The Department filed a motion requesting that the Court remand the case for further investigation, and the Court granted the motion.

On remand, the Department conducted an investigation to determine whether the subject worker group is eligible for certification for worker adjustment assistance benefits. The remand investigation consisted of requesting additional information from the company regarding the functions of the subject worker group, contacting members of the subject worker group, and surveying the customers that the Petitioner alleged had increased their imports of re-tooled machines and parts.

To better understand the nature of American Suessen's activities, the Department requested information from American Suessen in a letter dated February 4, 2004. From American Suessen's response to this letter and through discussions with company officials, the Department discovered that American Suessen distributes machinery and parts designed and manufactured by its parent corporation, Spindelfabrik Suessen, in Germany. American Suessen operates as a showroom/retail store for machinery and parts and as a service shop. When repairing machines, American Suessen workers disassemble, reassemble, and test machinery parts to determine the cause/scope of the machine malfunction or to ascertain if the part has been repaired successfully.

Because the Petitioner specifically mentioned GVA machines in a submission, the Department sought clarification from the subject company on that matter. In response to the Department's inquiry, a company official informed the Department that the GVA machines were manufactured in Germany and put into operation by American Suessen. The official also wrote that during the 1980s and 1990s, the company modified parts on the GVA machines. This was done as needed. However, the official also stated that no production had occurred at American Suessen's Charlotte, North Carolina Facility since 1998 and that refurbishing operations had ceased in 2001.

The Department also requested information from the former workers of American Suessen. Two workers sent a letter stating that American Suessen had the capability to produce products and machine components between August 2002 and August 2003. These two workers also wrote that American Suessen "re-work[ed]/refurbish[ed]/modif[ied] rotor spinning parts and component parts." In a telephone call, one of these former workers explained this process. Customers sent broken textile machine parts to American Suessen, and then the workers cleaned, repaired, and returned the part to the customer. The former worker also explained that the customer was charged for labor and replacement parts but was not buying a new product; that no production took place on the premises; and that the subject facility was a parts warehouse, showroom, sales, and repair shop. Finally, the former worker stated that because customers wanted newer machines and did not want to repair the older machines, the repair work disappeared, thereby causing the workers to lose their jobs.

Another former worker stated that the workers "remanufacture" machinery and parts and that the "re-manufactured" items constitute an article. This former worker also communicated that customers sent malfunctioning machines and broken parts to the subject facility for repair. The machines were fixed, the broken parts were replaced, and then the parts were returned to the customer. According to this worker, the repaired machines were not resold, and the facility operated primarily as a repair service shop.

Finally, the Department contacted several customers identified by the Petitioner. The customers stated that they viewed the machines at American Suessen's showroom and placed purchase orders for machinery and parts with American Suessen. The purchase order included shipping the machines and parts from Germany, assembly of the machinery at the customer's facility, and installation of the machines per customer's instructions.

The customers also had service contracts with the subject company. If a customer's machine needed to be repaired or a part needed to be replaced, an employee from American Suessen would work on-site to satisfy the terms of the service contract. At times, workers disassembled part of the machinery and take the problem part(s) back to American Suessen for extensive repair work. The repair work could include replacing a broken component with a new one, per the terms of the service agreement. The fixed part would then be returned and installed into the customer's machinery by the American Suessen worker.

The TAA program helps primarily trade-affected workers who have lost their jobs as a result of increased imports or shifts in production abroad to specific countries. Workers employed by a company that is a supplier or downstream producer to a trade-affected company may also qualify for TAA assistance as secondarily trade-affected workers. The former workers of American Suessen do not quality for TAA assistance as primarily or secondarily trade-affected workers.

First, the subject facility did not produce an article within the relevant time period, August 28, 2002 to August 28, 2003. No production has occurred at the company since 2001.

Second, although the former workers assert that American Suessen re-works, refurbishes, and modifies component parts, these processes, as described by the former workers, company officials, and customers, do not qualify as production under the Trade Act because they do not result in a new article. The workers are simply repairing an old article that is used for the same purpose before and after the repair process. Accordingly, these activities fall into the category of service rather than production. The Department has consistently considered repair work as service and not production because the nature and purpose of the serviced goods are the same at the end of the repair process as at the beginning of the repair process.

Finally, the former workers of American Suessen do not qualify as secondarily trade-affected workers. To be certified as a secondarily trade-affected worker, per the Trade Act, a worker must be employed by a company that produces or supplies "component parts for articles that were the basis for a certification of eligibility" of a group of primarily trade-affected workers. 19 U.S.C. § 2272(c)(4). American Suessen's customers produce textiles. Because American Suessen supplies its customers with machinery and parts, which are not components of textiles, the former workers of America Suessen do not qualify as secondarily trade-affected workers.

For the reasons stated above, as well as the intent and historical application of the TAA program, the Department has determined that the subject worker group is not engaged in activity

primarily or secondarily related to the production of an article within the meaning of section 222 of the Trade Act of 1974.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for TAA for workers and former workers of American Suessen Corporation, Charlotte, North Carolina.

Signed at Washington, DC this 10th day of June 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–14919 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,766]

American Suessen Corp., Charlotte, NC; Dismissal of Application for Reconsideration; Correction

This notice corrects the notice of dismissal of application for reconsideration applicable to TA–W–52,766 which was published in the **Federal Register** on December 29, 2003 (68 FR 74972) in FR Document 03–31859.

This revises the dismissal letter (date) on the last line in the first column on page 74972. On the last line, in the first column, the dismissal letter (date) should read December 2, 2003.

Signed at Washington, DC, this 25th day of June, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–14926 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,484]

Cady Industries, Inc., Pearson, GA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Cady Industries, Inc., Pearson, Georgia. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,484; Cady Industries, Inc., Pearson, Georgia (June 24, 2004)

Signed at Washington, DC, this 25th day of June, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–14923 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 12, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 12, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 25th day of June 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 06/14/2004 and 06/18/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,070	Franklin Templeton Instruments (NPS)	Ft. Lauderdale, FL	06/14/2004	06/14/2004
55,071	Wellington Point, LLC (Comp)	Salt Lake City, UT	06/14/2004	06/11/2004
55,072	Jaymar-Rudy, Inc. d/b/a Trans-Apparel (Wkrs)	Michigan City, IN	06/14/2004	06/10/2004
55,073	R/D Tech (Comp)	Madison, PA	06/14/2004	06/02/2004
55,074	Dana Corporation (Wkrs)	El Paso, TX	06/15/2004	05/25/2004
55,075	Quitman Manufacturing Co. (Comp)	New York City, NY	06/15/2004	06/06/2004
55,076	Inflation Systems, Inc. (Comp)	LaGrange, GA	06/15/2004	06/14/2004
55,077	SMS Demag/PRO–ECO Ltd. (Wkrs)	Mentor, OH	06/15/2004	06/14/2004
55,078	N.E.W. Plastics Corp. (Comp)	Coleman, WI	06/15/2004	06/14/2004
55,079	OSRAM Sylvania (Wkrs)	Wincheser, KY	06/15/2004	06/14/2004
55,080	Vesuvius McDanel (Wkrs)	Beaver Falls, PA	06/15/2004	06/14/2004
55,081	National Distribution Center (Comp)	Lexington, KY	06/15/2004	05/18/2004
55,082	Chieftain Products Plant II (Wkrs)	Owosso, MI	06/15/2004	06/14/2004

APPENDIX—Continued

[Petitions Instituted Between 06/14/2004 and 06/18/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,083	Hawk Motors (Comp)	Alton, IL	06/16/2004	06/04/2004
55,084	Eastman Chemical Co. (Comp)	W. Elizabeth, PA	06/16/2004	05/24/2004
55,085	Jomed (CA)	San Diego, CA	06/16/2004	06/15/2004
55,086	Mayfield Cap Co. (Wkrs)	Mayfield, KY	06/16/2004	06/09/2004
55,087	Pasquier Panel Products (LSW)	Summer, WA	06/16/2004	06/14/2004
55,088	United Steel Enterprises, Inc. (Comp)	E. Stroudsburg, PA	06/16/2004	06/15/2004
55,089	Software House/Tyco International (Wkrs)	Lexington, MA	06/16/2004	06/08/2004
55,090	Vishay Dale Electronics (NE)	Norfolk, NE	06/16/2004	06/15/2004
55,091	Honeywell (Comp)	Rocky Mt., NC	06/16/2004	06/14/2004
55,092	Computer Sciences Corp. (NPW)	Somerset, NJ	06/16/2004	06/10/2004
55,093	Galey and Lord Industries, Inc. (Comp)	Shannon, GA	06/16/2004	06/15/2004
55,094	Executive Greetings, Inc., (CT)	New Hartford, CT	06/16/2004	05/18/2004
55,095	Gateway Country Store (NPW)	Davenport, IA	06/16/2004	06/16/2004
55,096	Elizabeth City Cotton Mills (Comp)	Elizabeth City, NC	06/17/2004	06/14/2004
55,097	Johnson Controls (MI)	Holland, MI	06/17/2004	06/15/2004
55,098	Pacific Crest Technology (NPS)	Tualatin, OR	06/17/2004	06/16/2004
55,099	J.P. Morgan Chase Bank (NPW)	Hicksville, NY	06/17/2004	06/08/2004
55,100	Stratus, Inc. (Comp)	Chattanooga, TN	06/18/2004	06/10/2004
55,101	Ideal Frame Co., Inc. (Comp)	Taylorsville, NC	06/18/2004	06/15/2004
55,102	ACS, Inc. (OR)	Portland, OR	06/18/2004	06/17/2004
55,103	C and S Sewing, Inc. (Wkrs)	San Francisco, CA	06/18/2004	06/10/2004
55,104	Albany International/Gesch May Corp. (Comp)	Greenville, SC	06/18/2004	06/08/2004
55,105	PowderJect (Wkrs)	Middleton, WI	06/18/2004	06/09/2004
55,106	Truth Hardware (Comp)	Pacoima, CA	06/18/2004	06/17/2004
55,107	Magnecomp Corp. (Comp)	Temecula, CA	06/18/2004	06/09/2004

[FR Doc. 04–14910 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,942]

Hawk Motors; A Division of the Hawk Corporation, Alton, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 20, 2004 in response to a petition filed by a company official on behalf of workers at Hawk Motors, a division of the Hawk Corporation, Alton, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 9th day of June, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–14914 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,170]

Hunter Corporation, Portage, IN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(c) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Hunter Corporation, Portage, Indiana. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,170; Hunter Corporation, Portage, Indiana (June 24, 2004)

Signed at Washington, DC, this 25th day of June, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–14925 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 12, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 12, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 21st day of June 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 06/01/2004 and 06/10/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,000	Jacquart Fabric Products (Comp)	Ironwood, MI	06/01/2004	05/24/2004
55,001	Netwech PA (Comp)	Northampton, PA	06/01/2004	05/19/2004
55,002	Parallax Power Components (Comp)	Goodland, IN	06/01/2004	05/20/2004
55,003	Pomona Textile Co. (Comp)	Los Angeles, CA	06/01/2004	05/28/2004
55,004	Solutia, Inc. (Comp)	Anniston, AL	06/01/2004	05/28/2004
55,005	Sara Lee Hosiery (Comp)	Marion, SC	06/01/2004	05/20/2004
55,006	WestPoint Stevens (Comp)	Hickory, NC	06/02/2004	06/01/2004
55,007	Berwick Offray, LLC (Wkrs)	Berwick, PA	06/02/2004	06/01/2004
55,008	National Textiles (Comp)	Hodges, SC	06/02/2004	06/01/2004
55,009	Oregon Panel Products (OR)	Lebanon, OR	06/02/2004	06/01/2004
55,010	Rochelle Furniture (Comp)	Montgomery, PA	06/02/2004	06/01/2004
55,011	Caspain International Group (Wrks)	New York, NY	06/02/2004	06/02/2004
55,012	Lavallee and Ide, Inc. (Comp)	Winooski, VT	06/02/2004	06/01/2004
55,013	Molex, Inc. (NPC)	Rio Rico, AZ	06/02/2004	05/25/2004
55,014	Venture Industries (Wkrs)	Grand Rapids, MI	06/03/2004	05/24/2004
55,015	Allen Systems Group (NPS)	Naples, FL	06/03/2004	06/02/2004
55,016	BC Technologies, Inc. (GA)	Stockbridge, GA	06/03/2004	06/02/2004
55,017	Glatfelter (Comp)	Spring Grove, PA	06/03/2004	06/02/2004
55,018	Hewitt Associates, LLC (NPW)	Lincolnshire, IL	06/03/2004	05/21/2004
55,019	Timken Company (Comp)	Canton, OH	06/03/2004	06/02/2004
55,020	Bombardier learjet (NPC)	Indianapolis, IN	06/03/2004	05/26/2004
55,021	Parametric Technology Corp. (NPW)	Needham, MA	06/03/2004	05/27/2004
55,022	Jantzen, Inc. (NPW)	Portland, OR	06/03/2004	05/27/2004
55,023	X–L Grinding and Tool (Comp)	Alpena, MI	06/03/2004	06/02/2004
55,024	Springfield Plastics, Inc. (Comp)	E. Springfield, PA	06/24/2004	05/27/2004
55,025	Medex, Inc. (Comp)	Chicago, IL	06/04/2004	06/02/2004
55,026	Snow River (Comp)	Crandon, WI	06/04/2004	06/02/2004
55,027	Tyco Fire and Security (Comp)	Marinette, WI	06/04/2004	06/02/2004
55,028	Goodrich (Comp)	Aurora, OH	06/04/2004	06/04/2004
55,029	Leeda Sewing Mfg. (Wkrs)	San Francisco, CA	06/04/2004	06/03/2004
55,030	New Era Cap (Wkrs)	Buffalo, NY	06/04/2004	05/25/2004
55,031	Sherwood Home Furnishings (Wkrs)	Spring City, TN	06/04/2004	05/26/2004
55,032	Henagar Hosiery (Comp)	Henagar, AL	06/07/2004	05/21/2004
55,033	Tac Americas (Wkrs)	Carrollton, TX	06/07/2004	06.03/2004
55,034	Android Industries (Comp)	Vienna, OH	06/07/2004	06/07/2004
55,035	REMEC (Wkrs)	Irvine, CA	06/07/2004	06/02/2004
55,036	Spartech Vy-Cal (USWA)	Conshohocken, PA	06/07/2004	06/02/2004
55,037	Symbol Technologies (NPC)	Lake Forest, CA	06/07/2004	06/03/2004
55,038	Duracell GBMG (Comp)	Lexington, NC	06/07/2004	06/04/2004
55,039	APAC Customer Services (NPW)	Deerfield, IL	06/07/2004	06/05/2004
55,040	Corning Asahi Video (Comp)	State College, PA	06/07/2004	06/04/2004
55,041	Dielectric Communications (ME)	Raymond, ME	06/07/2004	06/01/2004
55,042	NCR Corporation (NPW)	Dayton, OH	06/07/2004	05/27/2004
55,043	Dorr-Oliver Eimco (Comp)	Milford, CT	06/08/2004	06/02/2003
55,044	Russell's Woodcarving (Comp)	Hickory, NC	06/08/2004	06/07/2004
55,045	Merrow Machine (CT)	Newington, CT	06/08/2004	06/08/2004
55,046	Schweitzer-Mauduit International (Comp)	Spotswood, NJ	06/08/2004	06/08/2004
55,047	Imperial Electric Co. (IBEW)	Middleport, OH	06/08/2004	06/08/2004
55,048	Effort Foundry (Comp)	Bath, PA	06/08/2004	06/06/2004
55,049	Bowe, Bell and Howell (Wkrs)	Allentwon, PA	06/08/2004	06/08/2004
55,050A	TI Group Automotive System, LLC (Comp)	Sabina, OH	06/09/2004	05/20/2004
55,050	TI Group Automotive System, LLC (Comp)	Washington, Ct., OH	06/09/2004	05/20/2004
55,051	Sun Air Conditioning (GA)	Vienna, GA	06/09/2004	06/03/2004
55,052	Thermotech Company (Wkrs)	El Paso, TX	06/09/2004	06/08/2004
55,053	Solon Manufacturing Co. (ME)	Skowhegan, ME	06/09/2004	06/01/2004
55,054	Varco International (CA)	Orange, CA	06/09/2004	06/03/2004
55,055	Invista (Comp)	Chattanooga, TN	06/09/2004	06/07/2004
55,056	Knight Apparel Corp. (Wkrs)	New York, NY	06/10/2004	06/01/2004
55,057	Robert Bosch Tool Corp. (Comp)	Leitchfield, KY	06/10/2004	06/07/2004
55,058	Hewlett Packard (Comp)	Omaha, NE	06/10/2004	06/02/2004
55,059	Technical Machining Services Corp. (AR)	Rogers, AR	06/10/2004	06/09/2004

APPENDIX—Continued

[Petitions instituted between 06/01/2004 and 06/10/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,060	Nemanco, Inc. (Comp)	Philadelphia, MS	06/10/2004	06/02/2004
55,061	Prestolite Wire Corp. (Wkrs)	Tifton, GA	06/10/2004	06/01/2004
55,062	Lakeland Industries (Wkrs)	St. Joseph, MO	06/10/2004	06/09/2004
55,063	Milliken (Wkrs)	Union, SC	06/10/2004	06/01/2004
55,064	Annin and Co. (Wkrs)	Roseland, NJ	06/10/2004	06/03/2004
55,065	Franklin International (UIW)	Columbus, OH	06/10/2004	05/18/2004
55,066	Salton, Inc. (Comp)	Columbia, MO	06/10/2004	06/09/2004
55,067	Intier Automotive (Comp)	Aubum Hills, MI	06/10/2004	06/01/2004
55,068	TB Wood's Inc. (Comp)	Trenton, NJ	06/10/2004	06/08/2004
55,069	Eaton Aeroquip, Inc. (IAM)	Hohenwald, TN	06/10/2004	06/09/2004

[FR Doc. 04–14911 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,773]

Lebanite Corp., Hardboard Division, Now Known as Oregon Panel Products, LLC, Lebanon, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 29, 2003, applicable to workers of Lebanite Corporation, Hardboard Division, Lebanon, Oregon. The notice was published in the **Federal Register** on November 28, 2003 (68 FR 66879).

At the request of the petitioners, the Department reviewed the certification for workers of the subject facility. The workers are engaged in the production of high density hardboard.

New information shows that operations at the subject facility have been undertaken by a successor company known as Oregon Panel Products, LLC. Workers separated from employment at the subject facility had their wages reported under a separate unemployment insurance (UI) tax account for Oregon Panel Products, LLC.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–52,773 is hereby issued as follows:

All workers of Lebanite Corporation, Hardboard Division, now known as Oregon Panel Products, LLC, Lebanon, Oregon, who became totally or partially separated from employment on or after November 1, 2002, through October 29, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of June 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–14918 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,533]

Mastercraft Fabrics LLC, Joan Fabrics Corporation, Andrew Major Plant, Including Temporary Workers of Manpower, Personnel Services, Unlimited and Coxe Personnel, Spindale, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 14, 2003, applicable to workers of Mastercraft Fabrics LLC, Andrew Major Plant, including temporary workers of Manpower, Personnel Services Unlimited and Coxe Personnel, Spindale, North Carolina. The notice was published in the **Federal Register** on March 10, 2003 (68 FR 11409).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of jacquard furniture fabric.

New information shows that Joan Fabrics Corporation is the parent firm of Mastercraft Fabrics LLC, Andrew Major Plant. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax accounts for Joan Fabrics Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Mastercraft Fabrics LLC, Andrew Major Plant, including temporary workers of Manpower, Personnel Services Unlimited and Coxe Personnel, Spindale, North Carolina who were adversely affected by increased imports of jacquard furniture fabrics.

The amended notice applicable to TA–W–50,533 is hereby issued as follows:

All workers of Mastercraft Fabrics LLC, Joan Fabrics Corporation, Andrew Major Plant, including temporary workers of Manpower, Personnel Services Unlimited and Coxe Personnel, Spindale, North Carolina, who became totally or partially separated from employment on or after January 2, 2002, through February 14, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of June, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–14920 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,013]

Molex Inc, Rio Rico Warehouse, Rio Rico, AZ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 2, 2004, in response to a petition filed by a company official on behalf of workers

at Molex Inc, Rio Rico Warehouse, Rio Rico, Arizona.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 9th day of June, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–14912 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,725]

Pristech Products, Inc., Formerly Prism Enterprises Services, Including Leased Workers of Link Staffing Services, San Antonio, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(c) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Pristech Products, Inc., formerly Prism Enterprises Services, including leased workers of Link Staffing Services, San Antonio, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,725; Pristech Products, Inc., formerly Prism Enterprises Services, including leased workers of Link Staffing Services (June 24, 2004)

Signed at Washington, DC, this 25th day of June, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–14922 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,222]

Rohm & Hass Company, Elma, WA; Notice of Revised Determination on Reconsideration

On May 25, 2004, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice will soon be published in the **Federal Register**.

On March 16, 2004 the Department initially denied TAA to workers of Rohm & Haas Company, Elma, Washington producing borohydride because the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974 was not met.

In the request for reconsideration, the petitioner indicated that while requesting a consideration on the basis of a secondary upstream supplier impact during the initial petition, the petitioner did not provide domestic primary import impacted customers. Upon further review, it was revealed that the Department did not request a list of declining domestic customers during the initial investigation and thus did not investigate a secondary impact.

Having conducted an investigation of subject firm workers on the basis of secondary impact, it was revealed that Rohm & Haas Company, Elma, Washington supplied chemicals that were used in the production of pulp paper, and a loss of business with domestic manufacturers (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Rohm & Haas Company, Elma, Washington qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Rohm & Haas Company, Elma, Washington who became totally or partially separated from employment on or after February 3, 2003 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of June 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–14917 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,479]

SCA Packaging, Formerly Tuscarora, Inc., Streator, IL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at SCA Packaging, formerly Tuscarora, Inc., Streator, Illinois. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,479; SCA Packaging Formerly Tuscarora, Inc., Streator, Illinois (June 25, 2004)

Signed at Washington, DC, this 25th day of June, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–14924 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,396 and TA–W–50,396A]

Sherwood Tool, a Division of Sweetheart Cup Company, Inc., Currently Known as Sweetheart Cup Company, Inc.; Sherwood Tool Facility Commercial Manufactured Parts Department, Kensington, CT; Sherwood Tool, a Division of Sweetheart Cup Company, Inc., Currently Known as Sweetheart Cup Company, Inc., Sherwood Tool Facility, Assembled Equipment Department, Kensington, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 14, 2003, applicable to workers of Sherwood Tool, a Division of Sweetheart Cup Company, Inc., Commercial Manufactured Parts Division and Assembled Equipment Division, Kensington, Connecticut. The notice was published in the **Federal Register** on April 2, 2003 (68 FR 16094).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Workers at the Commercial Manufactured Parts Department are engaged in the production of spare parts for paper converting equipment. Workers at the Assembled Equipment Department are engaged in the production of paper converting equipment. Workers are separately identifiable by their Departments.

New information shows that as the result of a change in ownership, some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Sweetheart Cup Company, Inc., Sherwood Tool Facility.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Sherwood Tool, a Division of Sweetheart Cup Company, Inc., currently known as Sweetheart Cup Company, Inc., Sherwood Tool Facility, Commercial Manufactured Parts Department and Assembled Equipment Department, Kensington, Connecticut, who were adversely affected by a shift in production to Mexico and Canada.

The amended notice applicable to TA–W–50,396 and TA–W–50,396A are hereby issued as follows:

All workers of Sherwood Tool, a Division of Sweetheart Cup Company, Inc., currently known as Sweetheart Cup Company, Inc., Sherwood Tool Facility, Commercial Manufactured Parts Department, Kensington, Connecticut, engaged in employment related to the production of spare parts for paper converting equipment (TA–W–50,396), and workers of Sherwood Tool, a Division of Sweetheart Cup Company, Inc., currently known as Sweetheart Cup Company, Inc., Sherwood Tool Facility, Assembled Equipment Department, Kensington, Connecticut, engaged in employment related to the production of paper converting equipment (TA–W–50,396A), who became totally or partially separated from employment on or after December 11, 2001, through March 14, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of June, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–14921 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,667]

Terra Nitrogen Corporation, a Subsidiary of Terra Industries, Inc., Blytheville, AK; Notice of Revised Determination on Reconsideration Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

By letter dated April 29, 2004, a company official requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification of Trade Adjustment Assistance eligibility was signed on April 15, 2004. The Department's notice was published in the **Federal Register** on May 24, 2004 (69 FR 29578).

The initial investigation determined that the workers possessed skills that are easily transferable.

New information provided by the company official revealed that the workers possess skills that are not easily transferable. A significant number of workers in the subject company are age fifty or older and competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Terra Nitrogen Corporation, a Subsidiary of Terra Industries, Inc., Blytheville, Arkansas, who became totally or partially separated from employment on or after April 2, 2003, through April 15, 2006, are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 7th day of June 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–14915 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,962]

Trilux Technologies, Inc., Winston-Salem, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 24, 2004, in response to a petition filed by a company official on behalf of workers at Trilux Technologies, Inc., Winston-Salem, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 8th day of June, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–14913 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,658]

Whiting Manufacturing Company, Inc., Hazel Green, KY; Notice of Revised Determination on Reconsideration Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

By letter dated May 17, 2004, a company official requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification of Trade Adjustment Assistance eligibility was signed on April 23, 2004. The Department's notice was published in the **Federal Register** on June 2, 2004 (69 FR 31137).

The initial investigation determined that the workers possessed skills that are easily transferable.

A careful review of new and existing information revealed that a significant number of workers in the subject company are age fifty or older and that the workers possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Whiting Manufacturing Company, Inc., Hazel Green, Kentucky, who became totally or partially separated from employment on or after April 1, 2003, through April 23, 2006, are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 7th day of June 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–14916 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Application for Alien Employment Certification

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension to the collection of information on the Application for Alien Employment Certification. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Submit comments on or before August 30, 2004.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 750, Parts A and B, Application for Alien Employment Certification, should be directed to William L. Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210. Mr. Carlson may be reached at (202) 693–3010; this is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Melanie Shay, Team Leader, Permanent Labor Certification Program, Division of Foreign Labor Certification, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210. Ms. Shay may also be reached at (202) 693–3010.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 212(a)(5)(A) of the Immigration and Nationality Act (INA)(8 U.S.C. 1182(a)(5)(A)), certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that: (1) There are not sufficient U.S. workers who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work; and (2) The employment of the alien will not adversely affect the wages and working conditions of U.S. workers similarly employed. Form ETA 750, Parts A and B, is the application form submitted by employers that forms the basis for a determination as to whether the Secretary shall provide such a certification. Form ETA 750, Part A, is also utilized to collect information that permits the Department to meet Federal responsibilities for administering two nonimmigrant programs: the H–2A and H–2B temporary labor certification programs. The H–2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant aliens to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. The H–2B program establishes a means for employers to bring nonimmigrant aliens to the U.S. to perform nonagricultural work of a temporary or seasonal nature.

II. Desired Focus of Comments

Currently, the Department is soliciting comments concerning the proposed extension to the collection of information on the Application for Alien Employment Certification.

The Department is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed ICR can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

In order for the Department to meet its statutory responsibilities under the INA, there is a need for an extension of an existing collection of information pertaining to employers seeking to hire foreign workers for permanent or temporary employment in the U.S. by filing an Application for Alien Employment Certification on their behalf. There is an increase in burden due to a significant and sustained increase in the number of applications filed by employers each year.

Type of Review: Extension.

Agency: Employment and Training Administration, Labor.

Title: Application for Alien Employment Certification.

OMB Number: 1205–0015.

Affected Public: Individuals or households; Businesses or other for-profit or not-for-profit institutions; Federal, State, Local, or Tribal governments; Farms.

Form: ETA 750, Parts A and B.

Total Respondents:

Permanent Program: 100,000.

H–2A Program: 4,000.

H–2B Program: 8,000.

Frequency of Response: On occasion.

Total Responses: 112,000.

Average Burden Hours Per Response: Permanent Program: 2.8.

H–2A Program: 1.

H–2B Program: 1.4.

Estimate Total Annual Burden Hours: 295,200.

Comments submitted in response to this Notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they will also become a matter of public record.

Signed at Washington, DC, this 21st day of June, 2004.

John R. Beverly, III,

Administrator, Office of National Programs.

[FR Doc. 04–14781 Filed 6–30–04; 8:45 am]

BILLING CODE 4510–30–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

June 23, 2004.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 69, No. 116, at 33,945, June 17, 2004.

TIME AND DATE: 1:30 p.m., Tuesday, June 29, 2004.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on an appeal of Twentymile Coal Company from the decision of an administrative law judge in *Secretary of Labor* v. *Twentymile Coal Company,* Docket No. WEST 2002–194. (Issues include whether the judge correctly determined that the Secretary of Labor properly cited Twentymile Coal Company for violations of mandatory safety standards committed by its independent contractor.)

The time and location for this oral argument have been changed. It was previously scheduled for 1 p.m. on June 29, 2004 at the U.S. Department of Labor Auditorium, 200 Constitution Avenue, NW., Washington, DC. No earlier announcement of the change in time and location was possible.

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 04–15091 Filed 6–29–04; 12:28 pm]

BILLING CODE 6735–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management Renewals

The NSF management officials having responsibility for the advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director. National Science Foundation (NSF), by 42 USC 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

1115 Advisory Committee for Computer and Information Science and Engineering
13853 Advisory Committee for GPRA Performance Assessment
66 Advisory Committee for Mathematical and Physical Sciences
1171 Advisory Committee for Social Behavioral and Economic Sciences
1173 Committee on Equal Opportunities in Science and Engineering
1186 Proposal Review Panel for Astronomical Sciences
1189 Proposal Review Panel for Bioengineering and Environmental Systems
1190 Proposal Review Panel for Chemical and Transport Systems
1191 Proposal Review Panel for Chemistry
1205 Proposal Review Panel for Civil and Mechanical Systems
1207 Proposal Review Panel for Computer and Network Systems
1192 Proposal Review Panel for Computing & Communication Foundations
1194 Proposal Review Panel for Design Manufacture and Industrial Innovation
1196 Proposal Review Panel for Electrical and Communications Systems
59 Proposal Review Panel for Elementary Secondary & Informal Education
173 Proposal Review Panel for Engineering Education and Centers
1198 Proposal Review Panel for Experimental Programs to Stimulate Competitive Research
57 Proposal Review Panel for Graduate Education
1199 Proposal Review Panel for Human Resource Development
1200 Proposal Review Panel for Information and Intelligent Systems
1203 Proposal Review Panel for Materials Research
1204 Proposal Review Panel for Mathematical Sciences
1208 Proposal Review Panel for Physics
1209 Proposal Review Panel for Polar Programs
1210 Proposal Review Panel for Research Evaluation and Communication
1185 Proposal Review Panel for Shared Cyberinfrastructure
1214 Proposal Review Panel for Undergraduate Education

Effective date for renewal is July 1, 2004. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: June 28, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–14960 Filed 6–30–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science

Board, *Ad hoc* Committee on NSB Nominees Class of 2006–2012.

DATE AND TIME: July 15, 2004, 2:30–4 p.m.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Nominees for appointments as NSB members.

FOR INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Officer and NSB Office Director, (703) 292–7000, *www.nsf.gov/nsb.*

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 04–15109 Filed 6–29–04; 1:50 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–28, issued to Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (the licensees), for operation of the Vermont Yankee Nuclear Power Station (VYNPS) located in Windham County, Vermont.

The proposed amendment would change the VYNPS operating license to increase the maximum authorized power level from 1593 megawatts thermal (MWt) to 1912 MWt. This change represents an increase of approximately 20 percent above the current maximum authorized power level. The proposed amendment would also change the VYNPS technical specifications to provide for implementing uprated power operation.

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.

Within 60 days after the date of publication of this notice, 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 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21,11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor 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 general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for 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. The petition must include 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/requestor to relief. A petitioner/requestor who fails to satisfy 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.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by email to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to John M. Fulton, Assistant

General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated September 10, 2003, as supplemented on October 1, 2003, October 28, 2003 (2 letters), January 31, 2004 (2 letters), March 4, 2004, and May 19, 2004, which are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of June, 2004.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–14908 Filed 6–30–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027–MLA–9 and ASLBP No. 04–824–06–MLA]

Sequoyah Fuels Corporation; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding: Sequoyah Fuels Corporation, Gore, Oklahoma Site, (Materials License Amendment).

This proceeding concerns a request for hearing submitted on May 17, 2004, by the State of Oklahoma. That request was filed in response to a March 10, 2004 notice of receipt of a January 7, 2004 materials amendment request from Sequoyah Fuels Corporation to authorize a proposed raffinate dewatering project at its Gore, Oklahoma facility site, and of opportunity for a hearing which was published in the **Federal Register** on March 17, 2004 (69 FR 12,715).

The Board is comprised of the following administrative judges: Alan S. Rosenthal, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Dr. Anthony J. Baratta, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 25th day of June 2004.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 04–14905 Filed 6–30–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–20567]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for Issuance of a License Renewal for Byproduct Material License No. 24–21362–01 for American Radiolabeled Chemicals, Inc., St. Louis, MO

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: William Snell, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, Illinois 60532; telephone (630) 829–9871; or by e-mail at *wgs@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the renewal of Byproduct Material License No. 24–21362–01 issued to American Radiolabeled Chemicals, Inc. (the licensee), in St. Louis, Missouri.

The NRC staff has prepared this environmental assessment (EA) to support this licensing action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. Environmental Assessment Summary

The proposed action is to renew Byproduct Material License No. 24–21362–01 issued to the American Radiolabeled Chemicals, Inc. in St. Louis, Missouri. American Radiolabeled Chemicals is licensed to possess byproduct materials to be used in the manufacture and synthesis of radiolabeled chemicals. The licensee primarily uses tritium (H–3) and carbon-14 (C–14), and as a result of licensed activities releases curie quantities of H–3 and C–14 in airborne effluent releases. American Radiolabeled Chemicals, Inc. requested by letter to the NRC dated October 28, 2002, the renewal of Byproduct Material License No. 24–21362–01, which would have expired on November 30, 2002. The American Radiolabeled Chemicals, Inc. provided radiological airborne effluent release data, radiological air sampling data, and computational results to demonstrate compliance with 10 CFR 20.1201, "Occupational Dose Limits for Adults," and 10 CFR 20.1301, "Dose Limits for Individual Members of the Public." No licensee activities are required to complete the proposed action. The NRC staff has reviewed the radiological airborne effluent release data, radiological air sampling data, and computational results provided by American Radiolabeled Chemicals to ensure the NRC's decision is protective of public health and safety and the environment.

III. Finding of No Significant Impact

The staff has prepared the EA, summarized above, in support of American Radiolabeled Chemicals, Inc.'s request to renew Byproduct Material License No. 24–21362–01. Based on its review, the staff has determined that there are no radiological or non-radiological environmental impacts associated with the renewal of American Radiolabeled Chemicals, Inc.'s license. The staff also finds that American Radiolabeled Chemicals demonstrated compliance with the occupational dose limits for adults in 10 CFR 20.1201 and the dose limits for individual members of the public in 20.1301, and finds no other activities in the area that could result in cumulative impacts. On the basis of the EA, the staff has concluded that the environmental impacts from the

proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an Environmental Impact Statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," American Radiolabeled Chemicals, Inc.'s request, the EA summarized above, and the documents related to this proposed action, are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). The NRC's document system is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. These documents include American Radiolabeled Chemicals' letter dated October 28, 2002, (Accession No. ML041540462); and the EA summarized above (Accession No. ML041680276). These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Lisle, Illinois, this 17th day of June 2004.

Kenneth G. O'Brien,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 04–14907 Filed 6–30–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–08597]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Northwest Missouri State University, Maryville, MO

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Suite 210, Lisle, Illinois 60532–4352; telephone (630) 829–9870; or by e-mail at *pjl2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Material License No. 24–15118–01 issued to Northwest Missouri State University (formerly known as Northwest Missouri State College) (the licensee), to terminate its license and authorize release of its Maryville, Missouri facility for unrestricted use.

The NRC staff has prepared an Environmental Assessment (EA) in support of this licensing action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. Environmental Assessment Summary

The purpose of the proposed action is to terminate Northwest Missouri State University's license and release its Maryville, Missouri facility for unrestricted use. In May 1972, the NRC authorized Northwest Missouri State University to use radioisotopes such as phosphorus-32 (P-32), iodine-25 (I-25), tritium (H-3), and carbon-14 (C-14), *etc.* for laboratory experiments and teaching and training of students. On December 19, 2003, Northwest Missouri State University submitted a license amendment request to terminate its license and release its Maryville facility for unrestricted use. The staff has examined Northwest Missouri State University's request and the information that the licensee provided in support of its request. The NRC staff concluded that the proposed action complies with the license termination criteria in subpart E of 10 CFR part 20 for unrestricted release.

III. Finding of No Significant Impact

The staff has prepared the EA, summarized above, in support of Northwest Missouri State University's proposed license amendment to terminate its license and release the Maryville facility for unrestricted use. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with the decommissioning of Northwest Missouri State University's facility were bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496). No outdoor areas were affected by the use of licensed materials. Additionally, no non-radiological impacts were identified. The staff also finds that the proposed release for unrestricted use of the Northwest Missouri State University's facility is in compliance with 10 CFR 20.1492. No other activities in the area that could have resulted in cumulative impacts. On the basis of the EA, the staff has concluded that the environmental impacts from the proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an Environmental Impact Statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," Northwest Missouri State University's request, the EA summarized above, and the documents related to this proposed action, are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). The NRC's document system is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. These documents include Northwest Missouri State University's NRC Form dated December 19, 2003, with enclosures (Accession No. ML041590566); and the EA summarized above (Accession No. ML041680287). These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Lisle, Illinois, this 17th day of June, 2004.

Kenneth G. O'Brien,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 04–14906 Filed 6–30–04; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Earnings Information Request.
(2) *Form(s) submitted:* G–19–F.
(3) *OMB Number:* 3220–0184.
(4) *Expiration date of current OMB clearance:* October 31, 2004.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Individuals or households.
(7) *Estimated annual number of respondents:* 1,000.
(8) *Total annual responses:* 1,000.
(9) *Total annual reporting hours:* 133.
(10) *Collection description:* Under section 2 of the Railroad Retirement Act, an annuity is not payable or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The collection obtains earnings information not previously or erroneously reported by a beneficiary.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,
Clearance Officer.
[FR Doc. 04–14891 Filed 6–30–04; 8:45 am]
BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employer Service and Compensation Reports.
(2) *Form(s) submitted:* UI–41, UI–41a.
(3) *OMB Number:* 3220–0070.
(4) *Expiration date of current OMB clearance:* October 31, 2004.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Business or other for-profit.
(7) *Estimated annual number of respondents:* 30.
(8) *Total annual responses:* 3,000.
(9) *Total annual reporting hours:* 400.
(10) *Collection description:* The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,
Clearance Officer.
[FR Doc. 04–14892 Filed 6–30–04; 8:45 am]
BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26488]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 25, 2004.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June, 2004. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 20, 2004, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC. Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0504.

T.O. Richardson Trust [File No. 811–8849]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 30, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $710 incurred in connection with the liquidation were paid by T.O. Richardson Company, Inc., applicant's investment adviser.

Filing Date: The application was filed on May 28, 2004.

Applicant's Address: 615 East Michigan St., Milwaukee, WI 53202.

TCW/DW Term Trust 2002 [File No. 811–7146]; TCW/DW Term Trust 2003 [File No. 811–7448]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 20, 2002 and December 12, 2003, respectively, each applicant made a liquidating distribution to its shareholders, based on net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Date: The applications were filed on May 25, 2004.

Applicants' Address: Morgan Stanley Investment Advisors Inc., 1221 Avenue of the Americas, New York, NY 10020.

Morgan Stanley New Discoveries Fund [File No. 811–9951]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 19, 2003, applicant transferred its assets to

Morgan Stanley Developing Growth Securities Trust, based on net asset value. Applicant incurred expenses of approximately $416,650 in connection with the reorganization.

Filing Date: The application was filed on May 25, 2004.

Applicant's Address: Morgan Stanley Investment Advisors Inc., 1221 Avenue of the Americas, New York, NY 10020.

Morgan Stanley Technology Fund [File No. 811–9983]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 3, 2003, applicant transferred its assets to Morgan Stanley Information Fund, based on net asset value. Applicant incurred expenses of approximately $893,533 in connection with the reorganization.

Filing Date: The application was filed on May 25, 2004.

Applicant's Address: Morgan Stanley Investment Advisors Inc., 1221 Avenue of the Americas, New York, NY 10020.

Morgan Stanley Select Municipal Reinvestment Fund [File No. 811–3878]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 13, 2002, applicant transferred its assets to Morgan Stanley Tax-Exempt Securities Trust, based on net asset value. Applicant incurred expenses of approximately $127,019 in connection with the reorganization.

Filing Date: The application was filed on May 25, 2004.

Applicant's Address: Morgan Stanley Investment Advisors Inc., 1221 Avenue of the Americas, New York, NY 10020.

Morgan Stanley S&P 500 Select Fund [File No. 811–8809]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 12, 2002, applicant transferred its assets to Morgan Stanley S&P 500 Index Fund, based on net asset value. Applicant incurred expenses of approximately $95,835 in connection with the reorganization.

Filing Date: The application was filed on May 25, 2004.

Applicant's Address: Morgan Stanley Investment Advisors Inc., 1221 Avenue of the Americas, New York, NY 10020.

Morgan Stanley Capital Growth Securities [File No. 811–5975]; Morgan Stanley 21st Century Trend Fund [File No. 811–9515]

Summary: Applicants seek an order declaring that it has ceased to be an investment company. On July 12, 2002 and October 3, 2003, respectively, each applicant transferred its assets to Morgan Stanley American Opportunities Fund, based on net asset value. Applicants incurred expenses of approximately $244,266 and $399,578, respectively, in connection with the reorganizations.

Filing Date: The applications were filed on May 25, 2004.

Applicants' Address: Morgan Stanley Investment Advisors Inc., 1221 Avenue of the Americas, New York, NY 10020.

Morgan Stanley Equity Fund [File No. 811–8739]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 19, 2003, applicant transferred its assets to Morgan Stanley Dividend Growth Securities Inc., based on net asset value. Applicant incurred expenses of approximately $212,915 in connection with the reorganization.

Filing Date: The application was filed on May 25, 2004.

Applicant's Address: Morgan Stanley Investment Advisors Inc., 1221 Avenue of the Americas, New York, NY 10020.

Morgan Stanley Tax-Managed Growth Fund [File No. 811–9769]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 3, 2003, applicant transferred its assets to Morgan Stanley Growth Fund, based on net asset value. Applicant incurred expenses of approximately $128,743 in connection with the reorganization.

Filing Date: The application was filed on May 25, 2004.

Applicant's Address: Morgan Stanley Investment Advisors Inc., 1221 Avenue of the Americas, New York, NY 10020.

Morgan Stanley North American Government Income Trust [File No. 811–6572]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 1, 2002, applicant transferred its assets to Morgan Stanley Limited Duration Fund, based on net asset value. Applicant incurred expenses of approximately $115,794 in connection with the reorganization.

Filing Date: The application was filed on May 25, 2004.

Applicant's Address: Morgan Stanley Investment Advisors Inc., 1221 Avenue of the Americas, New York, NY 10020.

Nuveen New York Municipal Income Fund, Inc. [File No. 811–5493]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 8, 1996, applicant transferred its assets to Nuveen New York Municipal Value Fund, Inc., based on net asset value. Applicant incurred expenses of $75,444 in connection with the reorganization.

Filing Date: The application was filed on May 14, 2004.

Applicant's Address: 333 West Wacker Dr., Chicago, IL 60606.

Dunhill Investment Trust [File No. 811–8719]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 1, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on May 24, 2004.

Applicant's Address: 700 Pete Rose Way, Cincinnati, OH 45203.

UBS Financial Sector Fund Inc. [File No. 811–4587] UBS Mutual Funds Securities Trust [File No. 811–9745]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On November 5, 2003, UBS Financial Sector Fund Inc. transferred its assets to a corresponding series of The UBS Funds, based on net asset value, and UBS Mutual Funds Securities Trust transferred the assets of its two series to corresponding series of The UBS Funds and UBS Index Trust, based on net asset value. Expenses of $85,000 and $170,000, respectively, incurred in connection with the reorganizations were paid by UBS Global Asset Management (US) Inc., investment adviser to each applicant.

Filing Date: The applications were filed on May 20, 2004.

Applicants' Address: 51 West 52nd St., New York, NY 10019–6114.

Oppenheimer Trinity Growth Fund [File No. 811–9363]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 12, 2001, applicant transferred its assets to Oppenheimer Trinity Large Cap Growth Fund, formerly known as Oppenheimer Large Cap Growth Fund, based on net asset value. Expenses of $118,041 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on May 5, 2004, and amended on June 10, 2004.

Applicant's Address: OppenheimerFunds, Inc., Two World

Financial Center, 225 Liberty St., 11th Floor, New York, NY 10281–1008.

Lindner Investments [File No. 811–7932]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By March 5, 2004, each of applicant's five series had made a liquidating distribution to its shareholders, based on net asset value. Expenses of $531,932 incurred in connection with the liquidation were paid by applicant's investment adviser and Hennessy Advisors, Inc., the successor adviser.

Filing Dates: The application was filed on April 21, 2004, and amended on June 7, 2004.

Applicant's Address: 520 Lake Cook Rd., Suite 381, Deerfield, IL 60015.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14897 Filed 6–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27862]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 25, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 20, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 20, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corporation, et al. (70–10220)

Ameren Corporation ("Ameren"), a Missouri corporation and a registered holding company under the Act; Ameren Energy Fuels and Services Company ("Ameren Fuels"), an indirect, wholly-owned, nonutility subsidiary of Ameren, both located at 1901 Chouteau Avenue, St. Louis, Missouri 63103; and Illinois Power Company ("Illinois Power," and together "Applicants"), an electric and gas utility company, 500 South 27th Street, Decatur, Illinois, 62521, have filed an application/declaration ("Application") under sections 6(a), 7, 9(a), 10, 11(b), 12(b), 12(f), and 13(b) of the Act and rules 43, 45, 54, 87, 90, and 91 under the Act.

I. Introduction

Ameren proposes to purchase all of the issued and outstanding common stock ("Common Shares") of Illinois Power from Illinova Corporation ("Illinova"), an exempt holding company under section 3(a)(1) of the Act,[1] which is itself a wholly-owned subsidiary of Dynegy Inc. ("Dynegy"), also an exempt holding company under the Act.[2] Ameren also proposes to acquire the issued and outstanding shares of preferred stock of Illinois Power that are held by Illinova ("Preferred Shares"), and the 20% interest in the common stock of Electric Energy, Inc. ("EEInc"), an "exempt wholesale generator" ("EWG") as that term is defined under section 32 of the Act, that is held by Illinova Generating Company ("IGC"), an indirect subsidiary of Dynegy ("EEInc Shares," and together with the Common Shares and the Preferred Shares, the "Shares"), for an aggregate purchase price ("Purchase Price") of $2,300,000,000, subject to certain adjustments as described below ("Transaction"). Ameren intends to acquire and hold the Common Shares and Preferred Shares of Illinois Power directly, and to acquire the EEInc Shares through its nonutility subsidiary, Ameren Energy Resources Company ("Ameren Energy Resources"), under the exemption provided by section 32 of the Act.

[1] *See* HCAR No. 26450 (May 18, 1994).

[2] Dynegy has filed for a 3(a)(1) exemption by rule 2 of the Act.

Applicants also request authorization, once the Transaction closes, for:

1. Illinois Power to: (i) Issue and sell from time to time from the closing of the Transaction through June 30, 2007 ("Authorization Period") short-term debt securities, (ii) to become a participant in the Ameren System Utility Money Pool Arrangement ("Utility Money Pool"), (iii) to enter into interest rate hedging transactions, and (iv) to engage in certain other related transactions;

2. Ameren to acquire, from time to time during the Authorization Period, outstanding long-term debt securities and/or shares of preferred stock of Illinois Power or any subsidiary of Illinois Power that are held by unaffiliated third parties in open market purchases, through invitations for tenders and/or through negotiated purchases; and

3. Ameren Fuels to provide gas management services to Illinois Power under a fuel supply management agreement that is substantially identical to agreements between Ameren Fuels and Ameren's current public utility subsidiaries.

II. Description of Ameren System

The Ameren holding company system ("Ameren System") consists of both utility subsidiaries ("Utility Subsidiaries") and nonutility subsidiaries ("Nonutility Subsidiaries").

A. Ameren's Public Utility Subsidiaries

Ameren states that it directly owns all of the issued and outstanding common stock of the following Utility Subsidiaries: (i) Union Electric Company d/b/a AmerenUE ("AmerenUE") and (ii) Central Illinois Public Service Company d/b/a AmerenCIPS ("AmerenCIPS"). Ameren further states that, indirectly through its intermediate holding company, CILCORP Inc. ("CILCORP"), Ameren owns all of the issued and outstanding common stock of the public utility Central Illinois Light Company d/b/a AmerenCILCO ("AmerenCILCO"). Together, AmerenUE, AmerenCIPS, and AmerenCILCO provide retail and wholesale electric service to approximately 1.7 million customers and retail natural gas service to approximately 500,000 customers in a 49,000 square-mile area of Missouri and Illinois, including the St. Louis, Missouri and Peoria and Springfield, Illinois metropolitan areas.

Ameren states that AmerenCILCO owns all of the issued and outstanding common stock of AmerenEnergy Resources Generating Company (f/k/a Central Illinois Generation, Inc.)

("AERG"), a generating subsidiary company. AERG was formed by AmerenCILCO in November 2001 in order to facilitate the restructuring of AmerenCILCO in accordance with the Illinois Electric Service Customer Choice and Rate Relief Law of 1997 ("Customer Choice Law"). In October 2003, AmerenCILCO transferred substantially all of its generating assets representing in the aggregate approximately 1,130 megawatts (MW) of electric generating capacity to AERG.

Ameren states that as of December 31, 2003 AmerenUE, AmerenCILCO, and AERG together owned and operated approximately 9,186 MW of electric generating capacity, all of which is located in Missouri and Illinois. Ameren further states that AmerenUE, AmerenCIPS, and AmerenCILCO together owned approximately 5,433 circuit miles of primary electric transmission lines, substantially all of which are located in Missouri and Illinois. In addition, as of December 31, 2003, AmerenUE, AmerenCIPS, and AmerenCILCO owned and operated approximately 11,700 miles of natural gas transmission lines and distribution mains, all located in Missouri and Illinois, and leased or owned natural gas storage capacity providing a total of 468,000 MMBtu of storage deliverability to meet peak day requirements and total storage capacity of 28.85 billion cubic feet to meet winter season demand.

Ameren states that AmerenUE, AmerenCIPS, and AmerenCILCO are subject to regulation by the Illinois Commerce Commission ("ICC"), and AmerenUE is also subject to regulation by the Missouri Public Service Commission ("MoPSC"), as to rates, service, issuance of equity securities, issuance of debt having a maturity of more than twelve months, mergers, affiliate transactions, and various other matters. AmerenUE, AmerenCIPS, and AmerenCILCO are also subject to regulation by the Federal Energy Regulatory Commission ("FERC") as to rates and charges in connection with the wholesale sale of energy and transmission in interstate commerce, mergers, affiliate transactions, and certain other matters.

Ameren states that AmerenUE, AmerenCIPS, and AmerenCILCO are members of the Mid-American Interconnected Network ("MAIN"), which is one of the ten regional electric reliability councils organized for coordinating the planning and operation of the nation's bulk power supply. MAIN operates in Illinois and portions of Michigan, Wisconsin, Iowa, Minnesota, and Missouri.[3] AmerenUE and AmerenCIPS have also agreed to participate, through GridAmerica, LLC ("GridAmerica"), an independent transmission company, in the Midwest Independent System Operator ("MISO"), a FERC-approved regional transmission organization, but have not yet transferred functional control of their transmission assets to the MISO. Ameren states that, Effective May 1, 2004, AmerenUE and AmerenCIPS transferred functional control of their transmission assets to the MISO. AmerenCILCO is already a member of the MISO and has transferred functional control of its transmission system to the MISO.

B. Ameren Nonutility Subsidiaries

Ameren states that it has five direct wholly owned Nonutility Subsidiaries (in addition to CILCORP, the direct parent of AmerenCILCO), as follows:

1. Ameren Services Company ("Ameren Services"), a service company subsidiary, which provides administrative, management and technical services to Ameren and its associate companies in the Ameren system;

2. Ameren Development Company, an intermediate nonutility holding company, which directly owns all of the outstanding common stock of Ameren ERC, Inc. ("Ameren ERC"), an "energy-related company" under rule 58 under the Act that provides energy management services. Ameren ERC in turn owns all of the outstanding common stock of Missouri Central Railroad Company, a fuel transportation subsidiary, and an 89.1% interest in Gateway Energy Systems, L.C., which in turn owns Gateway Energy WGK Project, L.L.C., which together are developing thermal energy projects. These entities are also "energy-related companies" under rule 58 ("Rule 58 Companies"). Ameren Development also directly owns all of the outstanding common stock of Ameren Energy Communications, Inc., an "exempt telecommunications company" ("ETC") as that term is defined under section 34 of the Act;

3. Ameren Energy Resources, an intermediate Nonutility Subsidiary holding company, which directly holds all of the outstanding voting securities of the following Nonutility Subsidiaries:

(a) Ameren Energy Development Company, an EWG which, in turn, owns all of the outstanding common stock of Ameren Energy Generating Company ("Ameren GenCo"), also an EWG;

(b) Ameren Energy Marketing Company, a Rule 58 Company;

(c) Ameren Energy Fuels and Services Company, also a Rule 58 Company, which directly and through AFS Development Company, L.L.C., a wholly-owned subsidiary, and Cowboy Railroad Development Co., L.L.C., a 71%-owned subsidiary, makes investments in and engages in operating activities related to fuel procurement, handling, transportation, and storage facilities, and provides related fuel management services to associate and nonassociate companies;

(d) Illinois Materials Supply Co., which is a registered retailer of goods, material and equipment to Ameren Energy Development Company and other associate Nonutility Subsidiaries; and

(e) AmerenEnergy Medina Valley Cogen (No. 4), L.L.C., an intermediate Nonutility Subsidiary holding company that indirectly through AmerenEnergy Medina Valley Cogen (No. 2), L.L.C., holds all of the membership interests in AmerenEnergy Medina Valley Cogen, L.L.C., an EWG, and directly holds all of the membership interests in AmerenEnergy Medina Valley Operations, L.L.C.

Ameren Energy Resources also directly holds 20% of the outstanding common stock of EEInc, which owns and operates a six-unit coal-fired generating facility with a capacity of approximately 1,014 MW located in Joppa, Illinois. Through a subsidiary, Midwest Electric Power Inc., which is also an EWG, EEInc owns and operates two combustion turbines with a summer net capability of approximately 72 MW, located at the Joppa plant site;

4. Ameren Energy, Inc.; a Rule 58 Company that primarily serves as the short-term energy trading and marketing agent for AmerenUE and Ameren GenCo and provides a range of energy and risk management services; and

5. CIPSCO Investment Company, which holds various nonregulated and passive investments, including passive investments in affordable housing projects that qualify for federal income tax credits and investments in equipment leases.

[3] Applicants state that AmerenUE, AmerenCIPS and AmerenCILCO provided formal written notice to the MAIN Board of Directors on June 23, 2003 of their intent to withdraw from MAIN effective January 1, 2005. Applicants state that these companies intend to join another regional electric reliability organization prior to their withdrawal from MAIN becoming effective. Until their withdrawal is effective, they will continue to honor all of their obligations as members of MAIN. Applicants further state that if they do not join another regional electric reliability organization, they may withdraw their notice of intent to withdraw from MAIN.

C. Direct Nonutility Subsidiaries of AmerenUE

AmerenUE has one direct wholly-owned Nonutility Subsidiary, Union Electric Development Corporation, which holds investments in affordable housing projects that qualify for federal income tax credits and other passive investments.[4] AmerenUE also directly holds 40% of the outstanding common stock of EEInc.

D. Direct Nonutility Subsidiaries of CILCORP

CILCORP directly owns all of the common stock of three Nonutility Subsidiaries, as follows:

1. CILCORP Investment Management Inc., which, through subsidiaries, manages CILCORP's investments in equipment leases, affordable housing projects that qualify for federal income tax credits, non-regulated independent power projects, and other passive investments;[5]

2. CILCORP Ventures Inc., which, through a wholly-owned subsidiary, CILCORP Energy Services, Inc., provides energy-related products and services, including gas management services for gas management customers; and

3. QST Enterprises Inc., which, through subsidiaries, provides energy and related services in non-regulated retail and wholesale markets, including predictive and preventive testing and maintenance for industrial customers and affiliated companies, and formerly held interests in environmentally distressed parcels of real estate acquired for resale.

E. Direct Nonutility Subsidiaries of AmerenCILCO

AmerenCILCO directly owns all of the issued and outstanding common stock of two Nonutility Subsidiaries, neither of which conducts any significant business at this time:

1. CILCO Exploration and Development Company, which previously engaged in the exploration and development of gas, oil, coal and other mineral resources and

2. CILCO Energy Corporation, which was formed to research and develop new sources of energy, including the conversion of coal and other minerals into gas.

III. Ameren Financial Condition

A. Revenues and Income

Ameren states that for the twelve months ended December 31, 2003, Ameren reported total operating revenues of $4,593,000,000, operating income of $1,090,000,000, and net income of $524,000,000. On a consolidated basis, approximately 85.7% of Ameren's 2003 operating revenues were derived from sales of electricity (inclusive of sales by Ameren GenCo), 14.1% from sales of gas and gas transportation service, and 0.2% from other sources. At December 31, 2003, Ameren had $14,233,000,000 in total assets, including net property and plant of $10,917,000,000.

B. Capitalization of Ameren

Under its Restated Articles of Incorporation, as amended, Ameren states that it is authorized to issue 500,000,000 shares of capital stock consisting of 400,000,000 shares of common stock, $.01 par value, and 100,000,000 shares of preferred stock, $.01 par value. At December 31, 2003, Ameren states that it had issued and outstanding 162,861,662 shares of common stock and it did not have any outstanding preferred stock. In addition, at December 31, 2003, Ameren had issued and outstanding $445 million principal amount of senior unsecured debt securities having maturities through 2007. At December 31, 2003, Ameren did not have any outstanding short-term debt. Ameren's common stock is listed and traded on the New York Stock Exchange.

As of December 31, 2003, Ameren's capitalization on a consolidated basis was as follows:

		Percent
Common equity	$4,354,000,000	46.9
Preferred equity	182,000,000	1.9
Long-term debt*	4,091,000,000	44.1
Short-term debt**	659,000,000	7.1
Total	9,286,000,000	100.00

*Includes mandatorily redeemable preferred stock.
**Includes current portion of long-term debt.

Ameren states that its senior unsecured debt securities are currently rated BBB+ by Standard & Poor's Inc. ("S&P") and A3 by Moody's Investors Service ("Moody's"). Ameren's commercial paper is rated A–2 by S&P and P–2 by Moody's.

IV. Illinois Power

Illinois Power states that it is engaged in the transmission, distribution, and sale of electric energy and the distribution, transportation, and sale of natural gas in substantial portions of northern, central, and southern Illinois. Illinois Power's service area includes 11 cities with a population greater than 30,000 (including the cities of Decatur, Bloomington, and Champaign-Urbana) and 37 cities with a population greater than 10,000 based on 2000 census data. Illinois Power also provides electric transmission service to other utilities, electric cooperatives, municipalities, and marketers.

A. Illinois Power Utility Operations

1. Electric Utility Operations

Illinois Power states that it provides electric service to approximately 600,000 customers in 313 incorporated municipalities, adjacent suburban and rural areas, and numerous unincorporated communities in Illinois. Illinois Power's electric transmission and distribution system includes 1,672 circuit miles of electric transmission lines and 37,765 circuit miles of overhead and underground distribution lines. Illinois Power states that it owns virtually no generation. Illinois Power states that it currently purchases the vast majority of its electric power requirements under contracts with Dynegy Midwest Generation, Inc. ("DMG"), an indirect subsidiary of Dynegy, AmerGen Energy Company, L.L.C. ("AmerGen"), and EEInc.

Illinois Power states that it is directly interconnected with AmerenUE, AmerenCIPS, and AmerenCILCO at

[4] The Commission authorized Ameren to acquire Union Electric Development Corporation by order dated December 30, 1997 (HCAR No. 26809.)

[5] The Commission authorized Ameren to acquire CILCORP Investment Management Inc. by order dated January 29, 2003 (HCAR No. 27645).

numerous locations. Illinois Power also participates, together with AmerenUE and AmerenCIPS, in the Illinois-Missouri Power Pool, which operates under a transmission interconnection agreement. Illinois Power is currently a member of MAIN, although its continued membership in MAIN beyond December 31, 2004 will depend on whether the Transaction is consummated. As explained below, Illinois Power has committed in its application to the FERC for approval of the Transaction that it will join the MISO within a reasonable time after the FERC issues an order approving the Transaction and transfer of functional control of Illinois Power's transmission assets to the MISO without conditions that are unacceptable to the applicants, but prior to closing of the Transaction.

2. Gas Utility Operations

Illinois Power states that it provides retail gas service to approximately 415,000 customers in 258 incorporated municipalities and adjacent areas in northern, central and southern Illinois, including the cities of Decatur, Champaign-Urbana, and East St. Louis. Illinois Power owns 763 miles of "Hinshaw" natural gas transportation pipeline and 7,669 miles of natural gas distribution pipeline. Illinois Power also owns seven on-system underground natural gas storage fields with a total capacity of approximately 11.6 billion cubic feet and total deliverability on a peak day of approximately 339 million cubic feet. To supplement the capacity of these underground storage facilities, Illinois Power has contracted with natural gas pipelines for an additional 5.4 billion cubic feet of underground storage capacity, representing additional total deliverability.

3. State Jurisdiction

Illinois Power states that it is regulated by the ICC with respect to retail electric and gas rates and service, classification of accounts, the issuance of stock and evidences of indebtedness (other than indebtedness with a final maturity of less than one year and renewable for a period of not more than two years), contracts with any affiliated interest, and other matters and by the FERC with respect to transmission service and wholesale electric rates.

B. Illinois Power Nonutility Subsidiaries

Illinois Power states that its nonutility subsidiaries ("Illinois Power Nonutility Subsidiaries") are as follows:

1. IP Gas Supply Company, an Illinois corporation, which was formed for the purpose of acquiring interests in oil and gas leases. There is little activity in this subsidiary;

2. Illinois Power Securitization Limited Liability Company, a Delaware limited liability company that is the sole beneficial owner of Illinois Power Special Purpose Trust ("IPSPT"), a Delaware business trust that was formed in 1998 to issue transitional funding trust notes as allowed under the Illinois Electric Utility Transition Funding Law to securitize the revenue stream associated with future recovery of a portion of revenues received from retail ratepayers;

3. Illinois Power Transmission Company, LLC, a Delaware limited liability company, was formed in 2002 for the purpose of acquiring and holding Illinois Power's transmission assets, but is currently inactive;

4. Illinois Power Financing I, a Delaware statutory trust, is a financing subsidiary through which Illinois Power issued $100 million of trust originated preferred securities ("TOPrS") in January 1996. Illinois Power states that these securities were redeemed in 2001 and this entity is now inactive; and

5. Illinois Power Financing II, also a Delaware special purpose trust, is a financing subsidiary that was created for a potential shelf registration in 2002. Illinois Power states that this company is not currently active.

C. Illinois Power Financial Condition

1. Income and Revenues

For the twelve months ended December 31, 2003, Illinois Power states that it reported total operating revenues of $1,567,800,000, operating income of $166,100,000, and net income applicable to common shareholder of $114,700,000. Approximately 70.3% of Illinois Power's 2003 operating revenues was derived from electric utility operations and approximately 29.7% was derived from gas utility operations. At December 31, 2003, Illinois Power states that it had $5,059,200,000 in total assets, including net utility plant of $2,083,000,000 and an intercompany receivable from Illinova with a principal balance of $2,271,400,000 ("Intercompany Note") that was issued by Illinova in consideration for the purchase of Illinois Power's fossil-fuel generating plants and other generation-related assets in 1999.

2. Capitalization

Illinois Power states that under its Amended and Restated Articles of Incorporation, Illinois Power is authorized to issue 100,000,000 shares of common stock, no par value, 5,000,000 shares of serial preferred stock, $50 par value, 5,000,000 shares of serial preferred stock, no par value, and 5,000,000 shares of preference stock, no par value. As of December 31, 2003, Illinois Power had issued and outstanding 62,892,213 shares of common stock, no par value, all of which are held by Illinova, and six series of cumulative preferred stock, $50 par value, having an aggregate stated amount of $45,800,000. Illinova holds 662,924 shares of Illinois Power's outstanding preferred stock, representing approximately 73% of the total number outstanding. In addition, as of December 31, 2003, Illinois Power had outstanding $1,444,600,000 principal amount of first mortgage bonds having maturities through 2032, certain series of which are pledged to secure obligations under pollution control revenue obligations, and $419,900,000 principal amount of transitional funding trust notes with maturities through 2008.

As of December 31, 2003, Illinois Power states that its capitalization on a consolidated basis was as follows:

		Percent
Common equity	$1,484,000,000	43.0
Preferred equity	45,800,000	1.3
Long-term debt*	1,780,200,000	51.5
Current portion of long-term debt	145,000,000	4.2
Total	3,455,900,000	100.00

*Includes $345,600,000 of transitional funding trust issued by IPSPT.

Illinois Power states that its senior secured debt is currently rated B by S&P and B1 by Moody's. Illinois Power's preferred stock is rated CCC by S&P and Caa2 by Moody's. Applicants state that they expect that, as a result of the

consummation of the Transaction and related recapitalization of Illinois Power, as described in below, Illinois Power will receive an investment grade rating for its long-term debt from at least one of the major statistical rating organizations.

V. The Transaction

A. Principal Terms of Amended Stock Purchase Agreement

Applicants state that Ameren, Dynegy, Illinova, and IGC have entered into a Stock Purchase Agreement, dated as of February 2, 2004, as amended by Amendment No. 1 thereto, dated March 23, 2004 ("Amended SPA"). The Amended SPA provides that, subject to the receipt of all necessary regulatory approvals and the satisfaction of other conditions precedent, Ameren will purchase the Common Shares and the Preferred Shares of Illinois Power from Illinova and the EEInc Shares from IGC for an aggregate purchase price of $2,300,000,000, less an amount equal to the "Existing IPC Obligations" (as described below), plus (or minus) the amount by which actual contributions made by Dynegy or any of its affiliates prior to the closing date for plan year 2004 with respect to certain pension plans exceeds (or is less than) $17,500,000, and plus or minus the change in adjusted working capital between September 30, 2003 and the closing date, as determined in accordance with the procedures set forth in the Amended SPA (the aggregate amount being the "Purchase Price"). The Amended SPA allocates $125,000,000 of the Purchase Price to the EEInc Shares and the balance ($2,175,000,000, subject to the adjustments described above) to the Common Shares and the Preferred Shares.

Applicants state that the term "Existing IPC Obligations" is defined in the Amended SPA to mean an amount equal to the sum of: (i) The unpaid principal amount of all short-term and long-term indebtedness (including current portion) for borrowed money of Illinois Power and any subsidiary of Illinois Power; (ii) the total liquidation preference of the 249,751 shares of preferred stock, $50 par value, of Illinois Power that are not owned by Illinova; (iii) any accrued and unpaid dividends on such shares of preferred stock, to the extent that dividends are in arrears; and (iv) any capital lease obligations of Illinois Power or any subsidiary of Illinois Power, in each case as of the date of closing, subject to certain adjustments related to the Transitional Funding Trust Notes, Series 1998–1, in the original amount of $864,000,000, issued by Illinois Power Special Purpose Trust. Applicants state that the Existing IPC Obligations as of September 30, 2003, totaled $1,909,508,000.

At closing, Ameren will pay $2,300,000,000 in cash, minus the sum of: (i) an amount equal to the Existing IPC Obligations and (ii) $100,000,000, which, subject to certain exceptions, will be deposited in escrow to secure certain indemnities from Dynegy under the Amended SPA relating to potential liabilities that Illinois Power faces, principally due to its former ownership of generating facilities now owned by Dynegy Midwest Generation, Inc.

Applicants state that the Amended SPA provides that, no more than two days prior to closing, Dynegy and Illinova will cause the unpaid principal balance of and all accrued and unpaid interest on the Intercompany Note to be eliminated pursuant to the following steps, which will be part of the total recapitalization of Illinois Power, described below:

1. The principal amount of the Intercompany Note will be reduced or offset by: (i) The amount of certain payables owed by Illinois Power to Illinova or other affiliates of Dynegy and (ii) the amount of interest that has been paid by Illinova to Illinois Power on the Intercompany Note that has not been earned, *i.e.*, prepaid interest; and

2. Dynegy and Illinova will, and Illinova will cause Illinois Power to, immediately following the reduction, eliminate or reduce the remaining Intercompany Note to zero, which Applicants state elimination or reduction may occur (in whole or in part) through one or more of the following: (i) Distribution of the Intercompany Note (net of any prepaid interest) to Dynegy or Illinova; (ii) a repurchase of common equity by Illinois Power from Illinova; (iii) the assignment of the Intercompany Note by Illinois Power after the balance has been reduced by the amount of any prepaid interest paid by Illinova to Dynegy or one of its affiliates and subsequent elimination of the Intercompany Note; (iv) a release of Illinova by Illinois Power from Illinova's remaining obligations under the Intercompany Note; or (v) other means reasonably acceptable to Dynegy and Ameren.

Applicants state that the elimination of the Intercompany Note through these measures requires approval by the ICC.

Applicants state that the Amended SPA also obligates Illinois Power to submit an application to FERC to join the MISO, conditioned on the closing of the Transaction. As part of the joint application filed with FERC, Illinois Power is requesting all necessary authorizations from FERC to transfer functional control over its transmission facilities to the MISO. Applicants state that, notwithstanding the language of the Amended SPA conditioning Illinois Power's joining the MISO on closing of the Transaction, Illinois Power has committed in the FERC application that it will transfer functional control over its transmission facilities to the MISO within a reasonable time after the FERC issues the requested orders without conditions that are unacceptable to the applicants, but prior to the closing. Applicants state that the obligations of the parties under the Amended SPA are subject to conditions precedent that are usual and customary for a transaction of this nature, including the receipt of required regulatory approvals from this Commission, the FERC, and the ICC. The Amended SPA may be terminated by Dynegy or Ameren if the closing shall not have occurred on or before December 31, 2004.

VI. Recapitalization of Illinois Power

Applicants state that, after the Transaction closes, Ameren intends to complete the recapitalization of Illinois Power by infusing substantial equity into Illinois Power, the proceeds of which will be used by Illinois Power to retire debt, including $550 million principal amount of 11½% first mortgage bonds. Ameren states that it expects that these intercompany financing transactions will be exempt under rules 45(b)(4) and 52(a), as applicable. The Amended SPA obligates Ameren to commit to the ICC that it will eliminate at least $750 million of Illinois Power's debt and that Ameren will cause Illinois Power's common equity to total capitalization ratio to be between 50% and 60% by December 31, 2006. As previously noted, Ameren expects that the recapitalized Illinois Power will receive an investment grade rating for its long-term debt from at least one of the major statistical rating organizations.

In addition, Ameren requests authorization to acquire, from time to time during the Authorization Period, up to $300 million principal or face amount of the outstanding long-term debt securities and/or shares of preferred stock of Illinois Power or any subsidiary of Illinois Power. Ameren states that these securities would be purchased in open-market purchases, through invitations for tenders, and/or through direct negotiations with the holders of the securities. Any securities that are acquired by Ameren may be held by Ameren until they mature or are

called, or, at Ameren's option, may be contributed to and canceled on the books of Illinois Power or its subsidiary, as the case may be and would not be reissued or resold by Ameren.

VII. Financing the Purchase Price

Ameren intends to finance the cash portion of the Purchase Price and subsequent equity infusions in Illinois Power by issuing common stock and other securities under existing financing authority granted by order dated October 5, 2001 (HCAR No. 27449) ("October 2001 Order") or as authorized in a separate proceeding. Ameren has filed a "shelf" Registration Statement on Form S–3 covering common stock and other long-term securities of Ameren that may be issued in accordance with its authorization in the October 2001 Order, and intends to file a new "shelf" Registration Statement in the near future.

VIII. Affiliate Transactions

A. Ameren Services

By order dated December 30, 1997 (HCAR No. 26809) ("Merger Order") the Commission authorized Ameren to organize and capitalize Ameren Services as a service company subsidiary, and authorized Ameren Services to provide AmerenUE, AmerenCIPS, and other companies in the Ameren system with administrative, management, engineering, construction, environmental, and other support services under a General Services Agreement ("GSA"). Ameren Services has entered into substantially identical GSAs with Ameren, AmerenUE, AmerenCIPS, AmerenCILCO, and certain of Ameren's Nonutility Subsidiaries. Under the Merger Order, Ameren Services is required to give written notice to the Commission at least 60 days prior to implementing any change in the type and character of the companies receiving services, the methods of allocating costs to associate companies, or the scope or character of services to be rendered.

Ameren Services intends to enter into a substantially identical GSA with Illinois Power following completion of the Transaction. Applicants state that after the Transaction closes, Ameren Services will provide to Illinois Power administrative, management, and technical services substantially similar to those that it now provides to other Ameren system companies under the GSA, utilizing the same work order procedures and the same methods of allocating costs that are specified in the GSA. Subject to Ameren's commitment to the ICC regarding workforce reductions, certain employees of Illinois Power and its subsidiaries may be transferred to and become employees of Ameren Services.

B. Ameren Fuels

By order dated April 5, 2001 (HCAR No. 27374), the Commission authorized Ameren Fuels to provide AmerenUE and AmerenCIPS fuel management services under the terms of a fuel and natural gas services agreement ("Fuel Services Agreement"). Ameren Fuels was authorized to provide AmerenCILCO with similar services by order dated Jan. 29, 2003 (HCAR No. 27645). Under the Fuel Services Agreement, Ameren Fuels, as agent for its associate companies, manages all aspects of procurement, storage, transportation, and handling of coal, natural gas, and other fuels. Applicants state that these services include negotiating contracts with third parties, contract administration, regulatory reporting, and ash management services, among others. Applicants state that Ameren Fuels is reimbursed for all costs properly chargeable or allocable thereto, through a work order procedure and that this procedure complies with rules 90 and 91. Applicants state that Ameren Fuels is authorized under the Fuel Services Agreement to take title to and resell fuel to its associate companies, but solely in an agency capacity.

In conjunction with the Transaction, Ameren Fuels proposes to enter into a separate Fuel Services Agreement with Illinois Power under which Ameren Fuels will manage gas supply resources for Illinois Power. Applicants state that these services will be provided at cost, in accordance with rules 90 and 91.

IX. Financing by Illinois Power

Applicants state that the existing equity and long-term debt securities of Illinois Power, as described above, will remain outstanding after the Transaction closes. Applicants state that, in general, all securities issuances by Illinois Power, other than indebtedness with a final maturity of less than one year, renewable for a period of not more than two years, must be approved by the ICC. In addition, the ICC must approve borrowings by Illinois Power from any affiliated company. Applicants state that after Illinois Power becomes a subsidiary of Ameren, rule 52(a) will exempt from sections 6(a) and 7 of the Act: (i) all external securities issued by Illinois Power, other than short-term indebtedness and (ii) all intercompany borrowings by Illinois Power.

Applicants request authority for Illinois Power to issue and sell from time to time during the Authorization Period short-term debt securities to unaffiliated lenders, to enter into interest rate hedging transactions, and to become a participant in the Ameren System utility money pool ("Utility Money Pool"). Applicants state that Illinois Power will not engage in any financing transactions requested in this Application unless, on a pro forma basis taking into account the amount and types of the financing and the application of the proceeds thereof, common equity as a percentage of capitalization (including short-term debt and current maturities of long-term debt) is at least 30%.

A. External Short-Term Debt

Applicants state that Illinois Power does not currently have any outstanding short-term debt (other than the current portion of long-term debt) or maintain any credit lines. After becoming a subsidiary of Ameren, however, Illinois Power wishes to have the flexibility to establish credit lines and make short-term borrowings as needed to finance its operations and support working capital needs. Accordingly, Illinois Power requests authorization through to issue commercial paper and/or establish and make secured or unsecured short-term borrowings (*i.e.*, maturities less than one year) under credit lines with banks or other institutional lenders from time to time during the Authorization Period, provided that the aggregate principal amount of commercial paper and borrowings by Illinois Power at any time outstanding under credit facilities when added to the aggregate amount of borrowings at any time by Illinois Power under the Utility Money Pool, described below, and direct borrowings at any time by Illinois Power from Ameren, will not exceed $500 million ("Short-Term Limit"). Subject to the Short-Term Limit, Illinois Power requests authority to sell commercial paper, from time to time, in established domestic or foreign commercial paper markets. Illinois Power states that the commercial paper would typically be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring the commercial paper will reoffer it at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Illinois Power anticipates that the commercial paper will be reoffered to investors such as commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges

and universities, finance companies, and nonfinancial corporations.

The issuance of secured short-term debt by Illinois Power would be limited to those circumstances in which Illinois Power can expect a savings in costs over the issuance of unsecured short-term debt or in which unsecured credit is unavailable, except at a higher cost than secured short-term debt. Illinois Power anticipates that the collateral offered as security for short-term debt would generally be limited to short-term assets, such as inventory and/or accounts receivable.

Illinois Power also proposes to establish credit lines with banks or other institutional lenders and other credit arrangements and/or borrowing facilities generally available to borrowers with comparable credit ratings as it deems appropriate in light of its needs and existing market conditions providing for revolving credit or other loans and having commitment periods not longer than the Authorization Period. Illinois Power states that only the amounts drawn and outstanding under these agreements and facilities will be counted against the Short-Term Limit. The effective cost of money on all external short-term borrowings by Illinois Power will not exceed at the time of issuance the greater of: (i) 300 basis points over the six-month London Interbank Offered Rate ("LIBOR") or (ii) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

Illinois Power represents that, except for securities issued for the purpose of funding Utility Money Pool operations, it will not issue any short-term debt securities in reliance upon the authorization granted by the Commission under this Application, unless: (i) The security to be issued, if rated, is rated investment grade, (ii) all outstanding securities of Illinois Power that are rated are rated investment grade, and (iii) all outstanding securities of Ameren that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one "nationally recognized statistical rating organization," as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Securities Exchange Act of 1934, as amended. Illinois Power requests that the Commission reserve jurisdiction over the issuance of any short-term debt securities that are rated below investment grade.

B. Participation in Utility Money Pool

By order dated February 27, 2003 in (HCAR No. 27655), as supplemented by order dated September 15, 2003 (HCAR No. 27721) ("Money Pool Order"), Ameren is authorized to fund loans to AmerenUE, AmerenCIPS, AmerenCILCO, and Ameren Services through the Utility Money Pool in order to provide for the short-term cash and working capital needs of these companies. In addition, Applicants state that AmerenUE, AmerenCIPS, AmerenCILCO, and Ameren Services are authorized to make unsecured short-term borrowings from the Utility Money Pool, to contribute surplus funds to the Utility Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool. Ameren may not make borrowings under the Utility Money Pool. If surplus funds made available by the participants in the Utility Money Pool (*i.e.*, "Internal Funds") are used to fund loans to eligible borrowers, the interest rate applicable to such loans is equal to the CD yield equivalent of the 30-day Federal Reserve "AA" Non-Financial commercial paper composite rate. If proceeds from external borrowings by any participant in the Utility Money Pool (*i.e.*, "External Funds") are used to fund loans to eligible borrowers, the interest rate is equal to the lending company's cost of borrowing. In cases where both Internal Funds and External Funds are used to fund loans to eligible borrowers, the applicable interest rate is a composite rate equal to the weighted average of the Internal Funds and External Funds.

Illinois Power requests authorization to become a party to the Utility Money Pool Agreement after the closing of the Transaction on the same basis as AmerenUE, AmerenCIPS, and AmerenCILCO. Applicants state that borrowings by Illinois Power under the Utility Money Pool must be approved by the ICC and therefore will be exempt under rule 52(a).

C. Interest Rate Hedging Transactions

Illinois Power requests authorization to enter into interest rate hedging transactions ("Interest Rate Hedges") with respect to outstanding long-term and short-term indebtedness, subject to certain limitations and restrictions, in order to reduce or manage its effective interest rate cost. Illinois Power would employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued pursuant to this authorization or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, and (iii) limiting the impact of changes in interest rates resulting from variable rate debt. Illinois Power states that in no case will the notional principal amount of the underlying debt instrument any interest rate swap exceed the face value of the underlying debt instrument and related interest rate exposure. Transactions will be entered into for a fixed or determinable period, thus, Illinois Power will not engage in speculative transactions. Interest Rate Hedges (other than exchange-traded interest rate futures contracts) would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of any credit support providers who have guaranteed the obligations of such counterparties, as published by S&P, are equal to or greater than BBB, or an equivalent rating from Moody's or Fitch, Inc. Illinois Power states that Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets, such as exchange-traded interest rate futures contracts and over-the-counter interest rate swaps, caps, collars, floors, swaptions, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or U.S. governmental (*e.g.*, Fannie Mae) obligations, or LIBOR-based swap instruments. The transactions would be for fixed periods and stated notional amounts. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

In addition, Illinois Power requests authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Illinois Power states that Anticipatory Hedges (other than exchange-traded interest rate futures contracts) would only be entered into with Approved Counterparties, and would be utilized to fix the interest rate and/or limit the interest rate risk associated with any new issuance through: (i) A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury

securities and/or a forward swap (each a "Forward Sale"), (ii) the purchase of put options on U.S. Treasury securities ("Put Options Purchase"), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury securities ("Zero Cost Collar"), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury securities, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar, and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or other financial exchange, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. Illinois Power will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution.

Illinois Power states that each Interest Rate Hedge and Anticipatory Hedge will qualify for hedge accounting treatment under the current Financial Accounting Standards Board ("FASB") guidelines in effect and as determined at the time entered into. Further, Illinois Power states that it will comply with the Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivatives Instruments and Hedging Activities") and SFAS 138 ("Accounting for Certain Derivative Instruments and Certain Hedging Activities") or other standards relating to accounting for derivative transactions as are adopted and implemented by the FASB.

D. Organization and Acquisition of Financing Subsidiaries

Illinois Power requests authorization to acquire, directly or indirectly, the common stock or other equity securities of one or more entities ("Financing Subsidiaries") formed exclusively for the purpose of facilitating the issuance of long-term debt and/or preferred securities and for the loan or other transfer of the proceeds thereof to Illinois Power. In connection with any such financing transactions, Illinois Power proposes to enter into one or more guarantees or other credit support agreements in favor of its Financing Subsidiary. Illinois Power also requests authorization to enter into an expense agreement ("Expense Agreement") with any Financing Subsidiary, under which it would agree to pay all expenses of Financing Subsidiary. In cases where it is necessary or desirable to ensure legal separation for purposes of isolating a Financing Subsidiary from its parent for bankruptcy purposes, the ratings agencies may require that any Expense Agreement whereby the parent provides services related to the financing to the Financing Subsidiary be at a price, not to exceed a market price, consistent with similar services for parties with comparable credit quality and terms entered into by other companies so that a successor service provider could assume the duties of the parent in the event of the bankruptcy of the parent without interruption or an increase of fees. Therefore, Illinois Power requests approval under section 13(b) of the Act and rules 87 and 90 to provide the services described in this paragraph at a fee not to exceed a market price but only for so long as the Expense Agreement established by the Financing Subsidiary is in place.

Illinois Power states that any Financing Subsidiary organized under the authority granted in this proceeding shall be organized only if, in management's opinion, the creation and utilization of such Financing Subsidiary will likely result in tax efficiencies, increased access to capital markets and/or lower cost of capital for Illinois Power. No Financing Subsidiary shall acquire or dispose of, directly or indirectly, any interest in any "utility asset," as that term is defined under the Act.

Illinois Power also requests authorization to issue to any Financing Subsidiary, at any time or from time to time in one or more series, unsecured debentures, unsecured promissory notes, or other unsecured debt instruments (individually, a "Note" and, collectively, the "Notes") governed by an indenture or indentures or other documents. Illinois Power proposes that the Financing Subsidiary will apply the proceeds of any external financing by such Financing Subsidiary plus the amount of any equity contribution made to it from time to time to purchase the Notes. The terms (*e.g.*, interest rate, maturity, amortization, prepayment terms, default provisions, etc.) of any Notes would generally be designed to parallel the terms of the securities issued by the Financing Subsidiary to which the Notes relate.

X. Accounting Treatment for the Transaction; Impact on Rates

In accordance with Statement of Financial Accounting Standards ("SFAS") No. 141, "Business Combinations," Ameren states that it will use the purchase method of accounting for the Transaction. Under this method of accounting, the total cost of acquiring Illinois Power will be assigned to the tangible and identifiable intangible assets acquired and liabilities assumed in the Transaction on the basis of their fair values on the date of the acquisition. Any premium (*i.e.*, the excess of the cost over the fair values of the net assets acquired) will be recorded as goodwill. In this case, Ameren intends to "push down" the purchase accounting and establish a new basis of accounting for the stand-alone financial statements of Illinois Power. Ameren expects that, for accounting purposes, the goodwill recorded on Illinois Power's books as a result of the Transaction will generally remain unchanged, but it will be reviewed for potential impairment on a regular basis in accordance with SFAS No. 141 and SFAS No. 142, "Goodwill and Other Intangible Assets."

Ameren states that, in the ICC application, Ameren has committed to reverse the balance sheet and income statement impacts of the purchase accounting entries "pushed down" to the financial statements of Illinois Power so that there will be no impact on Illinois Power's rate base, cost of service or any other factor upon which Illinois Power's rates will be determined in future ICC proceedings, with the exception that Illinois Power is requesting ICC authorization to amortize ratably over the period 2005 "2010 no less than $100 million of costs incurred to carry out the Transaction, and to recover the unamortized portion over the period 2007 "2010. Under the Amended SPA, it is a condition precedent to Ameren's obligation to consummate the Transaction that the ICC approve the "push down" of the purchase accounting entries to the financial statements of Illinois Power, subject to the foregoing commitments regarding rate impacts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49911; File No. SR–CHX–2003–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Governance of Issuers on the Exchange

June 24, 2004.

I. Introduction

On July 28, 2003, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain provisions of its rules relating to the governance of issuers that list securities on the CHX. The proposed rule change was published for comment in the **Federal Register** on October 28, 2003.[3] On November 24, 2003, the Exchange filed Amendment No. 1 to the proposal.[4] On December 1, 2003, the Commission partially approved the proposal, granted accelerated approval to Amendment No. 1, and solicited comments from interested persons on Amendment No. 1.[5] Specifically, the Commission approved the portions of the proposed rule change that implemented the requirements of Rule 10A–3 under the Act relating to audit committees of listed issuers;[6] amended CHX's listing maintenance standards; and added a provision relating to complaint procedures of audit committees of investment companies. The Commission received no comments on the proposal and Amendment No. 1.

On April 8, 2004, the CHX filed Amendment No. 2 to the proposed rule change.[7] On June 21, 2004, the CHX filed Amendment No. 3 to the proposed rule change.[8] In Amendment Nos. 2 and 3, the CHX proposed additional enhancements to the proposal and revisions to a number of its provisions that were not approved in the Partial Approval Order. The substantive changes to the proposal made by Amendment Nos. 2 and 3 are summarized below. This Order approves the proposed rule change in its entirety, as amended; grants accelerated approval to Amendment Nos. 2 and 3; and solicits comments from interested persons on Amendment Nos. 2 and 3.

II. Description of the Proposal

In addition to the provisions of the proposed rule change that were approved in the Partial Approval Order, including those implementing the requirements of Rule 10A–3 under the Act, the CHX proposes further enhancements to the governance of issuers that list securities on the Exchange, which are set forth in CHX Article XXVIII, Rules 19 and 21 (collectively, the "CHX Governance Standards"). Specifically, the CHX seeks to amend its Tier I and Tier II listing standards to enhance the Exchange's requirements relating to the roles and responsibilities of independent directors; expand its existing provisions and add new requirements relating to independent board committees (including audit committees, nominating committees and compensation committees); and require the adoption by each listed issuer of a code of ethics applicable to directors, officers, and employees.

The Exchange believes that in most respects the proposed changes are substantially similar to rule changes relating to governance standards adopted, with Commission approval, by the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), and by the American Stock Exchange LLC ("Amex").[9] A few of the proposed changes mirror similar rule changes adopted, with Commission approval, by the NYSE.[10] Summarized below are the principal categories of change to the CHX Governance Standards:

Definition of "Independence"

Several existing and proposed rules of the Exchange require that specified roles and responsibilities in the governance of listed issuers be assigned to independent directors. Existing CHX rule language defines "independent director" in a manner that generally precludes any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The proposed rule change would add that the board has the responsibility to make an affirmative determination that no such relationship exists.[11] In addition, the proposed amendments would specifically identify six categories of persons who could not be considered independent.

In general, persons who would not be considered independent would include: (i) A director employed by the issuer or its parent or subsidiary during the previous three years; (ii) a director who accepted (or who has a immediate family member who accepted) any payments from the issuer in excess of $60,000 during the current year or any of the past three fiscal years (other than compensation for board or board committee service, payments arising solely from investments in the issuer's securities, compensation paid to an immediate family member who is an employee but not an executive officer, benefits under a tax-qualified retirement plan, non-discretionary compensation, or loans permitted by Section 13(k) of the Act);[12] (iii) a director who is an immediate family member of an individual who is, or who served at any time during the previous three years, as an executive officer of the issuer or its parent or subsidiary; (iv) a director who is (or has an immediate family member who is) a partner, controlling shareholder, or executive officer in any organization that received payments from the issuer, or that made payments to the issuer, for property or services[13] exceeding 5% of the recipient's consolidated gross revenues for the year or $200,000, whichever is greater;[14] (v) a director who is (or who has an immediate family member who is)

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48669 (October 21, 2003), 68 FR 61500.

[4] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 21, 2003 ("Amendment No. 1").

[5] Securities Exchange Act Release No. 48860 (December 1, 2003), 68 FR 68436 (December 8, 2003) ("Partial Approval Order").

[6] 17 CFR 240.10A–3.

[7] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 7, 2004 ("Amendment No. 2").

[8] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 18, 2004 ("Amendment No. 3").

[9] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approving changes to the corporate governance listing standards of Nasdaq and the New York Stock Exchange, Inc. ("NYSE")) and Securities Exchange Act Release No. 48863 (December 1, 2003), 68 FR 68432 (December 8, 2003) (approving changes to the corporate governance listing standards of the Amex).

[10] *See* Securities Exchange Act Release No. 48745, *supra*.

[11] *See* CHX Article XXVIII, proposed Rule 19(p)(3), as revised by Amendment No. 2.

[12] The exceptions for compensation for board committee service and for loans permitted by Section 13(k) were added by Amendment No. 2.

[13] *See* Amendment No. 2.

[14] The proposed rule would provide exceptions for payments arising solely from investments in the issuer's securities and, as revised by Amendment No. 2, for payments under non-discretionary charitable contribution matching programs.

employed as an executive officer of another entity, where, at any time[15] during the past three years, any of the executive officers of the issuer serve on the compensation committee of the other entity; and (vi) a director who is (or who has an immediate family member who is) a current partner of the issuer's outside auditor or who was a partner or employee of the issuer's outside auditor, who worked on the issuer's audit at any time during the past three years.[16] A separate CHX rule would apply to investment companies.[17] The proposed amendments would also define an immediate family member as a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and any person who has the same residence as the director in question.[18]

Independent Board and Board Committees

The proposed amendments would require most issuers to maintain a majority of independent directors on their boards, and small business issuers would be required to have boards consisting of at least 50% independent directors.[19] However, a controlled company would be exempt from these requirements.[20] Other temporary exceptions would apply where a single director ceases to be independent due to circumstances outside the person's reasonable control or where an issuer fails to meet the independence standard due to a single vacancy on the board.[21] The proposed rule would also require regularly convened executive sessions of the independent directors.[22]

Under the proposal, nomination of the issuer's directors would be determined, or recommended for board determination, by either a majority of independent directors or a nominating committee comprised solely of independent directors.[23] Furthermore, each issuer would be required to adopt a formal written charter or board resolution, as applicable, addressing the nominations process and any related matters as may be required under the federal securities laws.[24] The nominating process set forth in the rule would not need to be followed in cases where the right to nominate a director legally belongs to a third party.[25]

The proposal would also require that the compensation of the issuer's chief executive officer ("CEO") and other officers be determined or recommended to the board for determination by a majority of independent directors or by a compensation committee comprised solely of independent directors.[26] An issuer's CEO would not be permitted to be present during voting or deliberations regarding his or her own compensation.[27]

Audit Committee Requirements

The proposed amendments would expand existing CHX requirements relating to audit committee composition and would include new requirements relating to that committee's role and authority.[28] Under the proposal, each listed issuer would be required to establish and maintain an audit committee of at least three members (two members for small business issuers).

Each audit committee member would continue to be required to meet the requirements of Rule 10A–3, as set forth in provisions of the proposed rule change that were approved in the Partial Approval Order.[29] In addition, subject to limited exceptions, each member of an issuer's audit committee would be required: (i) To be an independent director as defined by the proposed new CHX provisions discussed above; (ii) not to have participated, at any time during the past three years, in the preparation of the financial statements of the issuer or any current subsidiary of the issuer; and (iii) to be able to read and understand fundamental financial statements, including a company's balance sheet, income statement and cash flow statement.[30] At least one member of the audit committee would be required to have accounting or related financial management expertise, as the issuer's board of directors interprets that qualification in its business judgment.[31]

The proposed amendment also would require each issuer's audit committee to certify that it has adopted a formal written charter that specifies certain minimum purposes, duties, and responsibilities of the committee, including those that are required by Rule 10A–3. Under the proposal, the audit committee would be required to review and reassess the written charter on an annual basis.[32]

Audit committees for investment companies additionally would be required to establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or

[15] *See* Amendment No. 2.

[16] *See* Amendment No. 2.

[17] *See* CHX Article XXVIII, proposed Rule 19(p)(3)(G), which was added by Amendment No. 2. In the case of an investment company, in lieu of paragraphs (A)–(F) of proposed CHX Rule 19(p)(3), a director who is an "interested person" of the company, as defined in section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, would not be considered independent under the proposed rule.

[18] *See* CHX Article XXVIII, proposed Rule 19(p)(2).

[19] *See* CHX Article XXVIII, proposed Rule 19(a).

[20] *See* CHX Article XXVIII, proposed Rule 19(a)(3)(A). Under the definition proposed in CHX Article XXVIII, Rule 19(p)(1), a "controlled company" would mean a company of which more than 50% of the voting power is held by an individual, group, or other company. *See also infra* notes 39–41 and accompanying text regarding other entities that would be exempt from these requirements.

[21] *See* CHX Article XXVIII, proposed Rule 19(a)(3)(B).

[22] A controlled company would be subject to this requirement. *See* Amendment No. 3.

[23] *See* CHX Article XXVIII, proposed Rule 19(c). *See* Amendment No. 2, which added the phrase, "or recommended for board determination."

[24] *See* CHX Article XXVIII, proposed Rule 19(c)(2), which was added by Amendment No. 2.

[25] Controlled companies and certain other entities would be exempt from these requirements. *See infra* notes 39–41 and accompanying text. In addition, the rule would incorporate an exception that would permit certain persons to serve on the nominating committee if the issuer's board, under exceptional and limited circumstances, determines that a person's membership on the committee is required by the best interests of the company and its shareholders and the board discloses the nature of the relationship and the basis for its determination in the next annual meeting proxy statement or other applicable annual disclosure filed with the Commission following that determination. A nominating committee member appointed under these circumstances could not serve longer than two years, unless he or she ultimately satisfies the definition of an independent director. *See* CHX Article XXVIII, proposed Rule 19(c)(3).

[26] *See* CHX Article XXVIII, proposed Rule 19(d). See also Amendment No. 2, which added the phrase, "or recommended to the board for determination," and made other revisions. Controlled companies and certain other entities would be exempt from these requirements. *See infra* notes 39–41 and accompanying text. Also, a specific exception would exist to allow certain persons to serve on the compensation committee in exceptional and limited circumstances, similar to the exception regarding nominating committees discussed at *supra* note 25. *See* CHX Article XXVIII, proposed Rule 19(d)(3).

[27] *See* proposed CHX Article XXVIII, proposed Rule 19(d)(1), as revised by Amendment No. 2. The CEO would be permitted to participate in the deliberations relating to the compensation of other officers, but would not be allowed to vote. *See* CHX Article XXVIII, proposed Rules 19(d)(2).

[28] *See* CHX Article XXVIII, proposed Rule 19(b). *See infra* notes 39–41 and accompanying text regarding the applicability to certain issuers of the proposed rules discussed in this section.

[29] *See* CHX Article XXVIII, proposed Rule 19(b)(1).

[30] *Id.* Item (ii) was added by Amendment No. 2.

[31] *See* CHX Article XXVIII, proposed Rule 19(b)(1)(B), added by Amendment No. 2. A director who qualifies as a financial expert under Item 401(h) of Regulation S–K or Item 401(e) of Regulation S–B (or any successor provisions to those items) would be presumed to have accounting or related financial management expertise.

[32] *See* CHX Article XXVIII, proposed Rule 19(b)(3).

any other provider of accounting related services for the investment company, as well as employees of the investment company. This responsibility would be required to be addressed in the audit committee's charter.

Approval of Related Party Transactions

The rules, as amended, would require that each issuer conduct an appropriate review of all related party transactions on an ongoing basis and review potential conflict of interest situations where appropriate. Issuers would be permitted to use the company's audit committee or another independent body of the board of directors for this review.[33]

Code of Business Conduct and Ethics

Under the proposed rules, each issuer would be required to adopt a code of conduct and ethics that applies to its directors, officers, and employees.[34] The code would be required to comply with the definitions of Section 406(c) of the Sarbanes-Oxley Act and the rules thereunder and would be required to provide for an enforcement mechanism that meets specific requirements.[35] Waivers of the code for directors and officers would need to be approved by the issuer's board of directors and be made publicly available.[36] In addition, the code itself would be required to be made publicly available.[37]

Governance-Related Certifications

The proposed amendments would contain a requirement that each issuer's CEO certify, on an annual basis, that he or she is not aware of any violation by the issuer of any standard set forth in CHX Article XXVIII, Rules 19(a)–(e). Furthermore, such CEO would be required to promptly notify the Exchange if any executive officer of the issuer becomes aware of any material non-compliance by the issuer with those standards.[38]

Applicability

The CHX Governance Standards would apply to all companies listing securities on the Exchange, with particular exemptions for controlled companies, limited partnerships, companies in bankruptcy, management investment companies, and foreign issuers.[39] Passive business organizations (such as royalty trusts) would not be subject to these standards, nor would the standards apply to derivatives or special purpose securities, if those entities are exempt from the requirements of Rule 10A–3 under the Act.[40] Furthermore, under the proposal, foreign issuers would be permitted to comply with their home country practices with respect to corporate governance, except to the extent that Rule 10A–3 requires compliance with specific audit committee requirements.[41] As further discussed below, to the extent consistent with Rule 10A–3, additional specific exemptions would exist for dual and multiple listings, where the same or another class of security of the company is already listed on another national securities exchange or national securities association that has similar governance-related requirements.[42] As already noted, the proposed CHX Governance Standards would apply to companies that list securities under Tier I or Tier II of the CHX's listing standards.

Application of Standards to Issuers With Dual or Multiple Listings

The proposed rule change would further provide that, if an issuer is listed on a national securities exchange or national securities association with listing standards substantially similar to the CHX Governance Standards, the issuer would not be required to separately meet the CHX Governance Standards.[43] The proposed rule text would contain specific criteria that must be considered when determining whether another market's governance standards are "substantially similar."[44]

Schedule for Effectiveness of Proposed Rule Changes

The CHX proposes that the proposed rule changes to CHX Governance Standards that are the subject of this Order become effective in accordance with the timetable set forth in CHX Article XXVIII, Rule 19, proposed Interpretation and Policy .05, as amended by Amendment No. 2.[45] In

[33] A provision in the portion of the proposed rule change approved in the Partial Approval Order required the audit committee to conduct a review of all related party transactions and to review potential conflict of interest situations where appropriate. The Exchange modified this provision in Amendment No. 2 to permit such review to be conducted by another independent body of the board of directors. The provision, as amended, would appear as new paragraph (o) and be removed from the audit committee section of CHX Rule 19. *See also infra* notes 39–41 and accompanying text.

[34] *See infra* notes 39–41 and accompanying text regarding entities that would be exempt from this requirement.

[35] The enforcement mechanism, added as a requirement by Amendment No. 2, would be required to be designed to ensure prompt and consistent enforcement of the code, protections for persons reporting questionable behavior, clear standards for compliance, and a fair process by which to determine violations.

[36] For most issuers, waivers would need to be disclosed to shareholders in a Form 8–K within five business days. Foreign private issuers would be required to disclose waivers in a Form 6–K or in the next Form 20–F. *See* Amendment No. 2.

[37] *See* CHX Article XXVIII, proposed Rule 19(e).

[38] *See* CHX Article XXVIII, proposed Rule 19(f). *See also infra* notes 39–41 and accompanying text.

[39] *See* CHX Article XXVIII, Rule 19, proposed Interpretations and Policies .02 and .03. In Amendment No. 2, the CHX revised these proposed exemptions to make them consistent with those approved for other self-regulatory organizations ("SROs"). Under the revised proposal, for example, closed-end management investment companies that are registered under the Investment Company Act of 1940 would not be required to comply with sections (a) through (f) of CHX Rule 19, except that these issuers would be required to meet the requirements of Rule 10A–3 under the Act and other specified audit committee standards and to notify the Exchange of non-compliance with the applicable requirements, among other provisions. *See* CHX Article XXVIII, Rule 19, proposed Interpretation and Policy .03(2)(A). Similarly, open-end funds would not be required to comply with sections (a) through (f) of CHX Rule 19, except that they would be required to comply with the audit committee requirements of Rule 10A–3 under the Act and to establish complaint procedures for employees of third-party service providers and address these procedures in the audit committee charter. *See* CHX Article XXVIII, Rule 19, proposed Interpretation and Policy .03(2)(C). The Exchange believes that registered management investment companies are already subject to significant regulation, and, as a result, should not be required to adhere to all of the proposed governance standards. However, the Exchange believes that they should be required to meet specified requirements. Furthermore, business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, would be required to comply with all of the provisions of CHX Rule 19.

[40] *See* CHX Article XXVIII, Rule 19, proposed Interpretation and Policy .03(3).

[41] Foreign issuers would be required to provide English language disclosure of any significant ways in which their corporate governance practices differ from those required for domestic issuers under CHX Rule 19. This disclosure could be provided either on the issuer's website or in the annual report distributed to shareholders in the U.S. If the disclosure is made only on an issuer's website, the issuer would be required to note that fact in its annual report and provide the web address at which the disclosure may be reviewed. *See* CHX Article XXVIII, Rule 19, proposed Interpretation and Policy .03(4), added by Amendment No. 2.

[42] *See* CHX Article XXVIII, Rule 19, proposed Interpretation and Policy .04.

[43] *See* CHX Article XVIII, Rule 19, proposed Interpretation and Policy .04. The Exchange has represented that it will have surveillance procedures sufficient to confirm that an issuer relying on this provision is in compliance with the governance standards of the other listing market. Consistent with Rule 10A–3 under the Act, the exemption would not apply to the Exchange's requirements relating to audit committees or to an issuer's obligations to notify the Exchange if there is material non-compliance with the audit committee requirements.

[44] In Amendment No. 2, the CHX added that, among these criteria, the listing standards of the other market must include a code of business conduct and ethics that complies with the definition of a "code of ethics" set out in Section 406(c) of the Sarbanes-Oxley Act and the rules thereunder. *See* CHX Article XVIII, Rule 19, proposed Interpretation and Policy .04.

[45] The audit committee requirements approved in the Partial Approval Order, as mandated by Rule

Continued

general, following Commission approval of the proposed rule changes, these new governance standards would become effective on the earlier of the issuer's first annual shareholders meeting after July 1, 2004 or January 31, 2005. Foreign private issuers and small business issuers would have until July 31, 2005 to comply. If an issuer, however, has a board with staggered terms, and a change is required with respect to a director whose term does not expire within these periods, the issuer would have until its second annual meeting after the date specified above, but not later than December 31, 2005, to comply with the requirements of section (a) regarding boards of directors. Issuers listing on the Exchange in connection with an initial public offering would be required to comply with the CHX Governance Standards within time frames generally consistent with the exemptions in Rule 10A–3 under the Act.[46] Issuers transferring from another marketplace with substantially different governance standards generally would be required to comply with CHX Governance Standards within one year after listing on the CHX.[47]

Summary of Revisions Made by Amendment Nos. 2 and 3

Summarized below are the significant revisions of the proposal made by Amendment Nos. 2 and 3, most of which have already been noted in the discussion above. Amendment No. 2 revised the proposal to:

- Require a listed issuer's board to make an affirmative determination of a director's independence, and require the issuer to disclose the directors who have been determined to be independent;[48]
- Exclude compensation for board committee service or a loan permitted by Section 13(k) of the Act from payments that would preclude a finding that a director is independent;[49]
- Exclude non-discretionary charitable contribution matching programs from payments that would preclude a finding that a director is independent;[50]
- Include certain employment or partnership relationships of immediate family members with an issuer's outside auditor that would preclude a finding that a director is independent, and clarify the eligibility of former partners of an auditor who did not work on the audit;[51]
- Add a definition of independent director for registered management investment companies;[52]
- Include a requirement that each issuer adopt a formal written charter or board resolution, as applicable, addressing the nominations process and related matters;[53]
- Preclude a director holding 20% or more of an issuer's stock from serving on the nominating committee despite being an officer of the issuer;[54]
- Require each member of an issuer's audit committee not to have participated, in the past three years, in the preparation of the financial statements of the issuer or any current subsidiary, and require at least one member of the committee to have financial expertise;[55]
- Permit an issuer to use the company's audit committee or another independent body of the board of directors for the review of related party transactions;[56]
- Require an issuer's code of ethics to provide for an enforcement mechanism that meets specific requirements and clarify the disclosure obligations of the issuer with respect to waivers of the code;[57]
- Require foreign issuers to provide English language disclosure of significant ways in which their corporate governance practices differ from those required for domestic issuers;[58]
- Establish a revised schedule for the proposed rules to take effect, as discussed above;[59] and
- Set forth in a separate provision the governance requirements that are applicable to listed issuers until the provisions of the proposed rule change become effective.[60]

Amendment No. 2 further made additional clarifications to the definition of independent director[61] and to the roles of nominating and compensation committees;[62] revised the provisions concerning the applicability of the CHX Governance Standards to management investment companies;[63] and revised the provisions concerning the listing criteria for issuers of securities that are dually listed on the CHX and other markets, as discussed above.[64] In general, Amendment No. 2 incorporated a number of textual revisions to clarify the need of issuers to comply with the requirements of Rule 10A–3 under the Act, and included alternative methods for issuers that do not file annual proxies to make disclosures required under the rules.[65] Amendment No. 3 revised the proposal to require the independent directors of a controlled company to have regularly scheduled meetings at which only independent directors are present.[66]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[67] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[68] in that it is designed, among other things, to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

In the Commission's view, the proposed rule change, as amended, will foster greater transparency,

10A–3 under the Act, become effective as set forth in Rule 10A–3.

[46] Specifically, for each applicable committee that the issuer establishes (such as a nominating committee or compensation committee), the issuer would be required to have one independent member at the time of listing, a majority of independent members within 90 days of listing, and all independent members within one year. These issuers would be required to meet the majority independent board requirement (50% for small business issuers) within one year after listing on the Exchange. It should be noted, however, that investment companies are not afforded these exemptions under Rule 10A–3.

[47] An issuer transferring to the CHX from another market with substantially similar governance standards would be required to comply with such governance standards at the time the issuer lists with the CHX, or within any transition period that was provided by the other marketplace.

[48] *See supra* note 11.

[49] *See supra* note 12.

[50] *See supra* note 14.

[51] *See supra* note 16.

[52] *See supra* note 17.

[53] *See supra* note 24.

[54] The proposal initially included a provision that would have permitted such a director to serve on the nominating committee under certain limited circumstances, despite his or her failure to meet the independence standard.

[55] *See supra* notes 30 and 31.

[56] *See supra* note 33.

[57] *See supra* notes 35–36.

[58] *See supra* note 41.

[59] *See supra* notes 45–47 and accompanying text.

[60] *See* proposed Interpretation .05(5) to CHX Article XXVIII, Rule 19.

[61] *See supra* notes 13, 15, and 16.

[62] *See supra* notes 23 and 26.

[63] *See supra* note 39.

[64] *See supra* notes 43–44 and accompanying text.

[65] In Amendment No. 2, the CHX also made changes of a technical, non-substantive nature to some of the text approved in the Partial Approval Order.

[66] *See supra* note 22.

[67] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[68] 15 U.S.C. 78f(b)(5).

accountability, and objectivity in the oversight by, and decision-making processes of, the boards and key committees of CHX listed issuers. The proposal, as amended, also will promote compliance with high standards of conduct by the issuers' directors and management. The Commission notes that the CHX has amended its proposal to significantly harmonize it with rule changes recently approved by the Commission for the NYSE, NASD, and the Amex.[69] The Commission also believes that the proposed rule change, as amended, is consistent with Rule 10A–3 under the Act.[70]

The CHX has requested that the Commission grant accelerated approval to the changes in Amendment Nos. 2 and 3. The Commission believes that the revisions proposed in Amendment Nos. 2 and 3 significantly align the corporate governance standards proposed for companies listed on the CHX with the standards approved by the Commission for companies listed on other SROs.[71] The Commission believes it is appropriate to accelerate approval of these amendments so that the comprehensive set of strengthened corporate governance standards for companies listed on the CHX may be implemented on generally the same timetable (with some modification of certain deadlines) as that for similar standards adopted for issuers listed on other SROs. The Commission therefore finds good cause, consistent with Section 19(b)(2) of the Act,[72] to approve Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2003–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2003–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2003–19 and should be submitted on or before July 22, 2004.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[73] that the proposed rule change (SR–CHX–2003–19), as amended, be, and hereby is, approved, and that Amendment Nos. 2 and 3 to the proposed rule change be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[74]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14899 Filed 6–30–04; 8:45 am]

BILLING CODE 8010–01–P

[69] *See supra* note 9.

[70] *See* Partial Approval Order, *supra* note 5.

[71] *See supra* note 9.

[72] 15 U.S.C. 78s(b)(2).

[73] 15 U.S.C. 78s(b)(2).

[74] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49915; File No. SR–NYSE–2004–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend a Pilot Relating to Voluntary Supplemental Procedures for Selecting Arbitrators

June 25, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2004, the New York Stock Exchange, Inc. ("NYSE" or "the Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an extension until January 31, 2005, of a pilot regarding Voluntary Supplemental Procedures for Selecting Arbitrators ("Supplemental Procedures" or "pilot program").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

The Exchange has prepared summaries, set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is intended to extend until January 31, 2005, the pilot period of the Supplemental Procedures, which were approved by the Commission most recently for a two-year period ending July 31, 2004.[5]

The Exchange currently offers four alternative methods by which arbitrators are assigned to cases. The first is the traditional method pursuant to NYSE Rule 607, in which the staff of the Exchange appoints arbitrators to cases. Three additional methods were introduced in 2000 under the Supplemental Procedures to allow parties to select arbitrators: Random List Selection, Enhanced List Selection and any reasonable alternative method of the parties' own design and agreement.[6]

Under Random List Selection, the parties are provided randomly generated lists of public and securities classified arbitrators. The parties have ten days to strike and rank the names on the lists. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case. If a panel cannot be generated from the first list, a second list is generated, with three potential arbitrators for each vacancy, and one peremptory challenge available to each party for each vacancy. If vacancies remain after the second list has been processed, arbitrators are then randomly assigned to serve, subject only to challenges for cause.

Under Enhanced List Selection, six public and three securities classified arbitrators are selected by Exchange staff, based on their qualifications and expertise. The lists are then sent to the parties. The parties have a limited number of strikes to use and are required to rank the arbitrators not stricken. Based on the mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case.

Finally, the Supplemental Procedures provide that the Exchange will accommodate the use of any reasonable alternative method of selecting arbitrators that the parties decide upon, provided that the parties agree. Absent agreement to the use of Random List Selection, Enhanced List Selection, or any other reasonable alternative method, the traditional method is used.

The Exchange, pursuant to a separate filing (SR–NYSE–2004–29)[7], is proposing amendments to Rule 607 which would, in effect, make permanent a variation of the pilot program described herein. Pending approval of those amendments, the Exchange proposes to extend the pilot period for the Supplemental Procedures for an additional six months.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act[9], the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.[10] In this regard, the Commission notes that the proposal is the extension of a pilot program that has been in effect at the Exchange since August 2000. Nothing in the current notice should be interpreted as suggesting the Commission is predisposed to approving the pilot program on a permanent basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

[5] Exchange Act Release No. 46372 (August 16, 2002), 67 FR 54521 (August 22, 2002) (SR–NYSE–2002–30).

[6] The pilot program was implemented originally for a two-year period. Exchange Act Release No. 43214 (August 28, 2000), 65 FR 53247 (September 1, 2000) (SR–NYSE–00–34). Upon expiration of the first two-year period, the Exchange renewed the pilot program for two additional years, ending on July 31, 2004. Exchange Act Release No. 46372. See also Exchange Act Release No. 47929 (May 27, 2003), 68 FR 32791 (June 2, 2003) (SR–NYSE–2003–15) (amending the Supplemental Procedures to conform with NYSE Rule 601, which provides that a claim with an amount in dispute of $25,000 or less will be decided by a single arbitrator, instead of a panel of three).

[7] Filed with the Commission on June 14, 2004.

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–NYSE–2004–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–28 and should be submitted on or before July 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14898 Filed 6–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49912; File No. SR–PCX–2004–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. to Eliminate the Ability to Manually Trade With Orders and Quotes With Size in the Consolidated Book

June 24, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On June 22, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to eliminate the rule that allows a Market Maker or Floor Broker to manually trade with orders and Quotes with Size[4] in the Consolidated Book[5] by vocalizing a bid or offer in a particular series and effecting a trade with the Order Book Official. The text of the proposed rule change appears below. Text to be deleted is in brackets.

Rules of the Board of Governors of the Pacific Exchange, Inc.

Rule 6—Options Trading; Priority and Order Allocation Procedures

Rule 6.76(a)–(d)(1)(C)—No change.

[Rule 6.76(d)(2) Market Makers and Floor Brokers may trade with orders and Quotes with Size in the Consolidated Book by vocalizing a bid or offer in a particular series and effecting a trade with the Order Book Official.]

Commentary .01–.02—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, PCX Rule 6.76(d)(2) permits Market Makers and Floor Brokers to manually trade with orders and Quotes with Size in the Consolidated Book by vocalizing a bid or offer in a particular series and effecting a trade with the Order Book Official. The PCX represents that the PCX Plus platform does not support the functionality required by PCX Rule 6.76(d)(2) and that the PCX does not intend to develop such functionality. As such, the PCX believes that it is necessary to remove this provision from the Exchange's rules to conform the PCX rules to currently available and contemplated future trading procedures. The Exchange is not proposing to eliminate a Member's ability to trade with orders and Quotes with Size in the Consolidated Book. Rather, the Exchange chooses to have this type of trading available only on its electronic platform, PCX Plus. Therefore, Market Makers and Floor Brokers who wish to trade with orders and Quotes with Size in the Consolidated Book may do so by obtaining and using the PCX Plus platform.

In addition to the reason set forth above, the Exchange represents that requiring Market Makers and Floor Brokers to manually interact with an Order Book Official to execute a trade is not as efficient as executing the trade electronically via PCX Plus. The Exchange also represents that, because of the inefficiencies that exist with manual interaction, no Exchange Members have requested this functionality. Therefore, the Exchange believes that removing the rule permitting this manual interaction will have no impact on the Exchange Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of 6(b)(5) of the Act[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and

[11] 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 Steven B. Matlin, Senior Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 21, 2004 ("Amendment No 1"). In Amendment No. 1, the Exchange clarified the language describing the PCX Plus platform in the Purpose section.

[4] *See* PCX Rule 6.1(b)(33).

[5] *See* PCX Rule 6.1(b)(37).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–47 and should be submitted on or before July 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14971 Filed 6–30–04; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4735]

Bureau of Democracy, Human Rights and Labor; Establishment of Advisory Committee on Persons With Disabilities

SUMMARY: The Advisory Committee on Persons with Disabilities has been established to serve the Secretary of State and the Administrator of the Agency for International Development in an advisory capacity with respect to the consideration of the interests of persons with disabilities in formulation and implementation of U.S. foreign policy and foreign assistance The Committee is established under the general authority of the Secretary and the Department of State as set forth in Title 22 of the United States Code, in particular sections 2656 and 2651a, and in accordance with the Federal Advisory Committee Act, as amended. Applications for membership on the Advisory Committee are presently being solicited. Interested persons may forward their résumé to Christopher N. Camponovo, Bureau of Democracy, Human Rights and Labor, U.S. Department of State, 2201 "C" St., NW., Washington, DC 20520 or, in electronic form, to *camponovocn@state.gov*. All résumés must be received by July 14, 2004.

Dated: June 24, 2004.

Christopher N. Camponovo,

Department of State, Bureau of Democracy, Human Rights and Labor.

[FR Doc. 04–14977 Filed 6–30–04; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice 4739]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9 a.m. on Tuesday, August 24, 2004, in Room 6319 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 47th Session of the International Maritime Organization (IMO) Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety to be held at IMO Headquarters in London, England from September 13th to 17th.

The primary matters to be considered include:

- Harmonization of damage stability provisions in SOLAS Chapter II–1;
- Large passenger ship safety;
- Review of the Intact Stability Code;
- Revision of the Fishing Vessel Safety Code and Voluntary Guidelines;
- Review of the Offshore Supply Vessel Guidelines;
- Harmonization of the damage stability provisions in other IMO instruments, including the 1993 Torremolinos Protocol (probabilistic method);
- Review of the 2000 HSC Code and amendments to the DSC Code and the 1994 HSC Code.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Paul Cojeen, Commandant (G–MSE), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 1308, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: June 25, 2004.

Steven D. Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 04–14978 Filed 6–30–04; 8:45 am]

BILLING CODE 4710–07–P

[8] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Initiation of a Review To Consider the Designation of Iraq as a Beneficiary Developing Country Under the GSP

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment with respect to the eligibility of Iraq for the GSP program.

SUMMARY: This notice announces the initiation of a review to consider the designation of Iraq as a beneficiary developing country under the GSP program and solicits public comment relating to the designation criteria: Comments are due August 2, 2004 in accordance with the requirements for submissions, explained below.

ADDRESSES FOR SUBMISSIONS: Submit comments by electronic mail (e-mail) to: *FR0440@ustr.gov*. For assistance or if unable to submit comments by e-mail, contact the GSP Subcommittee, Office of the United States Trade Representative; USTR Annex, Room F–220; 1724 F Street, NW.; Washington, DC 20508 (Tel. 202–395–6971).

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee, Office of the United States Trade Representative; USTR Annex, Room F–220; 1724 F Street, NW.; Washington, DC 20508 (Tel. 202–395–6971).

SUPPLEMENTARY INFORMATION: The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has initiated a review in order to make a recommendation to the President as to whether Iraq meets the eligibility criteria of the GSP statute, as set out below. After considering the eligibility criteria, the President is authorized to designate Iraq as a beneficiary developing country for purposes of the GSP.

Interested parties are invited to submit comments regarding the eligibility of Iraq for designation as a GSP beneficiary developing country. Documents not submitted in accordance with the below instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

Eligibility Criteria

The trade benefits of the GSP are available to any country that the President designates as a GSP "beneficiary developing country." In designating countries as GSP beneficiary developing countries, the President must consider the criteria in sections 502(b)(2) and 502(c) of the Trade Act of 1974, as amended (19 U.S.C. 2462(b)(2), 2462(c)) ("the Act"). Section 502(b)(2) provides that a country is ineligible for designation if:

1. Such country is a Communist country, unless—

(a) The products of such country receive nondiscriminatory treatment, (b) Such country is a WTO Member (as such term is defined in section 2(10) of the Uruguay Round Agreements Act) (19 U.S.C. 3501(10)) and a member of the International Monetary Fund, and (c) Such country is not dominated or controlled by international communism.

2. Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—

(a) To withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and (b) To cause serious disruption of the world economy.

3. Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

4. Such country—

(a) Has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, (b) Has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or (c) Has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) Prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to above, (ii) Good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or (iii) A dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

5. Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

6. Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. Appx. section 2405(j)(1)(A)) or such country has not taken steps to support the efforts of the United States to combat terrorism.

7. Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

8. Such country has not implemented its commitments to eliminate the worst forms of child labor.

Section 502(c) provides that, in determining whether to designate any country as a GSP beneficiary developing country, the President shall take into account:

1. An expression by such country of its desire to be so designated;

2. The level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

3. Whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

4. The extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity

resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

5. The extent to which such country is providing adequate and effective protection of intellectual property rights;

6. The extent to which such country has taken action to—

(a) Reduce trade distorting investment practices and policies (including export performance requirements); and (b) Reduce or eliminate barriers to trade in services; and

7. Whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights. Note that the Trade Act of 2002 amended paragraph (D) of the definition of the term "internationally recognized worker rights," which now includes: (A) The right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labor; (D) a minimum age for the employment of children and a prohibition on the worst forms of child labor as defined in paragraph (6) of section 507(4) of the Act; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Requirements for Submissions

Comments must be submitted, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee. Comments must be received no later than 5 p.m., August 2, 2004.

Information and comments submitted will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of each and every page of the document.

The public version that does not contain business confidential information must also be clearly marked at the top and bottom of each and every page (either "PUBLIC VERSION" or "NONCONFIDENTIAL"). Documents that are submitted without any marking might not be accepted or will be considered public documents.

In order to facilitate prompt consideration of submissions, USTR strongly urges and prefers electronic mail (e-mail) submissions in response to this notice. Hand delivered submissions will not be accepted. These submissions should be single copy transmissions in English with the total submission, including attachments, not to exceed 50 single-spaced, standard letter-size pages and 3 megabytes as a digital file attached to an e-mail transmission. Persons making submissions by e-mail should use the following subject line: "Iraq GSP Eligibility Review." Documents must be submitted, in English, as either WordPerfect (".WPD"), MSWord (".DOC"), or text (".TXT") files.

Documents shall not be submitted as electronic image files or contain large imbedded images (for example, ".JPG", ".PDF", ".BMP", ".TIF", or ".GIF"), as these types of files are generally excessively large. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel, preformatted for printing on 8½ × 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters "BC–", and the file name of the public version should begin with the characters "P–". The "P–" or "BC–" should be followed by the name of the submitter.

Persons who make submissions by e-mail should not provide separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself. The name and organization of the submitter, address, telephone and e-mail address, should also be included in the submission itself.

Public versions of all documents relating to this review will be available for review shortly after the due date by appointment in the USTR public reading room, 1724 F Street, NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday by calling (202) 395–6186.

Steven Falken,

Executive Director GSP, Chairman, GSP Subcommittee.

[FR Doc. 04–14962 Filed 6–30–04; 8:45 am]

BILLING CODE 3190–W4–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 22, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 2, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1622.

Form Number: IRS Form 8866.

Type of Review: Revision.

Title: Interest Computation under the Look-Back Method for Property Depreciated Under the Income Forecast Method.

Description: Taxpayers depreciating property under the income forecast method and placed in service after September 13, 1995, must use Form 8866 to compute and report interest due or to be refunded under Internal Revenue Code (IRC) 167(g)(2). The IRS uses Form 8866 to determine if the interest has been figured correctly.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 5,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—10 hrs., 45 min.

Learning about the law or the form—1 hr., 12 min.

Preparing, copying, assembling, and sending the form to the IRS—1 hr., 25 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 66,850 hours.

OMB Number: 1545–1882.
Announcement Number: Announcement 2004–38.
Type of Review: Extension.
Title: Election of Alternative Deficit Reduction Contribution.
Description: This announcement describes the election that must be made in order for certain employers to take advantage of the alternative deficit reduction contribution in section 102 of H.R. 3108.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 200.
Estimated Burden Hours Respondent/ Recordkeeper: 4 hours.
Frequency of response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 800 hours.
Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.
[FR Doc. 04–14972 Filed 6–30–04; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 23, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 2, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0026.
Form Number: IRS Form 926.
Type of Review: Extension.
Title: Return by a U.S. Transferor of Property to a Foreign Corporation.
Description: U.S. persons file Form 926 to report the transfer of property to a foreign corporation and to report information required by section 367. The IRS uses Form 926 to determine if the gain, if any, must be recognized by the U.S. person.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 1,000.
Estimated Burden Hours Respondent/ Recordkeeper:
Recordkeeping—5 hrs., 30 min.
Learning about the law or the form—4 hrs., 10 min.
Preparing and sending the form to the IRS—4 hrs., 26 min.
Frequency of response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 14,120 hours.

OMB Number: 1545–0067.
Form Number: IRS Form 2555.
Type of Review: Extension.
Title: Foreign Earned Income.
Description: Form 2555 is used by U.S. citizens and resident aliens who qualify for the foreign housing exclusion or deduction. This information is used by the Service to determine if a taxpayer qualifies for the exclusion(s) or deduction.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 286,955.
Estimated Burden Hours Respondent/ Recordkeeper:
Recordkeeping—1 hr., 51 min.
Learning about the law or the form—26 min.
Preparing the form—1 hr., 46 min.
Copying, assembling, and sending the form to the IRS—48 min.
Frequency of response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 1,403,210 hours.

OMB Number: 1545–0112.
Form Number: IRS Form 1099–INT.
Type of Review: Extension.
Title: Interest Income.
Description: This form is used for reporting interest income paid, as required by sections 6049 and 6041 of the Internal Revenue Code. It is used to verify that payees are correctly reporting their income.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government.
Estimated Number of Respondents/ Recordkeepers: 709,000.
Estimated Burden Hours Respondent/ Recordkeeper: 13 minutes.
Frequency of response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 54,979,533 hours.

OMB Number: 1545–0122.
Form Number: IRS Form 1118, Schedule I, and Schedule J.
Type of Review: Extension.
Title: Foreign Tax Credit—Corporations.
Description: Form 1118 and separate Schedules I and J are used by domestic and foreign corporations to claim a credit for taxes paid to foreign countries. The IRS uses Form 1118 and related schedules to determine if the corporation has computed the foreign tax credit correctly.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 30,000.
Estimated Burden Hours Respondent/ Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
Form 1118	100 hr., 55 min	18 hr., 3 min	21 hr., 41 min.
Schedule I (Form 1118)	9 hr., 19 min	1 hr., 0 min	1 hr., 11 min.
Schedule J (Form 1118)	106 hr., 25 min	1 hr., 12 min	2 hr., 58 min.

Frequency of response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 4,235,389 hours.

OMB Number: 1545–0806.
Regulation Project Number: EE–12–78 Final.
Type of Review: Extension.
Title: Non-bank Trustees.
Description: Internal Revenue Code (IRC) section 408(a)(2) permits an institution other than a bank to be the trustee of an individual retirement account (IRA). To do so, an application needs to be filed and various requirements need to be met. IRS uses

the information to determine whether an institution qualifies to be a non-bank trustee.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 23.

Estimated Burden Hours Respondent/ Recordkeeper: 34 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 13 hours.

OMB Number: 1545–0814.

Regulation Project Number: EE–44–78 Final.

Type of Review: Extension.

Title: Cooperative Hospital Service Organizations.

Description: This regulation establishes the rules for cooperative hospital service organizations which seek tax-exempt status under section 501(e) of the Internal Revenue Code. Such an organization must keep records in order to show its cooperative nature and to establish compliance with other requirements in section 501(c).

Respondents: Not-for-profit institutions.

Estimated Number of Recordkeepers: 1.

Estimated Burden Hours Recordkeeper: 1 hour.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1545–1043.

Notice Number: Notice 88–30 and Notice 88–132.

Type of Review: Extension.

Title: Notice 88–30: Diesel Fuel and Aviation Fuel Taxes Imposed at Wholesale Level; and Notice 88–132: Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89.

Description: Producers of aviation fuel must be registered by the IRS to sell the fuel tax-free. Producers must also obtain certifications from their tax-free buyers.

Respondents: Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal.

Estimated Number of Respondents/ Recordkeepers: 3,500.

Estimated Burden Hours Respondent/ Recordkeeper: 1 hour, 6 minutes.

Frequency of response: Quarterly.

Estimated Total Reporting/ Recordkeeping Burden: 3,850 hours.

OMB Number: 1545–1056.

Regulation Project Number: REG–209020–86 (formerly INTL–61–86) NPRM & Temporary.

Type of Review: Extension.

Title: Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations.

Description: Section 905(c) requires notification and redetermination of a taxpayer's United States tax liability to account for the effect of a foreign tax redetermination, in certain cases. The reporting requirements will enable the Internal Revenue Service to recompute a taxpayer's United States tax liability.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 10,000 hours.

OMB Number: 1545–1072.

Regulation Project Number: INTL–952–86 NPRM and Temporary.

Type of Review: Extension.

Title: Allocation and Apportionment of Interest Expense and Certain Other Expenses.

Description: The regulations provide rules concerning the allocation and apportionment of expenses to foreign source income for purposes of the foreign tax credit and other provisions.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 15,000.

Estimated Burden Hours Respondent/ Recordkeeper: 15 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 3,750 hours.

OMB Number: 1545–1265.

Regulation Project Number: IA–120–86 Final.

Type of Review: Extension.

Title: Capitalization of Interest.

Description: The regulations require taxpayers to maintain contemporaneous written records of estimates, to file a ruling request to segregate activities in applying the interest capitalization rules, and to request the consent of the Commissioner to change their methods of accounting for the capitalization of interest.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500,050.

Estimated Burden Hours Respondent/ Recordkeeper: 14 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 116,767hours.

OMB Number: 1545–1287.

Regulation Project Number: FI–3–91 Final.

Type of Review: Extension.

Title: Capitalization of Certain Policy Acquisition Expenses.

Description: Insurance companies that enter into reinsurance agreements must determine the amounts to be capitalized under those agreements consistently. The regulations provide elections to permit companies to shift the burden of capitalization for their mutual benefit.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,070.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–14973 Filed 6–30–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 25, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 2, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0715.

Form Number: IRS Form 1099–B.

Type of Review: Extension.

Title: Proceeds From Broker and Barter Exchange Transactions.

Description: Form 1099–B is used by brokers and barter exchanges to report proceeds from transactions to the Internal Revenue Service.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 50,000.

Estimated Burden Hours Respondent/ Recordkeeper: 18 minutes.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 39,988,038 hours.

OMB Number: 1545–0747.

Form Number: IRS Form 5498.

Type of Review: Extension.

Title: IRA Contribution Information.

Description: Form 5498 is used by trustees and issuers to report contributions to, and the fair market value of, an individual retirement arrangement.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 81,208,141.

Estimated Burden Hours Respondent/ Recordkeeper: 12 minutes.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 16,241,629 hours.

OMB Number: 1545–0930.

Form Number: IRS Form 8396.

Type of Review: Revision.

Title: Mortgage Interest Credit.

Description: Used by individual taxpayers to claim a credit against their tax for a portion of the interest paid on a home mortgage in connection with a qualified mortgage credit certificate. Internal Revenue Code (IRC) section 25 allows the credit and IRS section 163(g) provides that the interest deduction on Schedule A will be reduced by the credit.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 30,000.

Estimated Burden Hours Respondent/ Recordkeeper: Recordkeeping—45 min.

Learning about the law or the form—10 min.

Preparing the form—30 min.

Copying, assembling, and sending the form to the IRS—13 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 53,400 hours.

OMB Number: 1545–0997.

Form Number: IRS Form 1099–S.

Type of Review: Extension.

Title: Proceeds From Real Estate Transactions.

Description: Form 1099–S is used by the real estate reporting person to report proceeds from a real estate transaction to the IRS.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 75,000.

Estimated Burden Hours Respondent/ Recordkeeper: 8 minutes.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 510,456 hours.

OMB Number: 1545–1153.

Regulation Project Number: PS–73–89 (TD 8370) Final.

Type of Review: Extension.

Title: Excise Tax on Chemicals that Deplete the Ozone Layer and on Products Containing Such Chemicals.

Description: Section 4681 imposes a tax on ozone-depleting chemicals sold or used by a manufacturer or importer thereof and imported taxable products sold or used by an importer thereof. A floor stocks tax is also imposed. This regulation provides reporting and recordkeeping rules.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 150,316.

Estimated Burden Hours Respondent/ Recordkeeper: 30 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 75,142 hours.

OMB Number: 1545–1155.

Regulation Project Number: PS–74–89 (TD8282) Final.

Type of Review: Extension.

Title: Election of Reduced Research Credit.

Description: These regulations prescribe the procedure for making the election described in section 280C(c)(3) of the Internal Revenue Code. Taxpayers making this election must reduce their section 41(a) research credit, but are not required to reduce their deductions for qualified research expenses, as required in paragraphs (1) and (2) of section 280C(c).

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 200.

Estimated Burden Hours Respondent: 15 minutes.

Estimated Total Reporting Burden: 50 hours.

OMB Number: 1545–1342.

Form Number: IRS Form W–5.

Type of Review: Extension.

Title: Earned Income Credit Advance Payment Certificate.

Description: Form W–5 is used by employees to see if they are eligible for the earned income credit and to request part of the credit in advance with their pay. Eligible employees who want advance payments must give Form W–5 to their employers.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 183,450.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—6 min.

Learning about the law or the form—12 min.

Preparing the form—15 min.

Sending the form to the IRS—10 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 135,753 hours.

OMB Number: 1545–1374.

Form Number: IRS Form 8834.

Type of Review: Extension.

Title: Qualified Electric Vehicle Credit.

Description: Form 8834 is used to compute an allowable credit for qualified electric vehicles placed in service after June 30, 1993. Section 1913(b) under Pub. L. 102–1018 created new section 30.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—7 hrs., 39 min.

Learning about the law or the form—30 min.

Preparing, copying, assembling, and sending the form the IRS—39 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 4,395 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–14974 Filed 6–30–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 126
Thursday, July 1, 2004

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 HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2004

Correction

In notice document 04–13892 appearing on page 34375 in the issue of Monday, June 21, 2004, make the following correction:

On page 34375, in the second column, the table is corrected in part to read as follows:

Inpatient Hospital per Diem Rate (Excludes Physician Services) Calendar Year 2004	
* * * * *	*
Outpatient per Visit Rate (Excluding Medicare) Calendar Year 2004	
Lower 48 States	$216
Alaska	$402
Outpatient per Visit Rate (Medicare) Calendar Year 2004	
Lower 48 States	$178
Alaska	$367
* * * * *	*

[FR Doc. C4–13892 Filed 6–30–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
July 1, 2004

Part II

Environmental Protection Agency

40 CFR Part 93

Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[FRL–7774–6]

RIN 2060–AL73; 2060–AI56

Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today we (EPA) are amending the transportation conformity rule to finalize several provisions that were proposed last year. First, today's final rule includes criteria and procedures for the new 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or "standards"). Transportation conformity is required under Clean Air Act section 176(c) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of a state air quality implementation plan (SIP). We are conducting this rulemaking in part to revise the conformity regulation in the context of EPA's broader strategies for implementing the new ozone and $PM_{2.5}$ standards.

The final rule also addresses a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund* v. *EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). This final rule incorporates into the transportation conformity rule the EPA and Department of Transportation (DOT) guidance that has been used in place of certain regulatory provisions of the rule since the court decision.

DOT is EPA's federal partner in implementing the transportation conformity regulation. We have consulted with DOT on the development of this rulemaking, and DOT concurs with this final rule.

EPA notes that a supplemental notice of proposed rulemaking will be published in the near future to request additional comment on options related to $PM_{2.5}$ and PM_{10} hot-spot requirements. EPA is also not finalizing at this time any requirements for addressing $PM_{2.5}$ precursors in transportation conformity determinations for $PM_{2.5}$ nonattainment and maintenance areas. EPA is considering the transportation conformity rule's $PM_{2.5}$ precursor requirements in the context of EPA's broader $PM_{2.5}$ implementation strategy. All of these issues will be addressed in a separate final rule to be issued before $PM_{2.5}$ designations become effective.

EFFECTIVE DATE: August 2, 2004.

ADDRESSES: Materials relevant to this rulemaking for the November 5, 2003 proposal (68 FR 62690) are in Public Docket I.D. No. OAR–2003–0049. Materials relevant to this rulemaking for the June 30, 2003 proposal (68 FR 38974) are in Public Docket I.D. No. OAR–2003–0063. For more information about accessing information from the docket, see Section I.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *patulski.meg@epa.gov*, (734) 214–4842; Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *kapichak.rudolph@epa.gov*, (734) 214–4574; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *berry.laura@epa.gov*, (734) 214–4858.

SUPPLEMENTARY INFORMATION:

The contents of this preamble are listed in the following outline:

I. General Information

A. Regulated Entities

Entities potentially regulated by the conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government.	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government.	State transportation and air quality agencies.
Federal government.	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities of which EPA is aware that potentially could be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 93.102 of the transportation conformity rule. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document?

1. Docket. EPA has established official public dockets for today's final rule. Materials relevant to this rulemaking for the November 5, 2003 proposal (68 FR 62690) are in Public Docket I.D. No. OAR–2003–0049. Materials relevant to this rulemaking for the June 30, 2003 proposal (68 FR 38974) are in Public Docket I.D. No. OAR–2003–0063. The

official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Docket telephone number is (202) 566–1742. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. You may have to pay a reasonable fee for copying docket materials.

2. Electronic Access. You may access this **Federal Register** document electronically through EPA's transportation conformity Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*. You may also access this document electronically under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1. Once in the EPA electronic docket system, select "search," then key in the appropriate docket identification number.

II. Background on the Transportation Conformity Rule

A. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of the state air quality implementation plan (SIP). Conformity currently applies under EPA's rules to areas that are designated nonattainment, and those redesignated to attainment after 1990 ("maintenance areas" with plans developed under Clean Air Act section 175A) for the criteria pollutants: ozone, particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). Today's final rule also applies the conformity rule provisions in fine particulate matter ($PM_{2.5}$) areas. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or "standards"). EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published a comprehensive set of amendments on August 15, 1997 (62 FR 43780) that clarified and streamlined language from the 1993 rule. EPA has made other smaller amendments to the rule both before and after the 1997 amendments.

Today's final rule includes provisions from two proposals that were published on June 30, 2003 and November 5, 2003, as described below. EPA has consulted with the Department of Transportation (DOT), our federal partner in implementing the transportation conformity regulation, in developing all aspects of this rulemaking, and DOT concurs with this final rule.

B. What Did EPA Propose on June 30, 2003 and Why?

Today's final rule incorporates existing federal guidance into the conformity regulation consistent with a previous court decision. A decision made on March 2, 1999, by the U.S. Court of Appeals for the District of Columbia Circuit affected several provisions of the August 15, 1997 rulemaking (*Environmental Defense Fund* v. *EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999; hereinafter referred to as the "court decision"). Specifically, the court's ruling affected provisions that pertain to five aspects of the conformity rule, including:

(1) Federal approval and funding of transportation projects in areas without a currently conforming transportation plan and transportation improvement program (TIP);

(2) Provisions allowing motor vehicle emissions budgets from submitted SIPs to be used in transportation conformity determinations before the SIP has been approved;

(3) The adoption and approval of non-federal transportation projects in areas without a currently conforming transportation plan and TIP;

(4) The timing of conformity consequences following an EPA disapproval of a control strategy SIP (*e.g.*, reasonable further progress SIPs and attainment demonstrations) without a protective finding; and,

(5) The use of submitted safety margins in areas with approved SIPs that were submitted prior to November 24, 1993.

In response to the court decision, the EPA and DOT issued guidance [1] to address the provisions directly affected by the court decision. DOT also issued guidance on May 20, 2003, to clarify the conformity requirements as they relate to FHWA/FTA projects that require environmental impact statements.[2] In addition, FTA issued guidance on April 9, 2003, that further clarified which approvals are necessary for transit projects to proceed during a conformity lapse.[3] EPA and DOT consulted on the development of all of the guidance documents that were issued to implement the court decision.

This final rule incorporates all of these guidance documents, as proposed in EPA's June 30, 2003 rulemaking entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (68 FR 38974). EPA notes that although guidance implementing the court decision will still apply upon the effective date of this final rule, aspects of these guidance documents that are specifically addressed in this rulemaking will be governed by the

[1] May 14, 1999, Memorandum from Gay MacGregor, then-Director of the Regional and State Programs Division of EPA's Office of Transportation and Air Quality, to Regional Air Division Directors, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision"; January 2, 2002, Memorandum from Mary E. Peters, Administrator, Federal Highway Administration (FHWA), and Jennifer L. Dorn, Administrator, Federal Transit Administration (FTA), to FHWA Division Administrators, Federal Lands Highway Division Engineers, and FTA Regional Administrators, "Revised Guidance for Implementing the March 1999 Circuit Court Decision Affecting Transportation Conformity"; February 7, 2002, Notice, Issuance of Revised Guidance for Implementing the March 1999 Circuit Court Decision Affecting Transportation Conformity, **Federal Register**, 67 FR 5882.

[2] May 20, 2003, Memorandum from James M. Shrouds, Director, Office of Natural and Human Environment, FHWA, and Susan Borinsky, Director, Office of Human and Natural Environment, FTA, to FHWA Division Administrators, Federal Lands Highway Division Engineers, and FTA Regional Administrators, "INFORMATION: Clarification of Transportation Conformity Requirements for FHWA/FTA Projects Requiring Environmental Impact Statements."

[3] April 9, 2003, Memorandum from Jennifer L. Dorn, Administrator, FTA, to Regional Administrators, Regions 1–10, "INFORMATION: Revised FTA Procedures for a Conformity Lapse."

federal conformity rules when they become effective. In addition to issues affected by the court, the June 30, 2003 proposal and today's final rule include several amendments to other provisions of the conformity regulations. These amendments are aimed at improving the implementation of the conformity program.

The June 30, 2003 proposal and the comments received on that proposal serve as the basis for related provisions of today's final rule. The public comment period for the proposed rule ended on July 30, 2003. EPA received 25 sets of public comments on the proposed rule from MPOs; state and local transportation and air quality agencies; and, environmental, transportation and construction industry advocacy groups. Today's final rule makes several minor changes to the June 30, 2003 proposed rule in response to these stakeholder comments. The changes from the June 30, 2003 proposal and EPA's rationale for these changes are stated below. EPA has not, however, restated in this final rule background information and our complete rationale for many of the revisions to the conformity rule that are identical to the June 2003 proposal. The reader is referred to the proposal for such discussions. A copy of the proposal can be downloaded from EPA's transportation conformity website listed in Section I.B.2. of today's rulemaking.

C. What Did EPA Propose on November 5, 2003 and Why?

This final rule is also based on the November 5, 2003 proposed rule entitled, "Transportation Conformity Rule Amendments for the New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas" (68 FR 62690), and the comments received on that proposal. The public comment period for this proposal ended on December 22, 2003. EPA held one public hearing for this proposal on December 4, 2003. EPA received over 110 sets of public comments on the proposed rule from MPOs, state and local transportation and air quality agencies, and environmental and transportation advocacy groups. EPA also received over 11,000 similar comments on the proposal from public citizens from a mass e-mail campaign. Today's final rule promulgates proposed options and rule revisions in response to these stakeholder comments. This preamble explains EPA's rationale for the selection of certain proposed options described in the November 2003 proposal. A copy of the November 2003 proposal can be downloaded from EPA's transportation conformity website listed in Section I.B.2. of today's rulemaking.

EPA's nonattainment area designations for the new 8-hour ozone standard are effective on June 15, 2004 for most areas, and EPA anticipates designating areas for the new $PM_{2.5}$ air quality standard in November or December 2004. EPA is conducting this rulemaking to provide clear guidance and rules for implementing conformity for these standards. Some of the conformity rule revisions in this rulemaking will provide more options and flexibility in demonstrating conformity. Other changes apply to existing 1-hour ozone, CO, PM_{10} and NO_2 nonattainment and maintenance areas.

EPA notes that today's action does not finalize new transportation conformity requirements for $PM_{2.5}$ precursors and $PM_{2.5}$ hot-spot analyses, or make changes to existing PM_{10} hot-spot analysis requirements. EPA is considering requirements for addressing $PM_{2.5}$ precursors in transportation conformity determinations in the context of EPA's broader $PM_{2.5}$ implementation strategy. EPA will soon be publishing a supplemental notice of proposed rulemaking to request additional comment on options related to $PM_{2.5}$ and PM_{10} hot-spot requirements. $PM_{2.5}$ precursors and $PM_{2.5}/PM_{10}$ hot-spot analysis requirements will be addressed in a separate final rule to be issued before $PM_{2.5}$ designations become effective. See Sections VIII., XII., and XIII. for further information on these topics.

Other changes to the conformity program could occur in the future through the reauthorization of the Transportation Equity Act for the 21st Century (TEA–21), which authorizes federal surface transportation programs. EPA will continue to monitor the proposed reauthorization proposals for their potential impact on the conformity regulation. If statutory amendments to the conformity program result from TEA–21 reauthorization, EPA would take appropriate action to address such changes in the future.

D. What Parts of the Final Rule Apply to Me?

The following table provides a roadmap for determining whether a specific final rule revision included in this rulemaking would apply in your area. This table illustrates which parts of the final rule are relevant for various pollutants and standards. Please note that Sections V.–VII. provide stand-alone descriptions of the regional emissions tests that will apply in $PM_{2.5}$ areas and 8-hour ozone areas with and without existing 1-hour ozone SIPs. For example, if your area expects only to be designated nonattainment under the $PM_{2.5}$ standard, you should read Section VII. but not Sections V. and VI. (for 8-hour ozone areas). EPA believes that any redundancy between these sections is warranted to assist readers that may not need to read the entire final rule.[4]

Type of area	Issue addressed in final rule	Preamble section	Regulatory section
8-hour ozone	Conformity grace period	III.A.	§93.102(d).
	Revocation of 1-hour ozone standard	III.B.	Not applicable.
	General implementation of new standards	III.C.	Not applicable.
	Early Action Compacts	III.D.	Not applicable.
	Baseline year test	IV.B.	§93.119(b).
	Build/no-build test (marginal classification and subpart 1 areas [4])	IV.C.	§93.119(b)(2); §93.119(g)(2).
	Regional conformity tests (moderate and above classifications)	IV.D.	§93.119(b)(1).
	Regional conformity tests (areas without 1-hour ozone budgets)	V.	§93.109(d).
	Regional conformity tests (areas with 1-hour ozone budgets)	VI.	§93.109(e).
	Definitions	XIV.A.	§93.101.
	Insignificance	XIV.B.	§93.109(k); §93.121(c).

[4] "Subpart 1 areas" are areas that are designated nonattainment under subpart 1 of part D of title 1 of the Clean Air Act. EPA also referred to these areas as "basic" nonattainment areas in its April 30, 2004 final designations rule for the 8-hour ozone standard (69 FR 23862).

Type of area	Issue addressed in final rule	Preamble section	Regulatory section
	Transportation plan and modeling requirements (moderate and above classifications)	XIV.D.	§93.106(b); §93.122(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§93.121(b)(1).
$PM_{2.5}$	Applicability	III.A.	§93.102(b)(1).
	Conformity grace period	III.A.	§93.102(d).
	Baseline year test	IV.B.	§93.119(e).
	Build/no-build test	IV.C.	§93.119(e); §93.119(g)(2).
	Regional conformity tests	VII.	§93.109(i).
	Precursors in regional analyses	VIII.	No regulatory text being finalized.
	Re-entrained road dust in regional analyses	IX.	§93.102(b)(3); §93.119(f).
	Construction-related fugitive dust in regional analyses	X.	§93.122(f).
	Compliance with SIP control measures	XI.	§93.117.
	Hot-spots	XII.	No regulatory text being finalized.
	Definitions	XIV.A.	§93.101.
	Insignificance	XIV.B.	§93.109(k); §93.121(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§93.121(b)(1).
1-hour ozone	Revocation of 1-hour ozone standard	III.B.	No proposed regulatory amendments.
	Build/no-build test (marginal and below classifications)	IV.C.	§93.119(b)(2); §93.119(g)(2).
	Regional conformity tests (moderate and above classifications)	IV.D.	§93.119(b)(1).
	Definitions	XIV.A.	§93.101.
	Insignificance	XIV.B.	§93.109(k); §93.121(c).
	Limited maintenance plans	XIV.C.	§93.101; §93.109(j); §93.121(c).
	Transportation plan and modeling requirements (moderate and above classifications)	XIV.D.	§93.106(b); §93.122(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§93.121(b)(1).
	Clarification to use of approved budgets in conformity	XIV.G.	§93.109(c).
PM_{10}	Build/no-build test	IV.C.	§93.119(d); §93.119(g)(2).
	Compliance with SIP control measures (Request for information only)	XI.	No proposed regulatory amendments.
	Hot-spots	XIII.	No regulatory text being finalized.
	Clarification to Precursors	XIV.E.	§93.102(b)(2); §93.119(f)(5).
	Definitions	XIV.A.	§93.101.
	Insignificance	XIV.B.	§93.109(k); §93.121(c).
	Limited maintenance plans	XIV.C.	§93.101; §93.109(j); §93.121(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§93.121(b)(1).
	Clarification to use of approved budgets in conformity	XIV.G.	§93.109(g).
CO	Build/no-build test (lower CO classifications)	IV.C.	§93.119(c); §93.119(g)(2).
	Regional conformity tests (higher CO classifications)	IV.D.	§93.119(c)(1).
	Definitions	XIV.A.	§93.101.
	Insignificance	XIV.B.	§93.109(k); §93.121(c).
	Limited maintenance plans	XIV.C.	§93.101; §93.109(j); §93.121(c).
	Transportation plan and modeling requirements (moderate and serious classifications)	XIV.D.	§93.106(b); §93.122(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§93.121(b)(1).
	Clarification to use of approved budgets in conformity	XIV.G.	§93.109(f).
NO_2	Build/no-build test	IV.C.	§93.119(d); §93.119(g)(2).
	Definitions	XIV.A.	§93.101.
	Insignificance	XIV.B.	§93.109(k); §93.121(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§93.121(b)(1).
	Clarification to use of approved budgets in conformity	XIV.G.	§93.109(h).

E. Does This Final Rule Include the Entire Transportation Conformity Regulation?

No. The regulatory text in this final rule is limited to changes to affected portions of the conformity rule. However, a complete version of the conformity rule is available to the public on our transportation conformity website listed in Section I.B.2. of this rulemaking. The complete version is intended to help reviewers understand today's final rule in context with other existing rule sections that are not being changed.

III. Conformity Grace Period and Revocation of the 1-hour Ozone Standard

A. When Will Conformity Apply for the 8-hour Ozone and $PM_{2.5}$ Standards?

1. Description of Final Rule

Conformity applies one year after the effective date of EPA's initial nonattainment designation for a given pollutant and standard. This one-year conformity grace period is provided by Clean Air Act section 176(c)(6) and § 93.102(d) of the conformity regulation. This final rule adds $PM_{2.5}$ to § 93.102(d) of the conformity rule even though the grace period is already available to all newly designated nonattainment areas as a matter of law.

Since the 1-hour and 8-hour ozone standards are different NAAQS, every area that was designated nonattainment for the 8-hour ozone standard has a one-year grace period before conformity applies for that standard even if the area was previously designated nonattainment for the 1-hour ozone standard. Areas subject to conformity for the 1-hour ozone standard continue to be subject to all applicable Clean Air Act requirements during the 1-year conformity grace period for the 8-hour ozone standard, as described in B. of this section. EPA designated areas for the 8-hour ozone standard on April 15, 2004, and published the final designations rule on April 30, 2004 (69 FR 23858). Designations for most of these 8-hour areas will be effective on June 15, 2004. Therefore, conformity for the 8-hour ozone standard will begin to apply on June 15, 2005 in most areas.

When conformity is done for the 1-hour standard during the grace period for the 8-hour standard, areas should consider whether demonstrating conformity for the 1-hour and 8-hour ozone standards at the same time is possible or advantageous. For example, if a conformity determination is made in September 2004 for a new or revised transportation plan and/or TIP, an area would demonstrate conformity for the 1-hour ozone standard and may choose to address the 8-hour ozone standard at a later date near the end of the one-year grace period, if conformity analyses for the 8-hour standard are not yet completed. In contrast, if a conformity determination is made in January 2005 for a new or revised plan/TIP, an area may be able to complete all the necessary work to demonstrate conformity for both ozone standards at that time. If no new or revised plan/TIP is required during the one-year grace period, conformity could be determined for the 8-hour standard without also making a conformity determination for the 1-hour standard. Whatever the case, a conformity determination for the 8-hour standard must be in place on June 15, 2005 for the plan and TIP, or an area will lapse.

Areas should use the interagency consultation process to determine a schedule for conducting regional emissions analyses and demonstrating conformity for the 1-hour and 8-hour ozone standards during the one-year conformity grace period as appropriate. Areas can rely on similar analyses and other work for conformity determinations for existing and new standards, to the extent that such work meets applicable requirements.

EPA plans to designate areas for $PM_{2.5}$ by November or December of 2004. Similarly, every area that is designated nonattainment for the $PM_{2.5}$ standard will have a one-year grace period from the effective date of designations before conformity applies for that standard. It is important to note that PM_{10} is a different pollutant than $PM_{2.5}$, and today's final rule does not affect the applicability and continued general implementation of conformity in PM_{10} nonattainment and maintenance areas.

EPA anticipates that some areas will be designated as nonattainment for both the 8-hour ozone and $PM_{2.5}$ standards. In these areas, conformity for the 8-hour ozone standard will apply one year after the effective date of the area's 8-hour ozone designation, while conformity for $PM_{2.5}$ will apply one year after the effective date of the area's $PM_{2.5}$ designation.

As described in the November 5, 2003 proposal, if upon the expiration of the one-year grace period, a metropolitan area does not have a transportation plan and TIP that conform to the applicable standard in place, the conformity status of the area "lapses." Likewise, within one year after the effective date of an area's initial nonattainment designation, the existing and planned transportation network for any donut[5] portion of an area (as well as for the metropolitan portion of the area) must demonstrate conformity, or conformity of the metropolitan transportation plan and TIP will lapse, and the entire nonattainment area will be unable to obtain additional non-exempt project funding and approvals at that time. During a conformity lapse funding and approval of transportation projects are restricted and only limited types of projects can proceed (*e.g.*, safety projects, project phases that were approved before the lapse).

The November 2003 proposal also stated that the one-year conformity grace period applies in isolated rural nonattainment areas.[6] However, conformity determinations in isolated rural areas are required only when a non-exempt FHWA/FTA project needs funding or approval. Therefore, once the conformity grace period has expired, a conformity determination will only be required in such areas the next time a non-exempt project needs funding or approval.

For more information on the application of the conformity grace period in metropolitan, donut and isolated rural nonattainment areas, see the November 5, 2003 proposal to this final rule (68 FR 62695–62696). See Section III.C. below for guidance and EPA's responses to comments regarding implementation of the one-year grace period and conformity determinations under the new standards.

2. Rationale and Response to Comments

EPA received a number of comments on the one-year conformity grace period and the transition from the 1-hour ozone standard to the 8-hour ozone standard. Most commenters supported the one-year conformity grace period, with some commenters stating that the grace period makes sense and will provide state and local agencies with the time needed to prepare for conformity under the new standards. Another commenter supported the grace period as a means to prevent having to demonstrate conformity to two ozone standards simultaneously.

[5] As defined in § 93.101 of today's final rule, donut areas are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

[6] As defined in § 93.101 of today's final rule, isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. These areas are not donut areas.

Some commenters, however, believed that the one-year grace period would not allow enough time for some areas to meet the conformity requirements. One of these commenters questioned whether a year would be enough time to implement the interagency consultation process in brand new nonattainment areas or in existing nonattainment and maintenance areas that change in size or complexity. A few other commenters argued that the one-year grace period does not provide adequate time for new MPOs to become familiar with the conformity process or for existing MPOs to complete technical documentation and the public and adoption processes in nonattainment counties that are not within the MPO's jurisdiction (*i.e.*, donut areas).

To address these concerns, a few commenters suggested approaches for lengthening the conformity grace period. One commenter that was concerned about the lack of experience and resource burden on new and rural nonattainment areas requested that the grace period be extended to two years for these areas. Another commenter suggested that EPA provide a longer 60-day effective date for nonattainment designations, effectively giving areas two additional months before the conformity requirements apply.

EPA understands that some areas, including brand new metropolitan areas, donut areas, and complex nonattainment areas (*e.g.*, areas with multiple states and/or multiple MPOs) may have additional challenges in conducting the conformity process. However, the Clean Air Act, as amended on October 27, 2000, specifically provides newly designated nonattainment areas with only a one-year grace period, after which conformity applies as a matter of law under the statute. Therefore, we believe that the statutory language precludes EPA from extending the conformity grace period beyond one year for new nonattainment areas. We emphasize, however, that EPA issued letters to the states effectively notifying areas of their proposed 8-hour ozone nonattainment designation in December 2003 and that states submitted their recommendations for nonattainment areas based on monitored data, well before designations became effective.[7] In addition, state and local agencies of potential nonattainment areas have been involved early on in the 8-hour designation process. These new ozone nonattainment areas have already had additional time ahead of the one-year grace period to begin developing consultation procedures, modeling tools and data collections efforts for implementing the conformity regulation. EPA anticipates that areas designated nonattainment under the $PM_{2.5}$ standard will have similar advance notice of their pending designations, since state recommendations were due February 15, 2004, and many areas already expect that they will be designated nonattainment for $PM_{2.5}$.

The amount of time between the publication and effective dates of an action is established by EPA on a case-by-case basis for each rulemaking. We generally believe that the time needed for states to implement obligations for the NAAQS is fully considered in the statutory or regulatory provision establishing the compliance timeframe and that the effective date of the designations should not be used as a method for adjusting the compliance timeframes. In the context of promulgating the 8-hour ozone designations, EPA determined that it was appropriate to make the designations effective on June 15, 2004, approximately 45 days following the publication date of the designations. EPA will consider the appropriate effective date for $PM_{2.5}$ designations at the time it promulgates those designations.

EPA notes that Section III.C. of today's final rule includes guidance on general and specific questions raised by commenters for implementing the new standards. In addition, EPA will release guidance on specific implementation issues that may arise in some of the different types of new nonattainment areas (*e.g.*, multi-state and/or multiple MPO areas). We will provide this information in response to requests for clarification raised during the public comment period for this rulemaking. Newly designated nonattainment areas should also consult with their respective EPA regional and DOT division offices for additional guidance and assistance in meeting the conformity requirements within the one-year grace period. In addition, EPA and DOT will be conducting training sessions for the new standards conformity rulemaking in the near future that state and local agencies can attend; areas can also take advantage of existing EPA and DOT conformity[8] and emissions modeling[9] training that is currently available.

B. When Does Conformity Stop Applying for the 1-hour Ozone Standard?

1. Description of Final Rule

Conformity for the 1-hour ozone standard will no longer apply in existing 1-hour ozone nonattainment and maintenance areas once that standard and corresponding designations are revoked. Today's final conformity rule and responses to comments with respect to this issue are consistent with EPA's April 30, 2004, 8-hour ozone implementation final rule that revokes the 1-hour standard one year after the effective date of EPA's 8-hour designations (69 FR 23951).

Current 1-hour nonattainment and maintenance areas will continue to ensure that transportation activities conform to the existing 1-hour standard, including any applicable existing adequate or approved 1-hour SIP budgets, until that standard is revoked. When the 1-hour standard is revoked, conformity will no longer apply for either ozone standard in areas that are attaining the 8-hour ozone standard. Section 93.109(c) of today's final rule addresses conformity requirements for the 1-hour ozone standard. See EPA's April 30, 2004, 8-hour implementation final rule for more discussion on the revocation of the 1-hour ozone standard (69 FR 23951).

2. Rationale and Response to Comments

Many commenters supported the revocation of the 1-hour ozone standard at the time conformity applies for the 8-hour ozone standard. Several commenters believed that requiring conformity for both ozone standards at the same time would be overly burdensome and confusing, and would significantly impact state and local resources and the transportation sector. These commenters supported a final rule that focused on attainment of the 8-hour standard, rather than created duplicative conformity requirements for two ozone standards. One commenter also argued that requiring conformity for both ozone standards at the same time could undermine progress to achieve

[7] Information on 8-hour ozone nonattainment designations, including copies of EPA's December 2003 designation letters, can be accessed from EPA's Web site at *http://www.epa.gov/air/oaqps/glo/designations/index.htm.*

[8] The National Transit Institute offers a course entitled, "Introduction to Transportation/Air Quality Conformity." This course was developed by FTA, FHWA and EPA and is designed for federal, state and local agencies involved in the conformity process. In addition, the National Highway Institute offers a course entitled, "Estimating Regional Mobile Source Emissions."

[9] EPA and DOT jointly sponsored seven MOBILE6 training courses across the country in 2002. The training materials for these courses are on EPA's MOBILE6 website and can be downloaded at: *http://www.epa.gov/otaq/m6.htm.* Other training materials prepared by EPA are also available on this website.

adequate emission reductions, since new nonattainment areas may have to develop different control strategies for attaining the 8-hour ozone standard. This commenter believed that such a result could leave nonattainment areas extremely vulnerable to litigation. Some commenters stated that EPA's proposal is logical, since the 8-hour ozone standard is presumably a more stringent standard than the 1-hour standard.

However, other commenters believed EPA's proposal to revoke the 1-hour standard is unlawful because they believed it would allow large increases in motor vehicle emissions and thus violate the statutory conformity tests. Other commenters stated that if the 1-hour standard was revoked, areas would no longer have to meet the SIP motor vehicle emissions budgets ("budgets") established for that standard. These commenters were concerned that 8-hour nonattainment areas that were nonattainment or maintenance for the 1-hour standard would be able to determine conformity using less protective conformity tests, such as the build/no-build test, during the time period before new 8-hour SIP budgets are established. These commenters stated that not using existing 1-hour SIP budgets would lead to emissions increases that would later need to be offset by future controls for the 8-hour standard. Commenters also believed that using 1-hour ozone SIP budgets would support current air quality progress and ensure that attainment of the 8-hour standard is not delayed.

As stated in the final 8-hour implementation rule (69 FR 23951) and corresponding response to comments document, EPA disagrees that revoking the 1-hour standard is unlawful. Congress gave EPA the authority to create and revise the NAAQS. In Clean Air Act section 109(d)(1), Congress directed EPA to review the standards every five years and "make such revisions in such criteria and standards and promulgate such new standards * * *." EPA interprets "make such revisions in * * * standards" to mean that EPA has the authority to replace one standard with another. EPA does not believe that Congress intended to have overlapping standards every five years for the same pollutant. If that were the case, states would be required to develop and implement a SIP for each version of the standard. Duplicating these efforts would waste limited resources because the goal of each standard is the same: to protect public health and welfare. EPA promulgated the 8-hour standard in response to the latest data and science regarding ozone, and has determined that the 8-hour ozone standard is more protective of public health and welfare. EPA has made the decision to replace the 1-hour standard with the 8-hour standard, because it may be difficult for states to plan for both standards and because EPA concludes that the 8-hour standard is the more appropriate standard.

Implicit in the authority to revise standards is the authority to revoke a standard. The U.S. Supreme Court's ruling (531 U.S. 547 (2001)) in a challenge against EPA's 1997 8-hour ozone implementation strategy certainly did not state otherwise. EPA needs to be able to revoke standards so that states and areas can move on to implementing the new standard and not have to implement old standards in perpetuity. Finally, since the 8-hour standard is the more stringent of the two standards, EPA believes conforming to that standard will be sufficient, as noted by several commenters.

As stated in the April 30, 2004 final 8-hour implementation rule (69 FR 23969), EPA believes it is sufficient that conformity be determined for one ozone standard at a time. EPA concludes that focusing conformity requirements on one ozone standard at a time will meet Clean Air Act conformity requirements and use limited state and local resources in an efficient manner.

However, EPA agrees that the continued use of existing approved or adequate 1-hour SIP budgets is important for meeting 8-hour conformity requirements before new 8-hour SIPs are established. Section VI. of this final rule provides further information regarding conformity requirements and EPA's rationale for such requirements in 8-hour ozone areas that have existing 1-hour SIP budgets.

One commenter supported EPA's proposal to revoke the 1-hour standard for areas that are found to be in attainment of the new 8-hour standard. Based on air quality data and significant reductions from federal and state measures that will continue to remain in place, this commenter believed that revoking the 1-hour standard in the commenter's specific area would not impact ozone emissions.

However, two other commenters opposed eliminating conformity in 1-hour ozone nonattainment and maintenance areas that were not designated nonattainment for the 8-hour standard. One of these commenters argued that conformity under the 1-hour maintenance plan helped prevent 8-hour violations, and urged EPA to work with these areas to find an acceptable mechanism to allow those areas that wish to retain conformity as a preventative measure. The other commenter believed that all areas that are covered by one of the ozone standards must continue or start to provide for clean air; the conformity process is a mechanism to accomplish this goal.

Conformity cannot apply in 1-hour maintenance areas once the standard is revoked. The Clean Air Act specifically states that conformity applies only in "a nonattainment area* * *" and "an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan under section 7505a of this title* * *" (42 U.S.C. 7506(5)). Clean Air Act section 176(c)(5) restricts conformity to nonattainment areas and areas that are required to submit maintenance plans under section 175A; in these areas, the Federal government's sovereign immunity is waived so that DOT can be required to make conformity determinations.[10] However, after revocation of the 1-hour standard, the areas previously required to submit section 175A maintenance plans under the statute for the 1-hour standard will no longer be required to do so. Thus, conformity can no longer be required in 1-hour maintenance areas, since the Clean Air Act limits conformity to areas that are required to submit section 175A maintenance plans and no longer waives the Federal government's sovereign immunity for these areas after revocation.

EPA acknowledged in the June 2, 2003 proposed 8-hour implementation rule (68 FR 32818–32825) that our interpretation that conformity would not apply in 1-hour maintenance areas differs from the approach taken in 1997. In 1997, EPA interpreted revoking the 1-hour standard to mean that conformity would not apply for the 1-hour standard in areas that were nonattainment for the 1-hour standard, but that conformity would continue to apply for the 1-hour standard in areas with a maintenance plan. This interpretation led to an unfair and counter-intuitive result: areas that had attained the standard and had made the effort to establish a maintenance plan would have to continue a required

[10] The concept of sovereign immunity specifies that the federal government can only be subjected to regulation to the extent it voluntarily agrees to become subject. With respect to conformity, in the Clean Air Act, Congress has agreed that the federal government should be subject only one year after designation in areas designated nonattainment or previously designated nonattainment and redesignated to attainment subject to a 175A maintenance plan. Thus, sovereign immunity prevents the mandatory application of conformity requirements either prior to a year after designation or after revocation with respect to a given air quality standard.

program, but areas that had not attained would not. EPA reconsidered this result and found it to be unfair and inappropriate. Further, upon reanalyzing Clean Air Act section 176(c)(5), this previous interpretation did not fit with the text of the statute.

As stated in the April 30, 2004 final 8-hour implementation rule (69 FR 23987), EPA has concluded that the better interpretation of the statute is that conformity would not apply in 1-hour maintenance areas once the 1-hour standard is revoked, because maintenance areas are relieved of the obligation under Clean Air Act section 175A (42 U.S.C. 7505a) to have a maintenance plan. Since these areas are no longer required to have a maintenance plan, conformity no longer applies for the 1-hour standard in these areas as a matter of law, and no waiver of sovereign immunity applies to allow imposition of conformity requirements.

It is EPA's conclusion that areas that are in attainment for the 8-hour standard are not subject to conformity because the statute explicitly limits the applicability of conformity to designated nonattainment and maintenance areas for a given pollutant and standard. EPA notes that these areas still have incentive to monitor the growth of emissions from the transportation sector; if these areas violate the 8-hour standard, EPA would designate them nonattainment for the 8-hour standard and conformity would then apply. Although states cannot implement conformity for attainment areas as a matter of federal law, they could still work with their MPOs to estimate regional emissions that would be generated by the planned transportation system to see whether a violation could occur, and to address motor vehicle emissions growth. These type of state activities may be done under state law, when possible, or on a voluntary basis.

One commenter suggested that the 1-hour standard should remain in place until the 8-hour standard is fully implemented and no longer subject to legal challenges to ensure that one of the ozone standards is implemented. The commenter believed that this approach would be particularly important for areas impacted by regional transport. Other commenters stated that the 8-hour ozone standard should be delayed if revocation of the 1-hour standard becomes delayed.

EPA does not believe, however, that the current statutory and regulatory requirements allow us to extend conformity for the 1-hour standard or delay conformity for the 8-hour standard in the event of legal challenges, for example, as this commenter has suggested. In the April 30, 2004 final 8-hour ozone implementation rule, EPA specifically promulgated rules that will revoke the 1-hour standard one year after the effective date of 8-hour designations. Alternatively, Clean Air Act section 176(c)(6) and conformity rule § 93.102(d) require conformity for the 8-hour standard one year after the effective date of ozone nonattainment designations. Therefore, conformity for the 8-hour standard will apply in areas designated nonattainment for that standard on June 15, 2005. As previously stated, EPA has no statutory authority to extend the one-year conformity grace period and delay the conformity requirements in new 8-hour nonattainment areas.

A few commenters recommended that if 8-hour ozone SIP budgets are submitted and found adequate by EPA prior to revocation of the 1-hour standard, they should replace all prior ozone budgets, including those for the 1-hour standard. One commenter supported EPA's proposal to require that 1-hour conformity requirements be met prior to revocation, including adherence to the applicable 1-hour SIP budgets. Another commenter believed that only conformity for the 8-hour standard should apply once designations are made during the one-year grace period, rather than the 1-hour conformity requirements.

EPA addressed this issue of revocation as part of its April 30, 2004 final 8-hour implementation rule. EPA did not propose in its June 2, 2003, 8-hour implementation proposal to revoke the 1-hour standard earlier than one year after designations, since EPA intended to align the revocation of the 1-hour standard with the application of conformity requirements for the 8-hour standard one year after the effective date of 8-hour nonattainment designations. Furthermore, EPA did not expect that areas would be able to submit an 8-hour SIP earlier.

EPA continues to believe that most areas are unlikely to have adequate budgets that address the 8-hour standard before EPA revokes the 1-hour standard. Such budgets cannot stand alone but have to be associated with adopted control measures and demonstrations of either attainment or reasonable further progress, and EPA believes developing these SIPs will take states some time. Once the SIPs are submitted, EPA must find them adequate, a process which EPA intends to complete within 90 days of receiving a SIP in most cases. It is very unlikely that states will be able to complete the work to submit 8-hour SIPs prior to one year from the effective date of 8-hour designations, and much less likely that states would have submitted them sufficiently in time for EPA to find them adequate before the 1-hour standard is revoked.

Given these facts and the fact that EPA did not include in its June 2003 8-hour implementation proposal an option for revoking the standard earlier than one year after 8-hour designations are effective, EPA did not provide for early revocation of the 1-hour standard, nor will EPA require 8-hour areas to expedite development of their 8-hour SIP for this purpose. As described above, the Clean Air Act provides a one-year grace period before conformity for the 8-hour standard applies, so EPA is not able to mandate 8-hour requirements sooner, as suggested by one commenter. Prior to the revocation of the 1-hour standard, new or revised transportation plans and TIPs must conform to the applicable SIP budgets for the 1-hour standard.

Finally, one commenter believed that the final rule should address the situation where a new ozone nonattainment area can demonstrate conformity for the 8-hour standard during the grace period, but cannot for the 1-hour standard.

EPA has concluded consistent with the April 30, 2004 final 8-hour ozone implementation rule and today's action, the 1-hour standard will remain in effect for one year following the effective date of 8-hour nonattainment designations. EPA believes this is appropriate since 8-hour conformity cannot be required to apply before that time. Therefore, areas currently designated nonattainment or maintenance for the 1-hour ozone standard must demonstrate conformity for the 1-hour standard for any new or revised transportation plan, TIP and project approval during the one-year grace period for the 8-hour standard. In general, if an area must determine plan/TIP conformity during the grace period because of a required deadline and is unable to do so, the nonattainment or maintenance area's conformity for the 1-hour standard will lapse. This lapse would remain in effect until conformity for the 1-hour standard is re-established or the 1-hour standard is revoked, regardless of whether the area conforms for the 8-hour standard during that time period. On the other hand, if an area's plan/TIP meets conformity for the 1-hour standard but cannot meet conformity for the 8-hour standard during the grace period, the area would lapse when the one-year grace period ends, because at that point, conformity applies for the 8-hour standard.

C. How Do Areas Implement the One Year Conformity Grace Period and Transition From the 1-hour Ozone Standard?

In the November 5, 2003 proposal, EPA provided details on the application of the one-year conformity grace period in metropolitan, donut, and isolated rural nonattainment areas (68 FR 62695–62696). New nonattainment areas should refer to A. of this section and the November 2003 proposal for these discussions.

EPA received several questions and comments regarding general implementation for the new standards. The paragraphs below include general information on the implementation of conformity requirements for:

- Initial conformity determinations in new nonattainment areas;
- regional emissions modeling requirements in new nonattainment areas;
- timely implementation of transportation control measures (TCMs) in approved SIPs;
- multi-jurisdictional nonattainment areas (*e.g.*, multi-state areas and areas with sub-area budgets); and
- donut and isolated rural areas.

Both the November 2003 proposal's preamble and our response to comments below are based on implementation precedent to date, and do not create any new conformity policy. Section VI. of today's notice provides more details on the use of 1-hour ozone budgets in 8-hour ozone nonattainment areas. EPA will post more detailed implementation guidance on its transportation conformity website for conformity determinations in new standard areas, including 8-hour ozone areas with 1-hour SIP budgets and multi-state/multi-MPO nonattainment areas. Please see Section I.B.2. of this notice for information regarding EPA's conformity website.

1. Initial 8-hour Ozone and $PM_{2.5}$ Conformity Determinations

As described in A. of this section, areas that are designated nonattainment for the 8-hour ozone and/or $PM_{2.5}$ standard must determine conformity of transportation plans and TIPs by the expiration of the one-year conformity grace period for a relevant pollutant and standard. Metropolitan and donut 8-hour ozone and $PM_{2.5}$ nonattainment areas must complete all of the tasks that are required for a conformity determination (*e.g.*, interagency consultation, regional emissions analyses, public participation, MPO and DOT conformity determinations) during the relevant grace period in order to avoid a conformity lapse upon the expiration of the grace period.[11] Clean Air Act section 176(c)(6) specifically states that conformity will not apply in an area for a particular standard until one year after the area is designated for that standard. Thus, although completing conformity determinations for the new standards is not required prior to the end of the grace period, FHWA, FTA, and MPOs can choose to make determinations early for administrative purposes, when desired. FHWA and FTA have voluntarily agreed that they can make conformity determinations during the grace period even though it is not mandated by the Clean Air Act.

Metropolitan areas that are designated nonattainment for the 8-hour ozone and $PM_{2.5}$ standards can make transportation plan and TIP conformity determinations during their respective grace periods on a voluntary basis. In order to avoid a lapse, DOT must make its conformity determination prior to the end of the grace period. The timing of the next required plan and TIP conformity determinations will be determined pursuant to the frequency requirements in § 93.104 of the conformity rule, starting from the date of DOT's first conformity determination that includes a new regional emissions analysis under the new standards, even if this occurs prior to the end of the grace period. Thus, conformity determinations will always be conducted at intervals as required by the regulations.

Similarly, a conformity determination for a non-exempt FHWA/FTA project in a metropolitan, donut, or isolated rural area could be prepared during the one-year grace period, and submitted to DOT. DOT can make its conformity determination for such a project during the grace period. However, a conformity determination for a new standard might not be necessary if FHWA and FTA take all necessary approval actions prior to the end of the grace period. Once the conformity grace period expires, a project-level conformity determination is required whenever non-exempt projects complete the NEPA process, as defined in 40 CFR 93.101. For projects that complete the NEPA process prior to the end of the conformity grace period without a conformity determination for a new standard, a project-level conformity determination would be required for the next project phase that requires FHWA/FTA approval.

2. Regional Emissions Analysis Requirements in 8-hour Ozone and $PM_{2.5}$ Areas

One commenter requested clarification on whether different regional emissions analysis requirements will apply under the 1-hour and 8-hour ozone standards. In this rulemaking, EPA did not change the regional emissions analysis requirements in § 93.122 for existing and new nonattainment and maintenance areas. Therefore, new 8-hour ozone and PM2.5 areas must adhere to the same emissions analysis requirements as existing areas. For example, only 8-hour ozone nonattainment areas classified as serious, severe and extreme whose metropolitan planning area contains an urbanized population over 200,000 are required to meet the more rigorous transportation modeling requirements contained in § 93.122(b) of the conformity rule. Based on EPA's April 15, 2004 designations and classifications for 8-hour nonattainment areas as published in the **Federal Register** on April 30, 2004 (69 FR 23858), all nonattainment areas classified as serious or severe under the 8-hour ozone standard are already meeting these modeling requirements because they had a similar or higher classification under the 1-hour ozone standard. There are no nonattainment areas classified as extreme under the 8-hour standard.

However, even if these areas were required to expand the geographic area covered by their transportation model, these expanded areas would have a two-year grace period to revise their model to cover the full 8-hour ozone nonattainment area, as described in Section XXIII. and § 93.122(c) of today's action. Similarly, if there are 8-hour ozone nonattainment areas initially classified as serious or severe with an urbanized population greater than 200,000 that were never previously required to comply with the modeling requirements contained in § 93.122(b), either because their 1-hour classification was lower or their urbanized population was under 200,000, these areas would also have a two-year grace period to develop a new transportation model that satisfies these requirements. During the two-year grace period, affected areas must meet the requirements of § 93.122(d) of the conformity rule.

In addition, $PM_{2.5}$ nonattainment areas and all other 8-hour ozone nonattainment areas are also required to

[11] As described in A. of this section, isolated rural areas that are designated nonattainment for the 8-hour ozone and/or $PM_{2.5}$ standard may not need to demonstrate conformity by the expiration of the one-year grace period. Newly designated isolated rural areas are only required to determine conformity for the first time when a non-exempt federal highway or transit project requires funding or approval after the end of the one-year grace period.

comply with the transportation modeling requirements contained in § 93.122(d). This section requires these areas to continue to model regional emissions using all of the procedures described in § 93.122(b) where it has been their past practice. In other words, if an area has previously been required to demonstrate conformity and the area's transportation model and modeling practices either fully or partially complied with the requirements of § 93.122(b), the area must continue to model regional emissions for the 8-hour ozone and/or $PM_{2.5}$ standard using procedures which continue to meet these same aspects of the § 93.122(b) requirements that were previously met. Otherwise, areas may estimate regional emissions using any appropriate methods that account for growth in vehicle miles traveled (VMT) and consider future economic activity, transit alternatives and transportation system policies, as determined through the interagency consultation process.

3. Timely Implementation of TCMs in Approved SIPs

Section 93.113 of the existing conformity rule requires that transportation plans, TIPs, and projects which are not from a conforming plan and TIP must provide for the timely implementation of TCMs from an approved SIP. EPA notes that today's final rule does not change the implementation of these requirements for any existing or new nonattainment or maintenance area, including 8-hour nonattainment areas that have approved 1-hour SIPs that contain TCMs.

Clean Air Act section 176(c) requires that TCMs in approved SIPs be implemented in a timely manner according to the schedules in the SIP. This requirement is not contingent on what type of SIP, pollutant, or standard for which the approved TCM was established. Conformity determinations for any pollutant and standard must provide for the timely implementation of TCMs in approved SIPs, including TCMs in approved SIPs for the 1-hour ozone standard after that standard is revoked. Such TCMs can only be removed from the 1-hour SIP through the SIP process.

4. Multi-State Nonattainment Areas and Nonattainment Areas With Sub-Area Budgets

Some commenters requested clarification regarding how conformity would be implemented under the new standards in nonattainment areas with multiple MPOs or that cover multiple states. EPA believes that today's action is consistent with its existing conformity rule and historical precedent that provides flexibility to such areas. For example, nonattainment areas with multiple MPOs can establish sub-area motor vehicle emissions budgets in their 8-hour ozone or $PM_{2.5}$ SIPs to allow MPOs to do conformity separately, provided that all MPOs in such a nonattainment area continue to have conforming transportation plans and TIPs. EPA will post implementation guidance on its transportation conformity Web site for conformity determinations in multi-state and multi-MPO nonattainment areas. Please see Section I.B.2. of this notice for information regarding EPA's conformity Web site.

5. Donut Areas

A few commenters requested clarifications pertaining to conformity implementation in portions of a nonattainment area that are not contained within the area's MPO boundary (*i.e.*, "donut areas"). Specifically, one commenter requested that adjacent MPO and donut areas in the same nonattainment area be allowed to submit individual conformity determinations.

In general, EPA believes that regional emissions for an entire nonattainment area, including any donut portion, must be considered at the time a conformity determination is made to ensure that all transportation activities in that area conform. Therefore, EPA has not changed the current rule's requirements and existing precedent for donut areas in response to this comment. Areas that contain a donut portion should refer to the November 5, 2003 proposal (68 FR 62695–62696) for more information on the requirements for demonstrating conformity in donut areas.

Another commenter requested that EPA designate state transportation and air quality agencies as the lead agencies for conducting and completing conformity determinations for donut areas. This commenter believed that this process for demonstrating conformity in donut areas needs to be formalized through the interagency consultation process and/or a memorandum of understanding.

EPA anticipates that the state departments of transportation may take the lead in conducting regional emissions analyses for the donut portion in some nonattainment areas. However, there may be cases where an adjacent MPO is better suited to conduct such analyses or wants to include the donut area's projects in its plan and TIP and supporting regional emissions analysis. Section 93.105(c)(3) of the conformity rule relies on the interagency consultation process (including the MPO and state transportation agency) to determine how best to consider projects that are planned for donut areas located outside the metropolitan area and within the nonattainment or maintenance area in the conformity process. Section 93.105 also requires that such procedures for demonstrating conformity of donut area projects be included in an area's conformity SIP that is approved by EPA. Therefore, EPA believes that the existing rule's requirements and the flexibility provided by this provision remain appropriate and do not need to be revised to address this comment.

Another commenter raised concerns that in some nonattainment areas only portions of the donut area may be included in the MPO's transportation model. This commenter also suggested that emissions information for such outlying donut portions may not be readily available.

EPA understands that the donut portion of some new nonattainment areas may not be included in the adjacent MPO's transportation model and may not have as up-to-date or detailed planning information as the MPO. The conformity rule provides flexibility for modeling requirements in these areas. In fact, existing methods that are used in donut areas may already be suitable for conformity determinations. EPA does not believe that a travel demand model is required to estimate emissions for donut areas in most cases (provided that § 93.122(b) does not apply to the nonattainment area). See C.2. of this section for more information about the general transportation modeling requirements in 8-hour and $PM_{2.5}$ nonattainment areas.

In addition, the conformity rule requires the use of the latest planning assumptions and emissions models that are available at the time a conformity analysis begins (§§ 93.110 and 93.111). Today's change to the latest planning assumptions requirements is discussed in Section XX. of this preamble. For most donut areas, the most recently available Highway Performance Monitoring System (HPMS) estimates of VMT may be the only source of travel data available, and thus, should be used. Some donut areas may also need to rely on national default data (*e.g.*, speeds and vehicle registration data) included in EPA's most recent emissions model, MOBILE6.2, when estimating emissions if no local data is available for the donut area and it appears that the default data is more representative than the local information for the adjacent metropolitan area. In such a case the conformity determination for the area

should contain an explanation of why the default data was used for a portion of the nonattainment area. The interagency consultation process must be used to determine which planning assumptions are considered the latest and best for demonstrating conformity for donut areas prior to the expiration of the one-year conformity grace period.

6. Isolated Rural Areas

We received one comment that supported our November 5, 2003 proposal for implementing the conformity grace period in isolated rural areas. This commenter believed that due to the rarity of new non-exempt projects in these areas, requiring a conformity determination for only exempt projects would be a misuse of resources. EPA agrees with this comment, and therefore, clarified in the November 2003 proposal and today's final rule that conformity in isolated rural areas is required only when a non-exempt FHWA/FTA project(s) needs funding or approval. See A. of this section and the November 2003 proposal (68 FR 62696) for more information.

D. When and For What Ozone Standard Does Conformity Apply in Areas With an Early Action Compact for the 8-hour Ozone Standard?

1. Description of Final Rule

EPA has provisionally deferred into the future the effective date of 8-hour ozone nonattainment designations for areas participating in an Early Action Compact (EAC). The deferral of the 8-hour designation effective date is contingent upon the participating area's adherence to all the terms and milestones of its EAC, as described in EPA's November 14, 2002 memorandum entitled, "Schedule for 8-Hour Ozone Designations and its Effect on Early Action Compacts," the December 16, 2003 proposed EAC rule (68 FR 70108), and the April 30, 2004 final designations rule (69 FR 23864).

Consistent with § 93.102(d) and Clean Air Act section 176(c)(6), conformity for the 8-hour ozone standard will not apply until one year after the effective date of an EAC area's 8-hour nonattainment designation. Therefore, conformity for the 8-hour ozone standard will apply in an EAC area only if the area fails to meet all the terms and milestones of its compact and the nonattainment designation becomes effective. In this case, conformity for the 8-hour standard will be required one year after the effective date of EPA's nonattainment designation that will occur shortly after a missed EAC milestone. Conversely, if the area meets all of the EAC milestones and attains the 8-hour ozone standard by December 2007, conformity for the 8-hour ozone standard would never apply since the area's ultimate effective designation would be attainment for the 8-hour ozone standard.

Conformity for the 1-hour ozone standard will continue to apply in EAC areas that are currently 1-hour ozone maintenance areas and are required to demonstrate conformity for that standard. If a maintenance area meets all of its EAC milestones and attains the 8-hour ozone standard by December 2007, conformity for the 1-hour standard will no longer apply once EPA revokes that standard one year after the effective date of EPA's 8-hour attainment designation (*i.e.*, spring 2009).

If, however, a 1-hour ozone maintenance area fails to meet a milestone in its EAC, EPA would lift its deferral, and the area's 8-hour ozone nonattainment designation would become effective shortly after the missed milestone. Under this scenario, conformity for the 1-hour ozone standard will continue to apply until one year after the effective date of EPA's nonattainment designation. Also occurring at one year after the nonattainment designation will be revocation of the 1-hour ozone standard, expiration of the one-year conformity grace period, and the application of conformity for the 8-hour ozone standard under Clean Air Act section 176(c)(6).

2. Rationale and Response to Comments

All commenters who addressed this topic supported EPA's approach for deferring the 8-hour ozone conformity requirements in EAC areas through deferral of the effective date of 8-hour designations. One of these commenters believed that EPA's proposal can yield positive results while imposing minimal constraints on states and localities. Other commenters believed that the EAC policy is a proactive approach for meeting Clean Air Act requirements and should reduce emissions and provide for attainment without the need of the conformity requirements. EPA agrees with these comments.

Another commenter raised concerns regarding how conformity would be implemented in 8-hour ozone nonattainment areas that are covered only partially by an EAC. For example, in a nonattainment area that contains a few donut counties that are not covered by a metropolitan area's EAC, this commenter argued that the conformity status of such an EAC would not lapse if the donut counties could not demonstrate conformity by the expiration of the one-year grace period. However, since 8-hour ozone nonattainment areas were not designated as the commenter described, EPA is not providing guidance in today's notice for such a situation.

IV. General Changes in Interim Emissions Tests

A. Background

Conformity determinations for transportation plans and TIPs as well as transportation projects not from a conforming plan and TIP must include a regional emissions analysis that fulfills certain Clean Air Act provisions. Section 176(c) requires that transportation activities in all nonattainment and maintenance areas must not worsen air quality. In addition, transportation activities in ozone and CO nonattainment areas of higher classifications also need to contribute emission reductions towards attainment.

The conformity rule provides for several different regional emissions analysis tests that satisfy these Clean Air Act requirements in different situations. Once a SIP with a motor vehicle emissions budget ("budget") is submitted for an air quality standard and EPA finds the budget adequate or approves it as part of the SIP, conformity is demonstrated using the budget test for that pollutant or precursor, as described in § 93.118 of the conformity rule. Before an adequate or approved SIP budget is available, conformity of the transportation plan, TIP, or project not from a conforming plan and TIP is generally demonstrated with the interim emissions tests, as described in § 93.119.

The following subsections describe the final changes to the interim emissions tests (under § 93.119). Sections V., VI., and VII. describe the application of these tests in different 8-hour ozone and $PM_{2.5}$ areas (under § 93.109).

B. Baseline Year Test for 8-Hour Ozone and $PM_{2.5}$ Areas

1. Description of Final Rule

We are adding the following tests to the conformity rule for 8-hour ozone and $PM_{2.5}$ nonattainment areas:

- The "less-than-2002 emissions" test, and
- the "no-greater-than-2002 emissions" test.

Under these interim emissions tests, conformity would be demonstrated if the emissions from the proposed transportation system are either less than or no greater than 2002 motor

vehicle emissions in a given area. Regulatory text for the 2002 baseline year tests can be found in § 93.119. See Sections V.-VII. for how these tests will be applied in various 8-hour ozone and $PM_{2.5}$ areas.

EPA is not changing the 1990 baseline year tests for 1-hour ozone, CO, PM_{10} and NO_2 areas that do not have adequate or approved SIP budgets. However, § 93.119 has been reorganized to include the provisions for new 8-hour ozone and $PM_{2.5}$ areas.

Consistent with current practice, the interagency consultation process under § 93.105(c)(1)(i) must be used to determine the latest assumptions and models for generating 2002 motor vehicle emissions to complete either baseline year test. All 8-hour and $PM_{2.5}$ areas will be submitting baseline SIP inventories for the year 2002. As described in the proposal, the 2002 baseline year test can be completed with the SIP's 2002 motor vehicle emissions inventory, if the SIP has been submitted in time for the current conformity determination. Draft 2002 baseline year emissions from a SIP inventory under development or the consultation process could also be used to develop 2002 baseline year emissions as part of the conformity analysis. EPA believes that a submitted or draft 2002 SIP inventory may be the most appropriate source for completing the 2002 baseline year tests for an area's first conformity determination under the new standards. This is due to the fact that the 2002 SIP inventories should be under development at the same time as these determinations, and such inventories should be based on the latest available data at the time they are developed. Whatever the source, the 2002 baseline year emissions level that is used in conformity must be based on the latest planning assumptions available for the year 2002, the latest emissions model, and appropriate methods for estimating travel and speeds as required by §§ 93.110, 93.111 and 93.122 of the conformity rule.

2. Rationale and Response to Comments

Most commenters supported the proposal to use 2002 for the baseline year tests for the new air quality standards. These commenters also supported the use of the interagency consultation process to determine how the 2002 baseline emission level is calculated. However, a few commenters supported using a more recent baseline year (*i.e.*, 2003, 2004, 2005) for conformity analyses completed before 8-hour ozone or $PM_{2.5}$ SIP budgets are found adequate. These commenters argued that a more recent year should be used when reliable data are available to ensure that additional project approvals are not made during interim years with an artificially high 2002 motor vehicle emissions inventory.

EPA continues to believe that the year 2002 is more appropriate than either the 1990 baseline year or a more recent baseline year, as some commenters suggested. EPA believes that it is important to have transportation and air quality planning time frames coordinated. Having consistent baseline years for SIPs, conformity determinations and other emission inventory requirements helps to achieve this goal. This was the rationale for maintaining 1990 as the baseline year for conformity tests in existing areas, and past experience indicates that having similar baseline years for SIP and conformity planning purposes has worked well.

As described in the November 2003 proposal, EPA has selected 2002 as the baseline year for SIP inventories under the new 8-hour ozone and $PM_{2.5}$ standards. EPA's November 18, 2002 memorandum, "2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$, and Regional Haze Programs," identifies 2002 as the emission inventory base year for the SIP planning process to address both of these pollutants and standards. EPA's April 30, 2004 final 8-hour ozone implementation rule also establishes 2002 as the base year for 8-hour ozone SIP inventories (69 FR 23951), as described in the June 2, 2003 proposal (68 FR 32810). Finally, EPA's Consolidated Emissions Reporting Rule (CERR) requires submission of emission inventories every three years, and 2002 is one of the required years for such updates. EPA continues to believe that coordinating conformity's baseline with other data collection and inventory requirements would allow state and local governments to use their resources more efficiently. In addition, since conformity is to be measured against a SIP it is appropriate to use the baseline year that will be used for SIP planning.

Furthermore, a 2002 baseline year is an appropriate measure for meeting Clean Air Act conformity requirements to not worsen air quality prior to adequate SIP budgets being established. EPA notes that emission inventories are generally not submitted until approximately two years after the year for which they are calculated. The 2002 inventories are scheduled to be submitted by the states to EPA in June of 2004, the year designations are made for the 8-hour ozone and $PM_{2.5}$ standards. In addition, emission inventories are not expected to vary by much in the few years following 2002. Emission inventories are generally trending downward, but year to year changes are generally small. Any advantage gained by using the most recent available inventory as the baseline for conformity purposes would be offset by the loss of coordination with other agencies and processes that will be possible by the use of 2002 as the baseline year. Therefore, EPA is retaining in this final rule the 2002 baseline year tests for conformity under the new air quality standards.

Finally, EPA is responding today to a comment that was raised in the context of the June 2, 2003 proposed 8-hour ozone implementation rule. A commenter supported using only the motor vehicle emissions inventories for the year 2002 as de facto interim motor vehicle emissions budgets for conformity determinations, during the time period before 8-hour areas have adequate or approved SIP budgets for the 8-hour standard. This commenter also suggested that the motor vehicle emissions inventory could be decreased 3% per year between the base year of 2002 and the attainment year, to represent "reasonable further progress" for the transportation sector.

EPA understands the commenter's point that the 2002 inventory is similar to a budget, in that both a 2002 baseline inventory and a SIP budget that is established to meet a Clean Air Act requirement serve as an emissions ceiling on future transportation actions. However, EPA does not agree that the 2002 baseline inventory could be used as a "de facto budget" and replace the interim emissions test requirements in today's final rule.

As described below, prior to adequate or approved SIP budgets being established, 8-hour ozone areas that are classified as moderate or higher are generally required to complete both the build-less-than-no-build and less-than-2002 interim emissions tests. Areas that are marginal or designated nonattainment under subpart 1 of part D of title 1 of the Clean Air Act ("subpart 1 areas") could, in general, choose to use either the no-greater-than-2002 or the build-no-greater-than-no-build test prior to an 8-hour SIP. Finally, all 8-hour ozone areas have the option to submit a reasonable further progress SIP with budgets early and use the budget test, instead of the interim emissions test(s).

EPA appreciates the commenter's idea to decrease inventories incrementally for the purpose of the baseline year conformity test. However, given that EPA did not propose and receive public comment on this idea, the commenter's

suggestion is not included in today's final rule. Furthermore, EPA believes that the option for an area to submit an early 8-hour SIP that meets Clean Air Act requirements provides sufficient flexibility to transition areas quickly to the budget test for future conformity determinations, when desired. Please *see* Sections V. and VI. of the preamble for more information regarding the regional emissions tests that apply for 8-hour conformity determinations.

C. Build/No-Build Test for Certain Existing and New Nonattainment Areas

1. Description of Final Rule

EPA is revising the build/no-build test for certain existing and new nonattainment areas. Specifically, the final rule amends § 93.119 to create the "build-no-greater-than-no-build" test, where conformity is demonstrated if emissions from the proposed transportation system ("build" or "action" scenario) are less than or equal to emissions from the existing transportation system ("no-build" or "baseline" scenario).

Under today's final rule, the build-no-greater-than-no-build test is available to the following subset of new and existing areas:

- 8-hour ozone areas of marginal classification,
- 8-hour ozone areas designated nonattainment under subpart 1 of part D of title 1 of the Clean Air Act ("subpart 1 areas"),
- All $PM_{2.5}$ areas,
- 1-hour ozone areas of marginal and below classifications (*i.e.*, Section 185A, incomplete data, and sub-marginal areas),
- CO areas of moderate classification with design values less than 12.7 ppm,
- Not classified CO areas,
- All PM_{10} areas, and
- All NO_2 areas.

Sections V., VI., and VII. of this rule provide more detail regarding the application of the build/no-build test in various 8-hour ozone and $PM_{2.5}$ areas.

For areas that would be using the build-no-greater-than-no-build test, EPA is also modifying the existing rule so that a regional emissions analysis would not be necessary for analysis years where the build and no-build scenarios contain exactly the same transportation projects and are based on exactly the same planning assumptions, for the reasons described below. Such a case may occur in smaller areas that do not have projects planned for earlier years in the regional emissions analysis, and population, land use, economic, and other assumptions do not change between the build and no-build scenarios for those years. Under the final rule, a regional emissions analysis would continue to be required for any applicable years where the action and baseline scenarios contain different projects and are based on different assumptions.

This change can be found in § 93.119(g)(2) of the final rule regulatory text. The rule requires that the conformity determination include documentation that a regional emissions analysis is not completed for analysis years in which no new projects are proposed and no change in planning assumptions has occurred.

Finally, § 93.119 has been reorganized in general to accommodate the above and other changes articulated in this final rule for new and existing areas.

2. Rationale and Response to Comments

As explained in the November 5, 2003 proposal, EPA believes that allowing certain areas to use a build-no-greater-than-no-build test is consistent with Clean Air Act section 176(c)(3)(A)(iii), which specifically requires that transportation plans and TIPs contribute to annual emissions reductions only in the higher classifications of ozone and CO areas. This statutory provision does not apply to other types of nonattainment areas that are required to demonstrate only that transportation activities do not cause or contribute to new violations, increase the frequency or severity of existing violations, or delay timely attainment, pursuant to Clean Air Act section 176(c)(1)(B). EPA believes that if the "build" scenario emissions are no greater than (*i.e.*, less than or equal to) the "no-build" scenario emissions, that such a demonstration is made, since only an increase in emissions would worsen air quality.

This change to the build/no-build test also makes its implementation consistent with the implementation of the baseline year tests: In ozone and CO areas of higher classifications, expected emissions from the proposed transportation system must be less than emissions in the baseline year, while in all other areas, expected emissions must be no greater than emissions in the baseline year. For further discussion of the rationale for how and where the baseline year tests apply, please refer to the preamble to the January 11, 1993 proposed rule (58 FR 3782–3784), the preamble to the July 9, 1996 proposed rule (61 FR 36116–36117), and the November 5, 2003 proposal (68 FR 62701, 62705).

Most commenters supported EPA's proposal to provide the build-no-greater-than-no-build test in certain nonattainment areas. Many of these commenters agreed with EPA's interpretation of the Clean Air Act section 176(c)(3)(A)(iii) that ozone nonattainment areas that are not classified moderate or above, lower classified CO nonattainment areas and all PM_{10}, NO_2 and $PM_{2.5}$ areas are not required to demonstrate annual emissions reductions for conformity purposes. One commenter stated that, from a practical standpoint, the build and no-build options are often identical and believed that there is no reason to require emissions reductions prior to the submission of a SIP for such areas. A few commenters also believed that this rule revision would provide flexibility and resolve previous conformity issues in areas with few transportation projects, only non-regionally significant projects, or projects planned for only certain years of the transportation plan. EPA agrees with these comments.

A few commenters also believed that the proposed build-no-greater-than-no-build test should be available to all 8-hour ozone nonattainment areas, not just marginal or subpart 1 areas. Two of these commenters believed that EPA should extend this flexibility as satisfying the Clean Air Act section 176(c)(1)(B) requirement, that transportation plans only be required to not make air quality worse. However, EPA believes that extending this approach to CO and ozone areas of higher classifications would violate Clean Air Act section 176(c)(3)(A)(iii), which also requires transportation plans and TIPs in these areas to contribute to annual emissions reductions. The build-no-greater-than-no-build test does not satisfy this requirement.

In contrast, two commenters did not agree with EPA's proposal to change the previous build-less-than-no-build test to a build-no-greater-than-no-build test in certain nonattainment areas. One of these commenters was concerned that changing the build/no-build test in certain areas may hinder future ozone reductions by not requiring the implementation of transportation activities that would reduce emissions. This same commenter, however, agreed that this proposed revision to the build/no-build test would simplify the planning process. Another commenter did not agree with EPA's proposal because this commenter believed that the conformity requirements should be the same for all parties regardless of size or classification. The commenter believed that all nonattainment and maintenance areas should contribute to reducing emissions not only to improve their own air quality but also to benefit

the air quality in nearby airsheds as well. Further, the commenter argued that EPA's proposal could rectify a previous issue with the build/no-build test where the first analysis year is sufficiently close to the present year (the year in which the regional emissions analysis is being conducted) such that all of the non-exempt projects in the action scenario are also in the baseline scenario.

EPA believes that the Clean Air Act makes the distinction in requirements between areas of different pollutants and classifications and thus certain areas are not required to contribute reductions towards attainment prior to SIP submission. Therefore, EPA is not changing the final rule in response to these comments.

Another commenter requested clarification on the level of precision that is required to demonstrate conformity using the proposed build-no-greater-than-no-build test. For example, if an analysis resulted in emissions from the baseline (no-build) scenario being 9,000 pounds/day (4.500 tons/day) and emissions from the action (build) scenario being 10,998 pounds/day (5.499 tons/day), the commenter asked whether the agency performing the analysis could round both values off to 5 tons/day and claim that the build-no-greater-than-no-build test had been satisfied. This commenter believed that leaving this issue to be resolved through interagency consultation does not recognize that there are separate conformity interagency consultation rules for each region or perhaps each state or metropolitan area. The commenter questioned whether consistency in implementing the build-no-greater-than-no-build test could be maintained without sufficient guidance.

EPA believes that, at a minimum, rounding conventions used in conformity should be consistent with the level of precision used for the motor vehicle emissions budget in the local SIP. Rounding conventions should be discussed through the interagency consultation process and consider past conformity practices for the area. EPA notes that today's final rule only addresses how conformity analyses are performed; budgets cannot be rounded or changed from the emissions level that is determined by the SIP. If questions remain or if the area has never developed a local SIP, the interagency consultation process is the correct place to deal with questions of precision and rounding. The precision used in the development of local emissions inventories may vary depending on the size of the area and the resources available for the analysis. Decisions on rounding conventions for conformity analyses need to be consistent with local analysis methods and cannot easily be made at the national level. However, even given local variations in analysis methods, it is clear in the commenter's example that the build scenario produces emissions greater than the no-build scenario, and thus the test is not passed.

EPA also notes that the final rule will also reduce the resource burden for analysis years where no new projects are proposed to be completed and assumptions do not change. Under the previous rule, a regional emissions analysis is required for all analysis years, even if no new projects are proposed for analysis years in the distant future. For such analysis years, the emissions from the build and no-build scenarios contain the same projects and assumptions, and therefore, result in exactly the same level of emissions.

EPA believes that in such cases it is obvious that the build-no-greater-than-no-build test is passed without calculating the emissions for such analysis years. Furthermore, the Clean Air Act requirements to not worsen air quality or delay timely attainment may be met by documenting in the conformity determination that projects, assumptions, and thus emissions would remain the same for affected analysis years.

Most commenters supported EPA's proposal to not require a regional analysis in years where the build and no-build scenarios are exactly the same with the same projects and planning assumptions. Many of these commenters believed that the proposal would reduce burden on small urban areas with relatively few projects and resources for conducting conformity analyses. One commenter also believed that this proposal would prevent conformity lapses and would allow states to focus on those nonattainment areas with more transportation projects and more severe air quality issues. Two commenters believed this flexibility should also be extended to ozone nonattainment areas of higher classifications.

EPA agrees that this approach will likely relieve some of the burden of the conformity process on small areas with few projects and less serious air quality problems. However, ozone areas with higher classifications are required to meet a build-less-than-no-build test so this provision of today's final rule does not apply. In these areas, transportation plans and TIPs actually have to reduce emissions from current levels.

One commenter raised concerns with our proposal to waive regional analysis requirements for future analysis years when the build and no-build scenarios are exactly the same. This commenter did not agree with EPA's logic for the proposed rule revision, stating that the build and the no-build cases will always contain different assumptions regarding growth. Another commenter pointed out that EPA's proposal would be beneficial only when new projects are programmed in the later years of a plan, and no new projects are planned for the early years of the plan or TIP. However, in the reverse situation when projects are added in the early years of the TIP or plan but not in the later years, the commenter indicated that the effect of those projects would need to be reflected in the build scenario throughout the horizon years of the plan, via different VMT and speed estimates. In this case, the commenter stated that all analysis years should be modeled and included in the conformity determination.

EPA agrees with the commenter's understanding that the logic given in the November 5, 2003 proposal for this change was incorrect. We agree that an area would have different projects and assumptions in later years where projects were added in earlier years (these projects would always and only be in the build case for any years). However, we still think there are limited cases where projects and assumptions for both scenarios could be the same such as in earlier years. EPA believes that if the build and no-build scenarios are exactly the same and are based on exactly the same planning assumptions, by definition they cannot contain different assumptions about growth. This provision is intended to only apply in situations when the build and no-build scenarios are exactly the same. If there are any differences in the build and no-build scenarios, including differences in planning assumptions, speed or VMT, this provision would not apply.

One commenter believed that this flexibility should be available through the interagency consultation process, and that EPA should modify the conformity regulation to allow it subject to agreement among affected parties though the interagency consultation process. EPA agrees that consultation should be used to determine when this flexibility applies, but no rule change is needed to do that.

Finally, several commenters raised general concerns about the build/no-build test and offered other suggested changes to the test to address these concerns. For example, a few commenters did not believe that the "no-build" scenario always provides an

appropriate basis for conformity demonstrations, particularly in the outyears of the transportation plan. To address this issue, one commenter proposed that for all analysis years in the second 10 years of the transportation plan, the "no-build" scenario should be the "build" scenario from the previous analysis year.

EPA agrees that there are limitations in the usefulness of the build/no-build test for assessing longer-term air quality impacts of highway and transit projects. In fact, this is the primary reason that the build/no-build test is an interim test prior to the availability of an adequate or approved SIP budget. EPA does not believe the suggested changes to the build/no-build test are necessary and would ensure protection of air quality during this interim period. For example, the suggested change proposed by one of the commenters could allow emissions increases. In addition, many commenters supported the flexibility to choose between build/no-build and baseline year tests, as described in Sections V., VI., and VII. Since these general comments were not germane to the proposal, we have included a full response to these comments in the separate response to comments document, which is in Public Docket I.D. no. OAR–2003–0049.

D. Test Requirements for Ozone and CO Nonattainment Areas of Higher Classifications

1. Description of Final Rule

EPA is retaining the requirement that ozone and CO areas of higher nonattainment classifications must meet both the build-less-than-no-build *and* less-than-baseline year tests to demonstrate conformity in the period before SIP budgets are available. This provision will affect moderate and above 1-hour and 8-hour ozone areas, moderate CO areas with design values greater than 12.7 ppm, and serious CO areas. This requirement is identical to the requirement of the existing conformity rule for these areas, and was the first of three options proposed for regional emissions analyses before adequate or approved SIP budgets are established.

EPA had requested comment on the following proposed options for these areas:

(1) Complete *both* the build-less-than-no-build *and* less-than-baseline year tests;

(2) Complete *either* the build-less-than-no-build or less-than-baseline year test; or

(3) Require that only one of these tests be met and eliminate the second test as an option altogether.

The first option, which EPA has selected for the final rule, will retain the current conformity rule requirement that such areas use both the current build-less-than-no-build test and the less-than-baseline year test. Under this option, emissions from the proposed transportation system (build) will have to be less than emissions from the existing system (no build) and less than emissions in 1990 (for higher classification 1-hour ozone and CO areas) or 2002 (for higher classification 8-hour ozone areas). See the proposal for further background information on options 2 and 3 (November 5, 2003, 68 FR 62699–62700).

2. Rationale and Response To Comment

Based on our review of the proposal, the existing requirements of the conformity rule, and comments submitted, EPA has concluded that option 1, the existing conformity requirements, will better meet the dual statutory requirements for ozone and CO areas of higher classifications. These areas must demonstrate that transportation activities not cause or contribute to violations of the standards or delay timely attainment of a standard (Clean Air Act section 176(c)(1)(B)) and that such activities also contribute to annual emissions reductions (Clean Air Act section 176(c)(3)(A)(iii)).

EPA's proposal was intended to explore potential alternatives in an effort to provide the most flexible and least burdensome way of meeting statutory requirements. When EPA first promulgated the transportation conformity rule (January 11, 1993, 58 FR 3782), EPA determined that moderate and above 1-hour ozone areas and CO areas of higher classifications would have to meet both the build-less-than-no-build test and the less-than-baseline year test to satisfy both applicable statutory requirements that transportation activities not cause or contribute to violations of the standards (Clean Air Act section 176(c)(1)(B)) and that such activities contribute to annual emissions reductions (Clean Air Act section 176(c)(3)(A)(iii)). EPA also discussed our rationale for these areas in a July 9, 1996, proposed rule (61 FR 36116–36117).

Although the majority of the comments supported option 2, a choice between either the build/no-build or baseline year test, these commenters primarily supported this option out of a stated desire to obtain greater flexibility in meeting conformity requirements. No commenters provided any further rationale for the option or explained how the statutory requirements could be satisfied with only one test. In contrast, the commenters supporting option 1, continuation of the existing rule requirement to meet both the tests, provided compelling arguments indicating that both tests would be necessary to meet the statutory requirements. Further, comments on option 3 noting why either test would be superior provided additional indication that either test by itself could not meet both statutory obligations. In the face of these comments, as explained below EPA does not believe it can alter the current rule requiring the use of both tests.

The totality of the comments led EPA to conclude that if only the baseline test were required, in an area where motor vehicle emissions were declining significantly as a result of technology improvements in vehicle engines and fuels, the transportation plan itself might not be contributing to emissions reductions while the area as a whole was still meeting the baseline test. This would not meet the statutory requirement that such transportation activities themselves must contribute to emissions reductions. In contrast, in ozone and CO areas of higher classifications, the build/no-build test alone would not guarantee that emissions from the planned transportation system are less than emissions in the baseline year, even if emissions from the planned transportation system (the build case) are less than the current transportation system (the no-build case). This could fail to meet the statutory requirement that activities not contribute to violations of the standard.

Thus, based on the Agency's reasoning in past conformity rules and the comments submitted in this rulemaking, EPA believes that it must continue to require the use of both the baseline year and build/no-build tests in ozone and CO areas of higher nonattainment classifications prior to the availability of SIP budgets in order to satisfy applicable statutory obligations. In light of this conclusion, EPA is not responding in detail in this preamble to the numerous comments indicating policy choices for which of the two tests should be chosen or how the choice should be made, since EPA is requiring the use of both tests on legal grounds. A full response to all comments is included in the separate response to comments document available in the docket for this final rule.

V. Regional Conformity Tests in 8-hour Ozone Areas That Do Not Have 1-Hour Ozone SIPs

A. Description of Final Rule

This section covers the provisions EPA is finalizing in today's rule for regional emissions analyses in 8-hour ozone areas that do not have an existing 1-hour ozone SIP with applicable budgets. These 8-hour ozone areas either were never designated nonattainment under the 1-hour ozone standard or were 1-hour ozone nonattainment areas that never submitted a control strategy SIP or maintenance plan with approved or adequate budgets. A regional emissions analysis is the part of a conformity determination that assesses whether the emissions produced by transportation activities are consistent with state, local, and federal air quality goals. EPA describes the final rule in four parts, as in the proposal: Conformity when 8-hour budgets are available, conformity before 8-hour budgets are available, conformity in clean data areas, and general implementation of regional emissions tests.

1. Conformity After 8-Hour Ozone SIP Budgets Are Adequate or Approved

Once a SIP for the 8-hour ozone standard is submitted with a budget(s) that EPA has found adequate or approved, the budget test must be used in accordance with § 93.118 to complete all future applicable regional emissions analyses for 8-hour conformity determinations. In other words, once EPA finds a budget from an 8-hour ozone SIP adequate or approves an 8-hour ozone SIP that includes such a budget, the interim emissions test(s) will no longer apply for that precursor. This provision is found in § 93.109(d)(1) of today's rule.

The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (*e.g.*, rate-of-progress SIP or attainment demonstration) or a maintenance plan. However, 8-hour ozone nonattainment areas "are free to establish, through the SIP process, a motor vehicle emissions budget [or budgets] that addresses the new NAAQS in advance of a complete SIP attainment demonstration. That is, a state could submit a motor vehicle emissions budget that does not demonstrate attainment but is consistent with projections and commitments to control measures and achieves some progress towards attainment" (August 15, 1997, 62 FR 43799). A SIP submitted earlier than otherwise required can demonstrate a significant level of emissions reductions from the current level of emissions, instead of the specific percentage required by the Clean Air Act for moderate and above ozone areas. For example, an area could submit an early 8-hour ozone SIP that demonstrates a 5–10% reduction of emissions in the year 2007, from 2002 baseline year emissions. An approvable early 8-hour SIP would include emissions inventories for all emissions sources for the entire 8-hour nonattainment area and would meet applicable requirements for reasonable further progress SIPs. For more information on establishing an early SIP and how it could be used for conformity, please refer to the final 8-hour ozone implementation rule (April 30, 2004, 69 FR 23951).

Air quality agencies responsible for developing 8-hour ozone SIPs must consult on their development with the relevant state and local air quality and transportation agencies per § 93.105(b). EPA Regions are available to assist on an "as needed" basis, including consultation on the development of early 8-hour ozone SIPs.

2. Conformity Before 8-Hour Ozone SIP Budgets Are Adequate or Approved

Before adequate or approved 8-hour ozone SIP budgets are established in 8-hour ozone areas that do not have 1-hour ozone SIPs, the regional emissions analysis is done using one or two interim emissions tests, depending on the area's classification or designation as described below. These provisions are found in § 93.109(d)(2)–(4) of today's rule.

Marginal and below classifications and subpart 1 areas. These 8-hour ozone nonattainment areas include: 8-hour ozone areas classified marginal and 8-hour ozone areas designated nonattainment under Clean Air Act subpart 1. These areas must pass one of the following tests in accordance with § 93.119 for conformity determinations that occur before adequate or approved 8-hour ozone SIP budgets are in place:

- The build-no-greater-than-no-build test, or
- The no-greater-than-2002 emissions test.

That is, emissions in all analysis years from the transportation system, as modified by the proposed transportation plan or TIP, must be less than or equal to emissions from either:

- The existing transportation system (the "no-build" case) in each of those analysis years, or
- The transportation system in 2002.

A discussion of the interim emissions tests can be found in Section IV. See also EPA's April 30, 2004 final 8-hour ozone implementation rule (69 FR 23951) for more information on 8-hour ozone areas designated under Clean Air Act subpart 1 ("subpart 1 areas").

Moderate and above classifications. These areas include: 8-hour ozone nonattainment areas classified as moderate, serious, severe, and extreme. These areas must pass both of the following tests in accordance with § 93.119 for conformity determinations that occur before adequate or approved 8-hour ozone SIP budgets are in place:

- The build-less-than-no-build test, and
- The less-than-2002 emissions test.

That is, emissions in all analysis years from the transportation system, as modified by the proposed transportation plan or TIP, must be less than each of the following comparison cases:

- The existing transportation system including projects currently under construction (the "no-build" case) in each of those analysis years, and
- The transportation system in 2002.

For more information regarding these interim emissions tests for moderate and above ozone areas, please *see* Section IV.D.

3. Options for 8-Hour Ozone Areas That Qualify for EPA's Clean Data Policy

In § 93.109(d)(5) of today's rule, EPA is extending the conformity rule's flexibility for 1-hour moderate and above "clean data areas" to 8-hour areas that meet the criteria of the clean data policy. As described in the November 5, 2003 proposal, EPA issued a policy memorandum on May 10, 1995 that addressed SIP requirements in a small number of moderate and above 1-hour ozone areas (entitled "Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard"). Please see the November 5, 2003 proposal for further background on EPA's existing clean data policy and conformity options (68 FR 62700–62701).

Clean data areas under today's final rule are moderate and above ozone areas with three years of clean data for the 8-hour ozone standard that have not submitted a maintenance plan and for which EPA believes it is reasonable to interpret the Clean Air Act's reasonable further progress and attainment demonstration requirements so as not to require areas that are meeting the ozone standard to make certain SIP submissions. In addition, some subpart 1 areas may also be eligible for the clean data policy if they are required to submit control strategy SIPs. Areas that qualify for EPA's clean data policy

under the 8-hour standard can use one of the following three options to complete regional emissions analyses:

- The interim emissions tests, as described above;
- the budget test using the adequate or approved motor vehicle emissions budgets in an 8-hour ozone SIP; or
- the budget test using the motor vehicle emissions levels in the most recent year of clean data as budgets, if the state or local air quality agency requests that budgets be established by EPA's clean data rulemaking for the 8-hour ozone standard and EPA approves the request.

As stated in Phase 1 of EPA's final 8-hour ozone implementation rule (April 30, 2004, 69 FR 23974), EPA intends to extend the existing clean data policy to applicable 8-hour ozone areas, and will respond on this issue in its future Phase 2 final 8-hour ozone implementation rule.

Please note that EPA's clean data policy, and therefore today's provision allowing emissions in the most recent year of clean data to be used as a budget, might not be available in any area for the first 8-hour conformity determination. Newly designated areas may not yet have three years of clean data for the 8-hour standard when the first conformity determination is due for that standard. As discussed in Section III., the first plan/TIP conformity determination is due by June 15, 2005, one year after the effective date of 8-hour designations.

4. General Implementation of Regional Tests

Regional emissions analyses for ozone areas must address both ozone precursors, which are nitrogen oxides (NO_X) and volatile organic compounds (VOCs) (40 CFR 93.102(b)(2)(i)). Before budgets are available, areas must meet the appropriate interim emissions test(s) for both VOC and NO_X precursors, unless EPA issues a NO_X waiver for the 8-hour standard under Clean Air Act section 182(f). This provision is consistent with the conformity rule to date, although in today's final rule the NO_X waiver provision is moved to § 93.119(f) (from § 93.119(d)) because of the reorganization of § 93.119. Once an adequate or approved SIP budget is available for the 8-hour standard, it must be used for regional emissions analyses.

In general, if a budget is available for only one ozone precursor, the interim emissions test(s) will continue to apply for the other precursor. For example, this situation would occur when a reasonable further progress SIP is submitted with a budget for VOCs only (*e.g.*, a 15% SIP), and this case is specifically covered by § 93.109(d)(3). In this example, an area would use the budget test for VOCs and the interim emissions test(s) for NO_X, unless it has a NO_X waiver as described above.

The consultation process must be used to determine the models and assumptions for completing either the interim emissions tests or the budget test, as required by § 93.105(c)(1)(i) of the current rule.

B. Rationale and Response to Comments

The use of the budget test once budgets are available for an air quality standard is based on the requirements of the Clean Air Act. Once budgets have been found adequate or approved, the budget test provides the best means to determine whether transportation plans and TIPs conform to a SIP and complies with the statutory obligation to be consistent with the emissions estimates in SIPs, according to Clean Air Act section 176(c)(2)(A). Several commenters specifically agreed that once a SIP for the 8-hour ozone standard is submitted with a budget(s) that EPA has found adequate or approved, the budget test should be used. One of these commenters stated that the advantage of the budget test is that areas have a high degree of confidence in attaining and maintaining the standards if emissions are held to budget levels from SIPs demonstrating attainment and maintenance. Another of these commenters strongly supported establishing 8-hour budgets through the submission of early SIPs, as discussed above.

Before budgets are available, the final rule's interim emissions test requirements for 8-hour areas are generally consistent with requirements for 1-hour areas. In general, several commenters supported the flexibility provided by the test options for 8-hour marginal and subpart 1 areas that do not have 1-hour ozone SIPs.

EPA believes that it is reasonable and credible to provide 8-hour ozone areas that are not classified moderate or above the same flexibility that applies under the 1-hour ozone standard. Several commenters specifically supported allowing these 8-hour ozone areas a choice between the baseline year and build/no-build tests. EPA determined in the 1997 conformity rule that either test could satisfy the statutory test of not causing or contributing to violations or delaying attainment in these areas, and the Agency believes this would continue to be true for new 8-hour areas, as discussed further below.

A few commenters requested clarification that the interim emissions test options remain available in subsequent conformity determinations until adequate or approved budgets are in place. These commenters are correct that while no 8-hour ozone budgets are available, areas are free to choose either test for a conformity determination, regardless of what test was used for a prior conformity determination. For example, if an MPO within a marginal 8-hour nonattainment makes a conformity determination based on the build-no-greater-than-no-build test, this would not preclude them, prior to adequate or approved budgets, from making a future conformity determination based on the no-greater-than-2002 emissions test. However, under these final rules, the same test must be used for each analysis year for a given conformity determination. In other words, an MPO may not use the build-no-greater-than-no-build test in one analysis year and the no-greater-than-2002 test in another analysis year within the same conformity determination. EPA believes that sufficient flexibility exists without mixing and matching interim emissions tests for different analysis years within one conformity determination, which is unnecessarily complicated and suggests that the area would not conform using one test consistently.

One commenter advocated that state air agencies should have the authority to determine which test is used, because in the commenter's view the state air agency would best be able to choose the test that ensures progress towards attainment. However, EPA believes that it is appropriate for the decision to be made within the interagency consultation process, as has been done to date. Given that MPOs have responsibility for making the conformity determination, and would need to set up the no-build network if the build-no-greater-than-no-build test is used, EPA believes they need to take part in choosing the test. State air agencies are insured a role in the transportation conformity process through interagency consultation, as § 93.105 of the conformity rule sets forth the requirements for state air agencies' participation in the conformity process, as well as a process for resolving conflicts. The state air agency role is also addressed in the preamble to the 1993 rule (November 24, 1993, 58 FR 62201). EPA continues to believe that the conflict resolution process provides a mechanism for the state air agency to elevate issues to the governor if they cannot be resolved by state agency officials, and that the process facilitates collaboration which is essential to

cooperative transportation and air quality planning. Therefore, EPA is not changing the final rule in response to this comment.

A few commenters supported one or the other of the proposed interim emissions tests in 8-hour marginal or subpart 1 areas. One commenter supported elimination of the build-no-greater-than-no-build test because no specific allowable level or limit is placed on emissions levels associated with the no-build scenario, while the no-greater-than-2002 test compares future emissions to a specified allowable level. However, another commenter made an opposing argument against the use of the no-greater-than-2002 test arguing that if an area was not attaining the 8-hour ozone standard in 2002, then the no-greater-than-2002 test allows emissions to continue at a level that will not bring the area into attainment. A third commenter suggested that prior to adequate or approved SIP budgets, emissions should be held to as low a level as possible to prevent an area from proceeding with transportation projects that may preclude them from meeting the 8-hour ozone standard in the future.

Since the transportation conformity rule was promulgated on November 24, 1993 (58 FR 62188), the build-less-than-no-build and less-than-1990 tests have been part of the transportation conformity rule as appropriate tests in meeting the conformity requirements of the Clean Air Act prior to the availability of SIP budgets. In the August 15, 1997 amendments (62 FR 43780), the transportation conformity rule was amended to allow ozone areas not classified moderate or higher to meet either the build-less-than-no-build test or the no-greater-than-1990 test. Our rationale for this change is found in the proposed rulemaking for those amendments (July 9, 1996, 61 FR 36112).

Though EPA has updated the tests in today's rule, our rationale for allowing 8-hour marginal and subpart 1 areas to choose between the two tests remains the same as described in the 1996 proposal. When there are no adequate or approved budgets, EPA believes that either test meets the Clean Air Act requirement that transportation activities will not cause new violations, increase the frequency or severity of existing violations, or delay timely attainment. In contrast to ozone areas of higher classifications, transportation activities in these areas are not required to contribute to emissions reductions per Clean Air Act section 176(c)(3)(A)(iii).

Though EPA considered additional options for moderate and above 8-hour ozone areas as discussed in Section IV.D., the final rule is consistent with requirements for 1-hour ozone areas. In 8-hour nonattainment areas classified moderate or above, EPA believes the build-less-than-no-build and the less-than-2002 tests together support the determination that a transportation plan, TIP, or project will not cause new violations, increase the frequency or severity of existing violations, or delay attainment. In addition, these tests together demonstrate that plans and TIPs contribute to emissions reductions required by section 176(c)(3)(A)(iii) of the Clean Air Act. Additional discussion of the rationale for both tests in these areas is also found in Section IV.D.

EPA is also continuing to provide more choices to areas that qualify for EPA's clean data policy. As EPA intends to include the clean data policy in EPA's Phase 2 final 8-hour ozone implementation rule, EPA is including the conformity options for such areas in today's conformity rule. These provisions will be able to be used once EPA has found that an area is a clean data area for the 8-hour standard pursuant to the regulations the Agency intends to promulgate under Phase 2 of the 8-hour implementation rule. See EPA's previous discussion and rationale for the conformity clean data options from the preamble to the 1996 proposed and 1997 final transportation conformity rule amendments (July 9, 1996, 61 FR 36116; and August 15, 1997, 62 FR 43784–43785, respectively). Two commenters supported extending the clean data policy to qualifying 8-hour ozone areas. One reasoned that conformance with budgets constrained by emissions levels during years in which the area demonstrated attainment should not cause or contribute to nonattainment, and thus meeting any one of the tests for clean data areas should be sufficient to demonstrate conformity.

However, two commenters stated that EPA should not apply a "clean data policy" to ozone areas classified as moderate or above because Clean Air Act sections 172 and 175A require a completed SIP containing measures that must be implemented if the area backslides into nonattainment, and a maintenance plan if the area seeks to avoid implementing some elements of its nonattainment plan.

In today's final rule, EPA is not making changes to its existing clean data policy, nor to the conformity process for clean data areas. EPA is merely extending the conformity flexibility that 1-hour ozone clean data areas have to the 8-hour ozone clean data areas. EPA believes this is appropriate since the Agency intends to extend the clean data policy to 8-hour areas for SIP purposes in Phase 2 of the final 8-hour ozone implementation rule. EPA will respond to all comments on the appropriateness of that extension in the final action on Phase 2 of the final 8-hour implementation rule.

Finally, one commenter wanted EPA to issue VOC waivers for areas that are NO_X limited, so they can focus on getting NO_X reductions. However, though section 182(f) of the Clean Air Act specifically provides that EPA could waive NO_X requirements in certain areas, the Clean Air Act provides no such flexibility with respect to VOCs. Since VOCs are clearly an ozone precursor, ozone areas must demonstrate conformity to VOC levels that provide for attainment and maintenance to prevent potential future violations, even in areas that may not need additional VOC reductions to attain. EPA has no ability to offer any provision to give areas VOC waivers.

VI. Regional Conformity Tests in 8-Hour Ozone Areas That Have 1-Hour Ozone SIPs

A. Description of Final Rule

This section covers how regional emissions analyses must be done in 8-hour ozone areas with an existing 1-hour ozone SIP that covers either part or all of the 8-hour ozone nonattainment area. The regulatory text in § 93.109(e) provides a general overview of when the budget test and interim emissions tests apply in 8-hour ozone nonattainment areas with adequate or approved 1-hour ozone SIP budgets. As in Section V., EPA describes the final rule provisions in four parts: conformity when 8-hour budgets are available, conformity before 8-hour budgets are available, conformity in clean data areas, and general implementation of regional emissions tests.

1. Conformity After 8-Hour Ozone SIP Budgets Are Adequate or Approved

Once a SIP for the 8-hour ozone standard is submitted with budget(s) that EPA has found adequate or approved, the budget test with the budgets from the 8-hour ozone SIP must be used in accordance with § 93.118 to complete the regional emissions analysis for 8-hour conformity determinations. The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (*e.g.*, rate-of-progress SIP or attainment demonstration). The first SIP could also

be submitted earlier and demonstrate a significant level of emission reductions from the current level of emissions, as described in Section V.A.1. Any existing 1-hour ozone SIP budgets and/or interim emissions tests will no longer be used for conformity for either NO_X or VOCs once an adequate or approved 8-hour SIP budget is established for such a precursor. State, local, and federal air quality and transportation agencies must consult on the development of 8-hour ozone SIPs including their budgets as appropriate, pursuant to § 93.105 of the conformity rule.

2. Conformity Before 8-Hour Ozone SIP Budgets Are Adequate or Approved

Under today's final rule, all 8-hour areas with adequate or approved 1-hour budgets must use these budgets for 8-hour conformity before 8-hour budgets are available, unless it is determined through the interagency consultation process that using the interim emissions tests is more appropriate for meeting Clean Air Act requirements. In today's rule, the budget test using the existing 1-hour ozone SIP budgets fulfills the regional emissions analysis requirement for the 8-hour ozone standard, rather than the 1-hour ozone standard. Please note that the 1-hour budgets are to be used as a proxy for 8-hour budgets. Conformity for the 1-hour and 8-hour ozone standards will not apply at the same time, according to EPA's April 30, 2004 final 8-hour ozone implementation rule, as described in Section III. of today's action.

There are four potential scenarios into which areas covered by this section can be categorized:

- *Scenario 1:* Areas where the 8-hour ozone area boundary is exactly the same as the 1-hour ozone area boundary;
- *Scenario 2:* Areas where the 8-hour boundary is smaller than the 1-hour boundary, (*i.e.*, the 8-hour area is completely within the 1-hour area);
- *Scenario 3:* Areas where the 8-hour boundary is larger than the 1-hour boundary (*i.e.*, the 1-hour area is completely within the 8-hour area); and
- *Scenario 4:* Areas where the 8-hour boundary partially overlaps the 1-hour area boundary.

EPA has posted diagrams of these four boundary scenarios for further clarification on the transportation conformity Web site. Please note that scenarios are determined according to how the entire 8-hour nonattainment area relates to the entire 1-hour nonattainment or maintenance area(s). For example, in a multi-state 8-hour area, the area's scenario and corresponding conformity requirements are based on the entire 8-hour area boundary, rather than on each state's portion of the 8-hour area. State and local agencies can consult with EPA and DOT field offices to determine which scenario applies to a given 8-hour nonattainment area.

The following paragraphs describe how regional conformity tests are applied in the four boundary scenarios, as well as the circumstances under which another test(s) may be appropriate. Please see A.4. of this section for further information regarding when another test may be appropriate for meeting Clean Air Act requirements. EPA will post more detailed implementation guidance on its transportation conformity website for conformity determinations in new standard areas, including 8-hour ozone areas with 1-hour SIP budgets and multi-state/multi-MPO nonattainment areas. Please also see Section I.B.2. of this notice for information regarding EPA's conformity Web site.

Scenario 1: Areas where 8-hour and 1-hour ozone boundaries are exactly the same. In this case, the 8-hour and 1-hour ozone boundaries cover exactly the same geographic area. Such an area could be formed from a single 1-hour area, or more than one 1-hour area, as long as the entire 8-hour area boundary is exactly the same as the boundary of the previous 1-hour area or areas.

In these areas, conformity must generally be demonstrated using the budget test according to § 93.118 with the 1-hour SIP budgets, as described in A.4. of this section. The regulatory text in § 93.109(e)(2)(i) covers Scenario 1 areas. The interagency consultation process would be used to clarify the 1-hour budget(s) for the 8-hour area. The interim emissions test(s) would only be used if it is determined through the consultation process that an adequate or approved 1-hour budget is not appropriate for a given year(s) in a regional emissions analysis, as explained in A.4. of this section and § 93.109(e)(2)(v) of the final rule. EPA will post on its website implementation guidance for conducting 8-hour conformity determinations in multi-jurisdictional areas, including Scenario 1 areas with multiple states, MPOs, etc. Please see Section I.B.2. of this notice for information regarding EPA's conformity website.

Scenario 2: Areas where the 8-hour ozone boundary is smaller than and within the 1-hour ozone boundary. In this case, the 8-hour nonattainment area is smaller than and completely encompassed by the 1-hour nonattainment boundary. In these areas, conformity must generally be shown using one of the following versions of the budget test:

- The budget test using the subset or portion(s) of existing adequate or approved 1-hour ozone SIP budgets that cover the 8-hour nonattainment area, where such portion(s) can be appropriately identified; or
- The budget test using the existing adequate or approved 1-hour ozone SIP budgets for the entire 1-hour nonattainment area. However, in this case any additional emissions reductions beyond those addressed by control measures in the 1-hour SIP budgets need to pass the budget test and must come from within the 8-hour nonattainment area.

The budget test would be completed according to the requirements in § 93.118, as described in A.4. of this section. The regulatory text in § 93.109(e)(2)(ii)(A) and (B) reflects these two choices. Though the November 5, 2003 proposed rule included both choices in one paragraph, today's rule separates them into different regulatory subparagraphs simply for ease of readability.

Once an area selects either of these budget test options, it must be used consistently for each analysis year of a given conformity determination. EPA believes that to do otherwise would be unnecessarily complicated and would imply that one test option used consistently for all analysis years may not demonstrate conformity. The interim emissions test(s) would only be used if it is determined through the consultation process that an adequate or approved 1-hour budget is not appropriate for a given year(s) in the regional emissions analysis, as explained in A.4. of this section and § 93.109(e)(2)(v) of the final rule.

As described in the November 2003 proposal, the first budget test option is available to an area if it is possible to determine what portion of the 1-hour budget applies to the 8-hour area. In that case, that portion can be used as the budget for the 8-hour area. Determining such a budget would be straightforward, for example, if the budget corresponds directly with an on-road mobile inventory for the 1-hour ozone SIP that was calculated by county, and the portion to be subtracted is a specific county that is not part of the 8-hour ozone area. However, where the 1-hour SIP does not clearly specify the amount of emissions in the portion of the 1-hour ozone area not covered by the 8-hour ozone area, this method may not be available. The consultation process would be used to determine whether using a portion of a 1-hour ozone SIP

budget is appropriate and feasible, and if so, how deriving such a portion would be accomplished.

In the second budget test option, a conformity determination based on the entire 1-hour ozone budget would include a comparison between the on-road regional emissions produced in the entire 1-hour ozone area and the existing 1-hour ozone budgets. However, if additional emissions reductions are required to meet conformity beyond those produced by control measures in the 1-hour SIP budgets, only reductions within the 8-hour ozone nonattainment area can be included in the regional emissions analysis. If conformity cannot be determined on schedule using either budget test option, only the 8-hour ozone nonattainment area would be in a conformity lapse.

Scenario 3: Areas where the 8-hour ozone boundary is larger than the 1-hour ozone boundary. This scenario will result when an entire 1-hour ozone nonattainment or maintenance area is contained within a larger 8-hour ozone area. For example, a Scenario 3 area would result when an 8-hour area is formed from an existing 1-hour area plus an additional county or counties that were not covered by the 1-hour standard. In these areas, the budgets from the previous 1-hour ozone area will not cover the entire 8-hour nonattainment area. However, conformity must consider regional emissions for the entire 8-hour ozone nonattainment area.

Therefore, in these areas, conformity must generally be demonstrated using the budget test based on the 1-hour ozone SIP budgets for the 1-hour ozone area, plus the interim emissions test(s) for one of the following:

- The portion of the 8-hour ozone nonattainment area not covered by the 1-hour budgets;
- The entire 8-hour ozone nonattainment area; or
- The entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where 1-hour SIP budgets are established for each state in a multi-state nonattainment area.

The budget test would be completed according to the requirements in § 93.118, as described in A.4. of this section. The interim emissions tests would only be used instead of the 1-hour budget if it is determined through the consultation process that an adequate or approved 1-hour budget is not appropriate for a given year in the regional emissions analysis, as explained in A.4. of this section and § 93.109(e)(2)(v) of the final rule. The regulatory text in § 93.109(e)(2)(iii)(A) and (B) reflects requirements for Scenario 3 areas. EPA notes that the final rule separates Scenario 3 and 4 area test requirements in the regulation for easier implementation.

The final rule's options for interim emissions tests are intended to give areas the flexibility to continue to implement conformity as they have under the 1-hour standard. EPA is clarifying this flexibility related to multi-state areas in the final rule since it was intended by the proposal and supported by public comments received.

For example, if an 8-hour multi-state nonattainment area with multiple MPOs has separate adequate or approved 1-hour budgets for each state, the MPOs would continue to determine conformity to their state's 1-hour budgets. In this special case where states and MPOs want to continue to work independently under the 8-hour standard, the budget test would be completed with applicable 1-hour SIP budgets for each state. In addition, the interim emissions test(s) would be done for either:

- any portion of a state's 8-hour nonattainment area that is not covered by a state's 1-hour SIP budget; or
- the entire portion of the 8-hour nonattainment area covered by that state.

EPA notes that the interim emissions test(s) could also be done for the entire 8-hour nonattainment areas under this final rule in this example. However, doing so may not allow each MPO in this example to develop transportation plans and TIPs and conformity determinations independently.

Rather than include all the possibilities of this type and others in today's preamble, EPA will post implementation guidance on its transportation conformity Web site for conducting 8-hour conformity determinations with 1-hour SIP budgets, including determinations in multi-state and multi-MPO nonattainment areas. Please see Section I.B.2. of this notice for information regarding EPA's conformity Web site. In any case, whether one or both interim emissions tests is required depends on the area's classification or whether an area is a subpart 1 area, as described in Section V. of today's preamble.

EPA acknowledges that there may be cases where it is difficult to model the remaining portion of the 8-hour ozone area separately, *e.g.*, in an area where the remaining 8-hour ozone area is a ring of counties around the 1-hour ozone area. In this case, an area may choose to complete the interim emissions test(s) for the entire 8-hour ozone area, rather than just the portion not covered by the 1-hour ozone budgets. Once an area selects a particular interim emissions test(s) and geographic coverage for such test(s), these choices must be applied consistently for all regional analysis years in a given conformity determination. For example, a marginal 8-hour ozone area that is larger than the 1-hour ozone area with one applicable 1-hour SIP can complete the regional emissions analysis by meeting the budget test for the 1-hour ozone nonattainment area and the no-greater-than-2002 test for the remaining portion of the 8-hour ozone area for all analysis years.

The consultation process should also be used to select analysis years for performing modeling where both the budget test (§ 93.118) and interim emissions test(s) (§ 93.119) are used. Sections 93.118(d) and 93.119(g) of the conformity rule both require the last year of the transportation plan and an intermediate year(s) to be analysis years where modeling is completed. However, the analysis years for the short-term may be different for the budget test and interim emissions tests in some cases. For example, § 93.118 requires modeling for the budget test to be completed for the attainment year if it is within the timeframe of the transportation plan; § 93.119 requires the first analysis year for the interim emissions tests to be within the first five years of the transportation plan. The consultation process can be used to select analysis years that satisfy both the budget and interim emissions test requirements as appropriate to avoid multiple modeling analyses in these cases.

Scenario 4: Areas where the 8-hour ozone boundary overlaps with a portion of the 1-hour ozone boundary. This scenario results when 1-hour and 8-hour boundaries partially overlap. For example, a Scenario 4 area could be an 8-hour area formed from a portion of one or more 1-hour areas plus new counties that were not covered by the 1-hour standard. As in the previous scenarios, these areas must generally use existing 1-hour budgets whenever feasible to determine conformity, plus the interim emissions test(s) when a portion of the 8-hour nonattainment area is not covered by existing 1-hour budgets.

In Scenario 4 areas, conformity must generally be demonstrated using the budget test based on the portion of the 1-hour ozone SIP budget(s) that covers both the 1-hour and 8-hour areas, plus

the interim emissions test(s) for one of the following:

- The portion of the 8-hour ozone nonattainment area not covered by the portion of the 1-hour budgets;
- the entire 8-hour ozone nonattainment area; or
- the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state in a multi-state nonattainment area.

EPA has also clarified in the regulatory text that only the budget test would be completed in the limited case where portions of 1-hour SIP budgets cover the entire 8-hour nonattainment area or portions thereof. Whatever the case, the budget test would be completed according to the requirements in § 93.118, as described in A.4. of this section. The regulatory text in § 93.109(e)(2)(iv)(A) and (B) reflect Scenario 4 area requirements. EPA again notes that the final rule separates Scenario 3 and 4 area test requirements for easier implementation.

The interim emissions tests would be used instead of a 1-hour budget only if it is determined through the consultation process that an adequate or approved 1-hour budget is not appropriate for a given year in the regional emissions analysis, or if it is not possible to determine what portion of the 1-hour budgets apply to the 8-hour area, as described in A.4. of this section and § 93.109(e)(2)(v) of the final rule.

As described for Scenario 3 above, the final rule is intended to give areas the flexibility to continue to implement conformity as they have under the 1-hour standard. EPA will post implementation guidance on its transportation conformity Web site for conformity determinations in Scenario 4 and other 8-hour areas. Please see Section I.B.2. of this notice for information regarding EPA's conformity Web site.

As described for Scenario 3, the consultation process should be used to select the analysis years where both the budget test (§ 93.118) and interim emissions test(s) (§ 93.119) are used. It should be possible to choose analysis years in most cases that satisfy both the budget and interim emissions test requirements for areas using both tests. Whether one or both interim emissions tests is required in any case depends on the area's classification or whether an area is a subpart 1 area, as described in Section V. of today's preamble.

3. Options for 8-Hour Ozone Areas That Qualify for EPA's Clean Data Policy

As described in Section V.A.3., EPA is extending the conformity rule's flexibility for 1-hour ozone "clean data areas" to 8-hour ozone areas that meet the criteria of the clean data policy. Clean data areas for the 8-hour ozone standard with adequate or approved 1-hour ozone SIP budgets must generally use one of the following three options to complete conformity:

- The budget test using the adequate or approved motor vehicle emissions budgets in a SIP for the 8-hour ozone standard;
- The budget and/or interim emissions tests using existing 1-hour ozone SIP budgets and/or applicable interim emissions tests, as described in A.2. of this section for different scenarios of 1-hour and 8-hour ozone nonattainment boundaries; or
- The budget test using the motor vehicle emissions level in the most recent year of clean data as budgets, if such budgets are established by the EPA rulemaking that determines an area to have clean data for the 8-hour ozone standard.

See the regulatory text for these options in § 93.109(e)(4), and preamble Section V.A.3. for more information about clean data areas.

4. General Implementation of Regional Tests

Under the existing conformity rule, regional emissions analyses for ozone areas must address NO_X and VOC precursors (40 CFR 93.102(b)(2)(i)). Areas must also complete the interim emissions test(s) for NO_X as required by § 93.119 if the only SIP available is a reasonable further progress SIP for either the 1-hour or 8-hour standard that contains a budget for VOCs only (*e.g.*, a 15% SIP). In all cases where areas use the interim emissions test(s), both precursors must be analyzed unless EPA issues a NO_X waiver for the 8-hour standard for an area under Clean Air Action section 182(f). This is consistent with the conformity rule to date, although today's final rule moves these provisions to § 93.119(f) due to reorganization of § 93.119. See § 93.109(e)(3) for this regulatory text.

The consultation process must be used to determine the models and assumptions for completing the budget test and/or the interim emissions test(s), as required by § 93.105(c)(1)(i) of the rule. The consultation process must also be used to decide if the interim emissions test(s) are more appropriate to meet the Clean Air Act requirements than existing adequate or approved 1-hour budgets before 8-hour ozone SIPs are submitted.

General implementation of the budget test with 1-hour budgets. The budget test requirements in § 93.118 for 8-hour areas will be generally implemented in the same manner as in 1-hour areas, with a few exceptions. First, as described above, the geographic area covered by the 8-hour standard may be different than that covered by the 1-hour standard and SIP budgets in some cases. Second, the years for which regional modeling is performed will slightly differ.

Areas that use 1-hour budgets for their 8-hour conformity determinations will need to determine the modeling analysis years that apply for the 8-hour standard per § 93.118(d). Under this section, a modeling analysis must be completed for the last year of the transportation plan, the attainment year for the relevant pollutant and standard, and an intermediate year(s) such that analysis years are not more than 10 years apart. The attainment year analysis is to be for an area's attainment year for the 8-hour standard, which will be different than the attainment year under the 1-hour standard. The area must then calculate emissions in the analysis years from the existing and planned transportation system.

Once modeling is completed per § 93.118(d)(2), 8-hour areas using 1-hour SIPs will also demonstrate consistency with 1-hour SIP budgets according to § 93.118(b), except for cases where it is determined that 1-hour SIP budgets are not appropriate through the consultation process as described above. According to § 93.118(b) of today's final rule as described in Section XXIII., consistency with 1-hour budgets must be shown for all 1-hour budget years that are within the timeframe of the transportation plan, the 8-hour attainment year (if in the timeframe of the plan), the last year of the plan, and an intermediate year(s) so that all years are not more than 10 years apart. Emissions projected for each analysis year must be within the budgets in the 1-hour SIP from the most recent prior year. Interpolation can be used between analysis years for demonstrating consistency with budgets, just as has been done under the 1-hour standard.

For example, suppose an area designated nonattainment for the 8-hour ozone standard with an 8-hour attainment date of 2010 has the following 1-hour SIP budgets:

- 2005 rate-of-progress budgets for NO_X and VOC_S,
- 2007 rate-of-progress budgets for NO_X and VOC_S, and

• 2007 attainment demonstration budgets for NO_X and VOC_S.

By 2005, this area would determine conformity for its 2005–2025 transportation plan and its TIP, and the conformity determination would be accomplished as follows:

• 2005 budget test, using the 2005 ROP budgets;

• 2007 budget test, using both 2007 ROP and attainment budgets;

• 2010 budget test, using the 2007 attainment budgets;[12]

• 2020 budget test, using the 2007 attainment budgets; and

• 2025 budget test, using the 2007 attainment budgets.

As described in § 93.118(d)(2), emissions for the year 2005 could be generated with a regional emissions analysis, or could be interpolated if the area has run a regional emissions analysis for an earlier year. Emissions for the year 2007 can also be interpolated or the area could choose to model emissions for this year. A regional modeling analysis must be done for the year 2010 (the 8-hour attainment year), any year between 2015 and 2020 for the intermediate year (in the above example, 2020 is the intermediate year), and the year 2025 (the last year of the transportation plan) as required by § 93.118(d)(2).

As stated in A.1. of this section, once adequate or approved 8-hour SIP budgets are established for a given precursor, the budget test would be completed with only the 8-hour SIP budgets for that precursor, rather than the 1-hour SIP budgets.

When might 1-hour SIP budgets not be the most appropriate test for 8-hour ozone conformity? Though EPA anticipates that exceptions to the use of the 1-hour budgets will be infrequent, there are some cases where using another test(s) may be more appropriate to meet Clean Air Act requirements. EPA expects such limited cases to be supported and documented in the 8-hour conformity determination for a given area. EPA notes that an adequate or approved 1-hour SIP budget cannot be considered inappropriate simply because it is difficult to pass for 8-hour conformity purposes. In addition, as noted below and consistent with past conformity precedent, 1-hour SIP budgets cannot be discarded simply because they are based on older planning assumptions or emissions models, unless through interagency consultation it is determined that a different emissions test(s) is more appropriate to ensure that air quality is not worsened for all 8-hour areas and that reductions are achieved in certain ozone areas.

The most likely example of when the budgets may not be the most appropriate test is where a 1-hour SIP budget is not currently used in conformity determinations for the 1-hour standard, and thus is currently not relied upon to measure whether transportation activities are consistent with Clean Air Act requirements. Such a case would happen when the SIP budget year is no longer in the timeframe of the transportation plan and there is no requirement to meet the budget test prior to the year in which the next 1-hour SIP budget is established (*e.g.*, the SIP established a budget for the 1-hour attainment year, but that attainment year has passed and budgets for future years are available).

For example, suppose a 1-hour maintenance area attained in 1999 and has a maintenance plan with budgets for 2009. If the area has an 8-hour attainment date of 2007, it would have to compare emissions in 2007 to the budgets from the most recent prior year, which would be the attainment budgets for the year 1999. In this case, the budgets are not currently in use for the 1-hour standard, and it may be more appropriate for an area to use the 2002 baseline year test for the 2007 analysis year, since the 2002 baseline could be lower and therefore more protective than the 1999 budgets. However, the maintenance area would use its 2009 budgets in the 1-hour maintenance plan to show 8-hour conformity for 2009 and all future analysis years.

Another example of when another test would be more appropriate than existing adequate or approved 1-hour SIP budgets would be in certain Scenario 4 areas where it is impossible to determine which portion of a 1-hour SIP budget covers an 8-hour nonattainment area. In this case, applying the budget test with 1-hour SIP budgets is not feasible, and consequently, only the interim emissions test(s) are available for such unique areas.

As described in Section V., when a SIP budget is not established a moderate or above ozone area would need to pass both interim emissions tests. Areas classified as marginal or designated under Clean Air Act subpart 1 can choose between the two tests when no budgets apply. However, in these cases where a 1-hour budget is available but the area demonstrates it is not the most appropriate test, EPA believes that the no-greater-than-2002 baseline year test would most likely be used. EPA believes it is extremely unlikely that the build/no-build test alone would ever be a more appropriate test than the budget test with existing 1-hour SIP budgets that are currently used for conformity purposes. See B.2. of this section below for further information regarding EPA's rationale for using 1-hour budgets and what is appropriate for meeting Clean Air Act requirements.

Areas must use the consultation process to decide whether the applicable interim emissions tests are more appropriate to meet Clean Air Act requirements than the 1-hour budgets, pursuant to § 93.109(e)(2)(v) of the final rule. In areas where another test(s) is used, areas must also justify selection of the specific test(s) chosen as being more appropriate for meeting Clean Air Act requirements than the available 1-hour SIP budgets. This decision should be discussed with all interagency consultation parties and documented in the conformity determination for the 8-hour standard.

B. Rationale and Response to Comments

1. Conformity After 8-Hour Ozone SIP Budgets Are Adequate or Approved

Several commenters strongly supported establishing budgets for the 8-hour standard through the submission of early SIPs. EPA agrees that Clean Air Act section 176(c) is met when the budget test is used, once budgets are available for an air quality standard. Once 8-hour ozone budgets have been found adequate or approved, the budget test provides the best means to determine whether transportation plans and TIPs conform to an 8-hour ozone SIP and comply with the statutory obligation to be consistent with the emissions estimates in SIPs, according to Clean Air Act section 176(c)(2)(A). A few commenters suggested that EPA urge states to establish budgets for the 8-hour standard early because of the potential complications without 8-hour budgets where the 8-hour boundary differs from the 1-hour boundary. EPA agrees that state and local agencies can choose to establish an early SIP for conformity purposes, however, each area needs to consider the benefits of an early SIP and impacts on state and local resources.

One commenter suggested that ozone areas should be required to consider emissions in the portion of the 8-hour area that is outside the boundary of the 1-hour standard when developing 8-hour SIPs. EPA agrees. In fact, they are required to consider these emissions because the SIP addressing the 8-hour standard must cover the entire 8-hour

[12] EPA has previously interpreted that only attainment budgets apply beyond the attainment year, in cases where ozone areas also have budgets for rate-of-progress SIPs.

nonattainment area. Please note that the conformity rule does not change existing SIP requirements and policy that will apply for the new standards.

Another commenter recommended that once 8-hour budgets are adequate or approved, areas should do conformity to both the 1-hour and the 8-hour standards. The commenter believed that doing conformity to both standards would not represent a significant hurdle. EPA has decided, however, to revoke the 1-hour standard when the 8-hour standard conformity grace period ends, one year after the effective date of 8-hour area designations. Once the 1-hour standard is revoked, conformity will no longer apply for that standard as a matter of law. Conformity therefore will only apply for one ozone standard at a time. Please see Section III. for more information regarding the conformity grace period and revocation of the 1-hour standard.

2. Conformity Before 8-Hour Ozone SIP Budgets Are Adequate or Approved

Though EPA proposed that areas could choose among several options before 8-hour budgets are available, today's rule requires the use of 1-hour SIP budgets, where available and appropriate, as a direct result of consideration of all of the relevant comments received on this issue. Section 176(c) of the Clean Air Act requires that transportation activities may not cause new violations, increase the frequency or severity of existing violations, or delay timely attainment. Using 1-hour budgets where available and appropriate ensures that air quality progress to date is maintained, air quality will not be worsened and attainment of the 8-hour standard will not be delayed because of emissions increases.

Once EPA finds a budget adequate or approves the SIP that includes it, the budget test provides the best means to determine whether transportation plans and TIPs meet Clean Air Act conformity requirements. EPA now believes this principle applies with respect to the 1-hour budgets in 8-hour nonattainment areas as well: in most cases, EPA concludes that the 1-hour budgets are the best test for determining conformity to the 8-hour standard before 8-hour ozone budgets are available because the 1-hour budgets have led to current air quality improvements. A couple of commenters noted that attaining the 1-hour standard is a milestone toward attaining the 8-hour standard. Some commenters mentioned that most 1-hour budgets in major urban areas are appropriate to use, especially in serious and above ozone areas that have budgets that have recently been updated with the MOBILE6 emissions factor model.

A number of commenters described how emissions could increase if areas use the interim emissions tests instead of their 1-hour budgets. Emissions could increase if areas use the 2002 baseline year test, commenters stated, because 2002 motor vehicle emissions are significantly higher than existing 1-hour budgets in many cases. Commenters provided an analysis of 2002 baseline emissions estimates compared to 1-hour ozone budget levels for 12 major metropolitan areas to illustrate that the 2002 motor vehicle emissions were significantly higher than the 1-hour budgets in these areas. For one major metropolitan area that had established MOBILE6-based attainment budgets for 2007, the 2002 baseline year test based on MOBILE6 would result in allowable VOC and NO_X emissions increasing by 44% and 56%, respectively, above the budget levels for the 1-hour ozone attainment demonstration. A second commenter corroborated this finding with data that showed VOCs could increase 47% and NO_X could increase 33% if 2002 emissions were used instead of the area's attainment budgets. Commenters concluded that emissions from motor vehicles could increase anywhere from 10 to 50% of the 1-hour budgets, and because motor vehicles represent a quarter to a half of all emissions in most metropolitan areas, the total emissions in an airshed could increase to the point where areas cannot attain the 8-hour standard.

Likewise, the build/no-build test could also lead to an increase in emissions over the 1-hour budgets and from current air quality progress, according to some commenters. Several commenters argued that the build/no-build test sets no meaningful limit on emissions growth because the test is satisfied as long as the build emissions are less than the no-build emissions, regardless of how much emissions increase in both the build and no-build cases.

Commenters also wrote to EPA about the results of using interim emissions tests where budgets are available. Many were concerned with negative impacts on public health due to the increase in emissions that could occur, especially impacts on children. One commenter predicted it would be difficult for areas to adopt future measures sufficient to offset the emissions increases that could result, and that such measures would impose increased burden on other source sectors, such as industrial sources and small businesses.

EPA found the evidence and the arguments presented by these commenters compelling, and we now believe that using the interim emissions tests would not fulfill the Clean Air Act conformity tests when appropriate 1-hour budgets are available. Some areas with 1-hour budgets have not yet attained the 1-hour standard, and the 8-hour standard is generally more stringent. In these areas, EPA believes that every additional ton of motor vehicle emissions allowed above the 1-hour budgets could impact an area's ability to attain the 8-hour standard and necessitate additional control measures.

Under today's rule, therefore, the interim emissions test(s) are only available if the circumstances warrant it, as determined through the interagency consultation process. EPA agrees with these commenters that the budget test is generally more protective of air quality and that the interim emissions tests do not meet sections 176(c)(1)(A) and (B) of the Clean Air Act when an appropriate 1-hour budget is available.

Furthermore, today's final rule is consistent with EPA's historical precedent that the budget test with an adequate or approved SIP budget is more appropriate than the interim emissions tests. As we stated in our July 9, 1996, conformity proposal (61 FR 36115), when motor vehicle emissions budgets have been established by SIPs, they provide a more relevant basis for conformity determinations. The baseline year and the build/no-build tests are sufficient for demonstrating conformity when an area does not have a budget. EPA created these tests based on the language in Clean Air Act section 176(c)(3). They ensure that emissions do not increase above emissions in a recent year, and show that the transportation plan and TIP contribute to emissions reductions, where required. However, these tests usually do not ensure that transportation emissions promote progress toward the air quality standards to the same extent that the use of motor vehicle emissions budgets do. Although the 1-hour SIP budgets are for a different standard, they still address ozone, will help areas make progress toward the new standard, and are a better reflection of the ozone pollution problem that each area faces than the interim emissions tests.

One commenter who supported requiring the budget test asked EPA to clarify whether 1-hour budgets remain in effect after revocation of the 1-hour standard. Once we revoke the standard, these budgets do not remain in effect for the 1-hour standard as conformity does not apply with respect to the 1-hour standard. However, those 1-hour budgets that are adequate or approved continue to be part of an area's SIP and

are therefore appropriate to use as proxies for the 8-hour standard. EPA notes that adjusting the 1-hour ozone budgets to correspond to the boundaries of the 8-hour area for purposes of conducting 8-hour ozone conformity analyses is legally appropriate since any 1-hour ozone SIP demonstrations and budgets would only be used as a proxy for the 8-hour ozone standard and would themselves no longer be for an applicable standard. Therefore, EPA believes that using the portion of the 1-hour SIP budget that covers the 8-hour nonattainment is appropriate for 8-hour conformity and that the relevant portion can be derived through the consultation process. For example, adding county level emissions to, or subtracting county level emissions from, the 1-hour budgets to reflect the geographic 8-hour area does not need to occur through a SIP revision or be reviewed through EPA's adequacy process. Using portions of 1-hour SIP budgets in this manner does not necessitate 8-hour or 1-hour SIP revisions, but merely are administrative analyses of what tests should be conducted for conformity purposes prior to submission of 8-hour SIPs. How these budgets are derived can be determined through the consultation process and documented in an area's conformity determination.

Many commenters supported our proposal to offer a menu of choices and use the interagency consultation process to choose the test. Most of these commenters simply stated their preference, but a few offered that the 2002 baseline year test may be better than the budget test when the 1-hour budgets are based on outdated planning assumptions or models. Today's final rule preserves an area's ability to decide that the 1-hour budgets are not the most appropriate test. However, budgets cannot be ignored solely because more recent planning assumptions or models are available. When budgets are not currently in use and in other cases where it is more appropriate for meeting Clean Air Act section 176(c) requirements, the consultation process must be used and the rationale for using other test(s) documented in the conformity determination.

Another commenter suggested that EPA should allow areas to choose among several tests because it has not yet classified areas or established attainment years. This was true as of the November 5, 2003 proposal, but at this point EPA has classified areas and established attainment years in the final 8-hour designations rule (April 30, 2004, 69 FR 23858). A few commenters thought that emissions should be held as low as possible, and therefore EPA should require areas to determine which of the tests is more protective through the interagency consultation process. Another commenter thought that the state air quality agency alone should choose the test to ensure that the conformity requirements of the Clean Air Act are met. EPA believes, however, that the budget test using the 1-hour budgets generally maintains current air quality progress and satisfies the Clean Air Act requirement that transportation activities not cause new violations, worsen existing violations, or delay timely attainment, as described above. Therefore, EPA is not incorporating the commenter's suggestion in today's rule, although air quality agencies are expected to play a significant role in the selection of the appropriate test through the consultation process in these areas, because they developed 1-hour SIPs and budgets.

One commenter suggested that where the 8-hour area is smaller than the 1-hour area (Scenario 2), a budget could be created for the 8-hour area by reducing the 1-hour budget proportional to the population of the 8-hour area (*i.e.*, 8-hour budget = 1-hour budget × 8-hour area population / 1-hour area population). EPA does not agree that this method would necessarily produce an appropriate proxy budget, because such a calculation may not accurately reflect the portion of the 1-hour SIP budget that applies for the geographic area covered by the 8-hour standard. Furthermore, emissions are not directly proportional to population but also depend on travel distances, speeds, and fleet characteristics, all of which may differ greatly among counties within one nonattainment area.

Where the 8-hour area is larger than the 1-hour area (Scenario 3), one commenter suggested that EPA should allow conformity to be demonstrated if the entire 8-hour area can meet the 1-hour budget. EPA did not propose this option in the November 2003 proposal because we do not believe that it would be possible for a larger 8-hour area to meet a 1-hour budget for a smaller area. However, EPA believes that if this case does occur in practice, such an area could demonstrate conformity for the 8-hour standard by completing the budget test with the 1-hour budget for the entire 8-hour nonattainment area. Although this case is not explicitly addressed in the regulatory text for today's final rule, if an 8-hour area that is larger than the 1-hour area meets its 1-hour SIP budgets, it would satisfy the requirements of § 93.109(e)(2)(iii). It would meet the budget test in (A) of this paragraph, and it would implicitly show that the interim emissions test(s) in (B) of this paragraph had been met.

Several commenters requested clarification that all of the test options remain available in subsequent conformity determinations until adequate or approved budgets for the 8-hour standard are in place. Though today's final rule does not offer the full range of options proposed, areas will still evaluate how to apply the budget test using 1-hour SIP budgets with each new conformity determination. In addition, the consultation process will be used to decide details for how to apply the interim emissions tests where the 8-hour boundary is larger than or partially overlaps with the 1-hour boundary (Scenario 4). Until 8-hour ozone budgets are available, areas do have the option to apply these tests as appropriate in any subsequent conformity determinations regardless of how the test was applied in a prior conformity determination.

The final rule also gives flexibility for how the interim emissions tests are applied in Scenario 3 and 4 areas. EPA is finalizing the budget test plus interim emissions tests either for:

- The whole area to be covered by an 8-hour SIP,
- the portion not covered by the 1-hour budget, or
- the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where 1-hour SIP budgets are established for each state in a multi-state nonattainment area.

EPA originally proposed that these areas would meet the interim emissions tests for the whole area, or the budget test for the 1-hour portion plus the interim emissions tests for the remainder. Though we did not specifically propose that areas would use the budgets plus the interim emissions tests for the entire area, we did propose that areas could meet the interim emissions tests for the whole area. Today's final rule includes this option because EPA now believes that, in most cases, the budgets must be used, but that offering a choice where possible with regard to the interim tests provides some flexibility for areas where they are also required. This option is a logical outgrowth of the proposal and comments received regarding the use of budgets. In addition, because many commenters supported the use of interim reduction tests by themselves for the whole area, EPA believes there is support for this option in conjunction with the 1-hour SIP budgets prior to 8-hour SIPs being established. Finally, as described above, EPA is finalizing a third interim

emissions test option for multi-state nonattainment areas with separate 1-hour SIP budgets, due to comments received from such areas.

One commenter raised questions about the situation where an existing 1-hour ozone nonattainment or maintenance area can demonstrate conformity, but the new 8-hour counties within the same 8-hour nonattainment area cannot. In this general case, the commenter believed that the 1-hour portion of the 8-hour ozone nonattainment area should be able to proceed with projects that will be implemented in the 1-hour portion even though the new 8-hour portion of the area fails to demonstrate conformity.

EPA does not agree. As described in Section III., during the one-year conformity grace period, conformity using the appropriate 1-hour ozone conformity test applies only in 1-hour nonattainment and maintenance areas. Once the grace period for the 8-hour standard expires and the 1-hour standard is revoked, however, the 1-hour ozone standard and conformity requirements for that standard no longer apply. At that time, new 8-hour ozone nonattainment areas (including the previous 1-hour area or portions thereof) must demonstrate conformity for the entire 8-hour area or the area will lapse. Therefore, EPA has not changed the final rule to address this comment. However, EPA will elaborate how 8-hour conformity determinations in multi-jurisdictional areas with existing 1-hour SIP budgets in implementation guidance. Please *see* Section I.B.2. of today's final rule for more information about EPA's conformity website.

Finally, some commenters supported the use of 1-hour SIP budgets based on legal rationale with which EPA disagrees. First, commenters stated that the Clean Air Act does not allow existing approved budgets for any pollutant or standard to be waived. Second, commenters stated that all elements of a SIP, including 1-hour budgets, remain enforceable until revisions are submitted by the state and approved by EPA as satisfying the requirements of Clean Air Act sections 110(k) and (l). EPA agrees that 1-hour ozone budgets should be used for 8-hour ozone conformity, but disagrees with these legal arguments. In section 109(d)(1) of the Clean Air Act, Congress directed EPA to review the standards every 5 years and "make such revisions in such criteria and standards and promulgate such new standards * * *." EPA interprets "make such revisions in * * * standards" to mean that EPA has the authority to replace one standard with another, and that implicit in this authority is the authority to revoke a standard. Once a standard is revoked, although control measures remain in a SIP the budgets for that standard are no longer in force for conformity purposes because areas are not required to conduct conformity determinations for such standards. Therefore, EPA does not agree that the 1-hour ozone budgets would automatically still apply for 8-hour conformity purposes, nor that section 110(k) and (l) requirements would have to be met before areas stopped using these budgets for conformity purposes. Section 176(c)(5) of the Act terminates conformity for the 1-hour standard at revocation. Conformity for the 8-hour standard begins one year after designation, but the SIP contains no budgets for the 8-hour standard until 8-hour SIPs are submitted. EPA believes that the remaining 1-hour budgets will generally represent the best approximation of future 8-hour budgets and thus should be used for 8-hour conformity in most cases, but does not agree that they must always be used as a legal matter as suggested by the commenter.

Third, commenters argued that EPA's previous statement in the preamble to the August 15, 1997 conformity rule supports their view that 1-hour SIP budgets in approved SIPs must be used for conformity determinations under the 8-hour standard. They quoted, "EPA does not believe that it is legal to allow a submitted SIP to supersede an approved SIP for years addressed by the approved SIP * * *. Clean Air Act section 176(c) specifically requires conformity to be demonstrated to approved SIPs. SIP revisions that EPA has approved under Clean Air Act section 110 are enforceable and cannot be relieved by a submission, even if that submission utilizes better data." (62 FR 43783). EPA does not agree that this quote is relevant, as we are not discussing submitted budgets that will replace the approved 1-hour ozone budgets. This language must be interpreted in context as referring to SIP revisions for the same applicable standard as the existing SIP.

Furthermore, EPA does not agree that Clean Air Act section 176(c)(2)(A) requires the use of 1-hour ozone budgets for conformity under the 8-hour standard. This section requires that emissions from the planned transportation plan and TIP must be consistent with emissions in the applicable SIP, but a 1-hour ozone SIP ceases to be the applicable SIP once the 1-hour standard is revoked. The 8-hour SIP, once available, will be the applicable SIP for conformity determinations under the 8-hour ozone standard. Instead of relying on Clean Air Act section 176(c)(2)(A), EPA believes the 1-hour budgets must be used where possible in 8-hour areas because their use best meets the requirements of 176(c)(1)(A) and (B) for the 8-hour standard.

VII. Regional Conformity Tests in $PM_{2.5}$ Areas

A. Description of Final Rule

Today's final rule requires that the budget test be used to complete a regional emissions analysis once a $PM_{2.5}$ SIP is submitted with budget(s) that EPA has found adequate or approved. Although the first $PM_{2.5}$ SIP may be an attainment demonstration, $PM_{2.5}$ nonattainment areas "are free to establish, through the SIP process, a motor vehicle emissions budget [or budgets] that addresses the new NAAQS in advance of a complete SIP attainment demonstration. That is, a state could submit a motor vehicle emissions budget that does not demonstrate attainment but is consistent with projections and commitments to control measures and achieves some progress towards attainment." (August 15, 1997, 62 FR 43799). To be approvable, such a SIP would include inventories for all emissions sources and meet other SIP requirements. EPA encourages nonattainment areas to develop their $PM_{2.5}$ SIPs in consultation with federal, state, and local air quality and transportation agencies as appropriate.

Today's final rule also requires that $PM_{2.5}$ nonattainment areas meet one of the following interim emissions tests for conformity determinations conducted before adequate or approved $PM_{2.5}$ SIP budgets are established:

- The build-no-greater-than-no-build test, or
- the no-greater-than-2002 emissions test.

The rule allows $PM_{2.5}$ nonattainment areas to choose between the two interim emissions tests each time that they determine conformity during this period. For example, an area may use the build-no-greater-than-no-build test in its first conformity determination for the $PM_{2.5}$ standard and then use the no-greater-than-2002 emissions test in a subsequent conformity determination. However, under this final rule, the same test must be used for each analysis year in a given conformity determination. In other words, an MPO may not use the build-no-greater-than-no-build test in one analysis year and the no-greater-than-2002 test in another analysis year for the same conformity determination. As noted in Section V. with respect to certain ozone areas, to do otherwise

would be unnecessarily complicated and would imply that one test used consistently for all years might not demonstrate conformity. The interagency consultation process should be used to determine which test is appropriate. EPA concludes that for reasons similar to those described for 8-hour ozone areas classified marginal and subpart 1 areas, conformity is demonstrated if the projected transportation system emissions reflecting the proposed plan or TIP (build) are less than or equal to either the emissions from the existing transportation system (no-build) or the level of motor vehicle emissions in 2002.

During the time period before a SIP is submitted and budgets are found adequate or approved, regional emissions analyses will be completed at a minimum for directly emitted $PM_{2.5}$ from motor vehicle tailpipe, brake wear, and tire wear emissions, as described in Section VIII. This section also provides information on EPA's further consideration of $PM_{2.5}$ precursors in conformity analyses. Sections IX. and X. describe situations under which regional emissions analyses would also include direct $PM_{2.5}$ emissions from re-entrained road dust and construction-related dust.

The consultation process should be used to determine the models and planning assumptions for completing any regional emissions analysis consistent with related requirements, as required by § 93.105(c)(1)(i). See the regulatory text in § 93.109(i) for a general overview of when the budget test and interim emissions tests apply in $PM_{2.5}$ areas, and § 93.119(e) for a description of the interim emissions tests for $PM_{2.5}$ nonattainment areas.

B. Rationale and Response to Comments

The final rule addresses the concerns of many stakeholders by providing flexibility before adequate or approved $PM_{2.5}$ SIP budgets are established. EPA received a number of comments on this section of the proposal. Most of the commenters supported the proposal to allow areas to choose between the two interim emissions tests. These commenters indicated that having a choice provided appropriate flexibility for local areas to tailor conformity requirements. One commenter stated that the interagency consultation process should be used to select the interim emissions test to be used in the nonattainment area.

EPA agrees with these commenters. As described in the proposal, EPA has previously determined that only ozone and CO areas of higher classifications are required to satisfy both statutory requirements that transportation activities not cause or contribute to violations of the standards or delay attainment (Clean Air Act section 176(c)(1)(B)) and that such activities contribute to annual emissions reductions (Clean Air Act section 176(c)(3)(A)(iii)) (January 11, 1993 proposed rule, 58 FR 3782–3783). EPA continues to believe that Clean Air Act section 176(c)(3)(A)(iii) does not apply to any other areas, including $PM_{2.5}$ areas; only Clean Air Act section 176(c)(1)(B) applies to these areas. To that end, the conformity rule currently allows many areas to conform based on only one interim emissions test if transportation emissions are consistent with current air quality expectations, rather than having to complete two tests and contribute further reductions toward attainment. Today's final rule continues to apply this same test structure and rationale to $PM_{2.5}$ areas. EPA also agrees that an area's interagency consultation process provides an appropriate forum for determining which of the two interim emissions tests should be used in conformity determinations.

Some commenters recommended that $PM_{2.5}$ nonattainment areas be required to pass both interim emissions tests prior to SIP budgets being found adequate or approved, for a variety of reasons. These commenters noted that it is possible that an area could pass the no-greater-than-2002 test, but fail the build-no-greater-than-no-build test. According to the commenter, failing the build-no-greater-than-no-build test could indicate increasing emissions and be inconsistent with Clean Air Act section 176(c)(1) because any increased emissions could cause or contribute to new violations, worsen existing violations or delay timely attainment of the air quality standard. In addition, two other commenters recommended that EPA require both interim emissions tests in areas with the more serious $PM_{2.5}$ nonattainment problems because these areas should be required to meet more stringent conformity tests. Three additional commenters indicated that both interim emissions tests should be required because this is the most conservative approach to ensure protection of public health, that it would reduce transport of emissions and it would maintain progress toward meeting the standard. One of these commenters indicated that the build-no-greater-than-no-build test requires that total emissions be less than a no-build scenario and the no-greater-than-2002 test prevents increases above a historical level of emissions; therefore, both tests should be applied.

EPA disagrees with the assertion that in order to demonstrate conformity during the time period before $PM_{2.5}$ budgets are found adequate or are approved an area must pass both interim emissions tests. As described above, EPA has previously determined that only ozone and CO areas of higher classifications are required to satisfy both statutory requirements that transportation activities not cause or contribute to violations of the standards or delay attainment (Clean Air Act section 176(c)(1)(B)) and that such activities contribute to annual emissions reductions (Clean Air Act section 176(c)(3)(A)(iii)) (January 11, 1993 proposed rule, 58 FR 3782–3783). EPA continues to believe that either of the two interim emissions tests are sufficient to meet Clean Air Act section 176(c)(1)(B) provisions. As noted by these commenters an area could pass only the build-no-greater-than-no-build test and fail the no-greater-than-2002 test and this would allegedly indicate increasing emissions which could cause new violations, worsen existing violations or delay timely attainment of the standard. EPA recognizes that meeting only the build-no-greater-than-no-build test is a possible outcome in some areas; however, as EPA stated in the section of the preamble to the November 24, 1993 final transportation conformity rule that addressed requirements for NO_2 and PM_{10} areas during the time before a SIP was submitted, "The build/no-build test is consistent with the interim requirements for ozone and CO areas and sufficient to ensure that the transportation plan, TIP or project is not itself causing a new violation or exacerbating an existing one." (58 FR 62197)

Conversely, some areas may fail the build-no-greater-than-no-build test and pass only a no-greater-than-2002 test. EPA believes that this would also be an acceptable outcome because it would ensure that emissions from on-road mobile sources are no greater than they were during the 2002 baseline year that is used for SIP planning purposes under the new standards. If future on-road emissions do not increase above their base year levels, EPA believes that new violations will not be created, existing violations will not be made worse and timely attainment will not be delayed. This is consistent with the approach applied to emissions in PM_{10} and NO_2 areas in the preamble to the January 11, 1993 notice of proposed rulemaking for the transportation conformity rule. Specifically, in that preamble EPA

stated that, "* * * EPA believes that preventing emissions from increasing above 1990 levels would be sufficient to prevent the exacerbation of existing violations during the interim period." (58 FR 3783).

With regard to the recommendations that we require both interim emissions tests based either on the severity of an area's nonattainment problem or on the conservative nature of requiring both tests, EPA is not accepting either recommendation. As stated above, EPA continues to believe that either test is sufficient to meet the requirements of Clean Air Act section 176(c)(1)(B) which applies to $PM_{2.5}$ nonattainment areas. Additionally, EPA intends to designate all $PM_{2.5}$ nonattainment areas under subpart 1 of the Clean Air Act. Subpart 1 does not mandate a classification scheme for nonattainment areas based on the severity of an area's air quality problem. Therefore, there is no basis for EPA to determine in this rulemaking what would constitute a serious $PM_{2.5}$ nonattainment problem and require both interim emissions tests in such areas. Areas should use the interagency consultation process to determine which of the two tests is most appropriate in their area. Although areas may voluntarily choose to perform both interim emissions tests during the time before a SIP is submitted and budgets are found adequate or approved if a conservative approach is desired, they are not required to do so. EPA believes that areas should make their own decisions on how conservative to be prior to SIP adoption so long as they meet the minimum requirements for conformity.

One commenter recommended that only the build-no-greater-than-no-build test be made available to $PM_{2.5}$ areas because it shows improvements resulting from the transportation plan and TIP. This commenter was concerned that the no-greater-than-2002 emissions test is not appropriate in $PM_{2.5}$ areas because re-entrained road dust is dependent on VMT and future year emissions will always be greater than 2002 emissions when dust emissions increases are included. EPA has not changed the rule in response to this comment.

First, because EPA believes that some $PM_{2.5}$ areas may be able to use the no-greater-than-2002 test successfully, EPA does not want to require that all areas must use the build-no-greater-than-no-build test. EPA believes that areas should have a choice of the two interim emissions tests since EPA concludes that both tests allow areas to demonstrate that they meet the requirements of Clean Air Act Section 176(c)(1)(B).

Second, while some PM_{10} areas experienced difficulties passing the baseline year test, it is not certain that $PM_{2.5}$ areas will experience the same difficulty. Road dust represents a much smaller fraction of total $PM_{2.5}$ mass than of PM_{10} because most road dust particles are larger than 2.5 microns. Also, as stated in Section IX. of today's notice, EPA is finalizing a provision that only requires re-entrained road dust to be included in conformity determinations before $PM_{2.5}$ SIP budgets are available if EPA or the state air agency makes a finding that road dust is a significant contributor to an area's $PM_{2.5}$ nonattainment problem. Therefore, not all areas will be required to include road dust in conformity determinations initially. For areas where it is determined that road dust is a significant contributor to the nonattainment problem and therefore must be included in conformity determinations, EPA will be issuing future guidance on how to quantify more appropriately road dust emissions for purposes of conducting regional emissions analyses.

Another commenter suggested that neither of the interim emissions tests should be required before a SIP is submitted and that mobile sources should not be targeted when they may not be the source of an area's $PM_{2.5}$ problem. EPA disagrees. Clean Air Act section 176(c)(6) requires that conformity apply in new nonattainment areas one year after the effective date of the nonattainment designation, even prior to the submission of SIPs establishing budgets for a particular pollutant. Clean Air Act section 176(c)(4) provides EPA with the authority to establish conformity tests that will ensure that transportation plans, programs and projects do not result in new violations of an air quality standard, worsen an existing violation or delay timely attainment of a standard during that time period. While the contribution of mobile sources to PM2.5 nonattainment problems is likely to vary from area to area, on-road sources are likely to make some contribution in all areas. Therefore, EPA believes that in order to protect public health it is both required by the Clean Air Act and necessary for PM2.5 areas to begin demonstrating conformity using appropriate interim emissions tests once conformity applies, before adequate or approved SIP budgets are established.

One commenter expressed support for the use of the budget test particularly in maintenance areas. The commenter noted that the budget test provides the area with a high degree of confidence that it will remain in attainment if emissions are held to the SIP budget levels. EPA agrees that once a SIP is submitted and budgets are found adequate or approved, the budget test is appropriate for meeting statutory requirements. Section 176(c)(2)(A) requires, in part, that a transportation plan or TIP may only be found to conform if a final determination has been made that emissions expected from the implementation of the plan and TIP are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan.

A number of comments were received on the suggestion that areas could submit early SIP budgets. One commenter supported this suggestion, while several other commenters were opposed to the suggestion. These commenters opposing early budgets believed that: Budgets should be developed as part of an area's attainment demonstration with adequate interagency consultation recognizing the complexities of the $PM_{2.5}$ problem; early budgets could isolate motor vehicle emissions in advance of considering reductions from other source categories; and the idea of developing these budgets in advance of the attainment demonstration is flawed in principle and would encourage incomplete air quality planning and delay the overall SIP development process.

EPA believes that commenters misunderstood the proposal, and we continue to believe that it is acceptable for areas to establish early motor vehicle emission budgets through the SIP process at an area's discretion. If an area chooses to prepare an early SIP, it must develop that SIP in consultation with EPA and state, local and federal transportation and air quality planners. To be approvable, such a SIP would have to include inventories for all source sectors and meet other SIP requirements. While these early SIPs would have to show some progress toward attainment, it is not a requirement that all of the reductions would come from on-road motor vehicles. It is not EPA's intention that motor vehicle emissions be solely controlled in a voluntary early SIP, but rather, to highlight that some areas may find it beneficial to establish early budgets by selecting appropriate controls on a range of sources instead of relying on one of the interim emissions tests to demonstrate conformity for $PM_{2.5}$. EPA agrees that $PM_{2.5}$ nonattainment is a complex issue. However, some areas will have

information (*e.g.*, air quality studies, modeling results) to guide them in the development of an early SIP, if desired.

Furthermore, EPA does not agree that the idea of early SIPs is flawed or that it will result in incomplete air quality planning or delay required SIPs. A voluntary early SIP does not relieve an area of its obligation ultimately to submit other required SIPs in a timely manner (*e.g.*, an attainment demonstration); therefore, an early SIP should not lead to incomplete air quality planning in the long run. An area that decides to submit an early SIP should recognize that it must still comply with submission dates for other applicable SIP requirements.

One commenter stated that early $PM_{2.5}$ SIPs may include some quantification of direct $PM_{2.5}$ emissions, but that these preliminary quantifications in emission inventories, which are not explicitly intended to be SIP budgets, should not trigger additional conformity requirements. EPA does not anticipate such early SIP submissions to cause confusion in the conformity process, as suggested by this commenter.

EPA believes that only control strategy SIPs establish motor vehicle emission budgets for conformity purposes. Section 93.101 of the conformity rule defines a control strategy SIP as an implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy Clean Air Act requirements for demonstrations of reasonable further progress and attainment. If the early SIP described by the commenter is submitted to satisfy different Clean Air Act requirements, it would most likely not establish budgets or trigger additional conformity requirements. It should be noted that § 93.105(b)(2) of the conformity rule requires that the interagency consultation process be used during the development of an area's SIP. Therefore, the MPO should be aware of any SIPs that are to be submitted that will establish budgets for future conformity determinations.

C. Comments Not Related to the Proposal

One commenter offered suggestions for alternate interim emissions tests for $PM_{2.5}$ areas. The commenter believed that $PM_{2.5}$ nonattainment areas will need reductions from on-road sources even before a SIP is established in order to attain the air quality standard. The commenter argued that EPA has the authority to require reductions in all nonattainment areas before a SIP is submitted under Clean Air Act Section 176(c)(1)(A), which requires conformity to the purpose of the SIP.

The commenter described an alternate interim emissions test that should be used prior to a SIP being submitted and budgets being found adequate or approved. Specifically, the transportation agency would prepare a motor vehicle emissions trends analysis for the 20-year planning horizon based on the current transportation plan. The transportation agencies would then assess the emissions reductions that could be achieved by the implementation of facilities, services and economic incentives. Based on this assessment the area would select measures to optimize the emissions reductions from the transportation sector towards attainment. The consultation process would be used to establish an emissions reduction curve that would serve as a conformity benchmark until a SIP is developed and submitted to EPA. The commenter believes such a test would identify the range of emissions reductions available from the transportation sector, yield valuable information for the development of a SIP and establish a framework for interagency collaboration to identify emissions reductions that could be implemented before adoption of a SIP containing motor vehicle emission budgets.

EPA is not changing the final rule in response to this comment. EPA agrees that the process described by the commenter may yield valuable information for the development of the $PM_{2.5}$ SIP for an area, and areas could elect to use it at their discretion for that purpose. However, EPA continues to believe that only Clean Air Act section 176(c)(1)(B) applies to $PM_{2.5}$ nonattainment areas prior to the time that a SIP is submitted and budgets are found adequate or approved, since section 176(c)(2)(A) requiring compliance with budgets only applies once a SIP is established. Although section 176(c)(1)(A) does require conformity to the purposes of a SIP, where a SIP has not been submitted to establish budgets, EPA does not believe this provision would mandate a test such as that suggested by the commenter.

As discussed above, EPA has concluded that use of either existing interim emissions test is sufficient to meet the requirements of section 176(c)(1)(B) in $PM_{2.5}$ areas. Moreover, the SIP process, which includes consultation with transportation agencies, is the appropriate venue for deciding on SIP control strategies for attaining the $PM_{2.5}$ air quality standard. Requiring a test such as the one described by the commenter would in effect extend the provisions of Clean Air Act section 176(c)(3)(A)(iii) requiring emissions reductions to $PM_{2.5}$ nonattainment areas as a mandatory matter, which is inconsistent with the statute.

The same commenter also recommended a change to the build-no-greater-than-no-build test for $PM_{2.5}$ areas. Specifically, the commenter recommended that emissions from the build scenario be compared to both the no-build scenario as is currently required and also to emissions resulting from implementing the projects in the current fiscally constrained transportation plan. The commenter believes that it is reasonable to expect that projects in the current plan would be implemented because of past political decisions, resource commitments and existing emissions analyses. Therefore, the commenter believes that area should examine the consequences of changing the current transportation plan.

EPA does not agree with requiring this type of test in $PM_{2.5}$ nonattainment areas. EPA believes that the current build/no-build test alone, as used for other pollutants and standards, is sufficient and more appropriate for meeting Clean Air Act section 176(c)(1)(B) requirements, which are intended to ensure that the emissions produced by an area's existing and planned transportation system are consistent with air quality goals. In contrast, the commenter's suggestion for redefining the build and no-build scenarios would focus conformity determinations on the specific projects and ongoing transportation decisions that are reflected within plans and TIPs. EPA believes that the transportation planning process is the more appropriate forum for deciding which specific projects are necessary to meet an area's transportation needs. As long as the statutory conformity requirements are met through the current form of the build/no-build test, EPA believes that additional tests such as the commenter suggested are not necessary to ensure that Clean Air Act requirements are met. Therefore, EPA is not including this suggested test in today's final rule.

VIII. Consideration of Direct $PM_{2.5}$ and $PM_{2.5}$ Precursors in Regional Emissions Analyses

A. Description of Final Rule

Today's final rule requires that all regional emissions analyses in $PM_{2.5}$ nonattainment and maintenance areas consider directly emitted $PM_{2.5}$ motor

vehicle emissions from the tailpipe, brake wear, and tire wear. The regulatory text can be found in § 93.102(b)(1). Sections IX. and X. provide information on when re-entrained road dust and construction-related dust must also be included in $PM_{2.5}$ conformity analyses.

To calculate emissions factors for direct $PM_{2.5}$ from motor vehicles all states except California would use the latest EPA-approved motor vehicle emissions factor model (currently MOBILE6.2). $PM_{2.5}$ nonattainment and maintenance areas in California would use EMFAC2002 or a more recently EPA-approved model. MOBILE6.2 and California's EMFAC2002 are designed to generate emissions factors for direct $PM_{2.5}$ as well as other emissions from on-road vehicles in the same modeling run.

EPA is not finalizing any requirements for addressing $PM_{2.5}$ precursors in transportation conformity determinations at this time. EPA will be proposing a broader $PM_{2.5}$ implementation rule to seek comment on options for addressing $PM_{2.5}$ precursors in the New Source Review program and in SIP planning activities such as reasonable further progress plans, attainment demonstrations, reasonably available control technology (RACT) requirements, and reasonably available control measure (RACM) analyses. EPA believes that it would be inappropriate to select an option for addressing $PM_{2.5}$ precursors in transportation conformity determinations prior to considering the precursor options in the $PM_{2.5}$ implementation rule. EPA plans to promulgate conformity requirements that address precursors prior to $PM_{2.5}$ designations being effective.

In the November 5, 2003 proposal, EPA presented several conformity options for $PM_{2.5}$ precursors for comment. Specifically, EPA proposed to add potential transportation-related $PM_{2.5}$ precursors—NO_X, VOCs, sulfur oxides (SO_X), and ammonia (NH_3)—for consideration in the conformity process. Under the proposal, a regional emissions analysis would be required for a given precursor if the $PM_{2.5}$ SIP established an adequate or approved budget for that particular precursor.

EPA also proposed two options for addressing how the various $PM_{2.5}$ precursors would be considered in conformity determinations conducted before adequate or approved $PM_{2.5}$ SIP budgets are established. EPA proposed regulatory text in §§ 93.102(b)(2) and 93.119(f) for both of these options.

The first proposed option would require regional emissions analyses for NO_X and VOC precursors in all areas, unless the EPA Regional Administrator or the state air agency makes a finding that one or both of these specific precursors are *not a significant contributor* to the $PM_{2.5}$ air quality problem in a given area. Regional emissions analyses would not be required for SO_x and NH_3 before an adequate or approved SIP budget for such precursors is established, unless EPA or the state makes a finding that on-road emissions of one or both of these precursors *is a significant contributor.*

EPA's second option would only require regional emissions analyses for one or more $PM_{2.5}$ precursors (*i.e.*, NO_X, VOC, SO_X and NH_3) before adequate or approved $PM_{2.5}$ SIPs have been established if EPA or the state makes a finding that one or more of these precursors *are significant contributors* to the $PM_{2.5}$ air quality problem in a given area.

As stated above, EPA intends to finalize the transportation conformity rule's $PM_{2.5}$ precursor requirements after further consideration through the $PM_{2.5}$ implementation rule and before $PM_{2.5}$ designations become effective. By finalizing the $PM_{2.5}$ precursor requirements before the effective date of the designations, areas will be fully aware of the conformity requirements at the start of the one-year $PM_{2.5}$ conformity grace period.

Although today's final rule does not address $PM_{2.5}$ precursors, conformity implementers can begin preparing for $PM_{2.5}$ conformity now, because this final rule includes the $PM_{2.5}$ regional conformity tests that apply for transportation plan and TIP conformity determinations that occur before and after $PM_{2.5}$ SIPs are established. In addition, the final rule and the existing conformity rule provide all other requirements for $PM_{2.5}$ determinations. For example, an MPO might choose to begin the no-greater-than-2002 test, as described in Section VII., prior to the release of final $PM_{2.5}$ precursor conformity requirements. Transportation and emissions modeling for $PM_{2.5}$ areas could also be prepared based on today's final rule, if desired. This is because VMT and speed estimates are based on the existing conformity rule's requirements, and can be made without regard to which precursors apply. Furthermore, MOBILE6.2 and EMFAC2002 emissions factor models generate direct $PM_{2.5}$ and precursor emissions factors from on-road vehicles at the same time in the same modeling run. Once $PM_{2.5}$ precursor requirements are finalized, $PM_{2.5}$ areas can document in conformity determinations that the applicable interim emissions test is met for direct $PM_{2.5}$ and any relevant precursors that apply.

Finally, EPA is not re-opening the comment period on the proposed transportation conformity requirements for addressing $PM_{2.5}$ precursors in transportation conformity determinations. EPA will address all of the comments received on the November 2003 proposal's $PM_{2.5}$ precursor options when we finalize these requirements, as described above.

B. Rationale and Response to Comments

EPA received a number of comments on this portion of the proposal. Most commenters supported the requirement that direct $PM_{2.5}$ emissions from the tailpipe and brake and tire wear be addressed in all regional emissions analyses. EPA believes that it is important to address direct $PM_{2.5}$ in conformity determinations because it is an important contributor to the air quality problem in these nonattainment areas and because of public health concerns with exposures to fine particles. A few commenters indicated that these direct emissions should only be required to be included in regional emissions analyses before a SIP is submitted if a finding of significance is made. One of these commenters also submitted the results of an emissions analysis that he prepared. The results of the analysis showed direct $PM_{2.5}$ emissions from on-road mobile sources (including re-entrained road dust) compared to emissions of $PM_{2.5}$ precursors and, in particular, emissions of NO_X. One commenter indicated that her agency would have data available to make findings of significance. EPA believes that it would be inappropriate to require a significance finding before direct emissions from motor vehicles can be included in regional emissions analyses, prior to the submission of a SIP for an area.

EPA believes that areas must include direct $PM_{2.5}$ emissions, including tailpipe emissions and emissions from brake and tire wear, in conformity determinations prior to the time that SIPs are submitted and budgets are found adequate. Clean Air Act Section 176(c)(1)(B) requires that activities not cause or contribute to any new violation of the air quality standard, increase the frequency or severity of any existing violation of the standard or delay timely attainment or any required interim emission reductions or other milestones. In order for an area to demonstrate compliance with the requirements of Clean Air Act Section 176(c)(1)(B) before a SIP is established, the area

must, at a minimum, conduct a regional emissions analysis for direct $PM_{2.5}$ emissions from motor vehicles. EPA anticipates that in most nonattainment and maintenance areas direct $PM_{2.5}$ emissions will be an important contributor to the $PM_{2.5}$ air quality problem. For these reasons, EPA is requiring that transportation conformity determinations consider direct $PM_{2.5}$ emissions. As noted above, EPA will finalize rules on how to account for $PM_{2.5}$ precursors, after further consideration in the context of EPA's broader $PM_{2.5}$ implementation strategy. See Section IX. of this notice for more information on $PM_{2.5}$ requirements for re-entrained road dust.

One commenter indicated that EPA's insignificance policy should apply to $PM_{2.5}$ emissions. EPA agrees with this commenter. The insignificance policy may be applied to direct $PM_{2.5}$ emissions during the period after a SIP is submitted for the area. If the SIP for the area demonstrates that direct $PM_{2.5}$ emissions from on-road mobile sources, including dust where relevant, do not need to be constrained in order to ensure expeditious attainment of the $PM_{2.5}$ standard, the requirement for a regional emissions analysis for direct $PM_{2.5}$ would no longer apply. See Section XXIII. for more details on requirements for demonstrating that motor vehicle emissions are insignificant contributors to an area's air quality problem.

One commenter recommended that conformity tests for direct $PM_{2.5}$ be done collectively, meaning that one budget test or interim emissions test be done for all of the relevant types of direct $PM_{2.5}$. EPA agrees with the commenter. EPA expects all $PM_{2.5}$ nonattainment and maintenance areas to complete the required regional emissions analyses for direct $PM_{2.5}$ by examining all of the relevant types of direct $PM_{2.5}$ in one analysis rather than separate analyses for each type of particle: Therefore, the analysis for direct $PM_{2.5}$ must include:

- Tailpipe exhaust particles,
- Brake and tire wear particles,
- Re-entrained road dust, if before a SIP is submitted EPA or the state air agency has made a finding of significance or if the applicable or submitted SIP includes re-entrained road dust in the approved or adequate budget, and
- Fugitive dust from transportation-related construction activities, if the SIP has identified construction emissions as a significant contributor to the $PM_{2.5}$ problem.

See Sections IX. and X. for more information on requirements for re-entrained road dust and fugitive dust from construction activities.

Three commenters expressed concern over the need to use MOBILE6.2 to estimate $PM_{2.5}$ motor vehicle emissions. One of the three was concerned about the accuracy of the modeling tools. Another was concerned about unexpected problems occurring because areas lack experience in using MOBILE to evaluate particulate matter levels.

EPA understands the concerns that these areas have expressed. Since the conformity proposal was published in November 2003, EPA has released MOBILE6.2. MOBILE6.2 is based on the latest available information concerning vehicle emissions and is therefore the best available tool at this time for calculating on-road emissions of direct $PM_{2.5}$ (*e.g.*, tailpipe emissions and brake and tire wear). The **Federal Register** notice announcing the release of the model was published on May 19, 2004 (69 FR 28830). EPA released SIP and conformity policy guidance on the use of MOBILE6.2 on February 24, 2004, entitled, "Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity." EPA will also be releasing technical guidance on the use of the MOBILE6.2 model in the future. Information on training in the use of MOBILE6.2 and related policy memoranda are available on EPA's MOBILE Web site at *http://www.epa.gov/otaq/m6.htm*. EPA believes there is adequate time for new areas to gain MOBILE experience and conduct conformity analyses for the $PM_{2.5}$ standard, before the end of the one-year conformity grace period for that standard.

IX. Re-entrained Road Dust in $PM_{2.5}$ Regional Emissions Analyses

A. Description of Final Rule

With today's action, EPA is finalizing the first of the two proposed options for addressing re-entrained road dust in conformity analyses prior to adequate or approved $PM_{2.5}$ SIP budgets. During this time period, re-entrained road dust will only be included in regional emissions analyses if the EPA Regional Administrator or state air quality agency determines that re-entrained road dust *is a significant contributor* to the $PM_{2.5}$ regional air quality problem. In other words, $PM_{2.5}$ areas can presume that re-entrained road dust is not a significant contributor and not include road dust in $PM_{2.5}$ transportation conformity analyses prior to the SIP, unless EPA or the state finds road dust significant. Re-entrained road dust is granular material released into the atmosphere as a result of motor vehicle activity on paved and unpaved roads.

EPA is applying this approach regardless of whether a $PM_{2.5}$ area is also a PM_{10} nonattainment or maintenance area. Therefore, even if the $PM_{2.5}$ area is also a PM_{10} area, the state or MPO can presume that re-entrained road dust is not a significant contributor and exclude it from $PM_{2.5}$ transportation conformity analyses prior to the SIP, unless EPA or the state finds road dust significant for $PM_{2.5}$. Regulatory text for this rule change is in §§ 93.102(b)(3) and 93.119(f).

An EPA or state air agency finding of significant re-entrained road dust emissions (a "finding of significance") would be based on a case-by-case review of the following factors: the contribution of road dust to current and future $PM_{2.5}$ nonattainment; an area's current design value for the $PM_{2.5}$ standard; whether control of road dust appears necessary to reach attainment; and whether increases in re-entrained dust emissions may interfere with attainment. Such a review would include consideration of local air quality data and/or air quality or emissions modeling results. Today's action with respect to $PM_{2.5}$ road dust is consistent with EPA's existing insignificance policy for all areas as described in Section XIV.B.

A finding of significance should be made only after discussions within the interagency consultation process for the $PM_{2.5}$ nonattainment area. These discussions should include a review of the data being considered. Interagency consultation will also ensure that all of the relevant agencies are aware that such a finding is being considered and is supported by the air quality information that is available. Findings of significance should be made through a letter to the relevant state and local air quality and transportation agencies, MPO(s), DOT, and EPA (in the case of a state air agency finding).

Road dust SIP emissions inventories and regional emissions analyses for conformity would be calculated using methods described in EPA's guidance entitled, "AP–42, Fifth Edition, Volume 1, Chapter 13, Miscellaneous Sources" (US EPA Office of Air Quality Planning and Standards; available at *http://www.epa.gov/ttn/chief/ap42/ch13/*). States and MPOs should consult with EPA before using alternative approaches, and EPA approval is needed before such approaches can be used. Details on the use of AP–42 for road dust estimation are given in "Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–

42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity," memorandum from Margo Oge and Steve Page to EPA Regional Air Division Directors, February 24, 2004 available at *http://www.epa.gov/otaq/models/mobile6/mobil6.2_letter.pdf*).

EPA notes that the absence of a finding of significance prior to the SIP should not be viewed as the ultimate determination of the significance of road dust emissions in a given area. State and local agencies may find through the SIP development process that road dust emissions are significant and should be included in the $PM_{2.5}$ SIP budget and subsequent conformity analyses, although they did not have sufficient data to support a finding prior to the development of the SIP.

As described in the November 5, 2003 proposal, EPA plans to issue guidance on how to adjust estimated $PM_{2.5}$ road dust emissions to reflect the true impact of re-entrained road dust on regional air quality. This guidance will take into account differences between road dust emissions measured near the roadway and measured on regional air quality monitors and allow states and MPOs to adjust road dust emissions estimates to reflect accurately the regional impact of these emissions. EPA plans to issue this guidance by the time final $PM_{2.5}$ designations are effective.

B. Rationale and Response to Comments

All of the commenters that directly addressed this issue supported the option of not requiring that re-entrained road dust be included in $PM_{2.5}$ conformity analyses prior to an adequate or approved SIP budget, regardless of whether the area is also a PM_{10} area. Reasons commenters stated for supporting this option included uncertainties about the role of re-entrained road dust for $PM_{2.5}$ air quality, likelihood that re-entrained dust will be dominated by larger particles, and concerns about needless expenditure of resources. As discussed in the proposal, at issue is the question of whether or not re-entrained road dust has a significant impact on $PM_{2.5}$ air quality and should be included in conformity analyses in all $PM_{2.5}$ areas. EPA believes that, unless there is already strong evidence of the importance of re-entrained road dust for $PM_{2.5}$ air quality, the proper time to make that determination is during the development of the $PM_{2.5}$ SIP.

There is still a great deal of uncertainty about the overall impact of re-entrained road dust on $PM_{2.5}$, and evidence suggests that re-entrained road dust is likely to have a relatively small impact on $PM_{2.5}$ compared to PM_{10} in general. The development of a SIP requires an in-depth review of all the available emissions and air quality data for a particular area. EPA expects that this review will resolve many of the uncertainties about the impact of re-entrained road dust on $PM_{2.5}$ in an area. However, if clear evidence of the impact of re-entrained road dust in a local area is available before the SIP is developed, the option of finding road dust significant so that it is included in conformity analyses can provide for the protection of public health and the environment in the short term. In the absence of such a finding prior to a $PM_{2.5}$ SIP, it is more productive for areas to focus control efforts on vehicle emissions that clearly contribute to the $PM_{2.5}$ air quality problem, rather than on re-entrained road dust emissions that have not been found to be significant. In addition, EPA does not believe there is compelling evidence to require that PM_{10} areas presume that re-entrained road dust will be a significant contributor to $PM_{2.5}$ air quality problems in all cases based on our current understanding and on the comments received.

Several commenters suggested that the final rule require that both EPA *and* the state make findings of significance before road dust is included in conformity analyses. EPA is not making this change to the final rule because we believe it is unnecessary given that the finding will be discussed through the interagency consultation process. The language used in the final rule for $PM_{2.5}$ road dust is consistent with how such findings for PM_{10} precursors have been implemented since the original 1993 conformity rule.

One commenter who supported the option EPA is finalizing also suggested as an alternative that re-entrained road dust be counted as part of the area source inventory not subject to transportation conformity at all. EPA disagrees. While the deposition of silt on a roadway is not necessarily completely dependent on vehicle activity, the release of that silt into the atmosphere is dependent on vehicle activity, and is therefore properly classified as an on-road mobile source emission subject to transportation conformity requirements.

Several commenters supported the future release of EPA guidance to allow road dust emissions estimates to be adjusted to reflect the true regional impact of those emissions. Several more commenters raised general concerns about the quality of methods available for estimating road dust emissions. These commenters believed that the existing methods overestimate road dust emissions. EPA agrees and believes that concerns about the inaccuracy of emission estimation methods arise from discrepancies between the observed emissions near the roadway surface and observed emissions at the regional air quality monitors. Allowing emissions estimates to be adjusted to reflect the true regional air quality impact through EPA's planned future guidance should alleviate many of these concerns. Without these adjustments, planners may not apply the proper combination of control measures on dust and vehicle emissions needed to address properly the regional $PM_{2.5}$ air quality problem. Based on observed discrepancies, EPA believes that controls on road dust would have a smaller impact on regional air quality than would initially appear based on unadjusted emissions inventories, and the Agency's planned guidance will address this issue.

Two commenters proposed that separate emission budgets be established for vehicle exhaust emissions and re-entrained road dust, rather than the current practice of including all on-road $PM_{2.5}$ emissions in one regional emissions analysis. The commenters believe that this approach would "avoid the risk that improvements in the measurement of a poorly characterized inventory be used to offset increases in direct emissions of primary particles from combustion." In general, EPA believes that emissions from all motor vehicle sources should be examined in a unified manner for transportation planning and air quality planning purposes. It is also important that conformity analyses in $PM_{2.5}$ areas are consistent with how $PM_{2.5}$ SIP budgets will be developed.

As long as Clean Air Act requirements are met when all motor vehicle emissions are considered in conformity analyses, EPA does not believe it is beneficial to further constrain the transportation project or control strategy development processes of state and local governments for transportation conformity purposes. If it is determined that $PM_{2.5}$ from road dust is significant, it may prove extremely difficult to meet a separate road dust budget with any growth in VMT. Because dust and vehicle $PM_{2.5}$ both contribute to direct on-road $PM_{2.5}$ emissions levels, EPA believes it would be appropriate to treat them jointly for purposes of transportation conformity. For these reasons, EPA is not requiring separate budgets for road dust and exhaust emissions.

X. Construction-Related Fugitive Dust in $PM_{2.5}$ Regional Emissions Analyses

A. Description of Final Rule

EPA is finalizing the proposal to include construction-related fugitive dust from highway or transit projects in regional emissions analyses in $PM_{2.5}$ nonattainment and maintenance areas only if the SIP identifies construction dust *as a significant contributor* to the regional air quality problem. Construction-related fugitive dust is granular material released into the atmosphere during construction. Construction-related dust emissions would not be included in any $PM_{2.5}$ conformity analyses before adequate or approved $PM_{2.5}$ SIP budgets are established. Regulatory text is in § 93.122(f) of this final rule. This is consistent with the way construction dust is considered in the current rule for PM_{10} nonattainment and maintenance areas.

The consultation process should be used during the development of $PM_{2.5}$ SIPs when construction emissions are a significant contributor, so that these emissions are included in the SIP's motor vehicle emissions budget for conformity purposes. EPA has previously provided similar guidance to PM_{10} nonattainment and maintenance areas for PM_{10} construction-related emissions requirements.[13] See the preamble to the proposal for this final rule for further information regarding how EPA intends to implement the $PM_{2.5}$ construction dust requirement (November 5, 2003, 68 FR 62711).

Construction dust SIP emissions inventories and regional emissions analyses for conformity can be calculated using methods described in EPA's guidance entitled, "AP–42, Fifth Edition, Volume 1, Chapter 13, Miscellaneous Sources" (US EPA Office of Air Quality Planning and Standards; available at *http://www.epa.gov/ttn/chief/ap42/ch13/*) or locally developed estimation methods that are selected through the interagency consultation process.

In addition, EPA will allow $PM_{2.5}$ emissions to be adjusted to reflect the true impact of construction-related fugitive dust on regional air quality, as explained in Section IX. EPA will issue guidance on how to adjust estimated $PM_{2.5}$ construction dust emissions to reflect more accurately the impact of construction dust on regional air quality before EPA's final $PM_{2.5}$ nonattainment designations are effective. Under EPA's future guidance, calculated emissions could then be adjusted downward, if appropriate and necessary, to account for discrepancies based on an analysis of the relative impact of construction dust on ambient $PM_{2.5}$ concentrations as determined by regional air quality monitors and the $PM_{2.5}$ SIP's demonstration in a given area.

B. Rationale and Response to Comments

Most of the commenters who addressed this issue supported the proposal that EPA is finalizing today. Section 176(c) of the Clean Air Act requires that the air quality impacts of transportation projects be evaluated so that new violations or worsened violations do not occur and that attainment is not delayed. If emissions of fugitive dust from highway or transit project construction contribute to air quality problems in $PM_{2.5}$ areas and as a result, air quality is worsened or timely attainment is delayed, then it is appropriate to evaluate those emissions in conformity before federal funding or approval is given. Section 93.122(e) of the transportation conformity rule requires regional PM_{10} emissions analyses to include construction-related PM_{10} dust if the SIP identifies construction emissions as a contributor to the nonattainment problem.

If construction-related fugitive PM_{10} is not identified as a contributor to the air quality problem in the SIP, areas are not required to include these emissions in the regional emissions analysis for transportation conformity. The consultation process should be used to help determine whether construction dust is a significant contributor to regional air quality problems in the development of the $PM_{2.5}$ SIP, and EPA will consider the significance of construction dust in its review of the SIP submission. Today's action applies the current rule's general approach for PM_{10} areas to $PM_{2.5}$ areas.

One commenter who supported the proposal said that the determination of whether construction dust is a significant contributor to the air quality problem should consider the temporary nature of these emissions, the mitigating impact of construction dust suppression measures, and the limitations of existing fugitive dust estimation methods. EPA believes that it is appropriate to include construction dust mitigation measures required in the local area when determining the air quality significance of construction dust. The temporary nature of these emissions can only be considered if the release is so short in duration that it does not affect regional air quality. The limitations of the existing fugitive dust method described by the commenter will be addressed by allowing the adjustment of the dust emissions inventory to reflect the impact of dust on regional air quality, which will be discussed in future EPA guidance.

A smaller group of commenters opposed any inclusion of construction dust in transportation conformity analyses, citing the temporary nature of these emissions. While EPA agrees that these emissions only occur during the construction phase of a transportation project and that they may also be covered by other requirements, this is not a compelling rationale for excluding them from transportation conformity if they do have a significant impact on regional air quality. Dust from highway or transit construction projects could contribute to regional air quality problems for months or even years depending on the size of the project. Therefore, EPA has not changed the final rule in response to this comment.

Some commenters argued construction dust should not be included because it is already addressed in the nonroad or area source inventory and that different emissions models and control strategies apply to nonroad sources. Other commenters argued construction dust should not be included because VOC and NO_X emissions from construction equipment used during road construction projects are not required to be included in conformity analyses. EPA disagrees, because these factors have no bearing on whether construction dust should be included in conformity determinations. Construction dust from highway or transit projects is the direct result of decisions made during the transportation planning process and these decisions should take those emissions into account. The fact that different estimation methods and control methods are used for these emissions does not negate the connection with the transportation planning process. If construction dust is determined to be a significant contributor to the regional air quality problem, the state or MPO should make sure that only construction dust from highway and transit projects and not from other types of construction projects is included in the conformity analysis.

Several commenters argued construction dust should not be included because construction projects are separately covered by project-level and National Environmental Policy Act (NEPA) requirements. Because project-level and NEPA requirements do not

[13] October 28, 1996, memorandum entitled, "Transportation Conformity: Regional Analysis of PM_{10} Emissions from Highway and Transit Project Construction," memorandum from Gay MacGregor, then-Director, Regional and State Programs Division, Office of Mobile Sources to EPA Regional Air Division Directors.

take into account other on-road sources of $PM_{2.5}$ emissions in other portions of the nonattainment or maintenance area, relying on these requirements exclusively would miss situations in which additional construction dust emissions from transportation projects worsen an existing region-wide $PM_{2.5}$ air quality problem.

A few commenters asked that full interagency consultation be required as part of the SIP development process with respect to the issue of the significance of construction dust. EPA agrees. Section 93.105(b)(1) of the conformity rule already requires that state and local transportation and air agencies, and other organizations with responsibilities for developing or implementing SIPs must consult with each other and with EPA, FHWA, and FTA field offices on the development of the SIP, transportation plan, TIP, and associated conformity determinations.

One commenter stated that emission analyses to determine if construction dust is a significant contributor to regional air quality should be required only in $PM_{2.5}$ areas for the 24-hour standard because the commenter believed that these emissions would have no effect on attainment of the annual $PM_{2.5}$ standard. EPA disagrees since it is impossible to make the determination that construction dust emissions will have no effect on attainment of the annual $PM_{2.5}$ standard in any area until a proper analysis has been done as part of the SIP development process, especially where construction activity continues for several years.

One commenter suggested that § 93.122(f)(2) should not include "the dust producing capacity of the proposed activities" because the commenter believes this requirement exceeds the SIP inventory requirements. EPA believes that an estimation of the dust producing capacity of the proposed transportation project is necessary in order to make a determination of the significance of construction dust on regional air quality. It is clearly possible to do this since the language in § 93.122(f)(2) is consistent with the requirement to account for construction dust for PM_{10} conformity, which has already been implemented for many years. Therefore, the final rule has not been changed in response to this comment.

One commenter stated that construction dust emissions were generally more significant than emissions of re-entrained road dust. This commenter believed that without a regulatory requirement to account for construction-related $PM_{2.5}$ emissions in all cases in conformity, effective measures to control these emissions would be inconsistent and only voluntary. As a result, this commenter recommended that construction dust emissions be considered in conformity analyses prior to the submission of an adequate $PM_{2.5}$ SIP budget. EPA believes based on the available data that construction dust will not be significant in all areas and that therefore requiring the inclusion of construction dust before it has been determined to be significant through the SIP process is unnecessary and could lead to the diversion of limited state and local resources. Furthermore, EPA did not include an option for including construction dust in all cases in the November 2003 proposal. Therefore, EPA is not changing the rule in response to this comment.

XI. Compliance With $PM_{2.5}$ SIP Control Measures

A. Description of Final Rule

The final rule requires that FHWA and FTA projects in $PM_{2.5}$ nonattainment and maintenance areas comply with the applicable SIP's $PM_{2.5}$ control measures, when such measures exist. Under the final rule, FHWA and FTA would assure implementation of a required control or mitigation measure by obtaining enforceable written commitments from the project sponsor and/or operator prior to making a project-level conformity determination. This requirement would be satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include the control measures in the final plans, specifications and estimates for the project. This final rule is consistent with a similar requirement for PM_{10} areas.

EPA notes, however, that § 93.117 is only applicable after a $PM_{2.5}$ nonattainment area has an approved $PM_{2.5}$ SIP, because the requirement is to comply with the measures in the approved $PM_{2.5}$ SIP. Today's final rule does not affect any separate state or other SIP requirements for compliance with control measures.

The purpose of a $PM_{2.5}$ control measure is to limit the amount of $PM_{2.5}$ emissions from construction activities and/or normal use and operation associated with the project. Examples of specific control or mitigation measures that may be approved into a SIP include limitations on fugitive dust during construction or street sweeping. Normal project design elements (dimensions, lane widths, materials, etc.), however, are not considered mitigation or control measures.

B. Rationale and Response to Comments

Commenters were supportive of the proposal. The purpose of conformity is to ensure that federal actions are consistent with the SIP air quality objectives. If the approved SIP includes control measures for mitigating $PM_{2.5}$ emissions from federal transportation projects, then conformity should include a written commitment from the project sponsor to include these SIP measures in the final plans, specifications, and estimates for the project. EPA believes that this requirement will help $PM_{2.5}$ areas achieve clean air by ensuring that federal projects comply with control measures that result in air quality improvements as anticipated in the SIP. Although such projects must comply with SIP requirements in any event, documenting compliance in a conformity determination adds an important enforcement tool to aid in SIP compliance.

Some commenters requested clarification that such control measures are not considered transportation control measures (TCMs) requiring timely implementation under 40 CFR 93.113. EPA is not changing the regulatory text in response to this comment. Not all control measures included in the SIP are TCMs. However, if a TCM is included in an approved $PM_{2.5}$ SIP as a $PM_{2.5}$ control measure, it must be implemented as required by the SIP and the conformity rule's timely implementation requirements. $PM_{2.5}$ SIP control measures can include many different kinds of control measures, including TCMs as defined under Clean Air Act section 108 and § 93.101 of the conformity rule. EPA believes this clarification is consistent with current practice for implementing §§ 93.117 and 93.113 requirements in PM_{10} areas.

One commenter generally supported EPA's proposal but was unsure how enforcement of $PM_{2.5}$ SIP control measures would take place within the conformity process. This commenter recommended that enforcement of $PM_{2.5}$ control measures be completed through the NEPA process, similar to the requirements for dealing with other environmental issues. EPA agrees that enforcement of $PM_{2.5}$ SIP control measures is important, but the conformity rule is the appropriate context for meeting Clean Air Act conformity requirements. If a SIP $PM_{2.5}$ control measure is not implemented, then EPA believes it would not be appropriate to make a project-level conformity determination. Finally, it is

EPA's experience that implementation of § 93.117 for PM_{10} areas has worked well within the framework of the existing conformity rule. For all of these reasons, EPA is finalizing the proposed § 93.117 without further changes.

XII. $PM_{2.5}$ Hot-Spot Analyses

In the November 2003 proposal, EPA presented two options concerning hot-spot analyses in $PM_{2.5}$ nonattainment and maintenance areas. One proposed option was to not require hot-spot analyses for FHWA and FTA projects in $PM_{2.5}$ nonattainment and maintenance areas. The other proposed option was to require hot-spot analyses for such projects at certain types of locations if the SIP for the area identified any such locations. Under the second option hot-spot analyses would not be required for any projects before a SIP was submitted and then only if the $PM_{2.5}$ SIP identifies susceptible types of locations.

EPA received substantial comment on this portion of the November 2003 proposal. After considering these comments, EPA, in consultation with DOT, has decided to request further public comment on these and additional options for $PM_{2.5}$ hot-spot requirements. Therefore, EPA is not taking final action on this issue at this time. EPA will be publishing a supplemental notice of proposed rulemaking (SNPRM) on hot-spots in the near future. In that notice, EPA will be soliciting comment on additional options for addressing hot-spot analysis requirements in $PM_{2.5}$ nonattainment and maintenance areas.

EPA will address all comments received on $PM_{2.5}$ hot-spot analysis requirements both in response to the November 2003 proposal as well as the future SNPRM on hot-spots in a final rulemaking after the close of the comment period for the SNPRM. EPA intends to complete its rulemaking on $PM_{2.5}$ hot-spot requirements before $PM_{2.5}$ nonattainment designations become effective.

XIII. PM_{10} Hot-Spot Analyses

EPA also proposed several options for amending PM_{10} hot-spot requirements in its November 2003 proposal. These options included maintaining the current conformity rule's hot-spot analysis requirements. A second option was to limit the analyses to certain circumstances. For example, only requiring analyses if the SIP has identified motor vehicle emissions as a localized problem. Under this scenario PM_{10} hot-spot analyses would not be required if the SIP determined that motor vehicle emissions do not cause localized problems. A third option was to limit PM_{10} hot-spot analyses to certain types of project locations. EPA also proposed an option to eliminate all PM_{10} hot-spot analysis requirements from the conformity rule.

Similar to Section XII. on $PM_{2.5}$ hot-spot requirements, EPA has decided to delay making a final decision on changes to the existing PM_{10} hot-spot analysis requirements, since EPA received substantial comment on the proposed options. In light of those comments and due to the close relationship between PM_{10} and $PM_{2.5}$ hot-spot requirements, EPA and DOT have decided to propose additional options for PM_{10} hot-spot analyses in a future SNPRM for hot-spots. In that notice, we will solicit comment on additional options for addressing hot-spot analysis requirements in PM_{10} nonattainment and maintenance areas.

EPA will address all comments received on PM_{10} hot-spot analysis requirements both in response to the November 2003 proposal and the future SNPRM in a final rulemaking after the close of the comment period for the SNPRM. EPA intends to complete rulemaking on PM_{10} hot-spot requirements before $PM_{2.5}$ nonattainment designations become effective. EPA notes, however, that the existing conformity rule's PM_{10} hot-spot requirements continue to remain in effect at this time. Until a final action is taken, PM_{10} nonattainment and maintenance areas will continue to meet the PM_{10} hot-spot requirements of §§ 93.116 and 93.123 of the current conformity rule.

XIV. Federal Projects

A. Description of Final Rule

Today's final rule is consistent with the June 30, 2003, proposal and the most recent EPA and DOT guidance implementing the March 2, 1999 court decision. The final rule modifies § 93.102(c) of the conformity rule so that no new federal approvals or funding commitments for non-exempt projects can occur during a transportation conformity lapse. A conformity lapse generally occurs if transportation plan and TIP conformity determinations are not made within specified time frames. During a conformity lapse no new conformity determinations for plans, TIPs, and FHWA or FTA non-exempt projects may be made. Under the new § 93.102(c) provision, non-exempt transportation project phases can be implemented during a lapse if they have received all required FHWA or FTA approvals or funding commitments and have met associated conformity requirements before the lapse. However, no new federal approvals or funding commitments for subsequent or new project phases can be made during the lapse.

EPA is making one minor revision to § 93.102(c) in today's rulemaking that was not included in the June 30, 2003 proposal. Specifically, we are clarifying that § 93.102(c) requirements do not have to be satisfied at the time of project approval for TCMs that are specifically included in an applicable SIP (provided that all other relevant transportation planning and conformity requirements are met). During the development of this final rule, EPA realized that the conformity rule § 93.114(b), as amended on November 15, 1995 (60 FR 57179), provided this exception for TCM project approvals during a conformity lapse. Therefore, EPA is including this exception in § 93.102(c) of today's action. EPA does not believe a reproposal is necessary to finalize this minor change to § 93.102(c) as this revision will not change the requirements for federal funding and approval of projects and project phases as determined by the court and simply clarifies the relationship between existing § 93.114(b) requirements and today's § 93.102(c) revision. Areas should refer to the November 1995 rulemaking for more information on § 93.114(b) requirements.

As proposed, today's final rule also moves previous § 93.102(c)(2) requirements relating to approved projects to § 93.104(d) to limit redundancy and improve organization of the conformity rule. The conformity rule continues to require a new conformity determination when a significant change in a project's design concept and scope has occurred, a supplemental environmental document for air quality purposes is initiated, or three years have elapsed since the most recent major step to advance a project has occurred. A major step is defined in today's conformity rule as "* * * NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; and construction (including Federal approval of plans, specifications and estimates)" (40 CFR 93.104(d)).

See EPA's conformity website listed in Section I.B.2. to download an electronic copy of the June 30, 2003 proposal to this final rule and the latest EPA and DOT guidance implementing the court decision.

B. Rationale and Response to Comments

EPA is revising the conformity rule in a manner consistent with the Clean Air Act, as interpreted by the court decision. Previously, section 93.102(c)(1) of the 1997 conformity rule

(62 FR 43780) allowed a highway or transit project to receive additional federal approvals and funding commitments during a lapse if the project came from a previously conforming plan and TIP, a conformity determination for the project had been made, and the NEPA process was completed before the lapse. In its decision, the court held that § 93.102(c)(1) of the 1997 rule violated the Clean Air Act since it allowed such transportation projects (*i.e.*, "grandfathered" projects) to receive further federal approvals or funding commitments during a lapse. As a result, the final rule allows projects and project phases to advance during a conformity lapse only if approvals or funding commitments for these projects and project phases were granted prior to the lapse.

Most commenters supported EPA's proposal for advancing project phases during a conformity lapse and believed that DOT and EPA's interpretation of the court decision was appropriate. Two commenters also agreed that EPA's June 30, 2003 proposal is a better interpretation of the court decision than a previous interpretation reflected in a FHWA/FTA guidance document issued on June 18, 1999. The June 1999 guidance has since been revised and superceded by the January 2, 2002 FHWA/FTA guidance. Under the FHWA/FTA January 2002 guidance document and today's final rule, any project phase (*e.g.*, right-of-way (ROW) acquisition, final design or construction) that is authorized before a conformity lapse can be implemented during the lapse. However, no further approvals or funding commitments for subsequent project phases can occur during the lapse. See Section II. for further information regarding these guidance documents.

EPA believes this change is appropriate because the court did not explicitly rule on the issue of how previously authorized project phases are affected during a lapse. Therefore, the court decision has led EPA and DOT to conclude that a project phase that previously receives all federal approvals and funding commitments can be implemented during a conformity lapse. EPA and DOT believe suspending such authorized commitments during a conformity lapse is not required by the Clean Air Act.

Although most commenters understood that EPA's proposed rule revision is constrained by the court decision, a few commenters still expressed a preference for the previous rule's grandfathering provision. Specifically, one commenter stated that without the grandfathering provision, conformity lapses will lead to costly delays in infrastructure development and will waste valuable planning resources. Another commenter stated that the conformity process should be a forward-looking process and that once a project is included in a conforming plan and TIP, that project should be permanently "grandfathered" until built, changed substantially or removed from the plan/TIP, as having previously satisfied all of its requirements under the Clean Air Act. Another commenter urged EPA to change the conformity rule so that projects can go forward during a conformity lapse once the environmental requirements pertaining to air quality in the NEPA process have been satisfied. This commenter questioned why project approvals and funding commitments that are unrelated to air quality (*e.g.*, ROW acquisition) should be impacted by the conformity rule.

As stated above, the court ruled that the previous rule's grandfathering provision did not meet Clean Air Act requirements since it allowed project approvals and funding commitments to be granted during a conformity lapse (*i.e.*, when the transportation plan and TIP do not conform). Thus, this rule change is mandated by the court decision, as noted by most commenters. This decision has resulted in a process for advancing projects that is more protective of air quality than the previous rule's grandfathering provision. Although some project phases, such as ROW acquisitions, will not affect regional motor vehicle emissions by themselves, such phases are significant steps towards the eventual construction and operation of a transportation project. EPA believes that if unauthorized project phases are allowed to proceed during a lapse, federal approval and funding may be expended on projects that do not conform to the SIP's air quality goals.

Also, EPA believes it is important to understand the practical impact and scope of eliminating the previous rule's grandfathering provision in most areas. This final rule will affect only those areas that are unable to meet a conformity deadline, and as a result, enter into a conformity lapse. This rule does not affect federal funding and approval of projects in areas that have a conforming plan and TIP in place and are meeting the conformity rule's requirements.

XV. Using Motor Vehicle Emissions Budgets From Submitted SIPs for Transportation Conformity Determinations

A. EPA's Role in the Adequacy Process

1. General Description of Final Rule

Today's final rule continues to allow certain SIP budgets to be used for conformity before a SIP is approved. However, this final rule modifies several provisions under §§ 93.109 and 93.118 of the conformity regulation to specify that EPA must affirmatively find submitted budgets adequate before they can be used in a conformity determination. The final rule also establishes the process by which EPA will review and make adequacy findings for submitted SIPs, as described in the June 30, 2003 proposal.

Specifically, the final rule eliminates those provisions in §§ 93.109 and 93.118(e) that required areas to use budgets from submitted SIPs 45 days after submission unless EPA had found them inadequate. Instead, today's rule stipulates that before a budget from a SIP submission can be used in conformity, EPA must find it adequate using the criteria in § 93.118(e)(4). Under this final rule, a budget cannot be used until the effective date of the **Federal Register** notice that announces that EPA has found the budget adequate, which would be 15 days from the date of notice publication (unless the adequacy finding is included in EPA's final approval notice for the SIP; *see* Section XV.C.1 below for more information).

This final rule also incorporates language from the November 5, 2003 conformity proposal (68 FR 62690). EPA's November 2003 proposal was consistent with the June 30, 2003 proposal that addressed the March 1999 court decision. However, the November 2003 proposal further clarified when the budget test would be required when EPA publishes a final approval or direct final approval of a SIP and budgets in the **Federal Register**. For more information on when approved budgets can be used in conformity determinations, see Section XV.C. of this final rule.

Today's final rule addresses only the procedures for making adequacy findings for submitted SIPs in accordance with the court decision. The final rule does not change the criteria listed in § 93.118(e)(4) of the rule for determining the adequacy of submitted SIPs, as the court did not address this provision in its decision. The final rule is consistent with the June 30, 2003 proposed rule and the adequacy

procedures already in place as a result of EPA's May 14, 1999 guidance issued to implement the court decision. Therefore, existing adequacy procedures will generally remain the same as they have been since the 1999 guidance was issued. EPA notes, however, that the June 30, 2003 proposal and today's final rule include more detailed information on the implementation of the adequacy process and expand upon EPA's May 1999 guidance. See Section II. of this notice for more background information on EPA's guidance document.

2. Rationale and Response to Comments

In its ruling, the court remanded § 93.118(e)(1) of the conformity rule to EPA for further rulemaking. This section of the conformity rule had allowed budgets to be used in conformity determinations 45 days after SIP submission even if EPA had not found them adequate. However, the court ruled that a submitted budget could only be used for conformity purposes if EPA had first found it adequate.

Specifically, the court stated that "where EPA fails to determine the adequacy of budgets in a SIP revision within 45 days of submission, * * * there is no reason to believe that transportation plans and programs conforming to the submitted budgets "will not—(i) cause or contribute to any new violation of any standard in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard * * *" 42 U.S.C. § 7506(c)(1)(B)." 167 F.3d, at 650. The court remanded § 93.118(e)(1) to EPA so that it could be harmonized with these Clean Air Act requirements. EPA believes this final rule achieves the court's directive.

Most commenters favored using submitted SIPs and budgets that have been found adequate before SIP approval in conformity determinations. Most commenters also supported EPA's proposal to incorporate the existing adequacy process into the conformity rule in accordance with the court decision. EPA received similar statements of support for our proposed adequacy process from one commenter that submitted comments on the November 5, 2003 proposal. Some commenters believed that the existing adequacy process provides certainty to the conformity process and ensures that submitted budgets are consistent with Clean Air Act requirements before they are used in conformity determinations. Additional comments on specific aspects of the adequacy process and EPA's responses to those comments can be found in Sections XV.B. through XV.F. below.

B. General Description of the Adequacy Process

1. Description of Final Rule

The final rule adds a new provision, § 93.118(f), to the conformity rule that provides the basic framework of the adequacy process. The new § 93.118(f) generally reflects EPA's existing adequacy process as proposed in the June 30, 2003 rulemaking and described in EPA's 1999 adequacy guidance. The adequacy process consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding, including response to submitted comments. These three steps are described below. Section XV.B. of today's preamble specifically addresses the adequacy procedures listed in § 93.118(f)(1) that will be used for submitted SIPs in most cases. Section XV.C. covers alternative procedures listed in § 93.118(f)(2) for determining the adequacy of submitted SIPs through the SIP approval process.

EPA will review the adequacy of submitted SIP budgets in cases where a budget can be used for conformity prior to approval. Adequacy reviews would be completed for the following cases:

- SIPs that are considered "initial SIP submissions" (generally the first SIP submission to meet a given Clean Air Act requirement). A discussion of "initial SIP submissions" can be found in the preamble of the proposed rule entitled, "Transportation Conformity Rule Amendments: Minor Revision of 18-month Requirement for Initial SIP Submissions and Addition of Grace Period for Newly Designated Nonattainment Areas" (August 6, 2002, 66 FR 50956–50957);
- Revisions to previously submitted but not approved SIPs; and
- Revisions to certain approved SIPs, as described further in Section XV.D.1. of today's action.

For more information on the SIP submissions that EPA will review for adequacy, see the June 30, 2003 conformity proposal (68 FR 38982–38984).

Notification of SIP submissions: After a state officially submits a control strategy SIP or maintenance plan to EPA, we will notify the public by posting a notice on EPA's adequacy Web site and will attempt to do so within 10 days of submission. EPA's adequacy Web site is the central national location for adequacy information. Currently, the Web site is found at *http://www.epa.gov/otaq/traq/traqconf/adequacy.htm.* We will consider a SIP submission to be formally submitted on the date that the EPA regional office receives the official SIP. In addition, EPA will directly notify identified interested members of the public. If a member of the public would like to be notified when we receive a SIP submission for a particular state or area, he or she should contact in advance the EPA regional employee listed on the Web site for that state. EPA's Web site provides EPA regional contact information so that interested parties can arrange or discuss notification processes. For example, EPA could use postcards, letters, emails or phone calls to notify requesters, as agreed on by the interested party and EPA.

Public comment: A 30-day public comment period will be provided at a minimum in either of the following cases:

- If the state has made the entire SIP submission electronically available to the public via a Web site, electronic bulletin board, etc., the 30-day comment period will start immediately upon the posting of the SIP notice on the EPA adequacy website. EPA will include a link to the state website in its public notification.
- If the SIP is not available via the Internet or is only available in part, if someone requests a paper copy of the entire SIP and EPA receives the request within the first 15 days after the SIP is posted, the 30-day public comment period will start on the date that EPA mails the requested copy of the SIP. However, if no one has requested a copy of the SIP from EPA within 15 days after the date of EPA posting notification, EPA will consider the 30-day comment period to have started immediately upon EPA's adequacy Web site posting.

Our Web site will state when the public comment period begins and ends, and to whom to send comments. The adequacy Web site will also include information on how to obtain a copy of a SIP submission under adequacy review. EPA will not make SIP submissions electronically available on our adequacy Web site. If someone requests a copy of the SIP, the Web site will be updated to reflect any extension of the public comment period.

EPA's adequacy finding: After a thorough review of all public comments received and evaluation of whether the adequacy criteria have been met, the appropriate EPA regional office will make a finding that the submitted SIP is either adequate or inadequate and send a letter indicating EPA's finding, including response to comments, to the state or local air agency and other relevant agencies such as the MPO and state transportation agency. The EPA

regional office will also mail or email a copy of the letter and response to comments to others who request it, as previously arranged.

The EPA regional office will also subsequently announce the adequacy finding in the **Federal Register**. If EPA finds a budget adequate, it can be used for conformity determinations on the effective date as stated in the **Federal Register** notice, which will be 15 days after the notice is published. EPA will post EPA's adequacy letter, our response to any comments, and the **Federal Register** notice on the EPA adequacy Web site.

Alternatively, in cases where EPA is conducting an adequacy review and moving quickly to rulemaking on a SIP, EPA may use the proposed or final rulemaking notice for a control strategy SIP or maintenance plan to announce our adequacy finding, instead of first sending a separate letter to the relevant agencies and following it with a **Federal Register** notice. In these cases, EPA would post our finding on the adequacy Web site, along with the relevant proposed or final rulemaking notice for the SIP that would include any response to comments.

Adequate budgets must be used in all future conformity determinations for an area after the effective date of EPA's adequacy finding pursuant to § 93.109 of today's final rule (or upon EPA's promulgation of a SIP approval as described in Section XV.C.I below); inadequate budgets cannot be used for conformity.

EPA notes that two minor changes to the proposed regulatory text have been incorporated in this final rule regarding the procedures for EPA's adequacy process in § 93.118(f)(1). First, EPA is clarifying in § 93.118(f)(1)(iii) that EPA's response to comments received on the adequacy of a submitted SIP budget must be sent to the state along with EPA's letter that includes its finding. In the June 30, 2003 proposal EPA stated that we will send our letter and response to comments to individuals who request a copy of these documents, but we did not specifically indicate that we would send a copy of the response to comments to the state. As a matter of practice, EPA does not issue adequacy findings through a formal letter to the state without including our responses to comments. Therefore, this minor clarification to the final rule language simply reflects how the adequacy process is currently being implemented.

Second, EPA is also clarifying in § 93.118(f)(1)(iii) that we will only review and consider any comments submitted through the state SIP process that are relevant to our adequacy finding. In § 93.118(f)(2)(iii) of the June 30, 2003 proposal EPA stated that we would respond to any comments submitted through the state process in the docket of our rulemaking to approve or disapprove a SIP (if adequacy is conducted through the SIP approval process). However, this language should be interpreted in context to refer only to comments relating to adequacy. If interpreted to apply to all comments on a submitted SIP, the language is not consistent with EPA's interpretation of existing requirements in §§ 93.118(e)(5)[14] or EPA's current process for adequacy findings of submitted SIPs and budgets that only require consideration of public comments addressing adequacy that were submitted through the state process. EPA and the states have separate established processes for taking action on a SIP and responding to all comments, including comments that relate to other aspects of a submitted SIP, that are received through those individual processes.

EPA believes that a reproposal is not necessary to make these two minor corrections in today's final rule. These minor revisions are consistent with EPA's original intentions and current practice of making adequacy findings.

Finally, EPA intends to review the adequacy of a newly submitted budget through the process described above within 90 days of EPA's receipt of a full SIP submission in most cases. However, adequacy reviews could take longer particularly when EPA receives significant public comments. EPA will work with state and local agencies when adequacy findings can be expedited to meet conformity deadlines.

2. Rationale and Response to Comments

EPA received a number of comments pertaining to different aspects of the proposed adequacy process. In particular, several commenters raised concerns about the length of time EPA has allocated to conduct adequacy reviews, indicating that 90 days is too long before submitted SIPs can become available for conformity purposes. Two commenters specifically urged EPA to commit sufficient staff and resources to ensure that adequacy determinations are timely. Some commenters suggested ideas for shortening the 90-day process by, for example, eliminating the 30-day public comment period and relying solely on the state's public involvement process for SIP development, or conducting adequacy reviews through parallel processing for all SIP submissions. Another commenter suggested eliminating the 15-day effective date for adequacy findings, since the adequacy process can be used to correct mistakes and later find budgets inadequate, if appropriate. In contrast, however, one commenter asked that the effective date be extended, as the current 15-day period does not allow sufficient time to prepare a petition for review and motion for stay in situations where a member of the public might disagree with EPA's finding. Other commenters suggested that parallel processing through the SIP approval process be used in all adequacy reviews to enable submitted SIPs to become available sooner in the conformity process.

Two commenters that submitted comments on the November 5, 2003 proposal requested that EPA commit to making adequacy findings during an explicit time period (*e.g.*, 90 days) to ensure that conformity deadlines are met and to provide more predictability to the conformity process.

After full consideration of all these comments, EPA believes that the current 90-day time frame for conducting adequacy reviews is appropriate and does not need to be modified. EPA believes that providing a 30-day public comment period that is focused entirely on the adequacy of a submitted SIP and that is separate from the state's public process is necessary to make an informed decision on the appropriateness of using a submitted SIP in the conformity process. In addition, we believe that the 15-day effective date is appropriate and should not be shortened or extended. We recognize that the public should be given some time to challenge EPA's finding before it becomes effective in cases where an individual disagrees with EPA's conclusion. We believe this time period before an adequacy finding becomes effective is necessary to ensure a fair and equitable process. However, EPA also understands the needs of conformity implementers to receive new air quality information for incorporation into the transportation planning and conformity processes in a timely manner. Therefore, EPA believes the existing adequacy process that provides a 15-day effective date best achieves these dual goals.

EPA also wants to assure implementers that we are committed to conducting adequacy reviews, especially when such reviews are closely aligned with an upcoming conformity deadline, in an efficient and timely manner. However, as discussed in the June 30, 2003 proposal, some adequacy reviews that are complicated and draw a great deal of public interest

[14] August 15, 1997 final rule; 62 FR 43782.

can take longer than 90 days. EPA is willing to conduct the adequacy review of any SIP submission through parallel processing to expedite our review and finding, if requested to do so by the state. Areas should use the interagency consultation process to consult on the development of SIPs and budgets and to determine whether parallel processing would expedite EPA's adequacy review so that conformity deadlines can be met in a timely manner.

Two commenters disagreed with EPA's existing process for determining the adequacy of submitted SIPs, and instead believed that adequacy findings should be conducted through full notice and comment rulemaking. One of these commenters argued that, in difficult cases, the public needs to have the procedural protections required by Administrative Procedures Act (APA) rulemaking when EPA determines the adequacy of a submitted SIP for conformity purposes. The commenter also argued that under the existing adequacy process, EPA fails to include a statement of basis and purpose in a proposed action that would inform the public prior to submitting comments of the action that the Agency intends to take and the reasons supporting that action, as required by the APA. The commenter cites a pleading filed in a challenge to an adequacy finding that states that under the current adequacy process the public is given no advanced notice of whether EPA considers the SIP and budgets adequate, and if so, what criteria have been applied and what facts have been considered by EPA in its decision.[15]

In response, EPA has always held that adequacy findings do not need to be made through APA notice and comment rulemaking. EPA does not believe these actions involve rulemaking, but rather they are conducted through informal adjudications. In the preamble to the 1997 conformity rule (62 FR 43783) EPA stated, "it is appropriate not to provide notice and comment for adequacy determinations for submitted SIPs, since these determinations are only administrative reviews and not substantive rules." Adequacy reviews are carried out on an informal, case-by-case basis and apply existing criteria in the conformity rule (40 CFR 93.118(e)(4)) that were previously subjected to notice and comment rulemaking.[16] Further, case law establishes that agencies have discretion to decide whether to conduct such actions through rulemaking or adjudication.[17] Since the March 1999 court decision did not address this aspect of the adequacy process, EPA is not reopening this legal conclusion as stated in the 1997 conformity rule in today's action.

However, EPA believes that providing some opportunity for public involvement even in these adjudications adds value to our adequacy review. We believe public comment can assist us in making more informed decisions regarding submitted budgets and their ability to ensure that new transportation activities will not cause or contribute to new violations, worsen existing violations, or delay timely attainment of the air quality standards. As a result, the existing adequacy process that is included in today's final rule provides a minimum 30-day public comment period for each SIP that we review for adequacy. This adequacy public comment period, along with the state's public process during SIP development, allows EPA to make an informed decision through adjudication on whether a submitted SIP meets the adequacy criteria established under § 93.118(e)(4) of the conformity rule.

C. Adequacy Reviews Through the SIP Process

1. Description of Final Rule

EPA is finalizing procedures for conducting adequacy reviews and making adequacy findings through the SIP approval process in § 93.118(f)(2). EPA may use the SIP approval process to conduct our adequacy review when we are moving quickly to approve a SIP soon after it has been submitted. These rule revisions are consistent with the June 30, 2003 conformity proposal and EPA's May 1999 guidance that implements the court's decision. EPA is also clarifying in § 93.109 when the budget test must be satisfied as required by § 93.118 if EPA finds SIP budgets adequate, and also if EPA approves SIPs and budgets through final and direct final rulemakings. This clarification to § 93.109 is consistent with EPA's November 5, 2003 proposal.

When EPA reviews the adequacy of a SIP submission simultaneously with EPA's approval of the SIP, the adequacy process will be substantially the same as that which we have outlined in Section XV.B.1. of this final rule as follows:

Notification of SIP submission: In these cases, EPA will use a notice of proposed rulemaking to notify the public that EPA will be reviewing the SIP submission for adequacy. For example, we will notify the public of our adequacy review through the proposal notice when we are proposing to approve a SIP through parallel processing. In addition, when we make an adequacy finding for a SIP through direct final rulemaking, EPA will publish a proposed approval and a direct final approval in the **Federal Register** on the same day. In both the proposed and direct final rulemakings, EPA would announce the start of its adequacy review.

Public comment: The publication of EPA's proposed approval notice (and direct final approval, when applicable) for a SIP submission will start a public comment period of at least 30 days. EPA will post the relevant proposed and direct final rulemakings on our Web site to notify the public when the comment period for adequacy, as well as for other aspects of the SIP, begins and ends. EPA will also include on the adequacy website information on how to obtain a copy of the SIP submission that EPA has proposed to approve and find adequate.

EPA's adequacy finding: When we announce our adequacy review in a proposal notice only, we will subsequently issue our finding through either a letter to the state or through our final action on the SIP in the **Federal Register**. In the case where we issue our finding prior to a final action on the SIP, EPA will update the adequacy website to include the letter to the state that indicates our finding, responses to any comments received during the public comment period that are relevant to the adequacy of the SIP, and our separate adequacy notice that is published in the **Federal Register** in accordance with § 93.118(f)(1)(iii)–(v). Such findings will become effective 15 days after our published adequacy notice.

In the case where we make our adequacy finding and address response to comments in a subsequent final rule that approves or disapproves the SIP, EPA will update the adequacy website with our finding as published in the final **Federal Register** approval or disapproval notice. In cases where EPA finds the budgets adequate when we approve a SIP, the budgets could be used for conformity purposes upon the publication date of the final approval action in the **Federal Register**. EPA is finalizing this clarification to § 93.109 for each criteria pollutant covered by the current conformity rule, consistent with the November 5, 2003 proposal. As stated in the November 2003 proposal, Clean Air Act section 176(c) requires that transportation activities conform to the motor vehicle emissions level established in the approved SIP.

[15] *TRANSDEF* v. *EPA*, 9th Circuit Court of Appeals, No. 02–70443, Petitioners Motion for Stay, June 2002 at xxiii–xxiv.

[16] July 9, 1996 proposed rule (61 FR 36112) and August 15, 1997 final rule (62 FR 43780).

[17] See, *NCRB* v. *Bell Aerospace Co.*, 416 U.S. 267,294 (1974).

Therefore, EPA believes that once a SIP is approved, its budgets must be used in future conformity determinations under the statute.

When EPA conducts adequacy through direct final rulemaking, EPA's approval and adequacy finding generally become effective 60 days after publication according to the date indicated in the direct final **Federal Register** notice, provided that we receive no adverse comments and no other information or analysis changes EPA's position in that time period. However, if we receive adverse comments or our position changes as a result of further information or analysis, we will publish a notice in the **Federal Register** withdrawing our direct final action and adequacy finding prior to its effective date in most cases. In the case where EPA receives adverse comments that do not affect our adequacy finding, we could publish a notice that withdraws only our direct final approval of the SIP but retains our adequacy finding in the **Federal Register** prior to the effective date of the direct final rule. In any case, EPA will use its Web site to inform the public when the adequacy finding included in a direct final rule takes effect, or that we received comments that resulted in a withdrawal of all or part of our direct final approval action.

Given the nature of the public comment process and effective date associated with direct final rulemaking, an adequacy finding cannot become effective until the effective date of the direct final rule. EPA is including this clarification in § 93.109 of today's rule. This rule revision is consistent with the November 2003 proposal.

Finally, consistent with language in § 93.118(f)(1)(iii), EPA is clarifying in § 93.118(f)(2)(iii) that when we conduct adequacy reviews through the SIP approval process, we will review and consider only those comments submitted through the state SIP process that are relevant to our adequacy finding (in addition to comments that are submitted through EPA's SIP approval process). In § 93.118(f)(2)(iii) of the June 30, 2003 proposal we stated that we would respond to any comments submitted through the state process in the docket of our rulemaking to approve or disapprove a SIP (if adequacy is conducted through the SIP approval process). However, as stated in Section XV.B.1. of today's action, one interpretation of this broad language could have implied that EPA would consider comments submitted through the state process beyond those comments relating to adequacy, which is not consistent with existing requirements or EPA's current adequacy process. Therefore, EPA believes that our final action clarifying this issue is a logical outgrowth of the proposal and that a reproposal is not necessary to make this minor correction limiting our consideration of comments submitted to the state to those comments relevant to the adequacy process in today's final rule.

2. Rationale and Response to Comments

One commenter did not agree with the 60-day effective date of budgets that are found adequate and approved through direct final rulemaking. This commenter argued that the 60-day effective date for direct final rulemaking unnecessarily burdens conformity implementers with additional time requirements, as these budgets would have already undergone public comment through the state's approval process.

EPA disagrees with this comment. When a SIP is found adequate and approved through direct final rulemaking (provided EPA receives no adverse comments), the 60-day effective date provides a 30-day public comment period and a 30-day time period for EPA to review any comments received and issue a withdrawal notice, if necessary. APA rulemaking procedures require EPA to provide a minimum 30-day public comment period when we approve a SIP through direct final rulemaking. In addition, EPA believes that providing a public comment period on our adequacy finding and SIP approval separate from the state's public process is necessary for EPA to make an informed decision on the appropriateness of using a submitted SIP in the conformity process. We also believe that the subsequent 30 days after the close of the 30-day public comment period is critical to review any comments we receive and decide whether any would change our approval of the SIP. If we receive comments that cause us to withdraw our direct final approval of the SIP, the subsequent 30 days is also necessary to perform the administrative tasks to ensure that the approval is withdrawn before it becomes effective. Areas should use the interagency consultation process to coordinate the introduction of new SIPs and budgets so that adequacy reviews can be completed and new budgets are available in time to meet any upcoming conformity deadlines.

Another commenter suggested that adequacy reviews of all submitted SIPs could be accomplished through parallel processing procedures and direct final rulemaking to meet EPA's objective of incorporating submitted SIPs into the conformity process in a timely manner. This commenter was generally opposed to EPA's existing adequacy process and believed that EPA should use notice and comment rulemaking for all adequacy findings.

EPA agrees with the comment that adequacy findings can be expedited through parallel processing procedures. Several states have requested such procedures to expedite EPA's adequacy findings since the 1999 court decision. As stated in the June 2003 proposal, EPA will parallel process a SIP if requested to do so by the state. However, we should note that parallel processing can expedite the adequacy review of a submitted SIP only if no changes to that SIP and its budgets are made before the state officially submits the SIP to EPA for approval. In the event that the SIP significantly changes between the time EPA begins its initial adequacy review and the state's formal submission of the SIP, EPA would have to re-start the adequacy process once the new SIP is formally submitted.

EPA does not believe, however, that direct final rulemaking would expedite the adequacy process for submitted SIPs in most cases. Under the situation the commenter has suggested, we would conduct our adequacy review and develop a proposed and direct final approval of our adequacy finding either at the same time that the state holds its public comment period (*i.e.*, parallel processing) or after the SIP has been formally submitted to EPA. Once EPA completes its review and publishes the proposed and direct final rulemakings in the **Federal Register**, the budgets could not be used until 60 days after publication even if no adverse comments were received on EPA's direct final approval. If we received any relevant adverse comments, we would have to withdraw our direct final rule and publish a subsequent approval notice with response to comments.

The purpose of the current adequacy process is to introduce new adequate submitted SIPs and budgets into the conformity process in a timely manner. EPA believes conducting all adequacy reviews through direct final rulemaking would defeat this purpose in many cases. EPA believes that conducting an adequacy review, preparing proposed and direct final rulemakings and providing a 60-day effective date (that includes a 30-day comment period), would require a time period much greater than the 90 days that EPA currently contemplates for the process. This required time period would significantly delay the use of adequate submitted budgets in conformity, especially in cases where EPA cannot

begin its adequacy review of a SIP until the state formally submits it to EPA for approval. Under the current adequacy process, EPA is able to complete its initial adequacy review concurrently with the adequacy public comment period, and thus, reduce the amount of time necessary to make an adequacy finding. Under direct final rulemaking, however, EPA would need to complete its adequacy review of submitted budgets before it could prepare and publish both a proposed approval and direct final approval of the budget's adequacy.

In addition, direct final rulemaking is typically used only when an approval is straight-forward and no adverse comments are expected. In cases where SIPs are more controversial and adverse comments are received, the use of direct final rulemaking could delay the use of adequate budgets in the conformity process if EPA is required to spend time withdrawing its direct final approval and publish a subsequent final approval notice in the **Federal Register** with response to comments some time significantly later.

For information on EPA's position regarding the general need to find submitted SIPs adequate through notice and comment rulemaking, *see* Section XV.B.2. above.

D. Use of Submitted Revisions to Approved SIPs

1. Description of Final Rule

EPA is also finalizing a minor clarification to a sentence in § 93.118(e)(1), consistent with the June 30, 2003 conformity proposal. Paragraph § 93.118(e)(1) of today's rule clarifies that a budget from a submitted SIP cannot be used for conformity if an area already has an approved SIP that addresses the same pollutant and Clean Air Act requirement (*e.g.*, rate-of-progress or attainment for a given air quality standard), and that approved SIP has budgets established for the same year as the submitted SIP.

2. Rationale and Response to Comments

EPA received a number of comments on the issue of using submitted SIPs in conformity once an approved SIP has already been established. Several commenters encouraged EPA to amend the conformity rule to allow adequate budgets to supercede approved budgets in all cases or when EPA believes it to be justified. One commenter that submitted comments on the November 5, 2003 proposal requested further clarification on when adequate budgets replace existing approved budgets. This commenter indicated that there has been confusion over this aspect of the rule and believed that requiring adequate budgets to be fully approved before they can replace existing approved budgets would be burdensome and would defeat the purpose of the adequacy process. In contrast, another commenter expressed concern over the use of submitted SIPs in conformity determinations when an approved SIP for the same year and Clean Air Act requirement already exists.

EPA believes that Clean Air Act section 176(c) clearly requires transportation plans, TIPs and projects to conform to a nonattainment or maintenance area's approved SIP before such activities can be funded or approved. Therefore, EPA believes it has no statutory authority to allow submitted budgets that are established for the same year and Clean Air Act requirement to supercede budgets that have already been approved into the SIP. In general, a submitted budget replaces a previously approved budget established for the same year and Clean Air Act requirement only after EPA has approved the submitted budget. EPA notes, however, that submitted budgets that are established for a different year or Clean Air Act requirement than a previously approved budget must be used in conformity upon EPA's adequacy finding, along with all other applicable adequate and approved budgets. Thus, EPA cannot agree with commenters' request to allow submitted SIPs to supercede approved SIPs in all cases.

However, there have been cases where, based on unique circumstances, EPA has agreed to a state's request to limit our approval of a SIP in such a manner that a revision to that SIP could be used upon the effective date of EPA's adequacy finding. Also, EPA has limited its approval of certain serious and severe 1-hour ozone attainment SIPs so that updated adequate SIP budgets based on the MOBILE6 emissions factor model could be used prior to EPA's approval.[18] In these cases, EPA has limited its approval of the original SIP so that the budgets included in that SIP are no longer considered "approved" upon the effective date of our subsequent adequacy finding for the revised SIP. EPA concludes that such actions to limit the approval of a SIP are permitted under the Clean Air Act and conformity rule, as both the statute and regulations only require the use of approved SIPs and budgets in the conformity process.

Another commenter objected to the continued use of submitted SIPs in conformity altogether, arguing that such SIPs lacked sufficient authority and validity to provide the basis for a conformity test in the absence of an approved SIP. At a minimum, the commenter suggested that in cases where a submitted SIP is used in conformity, the final rule should require that any transportation project approved on the basis of that submitted SIP should be subject to rescission, until the SIP itself is finally approved. Under circumstances where a SIP is submitted and found adequate, but subsequently found inadequate or disapproved, the commenter believed that this subsequent action on the SIP should reverse the approval of highway capacity increasing projects that received approval or funding after having conformed to budgets that are ultimately found inadequate or disapproved.

EPA disagrees with these comments. When no adequate or approved budgets are available for conformity purposes, the interim emissions tests (*i.e.*, the build/no-build test and/or the baseline emissions tests) in § 93.119 must be met to fulfill the conformity requirements. EPA, along with most stakeholders, prefers the use of submitted adequate SIPs and budgets for conformity rather than the interim emissions tests provided by § 93.119[19] because we believe that submitted SIPs and budgets are a better measure of emissions, consistent with attaining and maintaining a given standard and pollutant. Submitted SIPs and budgets that EPA has found adequate should be based on the most recent data and models available at the time the SIP is developed and should reflect accurate estimates of emissions that are consistent with attaining or maintaining a given pollutant and standard. Therefore, EPA believes that a submitted SIP for an applicable standard that satisfies the adequacy criteria in § 93.118(e)(4) provides a reasonable basis for ensuring that transportation activities do not worsen existing violations, create new violations or delay timely attainment of the relevant air quality standard.

Furthermore, EPA concludes that the use of submitted SIPs is supported by the Clean Air Act. Before a SIP has been submitted and approved by EPA, the Clean Air Act section 176(c)(3) requires

[18] November 8, 1999, Memorandum from Lydia N. Wegman, Director of the Air Quality Standards and Standards Division of EPA's Office of Air Quality Planning and Standards, and Merrylin Zaw-Mon, then-Director of the Fuels and Energy Division of EPA's Office of Mobile Sources, to Air Director, Regions I–VI, "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking."

[19] August 15, 1997, 62 FR 43781–43783.

that transportation plans and TIPs must be consistent with the most recent estimates of mobile source emissions, provide for the expeditious implementation of TCMs in approved SIPs, and contribute to the attainment of the air quality standards in certain ozone and CO areas. Clean Air Act section 176(c)(1) also requires that transportation activities not worsen violations or delay timely attainment of the air quality standards. Because the adequacy criteria require submitted budgets to be consistent with progress and attainment requirements, we believe that conformity determinations based on submitted budgets that have been reviewed and found adequate by EPA through the adequacy process meet these statutory requirements in cases where an approved budget does not exist for the same year and Clean Air Act requirement. In addition, EPA believes that the use of a submitted adequate budget for a given air quality standard serves the Clean Air Act's goals for that standard better than either of the interim emissions tests. This position regarding the use of submitted SIPs in conformity in the absence of an approved SIP has also been endorsed by a court in *1000 Friends of Maryland* v. *Carol Browner, et al.*, 265 F.3d 216 (4th Cir. 2001).

EPA also notes that in situations where a SIP has not yet been approved, the March 1999 court decision did not find the use of submitted budgets in conformity unlawful. In its decision, the court only ruled against the use of submitted SIPs that EPA had failed to affirmatively find adequate for conformity purposes. In the absence of EPA's adequacy finding, the court believed that there is no assurance that transportation activities would not cause new violations, increase the severity of existing violations or delay the timely attainment of an air quality standard. However, the court did not make a similar finding in the case where EPA has found a budget adequate. As a result of this decision, EPA developed the existing adequacy process to ensure that submitted SIPs and budgets are appropriate for use in the conformity process, while still retaining the flexibility of the 1997 conformity rule that allows submitted SIPs to be used in a timely manner in place of the interim emissions tests.

EPA also disagrees with the commenter's suggestion that transportation project approvals that conform to an adequate budget should be subject to rescissions in the event that the SIP and motor vehicle emissions budgets are later found inadequate or disapproved. We believe that such an approach would cause significant confusion and only serve to severely disrupt the transportation planning and conformity processes. EPA has always regarded conformity as a prospective and iterative process. EPA believes that a conformity determination that meets the Clean Air Act and conformity rule's requirements at the time the determination is made should remain valid, regardless of whether the SIP and budgets on which that determination is based are subsequently found to be inadequate or disapproved. Since 1997, § 93.118(e)(3) and § 93.120(a)(1) of the conformity rule have provided for conformity determinations based on budgets that are subsequently found inadequate or disapproved to remain in effect, and in overturning § 93.118(e)(1) and § 93.120(a)(2) of the rule, the court did not indicate any concern with these other provisions.

In the limited case where a transportation plan and TIP have been found to conform to applicable budgets that are later found inadequate or disapproved, such budgets could no longer be used in future conformity determinations once the disapproval or inadequacy finding becomes effective. In the next conformity determination, emissions projected from the transportation plan and TIP, together with emissions projected from the existing transportation network, would have to meet new and/or existing budgets that have been found adequate or approved, or if no budgets are available, the interim emissions test(s) in § 93.119.[20] As a result, the next conformity determination would ensure that the emissions from all on-road transportation sources would again be consistent with the area's goals for attaining or maintaining the air quality standards. In that determination, projected emissions reflecting projects that were approved based on the previous inadequate or disapproved SIP would have to be taken into account, before the plan and TIP could again conform. EPA believes these existing requirements and the iterative nature of the conformity process will address any of the above concerns.

[20] EPA also notes that upon the effective date of a SIP disapproval without a protective finding, an area would enter into a "conformity freeze." During a conformity freeze, only projects in the first three years of the current conforming plan and TIP can proceed. No plan and TIP conformity determinations can be made until a new control strategy SIP revision fulfilling the same Clean Air Act requirement as that which EPA disapproved is submitted, and EPA finds the motor vehicle emissions budgets in that SIP adequate for conformity purposes or approves the new revision. For more information on conformity freezes and the consequences of a SIP disapproval without a protective finding, see Section XVII. of this final rule.

E. Changing a Previous Finding of Adequacy or Inadequacy

1. Description of Final Rule

As explained in the June 30, 2003 conformity proposal, EPA can change an adequacy finding from adequate to inadequate or from inadequate to adequate for a specific reason such as receiving new information or conducting further review and analyses that affect our previous finding. For example, EPA might change a finding of inadequacy if a state submits additional information that clarifies or supports the adequacy of the submitted SIP and budget. In this case, EPA will treat the additional information as a supplement to the previous SIP submission, and would post a notice on the adequacy Web site and begin a new 30-day public comment period on the entire SIP including this new information. After reviewing any comments, we would make a new finding, as appropriate, in accordance with those procedures in § 93.118(f) of this final rule.

We could change our finding to inadequate in the case where we find the budgets in a submitted SIP adequate but later discover based on additional information or further review that they do not meet the criteria for adequacy. EPA requested comment in the June 30, 2003 proposal on whether the public should be provided an opportunity to comment on any new information before a subsequent finding of inadequacy becomes effective in cases where EPA reconsiders its initial finding of adequacy.

Based on comments received, the final rule does provide for a subsequent public comment period of at least 30 days in cases where EPA believes the public could provide helpful insight and analysis for determining whether an initial finding of adequacy should be changed because of new information. In such cases, EPA would re-post the SIP on the adequacy Web site and start another minimum 30-day public comment period. EPA would also provide an explanation of how the new information has caused us to reconsider our initial adequacy finding. After evaluating any comments received during the public comment period, EPA will determine whether the submitted SIP is inadequate using the adequacy procedures described in either § 93.118(f)(1) or (f)(2) of today's rule. In cases where EPA reverses its previous finding to a finding of inadequacy using procedures in § 93.118(f)(1), such findings would become effective

immediately upon the date of EPA's letter to the state. EPA believes this is necessary to prevent further use of inadequate budgets. Under § 93.118(f)(1), we would also publish a notice of our inadequacy finding in the **Federal Register** and announce our finding on EPA's adequacy Web site.

However, the final rule does not provide for a subsequent comment period under certain circumstances where it is obvious that a budget has become inadequate. For instance, if a state has submitted a new SIP indicating that the prior SIP submission no longer provides for attainment, it would be clear that the prior submission is inadequate. The final rule allows EPA to proceed on a case-by-case basis using the adequacy procedures described in § 93.118(f)(1) to make a finding of inadequacy effective immediately by explaining these facts in a letter to the state. In this case, EPA would also publish a **Federal Register** notice of that finding and post it on the adequacy Web site. EPA believes that in such situations public comment would not be necessary or in the public interest. Rather, it would be more important for EPA to complete the adequacy process quickly and limit further use of such clearly inadequate budgets in the conformity process.

2. Rationale and Response to Comments

EPA received four comments on whether an additional public comment period should be provided before EPA can reverse an initial adequacy finding to a finding of inadequate. Three of these commenters supported a public comment period of at least 30 days in these cases, with two of the commenters specifically stating that the additional time provided by the comment period could facilitate the completion of a conformity determination based on a previously adequate budget prior to the budget being deemed inadequate. One commenter, however, agreed with EPA's position that it is not always in the best interest of public health to delay an inadequacy finding until after a public comment period on new information has concluded.

Based on these comments, EPA is promulgating a final rule that would provide at least a 30-day public comment period in certain cases where new information is subjective and does not provide a clear answer as to whether the submitted SIP is still adequate. In these cases, EPA believes that soliciting public comment is appropriate and could provide helpful insight and analysis on determining the impact of the new information on the adequacy of a submitted SIP. However, under this final rule, EPA would not provide a public comment period in cases where it is obvious that a budget has become inadequate. EPA believes this approach to the final rule would serve to protect the public health while still preserving the role of public involvement in the adequacy process. Under this final rule, EPA will proceed on a case-by-case basis to determine whether new information for a submitted SIP budget warrants an additional public comment period, if such information causes us to reconsider our initial finding of adequacy.

One commenter also suggested that EPA investigate the necessity of even having to make a finding of inadequacy for SIPs that EPA has previously found adequate. The commenter argued that since the court directed EPA to make a formal adequacy finding for a submitted SIP before it can be used in a conformity determination, the SIP approval process could subsequently be used to further review the adequacy of the SIP's budgets. In cases where further review or additional information reveals that an adequacy finding is no longer appropriate, EPA assumes from this comment that a subsequent finding of inadequacy would be issued through a SIP approval or disapproval action.

EPA agrees that in some cases the SIP approval or disapproval process could be used to issue a subsequent finding of inadequacy for a SIP that was previously found adequate. However, in other cases, we believe that issuing a subsequent finding of inadequacy prior to EPA's approval and/or disapproval action for the SIP is necessary to protect public health. In most cases, EPA conducts a lengthy and detailed review of a submitted SIP as part of the SIP approval process. This review involves an evaluation of many aspects of the SIP that are not directly related to the motor vehicle emissions budgets. In situations where new information becomes available that clearly indicates that the budgets in a submitted SIP are inadequate prior to EPA's completed review of the entire SIP, we may determine that it is in the best interest of public health to issue a separate finding of inadequacy before going forward with a SIP approval and/or disapproval action. As a result, this final rule reserves EPA's ability to change a previous finding to a finding of inadequacy as provided by the existing adequacy process with public comment where the Agency deems necessary.

F. Adequacy Provisions Not Affected by This Rulemaking

1. Description of Final Rule

This final rule does not change any of the existing adequacy criteria in the conformity regulation (§ 93.118(e)(4)). Furthermore, the rule continues to provide that reliance on a submitted budget for determining conformity is deemed to be a statement by the MPO and DOT that they are not aware of any information that would indicate that emissions consistent with such a budget would cause or contribute to any new violation, increase the frequency or severity of an existing violation, or delay timely attainment of the relevant standards (§ 93.118(e)(6)). These provisions were not affected by the court decision; therefore, EPA did not address these provisions in this rulemaking.

2. Rationale and Response to Comments

One commenter objected to an alleged presumption inherent in § 93.118(e)(6) of the conformity rule. Prior to EPA's approval of a SIP, § 93.118(e)(6) requires the MPO and DOT's conformity determination to be considered a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with a submitted SIP would violate the Clean Air Act's requirements that transportation activities not cause or worsen a violation or delay timely attainment of the air quality standards. The commenter stated, however, that this presumption may not lawfully be substituted for the affirmative determination that an MPO is required to make under Clean Air Act section 176(c)(2)(A) or that DOT is required to make under Clean Air Act section 176(c)(1). The commenter also indicated that the regulatory requirement in § 93.118(e)(6) effectively relieves MPOs and DOT of meeting these statutory requirements before a SIP has been submitted or after a SIP has been approved. In the commenter's opinion, this provision implies that EPA assumes the statutory criteria are satisfied if a budget is from an approved SIP, and therefore, silently waives any requirement that these criteria be addressed in such cases. The commenter also argued that the budget test demonstrated for select analysis years over the time frame of a transportation plan does not fully satisfy the statutory requirement that transportation activities conform to the SIP and not cause or worsen air quality violations in every year consistent with Clean Air Act section 176(c)(1)(A) and (B).

In this rulemaking, EPA did not propose any changes to the rule's existing § 93.118(e)(6) provision. Therefore, EPA cannot address this comment in today's final rule and is not re-opening this aspect of the conformity rule in this action.

Furthermore, EPA does not agree that there is a presumption inherent in § 93.118(e)(6) of the rule, nor do we agree with the commenter's interpretation of § 93.118(e)(6) as it relates to the statutory requirements before a SIP is submitted and after a SIP has been approved. When EPA established the § 93.118(e)(6) requirement in the 1997 conformity rule, we did so as another "check" to ensure that submitted SIPs and budgets are appropriate to use in conformity determinations before such SIPs and budgets are approved. EPA's adequacy review is a cursory review of the SIP and motor vehicle emissions budgets to ensure that the minimum adequacy criteria are met before a submitted SIP is used in a conformity determination. Therefore, we included § 93.118(e)(6) in the 1997 final rule to share responsibility with the MPO and DOT for ensuring that the use of submitted budgets would not cause or contribute to any new violation; increase the frequency or severity of any existing violation; or delay timely attainment of the air quality standards. This provision clarifies that, in the absence of an EPA approved SIP, the MPO and DOT may not base conformity determinations on submitted SIPs that they have reason to believe do not satisfy Clean Air Act requirements.

Once EPA has approved a SIP, however, we have always held that conformity to that approved SIP fulfills the Clean Air Act's conformity requirements. Section 176(c)(2)(A) of the Act specifically requires conformity determinations to show that "emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emission reductions contained in the applicable implementation plan." Consistent with the Clean Air Act, section 93.101 of the conformity rule defines an "applicable implementation plan" as the portion(s) of a SIP, or most recent revision thereof, that has been approved by EPA. When EPA approves a SIP it is because we have concluded that the SIP and budgets are consistent with the SIP's purpose for attaining or maintaining a given air quality standard. Thus, since EPA promulgated the original conformity rule in 1993 (58 FR 62188), the budget test has been the mechanism that EPA believes is appropriate for meeting the statutory requirements for demonstrating conformity once a SIP becomes available for conformity purposes. Other tests or analyses in addition to the budget test have never been required by the conformity rule once a SIP is approved and EPA has not reopened this issue in this rulemaking.

EPA also disagrees with the commenter's statement that the conformity rule's current budget test and regional emissions analysis year requirements are inconsistent with the Clean Air Act. The Clean Air Act does not address the specific time frame or years in which conformity emissions tests or analyses must be conducted. Since the November 24, 1993 conformity rule (58 FR 62188), EPA has maintained that once a budget becomes available for conformity purposes a demonstration of conformity for specific budget test years as described in § 93.118 is sufficient for meeting the Clean Air Act requirements and ensuring that emissions from transportation activities do not cause violations, worsen existing violations or delay timely attainment of the air quality standards. In addition, EPA has always held that prior to a submitted SIP, the interim emissions tests as required by § 93.119 of the current rule are also appropriate for meeting the statutory requirements (58 FR 62188).

Conducting conformity determinations, including regional emissions analyses to satisfy §§ 93.118 and 93.119 requirements, demands a significant amount of state and local resources. Therefore, EPA believes it would be impractical and overly-burdensome to require MPOs and state transportation agencies to conduct the applicable conformity test and regional emissions analysis for every year of a 20-year transportation plan. Based on EPA's interpretation of the Clean Air Act, we believe that the current rule's conformity test and emissions analysis year requirements are consistent with the statute, reasonable to implement and protective of public health. Again, EPA has not reopened this aspect of the conformity rule in this rulemaking, although we are clarifying § 93.118 as described in Section XXIII. of this final rule.

The same commenter also expressed concern over how EPA has applied the adequacy criteria established in § 93.118(e)(4) of the conformity rule to certain submitted SIPs. Specifically, the commenter objected to adequacy findings for submitted SIPs that, (1) lack a control strategy that identifies all the control measures needed for reasonable further progress, attainment or maintenance, or (2) lack either fully adopted measures that satisfy the requirements of 40 CFR 51.121 or written commitments to adopt specific measures that have been conditionally approved pursuant to Clean Air Act section 110(k)(4). The commenter argues that EPA has failed to adhere to the requirements of the Clean Air Act and conformity rule when we issue adequacy findings for submitted SIPs that rely on enforceable commitments to adopt additional control measures. In cases where additional mobile source controls are needed to satisfy a SIP's enforceable commitments, the commenter believed that the motor vehicle emissions budgets in such SIPs cannot be adequate to provide for attainment, since the budgets do not reflect the emissions reductions from the additional measures. As a result, the commenter requested that EPA clarify that enforceable commitments may not be relied upon to make an adequacy finding for SIPs that fail to contain sufficient, adopted, enforceable control measures to meet the statutory requirements for reasonable further progress, attainment or maintenance. The commenter believed that such a clarification would reaffirm the conformity rule's requirements that only SIPs that contain sufficient control measures to demonstrate attainment can be found adequate.

In this rulemaking, EPA did not propose changes or clarifications to the existing adequacy criteria listed in § 93.118(e)(4). This rulemaking only addresses the process by which EPA finds submitted SIPs adequate for conformity purposes, in accordance with the March 1999 court decision. The existing adequacy criteria were established in the 1997 conformity rule (62 FR 43780) and were not impacted by the court decision. Therefore, EPA is not revising these criteria nor reopening this aspect of the conformity rule in this action.

EPA also disagrees with the commenter's position that SIPs that rely on enforceable commitments fail to meet the adequacy criteria established in § 93.118(e)(4) of the rule. Section 93.118(e)(4) of the conformity rule does not require that all necessary control measures be identified and adopted to find a submitted SIP adequate. The adequacy criteria in the conformity rule only requires a budget to come from a submitted SIP that provides for reasonable further progress, attainment or maintenance of a given standard. The relevant section of the rule, § 93.118(e)(4)(iv), states that a submitted SIP is adequate if: "The motor vehicle emissions budget(s), when considered together with all other emissions

sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance * * *". This provision of the rule only requires that the total emissions allowed by the SIP, including the motor vehicle emissions budgets, are consistent with the Clean Air Act's purpose of the SIP (*e.g.*, attainment). This provision of the rule does not require a submitted SIP to include all of the specific control measures necessary to meet its statutory purpose.

Furthermore, EPA disagrees with the commenter that budgets from SIPs that include enforceable commitments cannot be adequate to provide for attainment. Clean Air Act provisions that address control strategy SIPs, such as sections 110(a)(2)(A), 172(c) and 182, require SIPs to contain a control strategy that provides sufficient emission reductions to demonstrate attainment by the statutory deadline. EPA believes that the use of enforceable commitments as a limited part of an overall control strategy for a SIP is reasonable and consistent with these provisions of the Clean Air Act. Therefore, EPA believes that where we approve or find adequate a SIP control strategy that includes an enforceable commitment, EPA's approval or adequacy finding for the motor vehicle emissions budgets in such a SIP would also be appropriate. EPA believes that as long as the budgets, in addition to all other emission sources and controls identified in the SIP (including any enforceable commitments), are consistent with a SIP's purpose of attaining or maintaining a given air quality standard, conformity to such budgets will also be consistent to the SIP's clean air goals.

EPA also believes that SIPs that include enforceable commitments are consistent with both 40 CFR 51.121 relating to SIP control measures and Clean Air Act section 110(k)(4) requirements regarding conditional approvals. 40 CFR 51.281 requires that in cases where a SIP relies on a specific regulation as the basis for emissions reductions, that regulation must be properly adopted and copies of it must be submitted to EPA. This provision, however, does not require SIPs to consist only of rules that have been enacted as regulations and has no bearing on our ability to find a submitted budget adequate for conformity purposes. Clean Air Act section 110(k)(4) gives EPA the authority to conditionally approve a SIP that contains a commitment to adopt "specific enforceable measures." Such a conditional approval automatically converts to a disapproval if the measures are not adopted within one year, and thus the commitment itself is not enforceable. EPA believes, however, that SIPs that include adopted control measures as well as the enforceable commitment to identify and adopt additional measures can be found adequate and fully approved if such commitments meet various criteria and will achieve sufficient emission reductions to meet Clean Air Act deadlines and attain or maintain the air quality standards. In these cases, such commitments may extend beyond one year and are enforceable against the state if the state fails to meet the commitment by the specified time frame. EPA believes that it is appropriate to consider and approve the use of qualified enforceable commitments in cases where a state is not able to identify currently feasible measures to fill a small gap of needed emissions reductions.

EPA's current policy for approving SIPs that are based on enforceable commitments was recently upheld in a decision by the court of appeals, *BCCA Appeal Group, et al.*, v. *U.S. EPA, et al.*, 348 F.3d 93 (5th Cir. 2003). A complete discussion of our position on the use of enforceable commitments can be found in EPA's briefs in *BCCA Appeal Group, et al.*, v. *U.S. EPA, et al.*, 5th Cir. No. 02–60017, September 20, 2002, at 115–146 and *TRANSDEF, et al.*, v. *EPA, et al.*, 9th Cir. No. 02–7044, Respondent EPA's Second Supplemental Memorandum, August 22, 2002, at 4–7. In addition, EPA's complete response to these comments pertaining to conformity rule provisions that are not addressed in this rulemaking can be located in the response to comments document for this final rule. Copies of all these documents are located in the public docket for this rulemaking listed in Section I.B. of today's action.

Finally, one commenter stated that EPA should consider the entire SIP when determining adequacy of the budgets, as not doing so may permit conformity determinations to rely on SIPs that contain substantive flaws in inventories and control strategies for other sources. EPA would like to clarify that when we conduct an adequacy review of a submitted SIP, we always consider the SIP in its entirety as well as the budgets in that SIP. Section 93.118(e)(4)(iv) of the conformity rule requires that "the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance * * *". Therefore, EPA is required to consider emissions from other sources and their contribution towards meeting the purpose of the SIP before issuing an adequacy finding. Furthermore, some SIPs such as limited maintenance plans and those SIPs that qualify for EPA's insignificance policy do not contain budgets where certain findings are made. In these cases, EPA also focuses on the entire SIP and how such SIPs qualify for these specific policies. See the June 30, 2003 proposal to this final rule (68 FR 68983–4) for more information about EPA's adequacy review of SIPs that do not contain motor vehicle emissions budgets.

XVI. Non-Federal Projects

A. Description of Final Rule

EPA is amending § 93.121(a) of the conformity rule so that regionally significant non-federal projects can no longer be advanced during a conformity lapse unless they have received all necessary state and local approvals prior to the lapse. Non-federal projects are projects that are funded or approved by a recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Laws, but that do not require any FHWA/FTA funding or approvals. Under this final rule, recipients of federal funds cannot adopt or approve a regionally significant, non-federal project unless it is included in a currently conforming plan and TIP or is reflected in the regional emissions analysis supporting a currently conforming plan and TIP. The definition of non-federal project "approval" should be decided on an area-specific basis through the interagency consultation process, and should be formalized in the area's conformity SIP. For more information on how areas have defined the point of final approval for a regionally significant non-federal project, see EPA's June 30, 2003 proposed rule (68 FR 38984), which is consistent with EPA's May 14, 1999 guidance that implements the court decision.

B. Rationale and Response to Comments

In its ruling, the court found § 93.121(a)(1) of the 1997 conformity rule to be in violation of Clean Air Act section 176(c)(2)(C). This provision of the 1997 rule had allowed state or local approval of transportation projects in the absence of a currently conforming plan and TIP. The court found that the Clean Air Act requires all non-exempt projects subject to the conformity rule, including regionally significant non-federal projects, to come from a conforming plan and TIP (or included in their supporting regional emissions analysis) to be funded or approved. However, the court also noted that once

a non-federal project receives all appropriate state or local approvals, it need not meet any further conformity requirements.

Commenters generally concurred with EPA's proposed amendments to § 93.121(a) as being consistent with the court decision. One commenter stated that it is reasonable to treat federal and regionally significant non-federal projects in like manner so that neither type of project can proceed during a lapse, as required by the court. Another commenter also agreed that the definition of non-federal project "approval" should be determined through the interagency consultation process.

One commenter, however, requested that EPA clarify the required approach for approving non-federal projects in isolated rural areas. As stated in the June 30, 2003 proposal, the conformity rule only applies to non-federal projects that are considered regionally significant, in that these projects must be included in a conforming transportation plan and TIP and/or the regional emissions analysis supporting a conforming plan and TIP. Isolated rural areas, however, are not required to develop metropolitan transportation plans and TIPs and are not subject to the conformity frequency requirements for plans and TIPs in § 93.104 (including the 3-year conformity update requirement). A conformity determination in isolated rural areas is required only when a new non-exempt project needs federal funding or approval. Therefore, the commenter regarded the proposed rule as being unclear about whether isolated rural areas would need to conduct a separate conformity analysis that includes a new non-federal project before such a project could be funded or approved.

EPA refers this commenter to § 93.121(b) of the current conformity rule that includes the requirements for regionally significant non-federal projects in isolated rural nonattainment and maintenance areas. Section 93.121(b) states that no recipient of federal funds can approve or fund a regionally significant highway or transit project in an isolated rural area, regardless of funding source, unless: (1) The project was included in the regional emissions analysis supporting the most recent conformity determination; or (2) A new regional emissions analysis including the project and all other regionally significant projects expected in the isolated rural nonattainment or maintenance area demonstrates conformity. Such regional emissions analyses in isolated rural areas would include those projects in the statewide transportation plan and statewide TIP, including any existing or planned federal and regionally significant non-federal projects, that are in the nonattainment or maintenance area.

Although EPA has always believed that the Clean Air Act does not require project-level conformity determinations for regionally significant non-federal projects, the Clean Air Act does require such projects to be included in the regional emissions analysis supporting a conformity determination before funding or approval can be given. See the January 11, 1993 proposal to the November 24, 1993 conformity rule for further background (58 FR 3772–3773). Recognizing that isolated rural areas do not have transportation plans and TIPs, in the preamble to the November 24, 1993 conformity rule (58 FR 62208) EPA states: "In isolated rural areas, non-federal projects may be considered to have been included in a regional emissions analysis of the transportation plan and TIP if they are grouped with federal projects in the nonattainment or maintenance area in the statewide plan and STIP for the purposes of a regional emissions analysis." Therefore, we would consider the statute's conformity requirements to be satisfied in an isolated rural area if a regionally significant non-federal project is included in the area's previous regional emissions analysis and conformity determination (provided the project's design concept and scope have not changed significantly since the analysis and determination were made). If the project was not included in the previous regional emissions analysis and conformity determination, a new regional emissions analysis including the project must be completed.

XVII. Conformity Consequences of Certain SIP Disapprovals

A. Description of Final Rule

Consistent with the June 30, 2003 proposal, this final rule changes the point in time at which conformity consequences apply when EPA disapproves a control strategy SIP without a protective finding. Specifically, the final rule deletes the 120-day grace period from § 93.120(a)(2) of the 1997 conformity rule, so that a conformity "freeze" occurs immediately upon the effective date of EPA's final disapproval of a SIP and its budgets that does not include a protective finding. A conformity freeze means that only projects in the first three years of the transportation plan and TIP can proceed. During a freeze, no new plans, TIPs or plan/TIP amendments can be found to conform until a new control strategy SIP fulfilling the same Clean Air Act requirement as that which EPA disapproved is submitted, and EPA finds the budgets in that SIP adequate for conformity purposes.

In cases where EPA does not first make an affirmative adequacy finding for a new control strategy revision that is submitted to address a disapproved SIP, EPA is also clarifying in § 93.120(a)(2) of today's rule that no new plans, TIPs or plan/TIP amendments can be found to conform during a freeze until EPA approves the submitted SIP revision. EPA is adding this clarification to § 93.120(a)(2) to address the situation when EPA conducts its adequacy review through the SIP approval process. This clarification was not included in the June 30, 2003 proposal; however, EPA does not believe that a reproposal is necessary to incorporate this minor revision in today's final rule. This minor revision simply clarifies how the conformity process currently operates in practice and is a logical outgrowth of the June 2003 proposal that described how EPA can determine adequacy through the SIP approval process because such approval actions include a finding that a submitted SIP is adequate. See Section XV.C. above for more information on adequacy reviews that are conducted through the SIP approval process.

EPA will not issue a protective finding for our disapproval of a submitted control strategy SIP (*e.g.*, reasonable further progress and attainment SIPs) if the SIP does not contain enough emission reduction measures, or commitments to such measures, to achieve its specific purpose of either demonstrating reasonable further progress or attainment. If EPA disapproves a SIP without giving it a protective finding, the budgets cannot be used for conformity upon the effective date of EPA's disapproval action. *See* the June 30, 2003 proposal for more information on issuing a protective finding when EPA disapproves a control strategy SIP.

Today's final rule does not impact the 1997 conformity rule's provisions for a SIP disapproval with a protective finding under § 93.120. This final rule also does not affect the 1997 conformity rule's flexibility that aligned conformity lapses with Clean Air Act highway sanctions (§ 93.120(a)(1)). Today's rule affects only the timing of conformity freezes for SIP disapprovals without a protective finding.

B. Rationale and Response to Comments

In its ruling, the court found the 120-day grace period provided by

§ 93.120(a)(2) of the 1997 rule to be in violation of Clean Air Act section 176(c)(1) and remanded it to EPA for further rulemaking. Specifically, the court said that where EPA disapproves a SIP without a protective finding there is no basis to believe that conformity of transportation plans and TIPs to the submitted budget in the disapproved SIP will not cause or contribute to new violations, increase the frequency or severity of existing violations, or delay timely attainment of the air quality standards.

Under § 93.120(a)(2) of the 1997 rule, if EPA disapproved a submitted SIP or SIP revision without a protective finding, areas could use the 120-day grace period to complete a conformity determination that was already in progress. The court ruled that this grace period was not authorized by the statute because it would allow conformity to be demonstrated to a SIP that was determined not to be protective of the air quality standards. Therefore, we are eliminating the 120-day grace period from the conformity rule.

Most comments on this rule revision supported the June 30, 2003 proposal. One commenter specifically stated that this change will clarify time periods and eliminate confusion regarding the conformity requirements when a SIP is disapproved. One commenter, however, did not fully agree with EPA's proposal. This commenter argued that the proposed revision to § 93.120(a)(2) still allows budgets to be used for some period after EPA disapproves a SIP without a protective finding, since such budgets could still be used in a conformity determination until the disapproval action becomes effective. The commenter objected to any rule that would allow budgets to be given effect for conformity purposes when the disapproved SIP and budgets are not consistent with reasonable further progress, attainment or maintenance.

EPA agrees that SIPs and budgets that are inconsistent with Clean Air Act requirements for reasonable further progress, attainment or maintenance, should not be used in future conformity determinations. However, EPA also believes that a specific point in the SIP disapproval process at which budgets become "disapproved" and unavailable for conformity purposes needs to be established to provide certainty and consistency between the conformity and SIP processes. In this final rule we are establishing that point in the process as the effective date of EPA's SIP disapproval action. EPA has linked the immediate conformity consequences of a SIP disapproval without a protective finding to the effective date of that action to be consistent with an August 4, 1994 rulemaking that established the timing and implementation of offset and highway sanctions following certain SIP failures under 40 CFR 52.31.[21] Specifically, 40 CFR 52.31(d)(1) states that "the date of the [SIP disapproval] finding shall be the effective date as defined in the final action triggering the sanctions clock." In the August 1994 rulemaking, EPA has already concluded as a legal matter that a SIP disapproval, and by extension any consequences (*e.g.,* sanctions, conformity freeze, etc.) associated with that disapproval, do not take effect until the effective date of EPA's action in the **Federal Register**.

When EPA disapproves a SIP, the effective date of that action is generally only 30–60 days after the **Federal Register** publication of the disapproval. EPA believes that the minimum 30-day period is mandated by §§ 552(a)(1) and 553(d) of the Administrative Procedure Act. These provisions require the publication of actions that may adversely affect areas in the **Federal Register** to include a minimum 30-day effective date.

EPA also notes that such SIP disapprovals have occurred on a very infrequent basis, as EPA has only disapproved SIPs without a protective finding in three instances since the 1997 conformity rule was promulgated. Furthermore, for a SIP to be used in a conformity determination prior to the effective date of its disapproval, EPA would have found the SIP budget adequate. Such findings that would provide for the use of a SIP in the conformity process prior to its disapproval would not be expected in all cases, especially if the SIP is so deficient as to ultimately be disapproved without a protective finding. Therefore, EPA believes the impact of this rule change will be limited and generally will not result in the use of disapproved budgets in the conformity process.

The same commenter also argued that EPA's approval of SIPs that include enforceable commitments to adopt additional future control measures for rate-of-progress, attainment or maintenance purposes, does not meet Clean Air Act requirements for these specific SIPs. To address this issue, the commenter requested that EPA revise § 93.120 so that submitted SIPs that rely on enforceable commitments to adopt unspecified control measures could no longer be approved by EPA. The commenter argued that only SIPs that include adopted enforceable measures per 40 CFR 51.281 or written commitments to adopt specific measures that have been conditionally approved pursuant to Clean Air Act section 110(k)(4) can be approved.

EPA did not propose revisions to § 93.120 that would prohibit the full approval of SIPs that include enforceable commitments in this rulemaking, and therefore, cannot amend the conformity regulation to address this comment in today's final rule. This rulemaking merely deletes the 120-day conformity grace period from § 93.120(a)(2) in accordance with the court decision. Further, the conformity rule only provides requirements for finding budgets adequate and does not include any limitations on EPA's ability to approve SIPs.

EPA also disagrees with the commenter's position that SIPs that rely on enforceable commitments cannot be fully approved for the same reasons stated in Section XV.F.2. of this final rule. Furthermore, EPA does not believe the conformity regulations are the appropriate vehicle for specifying the criteria for approving SIP submissions. A more comprehensive response to this comment, including EPA's rationale, is included in the complete response to comments document in the public docket for this final rule. For information on how to access materials in the docket, see Section I.B. of this action.

XVIII. Safety Margins

A. Description of Final Rule

As proposed, EPA is deleting § 93.124(b) of the conformity rule that provided a narrowly targeted flexibility to areas with SIPs that had been submitted prior to the publication date of the original November 24, 1993 conformity rule. Under this provision, if an approved SIP submitted before November 24, 1993, had included a safety margin, but did not specify how the safety margin was to be used, an area could submit a revision to the SIP and specifically allocate all or a portion of the safety margin to the SIP's motor vehicle emissions budget(s). The 1997 rule allowed this SIP revision to become effective for conformity purposes before the revision had been approved by EPA. EPA is not aware of any nonattainment or maintenance areas that are currently affected by the elimination of this provision.

B. Rationale and Response to Comments

The court decision found that § 93.124(b) violated the Clean Air Act because it allowed a submitted but

[21] *See* 59 FR 39859, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act"—final rule.

unapproved SIP revision to supersede an approved SIP. The court ruled that EPA must fully approve these safety margin allocations into the SIP before they can be used for conformity, regardless of whether the SIP revision and safety margin was submitted before or after our November 1993 conformity rule.

Although the court eliminated § 93.124(b) for the use of safety margins in previously approved SIPs, the majority of areas that had allocated safety margins to their budgets after November 24, 1993, were not affected by the court's ruling. In general, areas that do not have approved SIPs can use submitted safety margins in conformity determinations once EPA finds the submitted SIP (and safety margin) adequate. Areas with approved SIPs that want to reallocate their safety margin for conformity purposes can do so once EPA has approved a SIP revision that specifically allocates all or a portion of the safety margin to a budget. Presently, no area is affected by the court's ruling, since SIP submissions with safety margins have either been approved by EPA or did not revise a previously approved SIP.

EPA received three comments on the elimination of this provision based on the court's decision. Two commenters supported EPA's proposal and highlighted the potential relationship between the allocation of a safety margin and an area's ability to allow for growth in emissions from other source categories. One of these commenters specifically requested clarification on the benefits and impacts of assigning safety margins to motor vehicle emissions budgets. EPA agrees that the allocation of a safety margin to an area's budget can be an effective means to facilitate future conformity determinations. However, EPA notes that the allocation of a safety margin to the on-road transportation sector could impact an area's ability to allow growth in emissions from other source sectors (*e.g.*, stationary sources). State and local transportation and air quality agencies and other affected parties should always consult on whether a safety margin is appropriate for conformity in a given area.

Another commenter requested that the conformity rule be amended to require that maintenance areas demonstrate that Prevention of Significant Deterioration (PSD) increments will not be exceeded if the area allocates a safety margin that would allow on-road motor vehicle emissions to grow up to the level that is consistent with attainment for the area. This comment is relevant only to NO_2 and PM_{10} maintenance areas, as EPA has not established PSD increments for carbon monoxide or ozone precursors. EPA has also established increments for sulfur dioxide (SO_2); however, transportation conformity does not apply in SO_2 nonattainment and maintenance areas because on-road motor vehicles are not significant contributors to SO_2 air quality problems in these areas.

EPA does not agree that the transportation conformity rule needs to be amended to address this comment. Rather, EPA believes that the Clean Air Act and existing guidance and regulations are sufficient to prevent PM_{10} and NO_2 maintenance areas from exceeding the amount of PM_{10} or NO_2 increment that is available when these areas allocated safety margins to their budgets and NO_2 and/or PM_{10} increments have been triggered. First, section 175A of the Clean Air Act requires that an area's maintenance plan must demonstrate that the area can maintain the relevant air quality standard for a period of 10 years. According to EPA's "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" the maintenance plan must either demonstrate that future emissions will not exceed emissions that existed at the time that the request for redesignation was made or conduct a modeling analysis that shows the future mix of sources, emissions rates and control strategies for the area will not result in any violations of the air quality standard. At a minimum, areas should provide for some growth in stationary source emissions in their maintenance plans, where applicable. Therefore, any safety margin available would be emissions over and above the total amount of expected emissions, including growth in sources affected by PSD requirements.

Second, the PSD program provides an opportunity for the permit applicant and the state to consult on how to address the allocation of a safety margin to the budgets while the PSD permit application is being prepared. Such consultation between the state and the potential source of NO_2 or PM_{10} emissions helps to ensure that maintenance of the relevant national ambient air quality standard(s) is still achieved. Safety margins are expressed as a tons per day emissions rate for the entire nonattainment or maintenance area. PSD increments are expressed as a concentration of the pollutant in the ambient air (*e.g.*, $\mu g/m^3$) in the area impacted by the emissions from the stationary source. States are encouraged to evaluate periodically whether an increment is available to be used by sources that are or will be applying for a PSD permit. If a state identifies a potential problem, the state could take timely action to address the problem. EPA's guidance [22] indicates that a source which is applying for a PSD permit should consult with state and local agencies to determine the parameters that should be used to model emissions from on-road sources in the area that will be impacted by emissions from the source. During the course of this consultation, the state or local air agency should advise the applicant on how to properly account for on-road motor vehicle emissions in the area including the use of any portion of a safety margin that has been established for conformity in the SIP. In the event that a permit applicant encounters difficulty in satisfying the requirements for an increment analysis, the air quality agency would have the option of appropriately revising its SIP to allow the source to receive a PSD permit and adjust the safety margin allocation, if necessary. Finally, EPA notes that neither the Clean Air Act nor EPA's regulations and guidance require areas to assess increment consumption in connection with conformity determinations; this assessment is conducted only in connection with PSD permitting and periodic updates.

XIX. Streamlining the Frequency of Conformity Determinations

A. Description of Final Rule

EPA is finalizing several revisions to the frequency requirements listed in § 93.104 of the conformity rule, consistent with the June 30, 2003 proposal. Specifically, we are eliminating § 93.104(c)(4) that required an MPO and DOT to determine conformity of the TIP within six months of the date that DOT determined conformity of the transportation plan. As a result of this rule revision, a TIP conformity determination will no longer be triggered upon DOT's conformity determination for the transportation plan. A conformity determination for the TIP will only be required when it is updated or amended, in accordance with § 93.104(c)(1) and (c)(2). In addition, a conformity determination and new regional emissions analysis for the TIP will be required no less frequently than every three years, per § 93.104(c)(3).

EPA is also finalizing several rule revisions to streamline § 93.104(e) of the rule. In particular, we are eliminating § 93.104(e)(1) that required all

[22] NSR Workshop Manual PSD and Nonattainment Area Permitting—Draft, October 1990, page C. 36.

nonattainment and maintenance areas to determine conformity within 18 months of November 24, 1993 (*i.e.*, the date that EPA originally promulgated the conformity rule, 58 FR 62188). At this point in time, § 93.104(e)(1) is no longer relevant for any area, and therefore, we are removing it from the rule.

In addition, EPA is finalizing two revisions to § 93.104(e)(3), which requires a conformity determination within 18 months of EPA's approval of a SIP. First, we are specifying that this 18-month clock begins on the effective date of EPA's approval of the SIP. This clarification will resolve any ambiguity in the current rule as to when this 18-month clock begins.

The second revision to § 93.104(e)(3) will require a conformity determination only when a conformity determination has not already been made using that same budget in the newly-approved SIP. That is, if an area determined conformity using adequate budgets from a submitted SIP, and those budgets had not changed before EPA subsequently approves the submitted SIP, then the area would not have to redetermine conformity within 18 months of EPA's approval of the SIP. EPA believes that if approved budgets have already been used in a conformity determination, there is no added environmental benefit in requiring another conformity determination to be made within 18 months of EPA's approval of a SIP that contains these same budgets. EPA notes that budgets are unchanged if they are for the same pollutant or precursor, the same quantity of emissions, and the same year.

EPA is also eliminating § 93.104(e)(4), which required a conformity determination to be made within 18 months of EPA's approval of a SIP that adds, deletes, or changes a TCM. As stated in the June 30, 2003 proposal to this final rule, EPA believes that this requirement is redundant with the requirements in §§ 93.104(e)(2) and (3) relating to conformity determinations after other SIP approvals, and therefore, is unnecessary.

Finally, EPA is making two changes to § 93.104(e)(5), which requires a new conformity determination within 18 months of EPA's promulgation of a federal implementation plan (FIP). First, the final rule indicates that the clock for this requirement also starts on the effective date of EPA's promulgation of a FIP to be consistent with the start date of the other SIP triggers found in § 93.104(e). Second, EPA is deleting the phrase "or adds, deletes, or changes TCMs," for the same reasons that we are deleting § 93.104(e)(4) discussed above. EPA believes that the purpose of § 93.104(e)(5) will be adequately served by the requirement to show conformity after EPA promulgates a FIP containing a budget.

B. Rationale and Response to Comments

In the first conformity rule proposal published in January 1993, we stated, "EPA believes conformity determinations should be made frequently enough to ensure that the conformity process is meaningful. At the same time, EPA believes it is important to limit the number of triggers for conformity determinations in order to preserve the stability of the transportation planning process" (58 FR 3775). As a result of these dual goals and based on experience gained through implementing the conformity rule to date, we are eliminating some of the frequency requirements found in § 93.104, and streamlining others. EPA believes that this final rule will simplify the current conformity requirements without compromising the environmental benefits of the conformity program.

Under today's rule, EPA concludes that conformity determinations will continue to be required frequently enough to ensure that the process is meaningful and consistent with the Clean Air Act. In this final rule, we have not made any changes to the requirement that new or revised plans, TIPs and projects must demonstrate conformity before they can be funded or approved. Furthermore, the final rule retains the requirement to determine conformity of transportation plans and TIPs at least every three years, as required by section 176(c) of the Clean Air Act. We are eliminating only those frequency requirements that are not expressly required by the Clean Air Act and that we now believe are either outdated or redundant with other requirements.

In general, commenters supported EPA's proposals to streamline the conformity frequency requirements. Most commenters agreed that these changes would improve the conformity rule and would serve to avoid confusion and simplify the overall conformity process. In addition, some commenters believed that these rule changes would reduce the number of required conformity determinations, and therefore, would conserve limited planning resources.

One commenter, however, opposed the elimination of the 6-month TIP clock in § 93.104(c)(4), stating that this rule change would result in MPOs having always to demonstrate conformity of the plan and TIP at the same time. This commenter believed that by eliminating the 6-month TIP clock, MPOs will lose the extra time and flexibility provided by the § 93.104(c)(4) provision that may be needed to update the TIP and demonstrate conformity after a conformity determination for the plan has been made.

EPA does not believe that the elimination of § 93.104(c)(4) and the 6-month TIP clock will result in the loss of time or flexibility for MPOs as this commenter has suggested. In contrast, EPA believes that this rule change will result in greater flexibility and less demands on planning resources to meet the conformity requirements.

As stated in the June 30, 2003 proposal, EPA believes that § 93.104(c)(4) is unnecessary because of other conformity and planning requirements that are in place. Therefore, the rule change will have no practical effect on the conformity process in most cases. According to the transportation planning statute (23 U.S.C. 134(h)(3)(C)), projects in the TIP must be consistent with the transportation plan to be federally funded or approved. Therefore, in cases where a plan is changed and a conformity determination is made, areas will continue to ensure that their TIPs also conform and are consistent with the plan to advance projects, regardless of whether the 6-month TIP trigger is part of the conformity regulation. If a plan changes in years also covered by the TIP, then the TIP would also be updated or amended to meet the planning regulations at the same time. Under today's final rule, conformity determinations will continue to be required for such plan and TIP changes. However, EPA's final rule and DOT's planning regulations would not require a TIP revision and conformity determination in the case where a plan is changed in a manner that does not affect the TIP.

Another commenter requested EPA to remove all TIP references and actions from the conformity rule, since the TIP is required to be consistent with a conforming transportation plan. The commenter believed that DOT's planning regulations and their originating legislation make EPA's TIP requirements and actions redundant and unnecessary, and that the removal of such requirements would improve the conformity rule.

EPA did not propose the removal of all TIP references and conformity requirements in this rulemaking, and therefore, cannot address the commenter's request in this final rule. Furthermore, EPA believes the current references and conformity requirements for TIPs are necessary to be consistent

with the Clean Air Act. The current Clean Air Act section 176(c)(2)(A) specifically states that "no transportation plan or transportation improvement program may be adopted* * *" until such plans and programs are shown to demonstrate conformity. Therefore, EPA believes that the corresponding regulations must reflect the statutory requirements for both the transportation plan and TIP.

XX. Latest Planning Assumptions

A. Change to Latest Planning Assumptions Requirement

1. Description of Final Rule

EPA is amending § 93.110(a) to change the point in the conformity process when the latest planning assumptions are determined. This final rule will allow conformity determinations to be based on the latest planning assumptions that are available at the time the conformity analysis begins, rather than at the time of DOT's conformity determination for a transportation plan, TIP, or project. Under today's final rule, the interagency consultation process should be used to determine the "time the conformity analysis begins" as described in B.1. and C.1 of this section.

2. Rationale and Response to Comments

EPA believes that today's final rule will make the conformity rule more workable for implementers while continuing to meet the basic Clean Air Act requirement that the latest planning assumptions be used in conformity determinations. Most commenters agreed and strongly supported EPA's proposed change to the latest planning assumptions requirement. Some of these commenters noted that the proposed changes to § 93.110(a) would provide more certainty to the process and conserve valuable state and local resources.

A few commenters, however, did not agree with EPA's proposed change. One commenter argued that the proposed rule violates the Clean Air Act by allowing conformity determinations to be based upon information other than "the most recent population, employment, travel and congestion estimates." This same commenter also stated that the proposed change would undermine reasoned decision-making by making the most accurate and reliable information irrelevant since data developed after the time the analysis begins would not be required to be considered until the next conformity determination. Another commenter reiterated this concern by stating that the proposed rulemaking improperly locks-in the planning assumptions that exist at the start of the conformity determination process, even though the actual conformity determination is typically made months later when more recent information could be available.

EPA disagrees that today's proposal is inconsistent with the Clean Air Act. Section 176(c)(1) of the Clean Air Act requires conformity determinations to be based on the most recent data and emissions estimates that are available. However, the Clean Air Act does not explicitly define the point in the conformity process when the most recent estimates should be determined. Therefore, EPA believes that this ambiguity in the Clean Air Act allows for a procedural change in how the latest planning assumptions requirement is implemented.

As stated in the proposal to this final rule, when EPA originally wrote the conformity rule in 1993, we did not fully envision how the requirement for the use of latest planning assumptions would be implemented in practice. Under the previous conformity rule, if an MPO had completed a regional emissions analysis for its plan and TIP conformity determinations, and new information became available as late as the day before DOT was scheduled to make its conformity determination, DOT was not able to complete its action, as the MPO would have had to revise the conformity analysis to incorporate the new data. EPA does not believe this situation is appropriate or consistent with the overall intent of the Clean Air Act to coordinate air quality and transportation planning.

EPA also disagrees that the proposed rule revision would undermine decision-making and allow for the use of irrelevant information in the conformity process. Although EPA believes that conformity determinations should be based on the most recent data and planning information in accordance with the Clean Air Act, we also believe that the conformity rule should provide certainty in implementing the statute's requirements. In other words, EPA believes that a conformity determination that is based on the most recent information available when that analysis is conducted should be allowed to proceed even if more recent information becomes available later in the conformity process.

EPA believes it can provide this certainty, without compromising air quality, due to the iterative nature of the conformity process. A conformity determination based on the latest planning assumptions and emissions models is required at a minimum of every three years. In addition, the conformity rule (40 CFR 93.104) requires a conformity determination for plan and TIP updates and amendments and within 18 months of certain EPA SIP actions (*e.g.*, when EPA finds an initially submitted SIP budget adequate). In the case where new data becomes available after an analysis has started, such information would be required in the next conformity determination to ensure that appropriate decisions concerning transportation and air quality are being made. Therefore, EPA does not believe this rule change will provide for the general use of "irrelevant" data in the conformity process. Rather, EPA believes this rule change will provide a reasonable approach to ensuring that conformity is based on accurate and available information without causing unnecessary delays late in the transportation planning process. EPA concludes that today's final rule is consistent with the Clean Air Act, as it provides a reasonable time at which latest planning assumptions are determined for use in a conformity determination.

Two commenters also expressed concern about the proposed rule's potential to eliminate the public's involvement in the selection of latest planning assumptions used in conformity determinations. One of these commenters stated that the proposed rule change would defeat the ability of interested parties from playing a meaningful role in the decision-making process by making new information developed after public notice of the emissions analysis and conformity determination irrelevant. The other commenter requested clarification on the obligation of an MPO to revise a conformity determination to address public comment that questions an area's use of the most recent planning information in the conformity analysis.

EPA does not believe that today's rule change will eliminate the public's involvement in selecting the latest planning assumptions that are used in conformity determinations. For proposed transportation plan/TIP updates, amendments and conformity determinations, the public has an opportunity to comment on whether the conformity determination meets the conformity rule's requirements for using the latest planning information. Under today's rule, the public will still have this opportunity, as the amendment to § 93.110(a) makes no changes to the public involvement requirements under § 93.105(e).

EPA also does not believe that this rule change will effectively alter an MPO or other designated agency's

responsibility to respond to public comments in a manner consistent with the conformity rule's requirements. Under today's final rule, when an MPO or other designated agency conducts a conformity determination, it should document in its determination the "time the conformity analysis begins" as determined by interagency consultation, the date on which the analysis was started and the planning assumptions that were used. During the public process and comment period, the public will continue to have the opportunity to comment on all these aspects of the conformity analysis. If, for example, a member of the public expresses concern that planning information available before the beginning of the analysis was not used in the conformity determination, an MPO would have to address such concerns and explain why the information was not incorporated. If, when addressing this comment, the MPO and other interagency consultation partners determine that the information was available prior to the start date of the analysis, the MPO or other designated agency would be required to re-run its analysis to incorporate such data to meet the conformity rule's requirements.

In contrast to those commenters who favored the previous rule's more stringent requirement, some commenters did not believe that the proposed change to § 93.110(a) would provide enough flexibility in implementing the latest planning assumptions requirement. Specifically, these commenters requested that EPA amend the conformity rule to define the "most recent planning assumptions available" as those assumptions used to develop the most recent applicable SIP and motor vehicle emissions budget(s). Under the existing conformity rule, one commenter stated that the transportation sector can be unfairly forced to reduce emissions simply because planning assumptions have changed since the SIP was developed. Since the existing process can result in the use of different planning assumptions in SIPs and conformity, another commenter argued that the proposed rule still runs counter to Congressional intent and the Clean Air Act which is to provide for an integrated planning process. One commenter stated that both transportation and air quality agencies would benefit from using the same planning assumptions that were used for both conformity analyses and SIP development. Another commenter agreed with this approach, provided that the SIP was approved in the last five years.

The final rule has not been changed from the June 30, 2003 proposal in response to these comments. In the 1993 conformity rule (58 FR 62210), EPA stated that: "It should be expected that conformity determinations will deviate from SIP assumptions regarding VMT, growth, demographics, trip generation, etc., because the conformity determinations are required by Clean Air Act section 176(c)(1) to use the most recent planning assumptions." For today's rulemaking, EPA did not propose to alter this aspect of § 93.110 as determined in the original conformity rule. Although EPA agrees that Congress intended for the integration of transportation and air quality planning through the conformity process, EPA believes that Congress also clearly intended for conformity to be based on the most recent planning information even if it differs from the assumptions used to develop the SIP and regardless of how recently a SIP was developed. The purpose of conformity is to ensure that emissions projected from planned transportation activities are consistent with the emissions level established in the SIP. If new planning assumptions introduced into the transportation and conformity processes result in an increase or decrease in projected emissions, EPA believes it is the responsibility of transportation and air quality agencies, along with other interagency consultation partners, to determine how best to consider the anticipated emissions change. In cases where projected emissions increase over the applicable SIP budget(s), the consultation process would be used to consider a revision to the transportation plan and TIP and/or the SIP to ensure that a conformity determination can be made and an area's air quality goals are achieved.

B. Defining the Time the Conformity Analysis Begins

1. Description of Final Rule

In the June 30, 2003 proposal, EPA requested comment on how MPOs, state departments of transportation, transit agencies, and air quality agencies would define the "time the conformity analysis begins." Based on the comments received, EPA is finalizing our proposed clarification for the start of the regional conformity analysis in § 93.110(a) of today's final rule. Specifically, the final rule clarifies the time the conformity analysis begins as the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan, TIP or project on VMT and speeds and/or emissions for a conformity determination. This point should be determined through interagency consultation and used consistently for all future conformity determinations.

For example, the beginning of the analysis for a transportation plan or TIP conformity determination might be the point at which travel demand modeling begins to generate the VMT and speed data that will be used to calculate emissions estimates for the conformity determination. For smaller MPOs and rural areas that do not use a travel demand model, the beginning of the conformity analysis might be the point at which VMT projections necessary to run the emissions model are calculated based on the most recent Highway Performance Monitoring System (HPMS), population and employment data that are available at that time.

EPA does not, however, intend for the beginning of the analysis that will support a transportation plan or TIP conformity determination to be before VMT and emissions estimates have begun to be calculated. The following examples illustrate when the analysis has not yet begun:

- When the initial list of projects for the plan and TIP have been developed or before those projects have been coded into the transportation network;
- If travel or emissions modeling is conducted to preliminarily examine the impact of several potential projects or project alternatives on travel or emissions in the area; or
- When an initial schedule for completing an analysis is developed during an interagency consultation meeting.

Whatever the case, any information and assumptions that become available before actual modeling for a conformity determination has commenced would be required to be considered in that conformity determination.

2. Rationale and Response to Comments

EPA received a number of comments with suggestions for defining the time the conformity analysis begins. After thorough consideration of these comments, EPA believes this final rule adequately describes our intentions for what criteria constitute the time the analysis "begins."

Other suggested approaches that we received included defining the beginning of the analysis as the date on which state and local agencies submit their projects to be included in the plan and TIP; the point where model parameters and inputs have been incorporated into the travel demand model; and, the time at which a project is adopted for inclusion into a plan or TIP. EPA did not believe that these

suggestions were consistent with our intentions of having the start of the analysis represent a point in the process when actual modeling of the travel or emissions impacts of the planned transportation system on air quality has begun, since these activities can occur some time before modeling for the conformity determination occurs. EPA believes that all new planning assumptions available at the time the actual travel or emissions modeling begins, could be incorporated in a conformity determination, and therefore, it would be unreasonable to not require such data to be used.

One commenter suggested that the time the analysis begins should be necessarily after the interagency consultation process has been completed. EPA believes this approach for defining the start of the analysis could lead to confusion and is also inconsistent with our proposal, as the completion of the interagency consultation process could represent a point in time well after travel and/or emissions modeling have begun (*e.g.*, the point in time when the conformity determination is made).

Another commenter also suggested that determining the start of the analysis be the prerogative of the MPO, rather than determined through interagency consultation. EPA disagrees. EPA believes having the start of the analysis determined through interagency consultation is critical for ensuring that transportation and air quality planners work together to meet air quality goals. Several commenters also agreed that using the interagency consultation process to decide this issue is appropriate, as further discussed in C.2 of this section).

A few commenters requested that EPA provide further guidance in the final rule for defining the beginning of the analysis, as they interpreted the proposal to be ambiguous and the source of unintended consequences. EPA agrees with these commenters, and therefore, has defined the start of the conformity analysis in § 93.110(a) of today's rule based on concepts described in the preamble to the proposed rule. In addition, EPA has provided further explanation and examples in the description of this final rule of what we intend the beginning of the conformity analysis to be.

C. Implementation of Final Rule

1. Description of Final Rule

Today's final rule relies on the interagency consultation process required by § 93.105(c)(1)(i) to determine when a conformity analysis reasonably begins in a given area. Section 93.105(c)(1)(i) already requires the consultation process to be used to decide which planning assumptions and models are available for use by the MPO or other designated agencies responsible for conducting conformity analyses. The definition of when the conformity analysis begins for a given area should be well documented through the interagency consultation process. New information (*e.g.*, population or fleet data) that becomes available after the conformity analysis begins is not required to be incorporated into the current analysis if the analysis is on schedule, although an area could voluntarily include the new information at any time as appropriate. EPA encourages the MPO or other designated agency to use the interagency consultation process to inform other involved agencies of when a conformity emissions analysis has started for a given conformity determination.

To support a valid conformity determination, the MPO or other appropriate agency should also document the following information:

- How the "time the conformity analysis begins" has been defined through interagency consultation;
- The calendar date that the conformity analysis began; and,
- The planning assumptions used in the analysis.

Documenting this information in the actual conformity determination would inform the public of previous decisions regarding the use of latest planning assumptions, and will record when an analysis was begun, so that commenters can address any issues related to these decisions.

Today's final rule also clarifies that new data that becomes available after a conformity analysis has started is required to be used in the upcoming current conformity determination if a significant delay in the analysis has occurred before a substantial amount of work has been completed. For example, an MPO starts a conformity analysis and begins generating VMT estimates from the travel demand model. However, the MPO's analysis is then delayed for six months. In this case, EPA believes it is reasonable to expect that an MPO should incorporate new planning information that became available during the six-month delay period. Under today's final rule, the interagency consultation process would be used to determine whether a significant delay has occurred and whether new data that becomes available during a delay should be incorporated.

EPA intends that in cases where areas adhere to their conformity determination schedules and such delays do not occur, the incorporation of new information that becomes available after the conformity analysis has begun is not required. The final rule only requires the incorporation of new information when an area falls significantly behind in completing a conformity analysis, as determined through interagency consultation.

Areas should consider the availability of new planning assumptions when determining their conformity schedules. The consultation process should continue to be used to determine what are the most recent assumptions available for SIP development, so that they can be incorporated into the conformity process expeditiously. For example, if EPA is expected to find a new SIP budget adequate before the MPO or DOT's conformity determination, conformity to the new SIP budget would be required. In such a case, transportation planners should use the more recent assumptions in the submitted SIP and consider them at the start of the conformity analysis, since the more recent assumptions would have been available through the consultation process when the SIP was being developed. State and local air agencies should continue to inform their transportation counterparts of new assumptions as they become available.

This final rule addresses only when latest planning assumptions must be considered and does not change the requirement that DOT's conformity determination of the transportation plan and TIP must be based on an analysis that is consistent with the proposed transportation system. For example, if a regionally significant project is significantly changed after the start of the conformity analysis, such a change must be reflected in the conformity analysis for the current determination. Likewise, a significant change in the design concept and scope of an emissions reduction program would also have to be reflected before DOT makes its conformity determination.

Today's proposal also does not change the requirements of § 93.122(a) which describes when emissions reduction credit can be taken in regional emissions analyses. Section 93.122(a)(2) continues to require that analyses reflect the latest information regarding the implementation of TCMs or other control measures in an approved SIP, even if a measure is cancelled or changed after the conformity analysis begins. In addition, § 93.122(a)(3) continues to require that DOT's conformity determination be made only when regulatory control programs have been assured and will be implemented

as described in the SIP. However, consistent with the rule change on availability of latest planning assumptions, today's rule allows areas to rely upon the latest existing information as documented at the beginning of the conformity analysis regarding the effectiveness of SIP control programs that are being implemented as described in the SIP (§ 93.110(e)).

Finally, § 93.122(a)(6) is similarly not amended by today's action. The conformity rule continues to require that the conformity analysis be based on the same ambient temperature and other applicable factors used to establish the SIP's motor vehicle emissions budget.

2. Rationale and Response to Comments

Many commenters agreed that the interagency consultation process should be central in determining the beginning of the conformity analysis. Given the unique circumstances of individual areas, some commenters believed that the interagency consultation process would provide a common sense approach to implementing the proposed § 93.110(a). One commenter also believed that EPA's approach for relying on interagency consultation for determining if an analysis is delayed and whether more recent data should be used is appropriate. This commenter argued that such an approach would provide for greater flexibility and local decisionmaking. EPA agrees with these comments to use the interagency consultation process to account for differences in the planning and conformity processes among individual nonattainment and maintenance areas.

One commenter, however, expressed concern over EPA's proposal to require the use of more recent data that has become available if an analysis is delayed. The commenter stated that this proposal lacked specificity and could potentially nullify the proposed flexibility provided by the revised § 93.110(a).

EPA believes that in cases where a significant delay in the start of the analysis has occurred and more recent data becomes available during that time, the new data must be included in the conformity determination. In response to this comment, EPA has clarified in the final rule that new data that becomes available after an analysis has begun is required to be used in the upcoming conformity determination if a significant delay in the analysis has occurred. As described above, EPA has provided further explanation and examples to more fully depict our intentions for this requirement in the description of this final rule. Interagency consultation would be used, following Section C.1. above, to decide whether a conformity analysis has been delayed and whether any new data has become available during the delay that would be incorporated into the conformity process.

Another commenter requested that the final rule require an MPO to incorporate new planning assumptions that become available after an analysis has started, if changes to other aspects of a conformity determination (*e.g.*, data, conclusions or assumptions) are made once the analysis has begun. In such cases, this commenter believed that the planning assumptions should again be reviewed, and if they have changed, such newer assumptions should be incorporated in the conformity determination along with any other changes the MPO is conducting.

As previously stated, EPA believes that once a conformity analysis begins, it is appropriate to allow that analysis to continue without requiring the incorporation of newer planning information, provided the conformity analysis and determination remain on schedule, as determined through interagency consultation. EPA does not believe that new planning information should be required if changes to the conformity analysis are made that do not cause a significant delay. However, in this case, EPA encourages areas to consider incorporating new information that has become available since the analysis began if other changes are initiated and new data can also be easily incorporated.

EPA believes it is appropriate to require the use of more recent planning assumptions that become available after a conformity analysis begins only if significant delays in completing the conformity analysis have occurred. Therefore, if an MPO or other designated agency initiates a change to the conformity analysis that causes a significant delay, EPA believes that any new planning information that has become available since the analysis began should be required in that conformity determination, as determined by the interagency consultation process.

Finally, several commenters requested clarification on various aspects of implementing the use of latest planning assumptions in conformity. Specifically, one commenter requested EPA to indicate in the final rule what newer information that becomes available will be required in a conformity determination even after the latest planning assumptions have been agreed upon through interagency consultation. This commenter stated that the final rule should specify those assumptions to avoid ambiguity.

EPA believes that § 93.110 of the current conformity rule provides a detailed description of the latest planning assumptions that must be incorporated in a conformity determination. For example, § 93.110(b) states that assumptions must be derived from the most recent estimates of current and future population, employment, travel, and congestion. Sections 93.110(c) and (d) require using the latest planning information on transit fares, service levels and ridership, as well as road and bridge tolls. In addition, § 93.110(e) specifies that conformity determinations must include the latest existing information regarding the effectiveness of transportation and other control measures that have been implemented. Under today's rule, an area's interagency consultation process would determine the most recent data and information available to meet § 93.110 requirements at the beginning of the conformity analysis. Provided the analysis starts on time and adheres to the conformity determination schedule, any updates to this information would not be required to be used until the next conformity determination.

However, this final rule does not change any other provision of the conformity rule. For example, this final rule does not change the requirement that DOT's conformity determination of the transportation plan and TIP be based on an analysis that is consistent with the proposed transportation system. In addition, the final rule does not change the existing requirements for determining regional transportation emissions under § 93.122. For example, as described above, § 93.122(a)(2) continues to require that analyses reflect the latest information regarding the implementation of TCMs or other control measures in an approved SIP, even if a measure is cancelled or changed after the beginning of the conformity analysis. EPA believes the requirements of both §§ 93.110 and 93.122 are clear and provide sufficient direction to implement today's final rule, and therefore, EPA has not made any further clarifications to these requirements in response to this comment.

Another commenter requested that EPA clarify in the final rule that MPOs may demonstrate conformity without being required to wait for changes in planning data that are not actually available. This commenter suggested that in some areas conformity determinations have been delayed to

incorporate anticipated data (*e.g.*, new Census data) that was not actually available at the time the determination was originally scheduled to be made.

The Clean Air Act and conformity rule do not require MPOs to delay their conformity analyses to incorporate anticipated data that is not yet available for conformity purposes under any circumstances. The conformity rule, as amended in today's action, only requires conformity determinations to incorporate the most recent planning information available at the time the conformity analysis begins. Under this final rule, areas should use the interagency consultation process to determine the start of the analysis and the planning assumptions that are available and will be used in that analysis.

Two commenters asked for clarification on the requirements of § 93.122(a)(6) as they relate to planning information used in regional emissions analyses. Section 93.122(a)(6) requires regional emissions analyses to include the same ambient temperatures and other applicable factors that were used to develop the SIP and budgets. However, since § 93.110 requires the use of the most recent planning assumptions available in conformity, one commenter requested clarification on the specific "factors" that § 93.122(a)(6) targets. One of these commenters also requested clarification on whether this provision of the rule should be applied to project level hot-spot analyses. This commenter argued that localized data can be more accurate than regional estimates in some cases, and therefore, should be used in hot-spot analyses.

In contrast to those planning assumptions described in § 93.110 (*e.g.*, population, employment, vehicle fleet composition), EPA intended § 93.122(a)(6) to apply to certain planning factors that would not be expected to change significantly over time in a given geographical area. For example, factors referred to in § 93.122(a)(6) would include environmental conditions such as ambient temperatures, humidity and altitude. Other factors subject to § 93.122(a)(6) could also include the fraction of travel in a hot stabilized engine mode and annual mileage accumulation rates over the time frame of the transportation plan. Since factors such as environmental conditions and certain vehicle use characteristics that do not typically change in future years could significantly impact emissions, EPA generally believes that it is appropriate to require such factors to be consistent between conformity analyses and the SIP budgets.

Under certain circumstances, however, it may be appropriate to use alternative factors instead of certain SIP assumptions, if it is determined through the interagency consultation process that these factors should be modified as provided for in § 93.122(a)(6). For example, such modifications in these types of factors may be appropriate where additional or more geographically specific information is incorporated or a logically estimated trend in such factors beyond the period considered in the SIP is represented. EPA does not expect changes in the SIP's factors to occur often, and they could occur only after interagency consultation. These factors, along with all other planning assumptions used in a conformity analysis, must be documented in the conformity determination that is released for public comment.

Finally, § 93.123(c)(3) of the conformity rule requires hot-spot analysis assumptions to be consistent with those assumptions used in the regional emissions analysis for those inputs which are required for both analyses. Therefore, the requirements of § 93.122(a)(6) also apply to hot-spot analyses; those factors covered by § 93.122(a)(6) used in regional emissions analyses generally need to be the same as those in hot-spot analyses. However, EPA believes the existing § 93.122(a)(6) provides flexibility to use different information for certain environmental and transportation-related factors (*e.g.*, temperature, cold-start vehicle travel) in hot-spot analyses, if it is determined through interagency consultation that there is a sound basis for using more localized geographic data. Areas should use the interagency consultation procedures established under § 93.105 to determine whether more localized data is appropriate in hot-spot analyses.

XXI. Horizon Years for Hot-Spot Analyses

A. Description of the Final Rule

Today's final rule clarifies § 93.116 of the conformity rule so that project-level hot-spot analyses in metropolitan nonattainment and maintenance areas must consider the full time frame of an area's transportation plan at the time the analysis is conducted.[23] Regional emissions analyses in isolated rural areas also cover a 20-year timeframe, consistent with the general requirements in metropolitan and donut areas. Alternatively, hot-spot analyses for new projects in isolated rural nonattainment and maintenance areas, as defined in today's rule, must consider the full time frame of the area's regional emissions analysis since these areas are not required to develop a transportation plan and TIP under DOT's statewide transportation planning regulations. All areas would use the interagency consultation process to select the specific methods and assumptions for conducting both quantitative and qualitative hot-spot analyses in accordance with § 93.123 of the conformity rule (§ 93.105(c)(1)(i)).

EPA does not anticipate that today's clarification would significantly change how project-level analyses are being conducted in practice. To ensure that the requirement for hot-spot analysis is being satisfied, areas should examine the year(s) within the transportation plan or regional emissions analysis, as appropriate, during which peak emissions from the project are expected and a new violation or worsening of an existing violation would most likely occur due to the cumulative impacts of the project and background regional emissions in the project area. EPA believes that if areas demonstrate that no hot-spot impacts occur in the year(s) of highest expected emissions, then they will have shown that no adverse impacts will occur in any years within the time frame of the plan (or regional emissions analysis).

Today's final rule does not change the procedural requirements for hot-spot analyses outlined in § 93.123, nor the flexibility for areas to decide how best to meet these requirements through interagency consultation. We believe our clarification to § 93.116, in combination with the rule's existing consultation and modeling requirements, is sufficient to demonstrate that a project will not cause or contribute to new local violations or increase the severity of existing violations during the period of time covered by the transportation plan.

B. Rationale and Response to Comments

On May 26, 1994, Environmental Defense, Natural Resource Defense Council and Sierra Club collectively submitted to EPA a Petition for Reconsideration of the November 1993 conformity rule (58 FR 62188). In the preamble to an April 10, 2000 conformity rule (65 FR 18913), we addressed four remaining issues raised in this petition, one of which was the issue regarding horizon years for hot-spot analyses. Specifically, the petitioners requested that we alter the rule to ensure that areas examine the 20-year time frame of the transportation

[23] Under DOT's current planning regulation, transportation plans in metropolitan nonattainment and maintenance areas need to be updated every three years and cover at least a 20-year planning horizon (23 CFR 450.322(a)).

plan when conducting hot-spot analyses. The existing transportation conformity rule does not clearly specify a time frame to be considered for hot-spot analyses.

In the preamble to the 2000 amendment, we acknowledged that hot-spot analyses should address the full time frame of the transportation plan to ensure that new projects will not cause or worsen any new or existing hot-spot violations. In addition, we clarified that in some cases modeling the last year of the transportation plan or the year of project completion may not be sufficient to satisfy this requirement. EPA believes that the most effective means to meet this requirement would be to have the hot-spot analysis examine the year(s) during the time frame of the plan in which project emissions, in addition to background regional emissions in the project area, are expected to be the highest. Today's final rule simply incorporates EPA's existing interpretation of the rule's hot-spot requirements into the conformity regulations.

EPA received a number of comments on our proposed clarification of § 93.116. One commenter believed that the transportation planning process should not be interrupted due to the inexact data on which the process is based.

Today's changes to § 93.116 do not impose any new requirements. Rather, this final rule clarifies that when a hot-spot analysis is performed, the year or years that are analyzed must be the year(s) when project emissions, in addition to background regional emissions in the project area, are expected to be the highest and violations are most likely to occur. We believe that most areas are already successfully complying with this hot-spot requirement, and consequently, changes to the existing planning process due to the final rule are not expected.

The remaining commenters requested additional guidance on implementing the clarification to § 93.116. Specifically, one commenter indicated that their state currently requires CO hot-spot analyses for new projects in nonattainment and maintenance areas to examine air quality impacts of the project over a period extending up to 20 years after the project opens. This commenter argued that this protocol for analyzing the year of project completion and a horizon year typically 20 years from project completion is very likely to capture the highest emissions expected from the project. However, the commenter was concerned that EPA's clarification to § 93.116 may not allow continued use of this protocol.

EPA does not believe that the hot-spot analysis procedures employed by this state are necessarily inconsistent with today's clarification. In fact, this protocol could be more conservative since it requires the analysis of years beyond the 20 year time frame of an area's transportation plan or regional emissions analysis. EPA does not believe that the clarification to § 93.116 would cause this state to revise its requirements for hot-spot analyses in most cases. EPA should note, however, that all hot-spot analyses performed in any nonattainment or maintenance areas should consider whether the combination of project emissions and background emissions could result in a violation occurring prior to the final year of the analysis period. Further, since areas are required to prevent hot-spot violations in years covered by the transportation plan, states should ensure that the use of the year of estimated highest projected emissions for a given project is sufficient to demonstrate that no violations would be expected during this time frame. Decisions regarding such analyses and year(s) chosen for hot-spot analyses should be determined through an area's interagency consultation process.

Another commenter requested clarification as to whether areas would be required to analyze more than one year if peak project emissions and peak background emissions are expected to occur in different years. EPA does not intend for the revised § 93.116 to require areas to analyze multiple years in all cases where peak project emissions and background emissions occur at different points in time. Instead, EPA intends for areas to analyze the year in which combined project and background emissions could most likely cause a violation or worsen an existing violation of the air quality standard. In some cases, however, a more conservative approach to meeting the conformity rule's requirements for hot-spot analyses would be to analyze more than one year within the time frame of the transportation plan or regional emissions analysis depending upon the local circumstances regarding peak project and background emissions. An area's interagency consultation process should be used to determine the appropriate year(s) for conducting hot-spot analyses in this type of situation.

One commenter requested that EPA revise the clarification to § 93.116 to take into account the situation where a project would not remain in place over a 20-year time period. This situation could occur if a project is scheduled to be built and opened for use in stages. Specifically, the commenter requested that the clarification be revised to require that the hot-spot analysis cover the time frame of the plan "or time frame of the proposed project, whichever is shorter."

EPA does not believe that this commenter's suggested clarification is necessary. In the case of a project that is being built and opened for use in stages, the conformity rule allows the area's interagency consultation process to select the appropriate hot-spot analysis years. EPA believes that in these cases the local consultation process provides the best forum for deciding how to model such projects appropriately. Furthermore, the clarification to § 93.116 allows areas to select an appropriate analysis year(s) to demonstrate that the project conforms over the entire time frame of an area's transportation plan or regional emissions analysis. It is likely that when a project is opened in stages, more than one analysis year may be necessary to satisfy the hot-spot requirements, as various years could produce significantly different emissions. For example, if a project were being opened in two stages and the entire two-stage project was being approved, the interagency consultation process may result in a decision to analyze two years. In this case, the first analysis year would be chosen to examine the impacts of the first stage of the project, such as a year between the opening of the first stage and the opening of the second stage of the project. The second analysis year would be chosen to examine the impacts of the complete project, such as a year between the opening of the second stage and the final year of the area's transportation plan or regional emissions analysis. Finally, EPA does not believe that the final rule is problematic with respect to projects that do not remain in effect for the entire time frame of the 20-year transportation plan. For example, if a project is only scheduled to be implemented for the first 10 years of the transportation plan, there would be no projected emissions from that project to consider for hot-spot analysis in the latter 10 years of the plan.

Another commenter encouraged EPA and DOT to issue hot-spot guidance that maintains and enforces significance thresholds and consider more stringent mitigation measures for exceedances of the thresholds. EPA does not believe that the requested guidance is needed or required to implement the Clean Air Act or conformity rule's requirements for ensuring that localized emissions from a new project do not cause or contribute to violations of the air quality standards. EPA believes that section 176(c)(3)(B)(ii)

of the Clean Air Act and § 93.116 of the conformity rule establish sufficient requirements for addressing localized air quality problems in CO and PM_{10} nonattainment and maintenance areas. Further, EPA does not believe that exceedances of significant threshold levels would necessarily contribute to increased violations of a given air quality standard.

Finally, one commenter asked when EPA intends to issue guidance on quantitative PM_{10} hot-spot analyses, as referred to in § 93.123(b)(4) of the conformity rule. As part of the November 5, 2003 proposal (68 FR 62690), EPA requested comment on the experience areas have had in applying the conformity rule's PM_{10} hot-spot analysis requirements and on the need to maintain or amend these requirements. As noted in Section XIII. of today's action, EPA intends to decide on the PM_{10} hot-spot analysis requirement, including needs for quantitative analysis guidance, based on our review of comments from the November 2003 proposal and a future supplemental proposal.

XXII. Relying on a Previous Regional Emissions Analysis

A. Description of Final Rule

EPA is finalizing three revisions to § 93.122(g), which describes when an area can rely on a previous regional emissions analysis for a new conformity determination. EPA notes that the provisions for relying on a previous analysis were located in § 93.122(e) of the former conformity rule, but are being moved to § 93.122(g) due to reorganization of this section. First, EPA is revising § 93.122(g) so that MPOs can rely on a previous regional emissions analysis for minor transportation plan revisions. Prior to today's final rule, § 93.122(g) (§ 93.122(e) of the previous conformity rule) allowed areas to rely on a previous emissions analysis only for conformity determinations made for minor TIP updates or amendments. To meet § 93.122(g) requirements, minor revisions to the transportation plan may include no additions or deletions of regionally significant projects, no significant changes in the design concept and scope of existing regionally significant projects, and no changes to the time frame of the transportation plan. Further, minor plan revisions under § 93.122(g) would not include revisions that delay or accelerate the completion of regionally significant projects across conformity analysis years.

EPA's second revision adds § 93.122(g)(3) to clarify that a conformity determination that relies on a previous analysis does not satisfy the three-year frequency requirement for plans and TIPs. The conformity rule continues to require a new regional emissions analysis that incorporates the latest planning assumptions and emissions models at least every three years. In response to comments EPA received on this proposed rule change, EPA is also clarifying the three-year regional emissions analysis requirement in § 93.104(b) and (c) of the rule.

EPA's third revision adds § 93.122(g)(1)(iv) and amends § 93.122(g)(2) to clarify that conformity determinations that rely on a previous regional emissions analysis must be based on all adequate and approved SIP budgets that apply at the time that DOT makes its conformity determination. Like all conformity determinations, a determination that relies on a previous emissions analysis must satisfy the emissions test requirements of § 93.118 (or of § 93.119, if no applicable budgets exist), and must do so over the time frame of the transportation plan. Therefore, EPA believes that pursuant to § 93.118(a) of the current rule, any conformity determination that relies on a previous emissions analysis must show consistency with all applicable adequate or approved budgets that are available for conformity purposes at the time the determination is made, including those budgets that have become applicable since the previous conformity determination. In other words, in cases where new adequate or approved budgets become available after the most recent conformity determination, the previous regional emissions analysis could be used for a subsequent determination if the emissions estimates from that analysis are at or below the emissions levels established by the new budgets for relevant years and all other § 93.122(g) requirements are met. In this case, the conformity determination that includes the new budgets would also satisfy any applicable 18-month conformity requirement, pursuant to § 93.104(e) that is triggered by EPA's adequacy finding and/or approval action of the new SIP budgets.

This final rule applies to conformity determinations for plans, TIPs, and projects not from a conforming plan and TIP. EPA expects that most conformity implementers already consider new budgets when they rely on a previous emissions analysis. Today's final rule simply clarifies existing requirements and ensures that the conformity regulation continues to be correctly implemented in the future.

EPA also notes that we are not altering the existing § 93.122(g)(2)(i) and (ii) provisions in today's final rule, as the June 30, 2003 proposed regulatory text may have been confusing with regard to the specific changes that were proposed. In the preamble to the June 30, 2003 proposed regulatory text, we stated that we were amending § 93.122(g)(2) to clarify that a conformity determination that relies on a previous emissions analysis must be based on all adequate and approved budgets that apply when the determination is made. However, we only intended to amend the introductory text for § 93.122(g)(2) and did not intend to delete the existing subparagraphs § 93.122(g)(2)(i) and (ii) for this provision, as may have appeared from the printed regulatory text. Therefore, we are now clarifying that subparagraphs § 93.122(g)(2)(i) and (ii) still apply. That is, a project that is not from a conforming plan and TIP may be demonstrated to conform without a new regional emissions analysis if the project is either not regionally significant, or is included in the currently conforming transportation plan (even if it is not included in the currently conforming TIP) and its design concept and scope have not significantly changed and are sufficient for determining regional emissions. EPA believes that a reproposal is not necessary to make this correction in today's final rule, as this clarification is consistent with EPA's original intentions and stakeholders' understanding of the proposed revision to the § 93.122(g)(2) provision.

B. Rationale and Response to Comments

EPA believes that relying on a previous emissions analysis for minor transportation plan changes is appropriate, since such changes do not impact regional air quality and usually occur in tandem with minor TIP updates and amendments. The purpose of § 93.122(g) is to allow areas to use a previous emissions analysis when no significant changes to the transportation system are being made. Through implementing § 93.122(g) over the years (as § 93.122(e)), EPA has concluded that because plan and TIP updates often occur together, the purpose of this provision has been frustrated due to the rule's past applicability only to TIPs, but not plans.

Most commenters supported EPA's proposal to allow areas to rely on a previous emissions analysis for minor transportation plan revisions. As stated in the June 30, 2003 proposal, the purpose of this final rule is to require a new regional emissions analysis only for transportation actions that involve

significant air quality impacts and at least every three years. One commenter, however, requested clarification on whether changes or additions to a plan and TIP would be determined "significant" through the interagency consultation process.

EPA articulates its intentions for when transportation planners can rely on a previous emissions analysis in the existing conformity rule and the preamble to the November 24, 1993 conformity rule. Specifically, in the 1993 final rule, we stated that a new regional analysis would not be required "if the only changes to the TIP involve either projects which are not regionally significant and which were not or could not be modeled in a regional emissions analysis, or changes to project design concept and scope which are not significant * * *" (58 FR 62202). Today's final rule clarifies that a previous analysis can only be used under similar circumstances for the plan, and when the time frame of the transportation plan has not changed. Under the consultation provisions of the conformity rule, the interagency consultation process should be used to determine which projects are "regionally significant" for the purposes of regional emissions analyses, and which projects have a significant change in design concept and scope (§ 93.105(c)(2)(ii)). Therefore, EPA believes that the conformity rule clearly specifies that an area's interagency consultation process should be used for determining whether any changes or additions to a plan and/or TIP are not "significant" for the purposes of relying on a previous emissions analysis in accordance with § 93.122(g).

Another commenter requested EPA to identify comprehensively the circumstances when reliance on a previous regional emissions analysis would not be appropriate. Specifically, this commenter asked EPA to clarify that an area cannot rely on a previous analysis if new or revised planning assumptions and/or emissions models become available after the previous conformity determination. The commenter also requested that EPA clarify that an area cannot rely on a previous emissions analysis when new SIP budgets have become available for conformity purposes since the last determination. The commenter argued that since the Clean Air Act requires conformity determinations to be based on the most recent planning assumptions and emissions estimates, the conformity rule should require a new regional emissions analysis for all minor plan and TIP changes if new planning information becomes available after the previous analysis and conformity determination are made.

In general, EPA agrees that Clean Air Act section 176(c)(1)(B)(iii) requires conformity determinations to be based on the most recent estimates of emissions. However, we also believe that Clean Air Act section 176(c)(4)(B)(ii) gives EPA discretion in establishing the requirements for a new regional emissions analysis when a minor change to a transportation plan and/or TIP is made. Specifically, section 176(c)(4)(B)(ii) requires EPA to promulgate conformity rules that "address the appropriate frequency for making conformity determinations, but in no case shall such determinations for transportation plans and programs be less frequent than every three years, * * *." To satisfy this statutory requirement, EPA promulgated rules in 1993 (58 FR 62188) that require a new regional emissions analysis and conformity determination to be conducted at a minimum of every three years and when a significant change to the TIP is made between the three-year conformity frequency requirement.

EPA does not believe that the Clean Air Act requires a new regional analysis to be triggered between three-year conformity updates in the case when minor project changes are made to the plan or TIP that would not affect regional emissions. Since the original November 24, 1993 conformity rule, EPA has held that only the three-year conformity frequency requirement and transportation actions that involve significant air quality impacts should drive the necessity for a new regional emissions analysis that incorporates the most recent planning information. EPA does not believe, however, that a new emissions analysis should be required for the sole purposes of incorporating new planning information or models in between the three-year minimum conformity requirement. The conformity rule has never required a new emissions analysis in this case and EPA is not reopening this aspect of § 93.122(g) in this rulemaking.

As we have stated elsewhere in this final rule, conducting conformity determinations and regional emissions analyses to satisfy the conformity rule requires a significant amount of state and local resources. In the January 11, 1993 conformity proposal, we stated that "conformity determinations should be made frequently enough to ensure that the conformity process is meaningful. At the same time, EPA believes it is important to limit the number of triggers for conformity determinations in order to preserve the stability of the transportation planning process" (58 FR 3775). EPA believes that requiring a new regional emissions analysis to incorporate new data and models for minor changes to transportation systems would essentially result in another conformity trigger whenever planning assumptions or models are updated. EPA believes such a trigger would be overly burdensome and in contrast with our stated goals of implementing a meaningful conformity process that limits disruption to the transportation planning process.

In the 1993 conformity rule, EPA concluded that areas should be granted flexibility for meeting the conformity requirements for minor interim TIP updates and amendments under § 93.122(g), even if new planning information becomes available after the previous analysis and conformity determination are made. See the January 11, 1993 proposal to the November 24, 1993 rule (58 FR 3778) for further background. EPA continues to believe such flexibility is appropriate and consistent with statutory requirements, and is not re-proposing nor re-opening the existing § 93.122(g) requirement for minor TIP changes in this rulemaking. This final rule simply extends § 93.122(g) requirements to minor plan revisions for consistency purposes. EPA believes this rule change will not have a significant impact on air quality, as the rule's existing frequency requirements will ultimately ensure that timely emissions analyses are conducted so that air quality is not worsened over the time frame of the long range transportation plan.

In addition, EPA has always believed that requiring a new regional emissions analysis simply because new SIP budgets have become available since the last conformity determination is also unnecessary. In our 1993 proposed conformity rule, we specifically stated, "If the existing emissions analysis for the current transportation plan demonstrates that the current plan is consistent with the new implementation plan budget, a conformity finding can be made for the current plan. The transportation plan would not need to be revised and a new regional emissions analysis would not be necessary" (58 FR 3775). Today's rule ensures that any adequate or approved budgets that have become available since the previous conformity determination are incorporated in subsequent determinations. However, EPA believes that it is unnecessary to require a new regional emissions analysis when new budgets are incorporated, if a minor revision to the plan/TIP meets the current requirements of § 93.122(g) and

conforms to the new budgets for relevant years. Again, EPA has not reopened this previous conclusion in today's rulemaking.

A few commenters also disagreed with the new provision, § 93.122(g)(3), that clarifies that a conformity determination that relies on a previous regional emissions analysis does not satisfy the three-year frequency requirement for plans and TIPs. These commenters believe that conformity determinations that rely on a previous analysis should not be treated differently from any other determination. One of these commenters argued that since the frequency requirements in § 93.104 do not specifically include a requirement to perform a new regional emissions analysis, a conformity determination that relies on a previous analysis meets all the applicable conformity criteria and should satisfy the three-year conformity frequency requirement. The commenter also stated that requiring a conformity determination with a new analysis to meet the three-year conformity requirement shortly after making a conformity determination that relies on § 93.122(g), would place an inappropriate burden on states and MPOs with no significant air quality benefit.

As previously stated, EPA has always interpreted the Clean Air Act as requiring a conformity determination with a new regional emissions analysis that incorporates the latest planning information and models at a minimum of every three years. In our 1993 conformity proposal, we specifically stated that an "emissions analysis must occur at least every three years" (58 FR 3775), and we believe this requirement is necessary to fulfill the Clean Air Act's three-year conformity frequency requirement. Further, EPA has concluded that a new emissions analysis every three years will provide significant air quality benefits that justify the additional effort. As a result of this interpretation, we believe that Clean Air Act section 176(c)(4)(B)(ii) precludes a conformity determination that is based on a previous regional emissions analysis from satisfying the three-year requirement. EPA believes that the existing rule's requirements for a new regional emissions analysis that incorporates the latest planning information and models every three years, and for plan/TIP updates and amendments that include significant changes, are important for ensuring that transportation activities are consistent with an area's clean air goals. Thus, EPA cannot agree with these commenters' request.

However, EPA agrees that the requirement for a new regional emissions analysis every three years could be clarified. Therefore, in response to this comment EPA is clarifying in § 93.104(b)(3) and (c)(3) of today's action that MPOs and DOT must make a conformity determination that includes a new regional emissions analysis for transportation plans and TIPs no less frequently than every three years. This minor revision to § 93.104 will not change existing requirements or implementation practices, as EPA expects that all metropolitan nonattainment and maintenance areas already conduct a new regional emissions analysis at a minimum of every three years. This rule revision simply clarifies existing requirements and ensures that the conformity regulation continues to be correctly implemented in the future.

Finally, one commenter requested that EPA expand § 93.122(g) so that a minimal number of new projects and/or project revisions could be added to a plan or TIP without having to do a new conformity determination at all. Such an approach, as suggested by this commenter, could be considered as a "de minimis test" for triggering a new determination.

EPA does not believe that the Clean Air Act permits minor plan and TIP changes to occur without a conformity determination. Clean Air Act section 176(c) states that no approval or funding of any transportation plan, TIP or project can be granted unless that plan, TIP or project conforms. Therefore, the statute does not support the addition of a minimal number of new non-exempt projects and/or project revisions to the transportation plan or TIP without a conformity determination. In addition, the existing conformity rule already includes a list of exempt projects that never need conformity determinations due to their minimal air quality impact (§ 93.126). EPA believes that only plan and TIP updates involving these exempt projects should be allowed to proceed without a conformity determination.

Furthermore, § 93.122(g) of the conformity rule already provides a streamlined process for meeting the conformity requirement for minor plan and TIP changes in between the three-year conformity requirement by eliminating the need for a new regional emissions analysis. EPA believes this provision provides appropriate flexibility in meeting the statute's requirements, as well as a necessary "check" to ensure through the interagency consultation and public processes that such plan/TIP changes are indeed insignificant with regard to air quality. In addition, such determinations ensure that other requirements of the Clean Air Act and conformity rule (*e.g.*, timely implementation of TCMs) are satisfied.

XXIII. Miscellaneous Revisions

A. Definitions

In today's rulemaking, EPA is clarifying the conformity rule's definitions for "control strategy implementation plan revision," "milestone," "donut areas," and "isolated rural nonattainment and maintenance areas" in § 93.101. Today's clarifications to these definitions should not impose any new requirements on nonattainment and maintenance areas; these rule revisions simply clarify EPA's original intent and current implementation of the existing conformity rule.

Control Strategy Implementation Plan Revision

The final rule clarifies that any implementation plan revisions that are submitted to fulfill any of the following Clean Air Act requirements are considered control strategy SIPs for conformity purposes: section 172(c) and 187(g) or 189(d), in addition to the currently listed sections 182(b)(1), 182(c)(2)(A), and 182(c)(2)(B) for ozone areas; section 187(a)(7) for CO areas; sections 189(a)(1)(B) and 189(b)(1)(A) for PM_{10} areas; and sections 192(a) and 192(b) for NO_2 areas. We are also clarifying that any SIP that is established to demonstrate reasonable further progress and/or attainment should be considered a control strategy SIP.

Several commenters supported EPA's clarification to the definition since it did not change the conformity frequency requirements in § 93.104(e). Specifically, these commenters understood that the definition change would not alter how initial submissions of control strategy SIPs or approvals of control strategy SIPs would trigger the 18-month frequency requirement for a new conformity determination. EPA agrees with these comments.

Another commenter believed that maintenance plans required under section 175A also constitute control strategy SIPs and suggested that this type of SIP be added to the definition. EPA disagrees with this comment. Control strategy implementation plans are plans developed by nonattainment areas for reasonable further progress or attainment purposes, as indicated by the above referenced Clean Air Act sections. In contrast, maintenance plans are developed by areas once they have

attained the applicable standard and, as such, would not fit this definition. Maintenance plans are already defined in § 93.101 of the conformity rule, and § 93.118 distinguishes between how control strategy SIPs and maintenance plans are applied when regional emissions analyses are completed with SIPs. For these reasons, EPA will not expand the definition of control strategy SIP to include maintenance plans.

Milestone

Similarly, EPA is expanding the current definition of milestone to more adequately reflect EPA's original intent and implementation of this term. The final rule expands this definition so that it includes any year for which a motor vehicle emissions budget has been established to satisfy Clean Air Act requirements for demonstrating reasonable further progress. This definition includes all years in the applicable SIP for which emissions targets showing progress towards attainment are established in any nonattainment area.

Several commenters supported EPA's clarification to the milestone definition and further urged EPA to encourage states to eliminate old motor vehicle emission budgets when submitting new SIPs or SIP revisions with new budgets. Commenters believed that eliminating old budgets would alleviate some confusion over which budgets and which milestones apply when more than one SIP is in place for the same pollutant.

EPA does not agree with this comment. SIPs are legal documents which establish air quality control strategies and measures required for attaining and maintaining the standard. SIPs are developed for more than one Clean Air Act purpose, and each SIP is developed with different planning assumptions and could, thus, generate a different budget as well as potentially address different years. These SIPs and their associated budgets each play a role in an area's attainment strategy and cannot be eliminated simply for convenience in the conformity process. However, there may be some cases where budgets were developed for a Clean Air Act purpose for a year that is no longer applicable for future conformity determinations. Previously established SIPs can only be revised after satisfying applicable Clean Air Act requirements through the SIP process.

EPA believes that there are already mechanisms for clarifying which SIP budgets apply for a given conformity determination. Section 93.118(b) of the conformity rule clarifies which budgets are to be used and under what conditions. In addition, areas should use the interagency consultation process to ensure that § 93.118 is being met and to determine which SIP budgets are applicable for conformity determinations where multiple SIPs are established. For these reasons, EPA believes that no further clarifications or changes to the regulations are necessary.

Donut Areas and Isolated Rural Nonattainment and Maintenance Areas

In this final rule, "donut areas" are defined as geographic areas outside a metropolitan planning area boundary as designated under 23 U.S.C. 134 and 49 U.S.C. 5303, but inside the boundary of a designated nonattainment/maintenance area that contains any part of a metropolitan area(s). "Isolated rural nonattainment and maintenance areas" are defined as any nonattainment or maintenance area that does not contain or is not part of any metropolitan planning area as designated under 23 U.S.C. 134 and 49 U.S.C. 5303. Isolated rural areas do not have metropolitan transportation plans or TIPs required under 23 U.S.C. 134 and 49 U.S.C. 5303 and 5304 and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. EPA notes, however, that some isolated rural areas may also include projects in the statewide transportation plan. Whatever the case, projects in isolated rural areas that are included in both the statewide plan and statewide TIP would be included in regional emissions analyses for the area consistent with § 93.109(l)(2)(i) of the final rule (formerly § 93.109(g)(2)(i)). Emissions analyses for these areas would also include any existing or planned regionally significant non-federal projects in the nonattainment or maintenance area.

EPA is finalizing these definitions to clarify how areas that are designated nonattainment or maintenance, but that are not within the planning boundary of any MPO's jurisdiction, should be considered for conformity purposes. In general, commenters agreed with these definitions. Two commenters, however, raised concerns about the proposed definition of "donut areas." These commenters believed that the phrase "that is dominated by a metropolitan area(s)" that was included in the June 30, 2003 proposal to this final rule was confusing and ambiguous. For example, one commenter stated that this phrase introduces uncertainty about how rural areas that are in a separate nonattainment area, but adjacent to an MPO in a different nonattainment or maintenance area for the same pollutant, would be treated. The commenter claimed that the phrase "is dominated by" raises an unnecessary question about the status of such rural areas, and to address this issue, EPA should revise its definition to more closely follow standard practice.

After consideration of these comments, EPA agrees that the proposed definition for donut areas did not accurately reflect our intentions for how these areas should be defined. Therefore, in this final rule we have replaced the phrase "is dominated by" with the phrase "contains any part of" to clarify our intentions. Historically, EPA has always regarded donut areas as rural areas that are located in a nonattainment or maintenance area that also contains all or part of a metropolitan area. In contrast, isolated rural areas are located in nonattainment or maintenance areas that do not contain any part of a metropolitan area. We believe this simple change to the final rule definition better reflects how donut areas have been defined, in practice, and will ensure that rural areas are appropriately classified under the conformity regulations. EPA believes that a reproposal is not necessary to incorporate this minor change in today's final rule, as this clarification is consistent with EPA's original intentions and stakeholder's understanding of the proposed regulatory definitions.

B. Areas With Insignificant Motor Vehicle Emissions

EPA is finalizing two rule revisions to incorporate our existing insignificance policy in the conformity rule. First, we are adding a new provision, § 93.109(k), which applies to nonattainment and maintenance areas where EPA finds that the SIP's motor vehicle emissions for a pollutant or precursor for a given standard are an insignificant contributor to an area's regional air quality problem. This provision waives the regional emissions analysis requirements in §§ 93.118 and 93.119 for an insignificant pollutant or precursor in these areas upon the effective date of EPA's adequacy finding or approval of such a SIP. In addition, this provision waives the hot-spot requirements in §§ 93.116 and 93.123 in CO and PM_{10} areas if EPA also determines that the SIP demonstrates that potential localized hot-spot emissions are not a concern. Section 93.109(k) also establishes the minimum criteria that are necessary to demonstrate that motor vehicle emissions are insignificant, as described below.

Second, EPA is adding a new § 93.121(c) to the rule to address regionally significant non-federal projects in areas where EPA has found a pollutant or precursor to be regionally insignificant. The new § 93.121(c) allows regionally significant non-federal projects to be approved without being included in a regional emissions analysis for a pollutant or precursor that EPA has found insignificant, since such analyses will no longer be conducted. Sections 93.121(a) and (b) require that the emissions impacts of regionally significant non-federal projects be considered prior to project approval. However, a regional analysis is not required for a pollutant or precursor for a given standard that EPA has found insignificant. Consistent with the new § 93.109(k) for federal projects, the new § 93.121(c) provision allows a non-federal project to be approved, without a regional emissions analysis otherwise required per §§ 93.118 and/or 93.119, for a regionally insignificant pollutant or precursor.

Under this final rule and the existing policy, areas with insignificant regional motor vehicle emissions for a pollutant or precursor are still required to make a conformity determination that satisfies other relevant requirements including: timely implementation of TCMs in an approved SIP, interagency and public consultation, hot-spot requirements including the use of latest planning assumptions and emissions models in CO and PM_{10} areas (if EPA has not made a finding that such emissions are also not a concern), and compliance with SIP control measures in PM_{10} and $PM_{2.5}$ areas. Areas are also required to satisfy the regional emissions analysis requirements in §§ 93.118 and/or 93.119 for pollutants or precursors for which EPA has not made a finding of insignificance. For non-federal regionally significant projects, the requirements in either § 93.121(a) or (b) apply for any other pollutants or precursors for which the area is designated nonattainment or maintenance that are considered significant (*i.e.*, those pollutants or precursors that EPA has not determined to be insignificant at the regional level).

Rationale and Response to Comments

As described in the preamble to the November 5, 2003 proposal, EPA developed the insignificance policy to provide flexibility for areas where motor vehicle emissions had little to no impact on an area's air quality problem. EPA believes that requiring these areas to perform a regional emissions analysis is not necessary to meet Clean Air Act section 176(c) requirements that transportation actions not worsen air quality, since the overall contribution of motor vehicle emissions in these areas is small and thus any significant change in such emissions over time would be unlikely. To date, approximately a dozen areas have taken advantage of the insignificance policy, consisting mainly of PM_{10} areas with air quality problems caused primarily by stationary or area sources. This current universe of areas has not changed significantly since 1993, and we do not anticipate the number of areas that could demonstrate insignificance of regional motor vehicle emissions to substantially increase in the future. Therefore, the final rule waives the regional emissions analysis requirement in these areas without compromising air quality, since state and local resources could then be directed toward reducing emissions from those sources that do contribute the most to an area's air quality problem.

All who commented on insignificance supported incorporating our insignificance policy into the conformity rule. Commenters thought including the policy would help a limited number of areas, and one commenter specifically stated it would reduce burden without endangering air quality. One commenter requested that requirements for federal and non-federal projects be consistent in areas where EPA has found a pollutant or precursor to be insignificant. These requirements are in fact consistent under the final rule as explained above, because no regional emissions analysis is required for either type of project to be approved in these areas.

A few commenters suggested that the insignificance provisions should be expanded to apply with respect to the $PM_{2.5}$ standard. We want to clarify that they in fact do apply for the $PM_{2.5}$ standard. These insignificance provisions could apply to any standard for which conformity is determined, including $PM_{2.5}$.

Furthermore, the new §§ 93.109(k) and 93.121(c) are consistent with the provisions of the rule in §§ 93.102 and 93.119 that address insignificance of pollutants before and after a SIP is submitted. See Section IX. for final rule amendments that address when re-entrained road dust emissions are considered significant for $PM_{2.5}$ analyses.

A few commenters suggested EPA include additional elements in the conformity rule. One commenter, for example, asked that EPA provide a definition of insignificance, and guidance on how such a determination would be made. However, EPA believes that the final rule is sufficient to implement the insignificance provisions in that it incorporates our existing guidance from the proposal to the 1997 rule (July 9, 1996, 61 FR 36118) into § 93.109(k). Rather than a "one-size-fits-all" definition, EPA's existing policy as articulated in this and previous conformity rulemakings and the new § 93.109(k) gives EPA and the states the ability to examine whether motor vehicles are a significant contributor to regional and hot-spot air quality on a case-by-case basis, while still providing a framework for EPA's action. Another commenter suggested that the criteria for determining insignificance be expanded to include an area's impact on downwind areas. EPA does not believe a rule change is necessary to accommodate the concern of this commenter and thus is not changing the final rule in response to this comment. Again, EPA will look at SIPs that claim insignificance on a case-by-case basis consistent with the guidance provided in § 93.109(k), including their effects on downwind areas.

A third commenter expressed concern that motor vehicle emissions could go from insignificant to significant simply because a reduction of emissions from other source sectors results in motor vehicle emissions comprising a greater percentage of the area's total inventory. EPA recognizes that this may occur. Initial inventories and strategies to attain or maintain air quality standards may change over time. Any changes to the significance of motor vehicle emissions must be discussed through interagency consultation in SIP development.

This example also illustrates the reason EPA believes it is important to have flexibility in implementing this provision. Although the commenter specifically mentions 10% as the threshold for finding motor vehicle emissions insignificant, EPA clarifies that this figure is a general guideline only. Depending on the circumstances, we may find that motor vehicle emissions that make up less than 10% of an area's total inventory are still significant. Conversely, we may also find that motor vehicle emissions in excess of 10% are still insignificant, under certain circumstances relating to the overall composition of the air quality situation. In general, the percentage of motor vehicle emissions in the area's total inventory is an important criterion for determining whether motor vehicles are a significant or insignificant contributor to an area's air quality problem, yet there are other criteria that EPA will examine when

making this finding, as described in the regulatory text for § 93.109(k).

Another comment we received on this section was with respect to hot-spot analyses. The commenter suggested that if motor vehicles are found to be an insignificant contributor to regional PM_{10}, then hot-spot analyses should no longer be required in all cases. EPA disagrees with this comment, because a project could still cause a PM_{10} hot-spot even when motor vehicle emissions of PM_{10} are not regionally significant. For example, the projects listed in § 93.127 of the conformity rule are exempt from regional emissions analysis because it is recognized that these projects are unlikely to affect emissions on a regional scale, but the local effects of these projects with respect to CO or PM_{10} concentrations must still be considered to determine if a hot-spot analysis is required.

Finally, we received several comments that insignificance should be addressed during the SIP development process with full opportunity for interagency consultation. EPA agrees with these commenters: as we said in the preamble to the November 5, 2003 proposal, it is appropriate that the claim of insignificance be reviewed via the interagency consultation process during the development of the SIP. If it is determined that regional and/or hot-spot motor vehicle emissions are insignificant, such a finding should be clearly stated and well supported in a SIP that is subsequently submitted to EPA for adequacy review and/or approval. We anticipate that interagency consultation regarding insignificance will occur as a result of the requirement for consultation on the development of the SIP in § 93.105(b) of the conformity rule. Further, the public will have appropriate opportunities to comment on proposed findings of insignificance in the process of both state adoption, EPA SIP approval and adequacy finding of submitted SIPs.

C. Limited Maintenance Plans

EPA is finalizing three rule revisions that would make the conformity rule consistent with EPA's existing limited maintenance plan policies for the 1-hour ozone, CO, and PM_{10} standards. Today's rule revisions also allow for any future limited maintenance plan policies for other standards to be considered in the conformity process. In general, a limited maintenance plan policy allows a nonattainment area with air quality that is significantly below a standard to request redesignation through a more streamlined maintenance plan. EPA received no comments on its proposed conformity revisions for limited maintenance plan areas.

First, EPA is adding a basic definition for "limited maintenance plan" to § 93.101 of the conformity rule. Second, we are including a new paragraph § 93.109(j) that states that a regional emissions analysis is not required to satisfy §§ 93.118 and/or 93.119 for pollutants in areas that have an adequate or approved limited maintenance plan for a given pollutant and standard. However, a conformity determination that meets other applicable criteria, including the hot-spot requirements for projects in CO and PM_{10} nonattainment and maintenance areas, interagency and public consultation, and timely implementation of TCMs in an approved SIP, is still required in these areas. A regional analysis also is required for any other pollutants or standards that otherwise apply but which are not the subject of a limited maintenance plan. The new § 93.109(j) requires a limited maintenance plan recognized under the conformity rule to have demonstrated that it would be unreasonable to expect that an area would experience enough motor vehicle emissions growth to cause a violation. The interagency consultation process should be used to discuss the development of a limited maintenance plan SIP (40 CFR 93.105(b)).

Third, EPA is adding a new provision, § 93.121(c), to clarify when funding and approval for new regionally significant non-federal projects is granted in areas with limited maintenance plans. Consistent with the new § 93.109(j) for federal projects in areas with limited maintenance plans, this provision would not require a regional emissions analysis per §§ 93.118 and/or 93.119 to be satisfied for regionally significant non-federal projects for the pollutant and standard that is addressed by the limited maintenance plan. However, the requirements in either § 93.121(a) or (b) are required to be satisfied for any remaining pollutants or standards that apply in such an area that are not addressed by the limited maintenance plan.

Based on the criteria for approving limited maintenance plans, EPA believes that violations of a standard for a pollutant due to unexpected regional growth would be highly unlikely in limited maintenance plan areas, although hot-spot violations could still occur. Furthermore, EPA considers it a reasonable assumption that motor vehicle emissions in an area that qualifies for a limited maintenance plan could increase to any realistic level during the maintenance period without causing or contributing to a violation of the standard. As a result, the budgets in limited maintenance plans are treated as essentially not constraining for the length of the maintenance period, and EPA believes that the Clean Air Act requirements to not worsen air quality are met presumptively without a regional conformity analysis. While this policy does not exempt an area from the need to determine conformity, it does eliminate the need for the regional emission analysis since EPA would be concluding through our adequacy review or approval of the limited maintenance plan that limits on motor vehicle emissions during the maintenance period are unnecessary, as long as the area maintains the standard.

The revisions to §§ 93.101, 93.109 and 93.121 in this final rule will not have a practical impact on how conformity is demonstrated in areas with applicable limited maintenance plans, as EPA is simply incorporating into the conformity rule our existing policies for these areas. The purpose of these rule revisions is to assist limited maintenance plan areas in their efforts to implement conformity. These revisions would in no way impose additional requirements for limited maintenance plan areas, nor would it eliminate any existing requirements applicable to such areas that could compromise air quality.

For more information on transportation conformity and limited maintenance plans, see the preamble to the July 9, 1996 proposed conformity rule (61 FR 36118) and EPA's existing limited maintenance plan policies, which are available in the docket for this rulemaking as listed in Section I.B.1. For a discussion on EPA's adequacy review of limited maintenance plans, see the preamble to the June 30, 2003 proposal (68 FR 38974).

D. Grace Period for Transportation Modeling and Plan Content Requirements in Certain Ozone and CO Areas

EPA is finalizing three changes to the conformity rule to clarify when more rigorous transportation modeling and plan content requirements apply when circumstances change in certain ozone and CO areas. Today's rule revisions do not make any changes to the existing transportation plan content and modeling requirements.

First, EPA is providing a two-year grace period in § 93.122(c) before the more advanced transportation modeling requirements in § 93.122(b) are required in the following types of nonattainment areas or portions of such areas that are

not already required to meet these provisions:

- Ozone and CO areas that have an urbanized area population over 200,000 and are reclassified to a serious or higher classification (*e.g.*, such a moderate ozone area that is reclassified to serious);
- Serious and above ozone and CO areas in which the urbanized area population increases to over 200,000; and
- Newly designated ozone and CO nonattainment areas that are classified as serious or above in which the urbanized area population is over 200,000.

EPA is clarifying in the final rule that the grace period covers areas or portions of areas that need additional start-up time to meet new requirements, as described further below.

Second, EPA is expanding the types of areas covered by the current rule's grace period for transportation plan content requirements. Under the previous rule, § 93.106(b) provided a two-year grace period before the more specific transportation plan requirements in § 93.106(a) applied in moderate ozone and CO areas that were reclassified to serious and had urbanized populations over 200,000. EPA crafted the rule that way because it believed at the time that only such areas would need additional time to implement the more sophisticated transportation planning requirements. Today's final rule provides that same flexibility to nonattainment areas or portions of areas that are not already required to meet these requirements and are:

- Ozone areas that have an urbanized area population over 200,000 that are reclassified to a serious or higher classification (*e.g.*, such a moderate ozone area that is reclassified to serious),
- Serious and above ozone and CO areas in which the urbanized area population increases to over 200,000; and
- Newly designated ozone and CO nonattainment areas that are classified as serious or above in which the urbanized area population is over 200,000.

EPA is clarifying the final rule so that these types of areas and portions of such areas which will also need time to implement newly applicable planning requirements are explicitly covered by the grace period, as originally intended.

Third, EPA is clarifying in both §§ 93.106(b) and 93.122(c) that the two-year grace periods begins upon either the:

- Effective date of EPA's action that reclassifies an ozone or CO area with an urbanized area population over 200,000, to a serious or higher classification,
- Official notice by the Census Bureau that the urbanized area population is over 200,000, or
- Effective date of EPA's action that initially designates an area as a serious or above ozone or CO nonattainment area.

An example of an official notice by the Census Bureau would be an announcement in the **Federal Register** that the urbanized population in a metropolitan area has increased to over 200,000.

Rationale and Response to Comments

In general, several commenters supported the two-year grace period as proposed, because it will allow additional time to meet new requirements when applicable. EPA is promulgating these rule revisions to provide flexibility as originally intended. For the reasons stated in the November 5, 2003 proposal (68 FR 62717–8), EPA believes the final rule achieves the appropriate flexibility by providing the grace period to all areas or portions of areas that become newly subject to these requirements, but need start-up time because they have not previously been subject to these requirements. In addition, EPA originally intended §§ 93.106 and 93.122 of the conformity rule to work together to provide start-up time when circumstances change, and providing a two-year grace period for both the plan content and modeling requirements achieves this goal.

EPA is clarifying that the grace period will apply in portions of nonattainment areas, rather than entire areas, that are newly affected and are then required to meet the more rigorous requirements. For example, if a serious 8-hour nonattainment area is designated and includes additional counties to those within the previous serious 1-hour nonattainment area, the grace period would only apply to those additional counties.

In addition, the final rule clarifies how the grace period applies in newly designated 8-hour ozone nonattainment areas, or portions of such areas, that are initially classified as serious or above with an urbanized area population over 200,000, and that have not previously been subject to §§ 93.106(a) and 93.122(b) requirements. EPA believes that it has good cause to finalize a grace period for these newly designated areas, even though the proposal did not specifically propose to provide the grace period to such areas. EPA intended the grace period to apply to these newly designated areas as well, since it is reasonable that such an area, or portion of such an area, would also need additional time to specify its networks and gather additional data to develop a more specific plan and conduct more advanced transportation modeling. Requesting further public comment on this detail is unnecessary, since EPA believes it has already received any comments that would have been submitted on such a minor clarification. Consistent with the intention and spirit of the proposal, EPA has clarified the final regulatory language to provide the grace period in these areas.

One commenter believed that allowing a two-year grace period for the development of regional transportation plans is not reasonable for areas that were already subject to this requirement because they have previously been designated serious or above. An example of this case would be an 8-hour ozone area classified as moderate that was previously classified as serious under the 1-hour ozone standard. The commenter argued that Clean Air Act section 176(c)(6) requires that these areas continue to be subject to the requirements that applied under the "preexisting" air quality standard.

EPA agrees with the commenter that areas that were previously subject to more rigorous transportation plan content and modeling requirements should continue to meet them. EPA did not intend to change this aspect of the existing rule with the proposal. Sections 93.106(c) and 93.122(d) (formerly § 93.122(c)) already require that if it had been the previous practice of MPOs to meet these requirements, they must continue to do so. In response, EPA has revised the final rule language to clarify that the grace period does not apply to those areas, or portions of such areas, that are already required to meet these requirements for an existing NAAQS.

Another commenter supported EPA's proposal, but noted that some transportation legislative proposals may change the transportation plan and TIP update intervals. This commenter suggested that EPA synchronize the grace period with the plan and TIP update periods to reduce the overall workload for planning agencies.

EPA recognizes that Congress is currently considering various proposals for surface transportation reauthorization, which may amend transportation planning and/or transportation conformity provisions. However, EPA cannot promulgate regulations now against possible future statutory changes. We must promulgate regulations in light of the current law.

If changes to the transportation planning and conformity processes are passed into law, and those changes necessitate a regulatory change, EPA will propose and promulgate appropriate amendments to the rule at that time.

In a similar light, a few other commenters stated that they opposed EPA's proposal because they believed that the grace period should be aligned with the transportation plan 3-year update cycle. They believed that such a grace period would be more adequate.

EPA did not propose to change the length of the grace period, which was originally finalized as part of the November 24, 1993 conformity rule (58 FR 62188). EPA continues to believe that two years is an adequate time to meet applicable requirements. EPA must balance the benefits achieved by meeting the plan and modeling requirements, with the time needed to specify networks and perform the other data and collection activities necessary to develop network models and specific plans. See the preamble in the proposal for that rulemaking (January 11, 1993, 58 FR 3776) for a discussion on the length of the two-year grace period. EPA continues to believe that a two-year period is an appropriate time span to accommodate these dual goals.

EPA also intends to provide a full two-year grace period in all cases. The commenters' suggestion would result in a shorter grace period in cases where an area is covered by the new regulation in the middle of the plan update cycle. For example, suppose an area updates its plan in 2009, and receives official notice in 2011 from the Census Bureau that its population has increased above 200,000, based on the 2010 census. Under commenters' suggestion that the grace period correspond to the plan update cycle, this area would have only one year to implement the transportation plan content and modeling requirements because its plan update and conformity determination, required every three years, would be due in 2012. EPA does not believe this would provide sufficient time for such an area to implement the plan content and modeling requirements.

In cases of areas increasing in population, several commenters believed that the grace period should begin when DOT notifies an area of the change in population, rather than upon the Census Bureau's official notification in the **Federal Register**. They believed that such a change would allow for a more stable planning process and a more reliable start to the grace period.

EPA disagrees with this approach for the following reasons. First, DOT does not issue formal notifications for all urbanized area definitions and changes. This is a Census Bureau function, and only the Census Bureau issues these notices. Although DOT issues a formal notice on the designation of transportation management areas (TMAs), this notification does not necessarily mean that the transportation plan content and modeling requirements in the conformity rule apply. Although most TMAs correspond to urbanized areas over 200,000 in population, DOT may also designate TMAs for certain areas under 200,000 population, at the request of the Governor of a State. As described above, the current rule is based on urbanized area population, rather than TMA status. Therefore, changing the plan and modeling requirements to align with TMA designations may unintentionally apply these requirements to additional areas. Therefore, EPA is finalizing the rule as proposed, utilizing the Census Bureau's notification as the starting date for the grace period.

Finally, one commenter who also supported the proposal requested further information regarding the selection of 200,000 as the threshold population. The 200,000 population threshold was finalized as part of the August 15, 1997 conformity rule (62 FR 43780). The preamble in the proposal for that rulemaking (July 9, 1996, 61 FR 36122) discussed EPA's rationale to limiting these requirements to areas with urbanized area populations over 200,000. In general, EPA chose the 200,000 population level because it is also the population level used to delineate transportation management areas (TMAs), and because this limitation would ensure that smaller urban or rural areas would not be subject to more rigorous network modeling procedures and methods. EPA continues to believe that the 200,000 level in urbanized areas is appropriate for the plan content and modeling requirements. EPA did not propose any changes to the 200,000 urbanized population level in this rulemaking, and this final rule does not amend this threshold established in the 1997 rulemaking.

E. Minor Clarification to the List of PM_{10} Precursors

Today's final rule clarifies the list of PM_{10} precursors in §§ 93.102(b)(2)(iii) and 93.119(f)(5) of the conformity rule. Under the revised § 93.102(b)(2)(iii), only VOC and NO_X are identified as PM_{10} precursors; *i.e.*, PM_{10} is deleted from the list of PM_{10} precursors in this paragraph. We are finalizing this clarification because § 93.102(b)(1) already requires that direct PM_{10} emissions be addressed in conformity analyses in PM_{10} nonattainment and maintenance areas. Therefore, inclusion of direct PM_{10} as a PM_{10} precursor in § 93.102(b)(2)(iii) is duplicative.

The revisions to § 93.119(f)(5) provide consistency with other pollutants and precursors discussed in this paragraph. Neither of these rule changes will affect conformity determinations in PM_{10} nonattainment and maintenance areas.

EPA received two comments on this clarification to the rule. Both commenters supported the change because it eliminates a source of confusion in the rule's references to PM_{10} and clarifies the requirements of the rule. One of these commenters requested that EPA further clarify a number of additional terms. EPA does not agree that further changes to the rule are required, since these terms are not used in the proposal for this final rule. Please see a more detailed response in the response-to-comments document for this rulemaking in our docket.

F. Clarification of Requirements for Non-Federal Projects in Isolated Rural Areas

EPA is finalizing a minor clarification to § 93.121(b)(1) of the conformity rule that addresses the conformity requirements for non-federal projects in isolated rural nonattainment and maintenance areas. Specifically, the final rule requires a regionally significant non-federal project to be included in the regional emissions analysis of the most recent conformity determination "that reflects" the portion of the statewide transportation plan and statewide transportation improvement program (STIP) which includes projects planned for the isolated rural nonattainment or maintenance area before the projects can be approved.

Today's revision to 93.121(b)(1) is intended to clarify that conformity determinations in isolated rural nonattainment and maintenance areas should not be "for" the statewide transportation plan or STIP, as written in the previous rule. In the proposal for the original 1993 conformity rule, we explained that "STIPs are not TIPs as the latter term is meant in Clean Air Act section 176(c), and that conformity therefore does not apply to [STIPs] directly" (January 11, 1993, 58 FR 62206). However, isolated rural areas do not develop metropolitan transportation plans and TIPs per DOT's planning regulations. Instead, conformity determinations in isolated rural nonattainment and maintenance areas should include those existing and planned projects that are within the area and that are reflected in the statewide

transportation plan and STIP, as well as any other regionally significant projects. This rule change simply clarifies the conformity requirements for isolated rural nonattainment and maintenance areas and should not have a practical impact on how conformity is demonstrated in these areas.

EPA received one comment on this clarification to the rule. The commenter stated that as written the rule would allow regionally significant non-federal projects to be approved even if the most recent conformity determination for a plan and TIP was not approved. The commenter also indicated that EPA must change the rule to require that such approvals only occur when non-federal projects are included in a conformity determination for a conforming plan and TIP.

EPA agrees that regionally significant non-federal projects in isolated rural areas can only be approved if they have been included in a regional emissions analysis supporting the most recent conformity determination for the nonattainment or maintenance area or if they have been included in a regional emissions analysis showing that the area would continue to conform consistent with the requirements of §§ 93.118 and/or 93.119 for projects not from a conforming transportation plan and TIP. We agree that the term "most recent conformity determination" refers to the most recent conformity determination that has been made by U.S. DOT. However, we do not agree that the rule needs to be revised to address the commenter's concern that a regionally significant non-federal project could be approved even if the most recent conformity determination has not been approved. EPA promulgated this part of the regulatory text for isolated rural areas in 1997, and EPA did not propose a change through this rulemaking. EPA understands that in practice, areas have always interpreted this provision to refer to approved conformity determinations. Therefore, we believe that the regulated community understands that "most recent conformity determination" applies to the most recent approved determination since we are not aware that language in the rule has resulted in any issues or problems.

The commenter also asserted that non-federal projects can only be approved if they are included in a conformity determination for a conforming TIP and plan. We disagree with the commenter's assertion as it pertains to the approval of regionally significant non-federal projects in isolated rural areas. Isolated rural areas are not required to prepare TIPs and plans. Only metropolitan areas are required to prepare these documents. Therefore, regionally significant non-federal projects in isolated rural projects may be approved as long as they meet the requirements of § 93.121(b)(1) or (2), which are described above. That is, although emissions from the project would be included in emissions analyses, the projects themselves would not require conformity determinations.

G. Use of Adequate and Approved Budgets in Conformity

As described in the June 30, 2003 and November 5, 2003 proposals to this final rule, EPA proposed to clarify in § 93.109 for each criteria pollutant and standard that the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after any one of the following:

- The effective date of EPA's finding that a motor vehicle emissions budget in a submitted SIP is adequate,
- The publication date of EPA's approval of such a budget in the **Federal Register**, or
- The effective date of EPA's approval of such a budget in the **Federal Register**, if the approval is completed through direct final rulemaking.

Under this final rule change, the budget would be used in any conformity determination conducted after the first time one of these three EPA actions occurs. See Section XV. for further information.

H. Budget Test Requirements for the Attainment Year

In this final rule, EPA is clarifying how § 93.118(b) and (d) should be implemented when a budget is established for a year prior to the attainment year (*e.g.*, a reasonable further progress budget). Specifically, we are amending § 93.118(b) so that once an area has any control strategy SIP budget available for conformity purposes, conformity must be demonstrated using the "budget test" for the attainment year if the attainment year is within the time frame of the transportation plan. EPA believes that it is always appropriate to conduct a budget test for the attainment year if it is within the time frame of the transportation plan and an applicable control strategy budget is established, as explained in the June 30, 2003 proposal. Areas should use the interagency consultation process to determine the appropriate years for which the budget test must be performed. EPA received no comments on this proposed revision to the conformity rule.

I. Budget Test Requirements Once a Maintenance Plan Is Submitted

EPA is also finalizing two minor changes to § 93.118(b)(2) to clarify which budgets apply when an area has both control strategy SIP and maintenance plan budgets. First, EPA is clarifying § 93.118(b)(2)(iii) so that when a maintenance plan has been submitted, the budget test is also completed for a submitted adequate control strategy SIP budget that is established for any year within the time frame of the transportation plan. The previous § 93.118(b)(2)(iii) explicitly required areas with submitted maintenance plans to show consistency only to approved control strategy SIPs, but not adequate control strategy SIPs. Today's action will ensure that new transportation plans and TIPs conform to all adequate and approved budgets that are established for years within the time frame of the transportation plan.

Second, we are adding § 93.118(b)(2)(iv) to clarify that the budget(s) established for the most recent prior year must be used for any analysis years that are selected before the last year of the maintenance plan to meet the requirements of § 93.118(d)(2). The previous conformity rule did not explicitly cover the situation where an analysis year is selected before the last year of the maintenance plan. The final rule provides consistency between the budget test requirements for control strategy SIPs and maintenance plans, since today's § 93.118(b)(2) language for maintenance plans mirrors language that already exists in § 93.118(b)(1) for control strategy SIPs. If an area analyzes a year for which no applicable budgets exist (*e.g.*, an intermediate year between an area's attainment year and the first maintenance budget year), the area should always use the most recent prior adequate or approved budget to demonstrate conformity. This rationale also applies in areas that are submitting their second required 10-year maintenance plan.

EPA received several comments requesting further clarification of our proposed revisions to § 93.118(b)(2). First, one commenter believed that the addition of § 93.118(b)(2)(iv) that requires conformity to prior budgets preempted the requirements for a qualitative finding under § 93.118(b)(2)(i). This commenter asked that the preamble explain under what circumstances a qualitative finding would be appropriate.

Section 93.118(b)(2)(i) states that when a maintenance plan is submitted that does not establish budgets for any years other than the last year of the

maintenance plan, a qualitative finding must be made to ensure that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. In our July 9, 1996 proposal, we stated our conclusion that a "qualitative finding is necessary if the budget only addresses the last year of the maintenance plan, because the budget test alone is not sufficient to determine, as required by the Clean Air Act, that the transportation action will not cause a new violation. The emissions impacts in the initial ten years of the maintenance plan must be considered in some manner in order to determine conformity."

EPA still believes that a qualitative finding is necessary in all cases where a maintenance plan establishes budgets only for the last year of the 10-year maintenance period. However, we also believe that a regional emissions analysis and budget test using a previously established budget for a year prior to the last year of a maintenance plan, pursuant to § 93.118(b)(2)(iv), may fulfill the requirement for a qualitative finding in certain cases where the analysis is done for a year early in the term of the maintenance plan. Areas should use the interagency consultation process to determine the specific basis and necessary level of analysis to meet the qualitative finding requirement under § 93.118(b)(2)(i) as described in the June 1996 rulemaking.

Another commenter stated that the proposed revisions to § 93.118(b)(2) do not clearly reflect their understanding that a budget established for a year beyond the time frame of a SIP (*i.e.*, an "outyear" budget) may be greater than the budgets established for a reasonable further progress, attainment or maintenance year. This commenter appears to have misinterpreted § 93.118(b)(2)(iii) and (iv), as EPA did not intend for these provisions to mean that budgets established for any years within the time frame of the transportation plan (*e.g.*, outyear budgets) must be less than or equal to a control strategy or maintenance plan budget. EPA intended for the phrase "emissions * * * must be less than or equal" to refer to the emissions projected from planned and existing transportation activities in a specific analysis year for the conformity analysis that would be compared to an applicable control strategy or maintenance plan budget. EPA agrees that budgets apply only for the year they are established and for any future analysis years up until the next future budget year. Areas may submit larger budgets for outyears so long as they demonstrate that the SIP continues to provide for attainment or maintenance of the relevant air quality standard in those years.

Finally, one commenter requested that EPA clarify the regional emissions analysis requirements in § 93.118(b) and (d) so that conformity to the applicable motor vehicle emissions budgets will continue to be affirmatively demonstrated during each of the years between budget years and not just for years in which the budget test is required. The commenter suggested that if regional emissions analyses are conducted for a budget year and a subsequent year during the time frame of the transportation plan, and both analyses are consistent with the SIP, then emissions in intervening years can be assumed to conform. However, if such analyses are not conducted and shown to conform in this manner (*e.g.*, when the first analysis year is chosen for a year some time after the first applicable budget), the commenter believed a more targeted analysis is required to ensure conformity in intervening years. By not addressing this alleged deficiency in the rule, the commenter believed that EPA has failed to include the clarification in § 93.118(b) and (d) most needed to serve the purposes of the Clean Air Act.

EPA disagrees with this commenter and believes that the current rule's budget test and regional emissions analysis requirements in § 93.118(b) and (d) are adequate for ensuring that transportation plans, programs and projects meet the conformity requirements of the Clean Air Act. Clean Air Act section 176(c) specifically requires emissions from transportation activities to be consistent with the motor vehicle emissions limits established in the SIP. However, the Clean Air Act is ambiguous about the specific time frame or years in which emissions tests or analyses must be conducted. In the 1993 conformity rule (58 FR 62188), EPA concluded as a legal matter that a demonstration of conformity for specific budget test years reasonably spaced over the time frame of the transportation plan is sufficient for meeting the Clean Air Act requirements and ensuring that emissions from transportation activities do not cause violations, worsen existing violations or delay timely attainment of the air quality standards.

Furthermore, conducting conformity determinations and regional emissions analyses in accordance with the current rule's requirements demands a significant amount of time and state and local resources. EPA believes it would be impractical and overly burdensome to require MPOs and state DOTs to conduct a budget test and regional emissions analysis for additional years within the time frame of a 20-year transportation plan than are already required. Based on EPA's interpretation of the Clean Air Act since 1993, we believe that the current rule's budget test and emissions analysis year requirements are consistent with the statute, reasonable to implement, and protective of public health. Moreover, EPA did not propose to alter this interpretation and thus, has not re-opened this aspect of the conformity rule in this rulemaking.

J. Exempt Projects

Finally, we are making a minor revision to the list of exempt projects in § 93.126 of the conformity rule. On December 21, 1999, DOT published a rule revision to its right-of-way regulation (64 FR 71284) that changed the citation for emergency or hardship advance land acquisitions (revised citation: 23 CFR 710.503) — activities that are currently exempt from the conformity process. As a result, we are revising § 93.126 to make the conformity rule fully consistent with DOT's December 1999 rulemaking. This proposed revision in no way expands or reduces the types of land acquisitions that are exempt from transportation conformity; it merely updates the conformity rule's reference to be consistent with DOT's regulations.

Commenters supported EPA's proposal to make the conformity regulations consistent with DOT's right-of-way regulations. However, one commenter asked EPA to broaden its revisions to the conformity rule's list of exempt projects. This commenter believed that the current list of exempt projects does not fully reflect all the types of projects that should be exempt from conformity, given the progress over the last decade in understanding the real-world air quality impacts of different types of transportation projects.

EPA did not propose amendments or clarifications to the list of exempt projects in §§ 93.126, 93.127 and 93.128, and therefore, cannot address the changes this commenter has suggested. Areas should use the interagency consultation process, including consultation with EPA, FHWA and FTA, to determine which projects in the area's transportation plan and TIP should be considered exempt under §§ 93.126, 93.127 and 93.128 of the rule.

XXIV. Comments Not Related to Rulemaking

Several commenters offered suggestions or raised concerns about aspects of the transportation conformity program that are not germane to this specific rulemaking. These aspects included the process for revising outyear SIP budgets; implementation of EPA and DOT's April 9, 2000 Memorandum of Understanding; reauthorization of the Surface Transportation Act, currently entitled Transportation Equity Act for the 21st Century (or TEA–21), and other topics. These comments do not affect whether EPA should proceed with this final action. Because these comments are not germane to this action, EPA has not responded substantively to them.

In addition, two commenters urged EPA to publish the entire conformity regulatory text when we issued today's final rule. These commenters stated that publication of the entire rule would make the regulation easier to understand and implement. In response to this comment, EPA will provide a complete version of the conformity regulations that includes today's final rule on our transportation conformity website listed in Section I.B.2. of this notice. Individuals can also obtain a copy of the conformity regulations that incorporate today's rule amendments from the next codification of the *U.S. Code of Federal Regulations* after this final rule is published in the **Federal Register**. A complete response to comments document is in the docket for this rulemaking. See Section I.B.2. of this final rule for more information regarding the relevant dockets and how to access additional information associated with this final rule.

XXV. How Does Today's Final Rule Affect Conformity SIPs?

Clean Air Act section 176(c)(4)(C) currently requires states to submit revisions to their SIPs to reflect all of the federal criteria and procedures for determining conformity. States can choose to develop conformity SIPs as a memorandum of understanding (MOU), memorandum of agreement (MOA), or state rule. However, a state must have and use its authority to make an MOU or MOA enforceable as a matter of state law, if such mechanisms are used. Section 51.390(b) of the conformity rule specifies that after EPA approves any conformity SIP revision, the federal conformity rule no longer governs conformity determinations (for the sections of the federal conformity rule that are covered by the approved conformity SIP).

EPA would like to clarify when provisions of today's final rule apply in nonattainment and maintenance areas with and without EPA-approved conformity SIPs:

- All provisions relating to the new standards apply immediately in all nonattainment and maintenance areas upon the effective date of today's action because no prior conformity rules (or approved conformity SIPs) address these new standard requirements.
- All amendments that address provisions directly impacted by the March 2, 1999 court decision apply immediately in all nonattainment and maintenance areas upon the effective date of today's action. Although some areas have conformity SIPs that were approved prior to March 1999, provisions included in these SIPs that the court subsequently remanded to EPA for further rulemaking are no longer enforceable by law. As a result, all areas, including those with a previously approved conformity SIPs, have been operating under EPA and DOT's guidance that implements the court decision and will be governed by the relevant court-related provisions of today's action when they become effective.
- In some areas, EPA has already approved conformity SIPs that include other provisions from previous conformity rulemakings that EPA is revising in this final rule. In these areas, the Clean Air Act prohibits today's federal rule amendments that are not a direct result of the March 1999 court decision or specifically related to the new standards (*e.g.*, streamlining the frequency of conformity determinations; revision to the latest planning assumptions requirement) from superceding the previously approved state rules. Therefore, these specific rule amendments will be effective in areas with approved conformity SIPs that include related rule provisions only when the state includes them in a SIP revision and EPA approves that SIP revision. EPA has no authority to disregard this statutory requirement for those portions of today's final rule.
- Areas without any approved conformity SIPs will be able to use immediately all of the conformity amendments that are included in today's final rule.

EPA will provide further guidance on when sections of the conformity rule can be used in the conformity process in areas with approved conformity SIPs to assist states in implementing these provisions. This guidance will be posted on EPA's transportation conformity Web site listed in Section I.B.2. of today's final rule.

One commenter did not agree that areas with approved conformity SIPs should have to revise their SIP before provisions of the final rule become effective. The commenter argued that this requirement penalizes areas with approved conformity SIPs and poses an undue burden on these areas to develop and gain EPA's approval of a SIP revision.

EPA believes that this commenter misunderstood the proposal which stated that amendments that address specific conformity requirements for the new standards can be used by all areas upon the effective date of today's final rule, whether or not an area currently has an approved conformity SIP addressing pre-existing standards. This is possible since specific conformity requirements for the new standards should not be included in any currently approved conformity SIPs.

However, amendments in today's final rule that are for sections of the federal rule that are not specifically related to the new standards and that are not affected by a March 1999 court decision finding certain provisions illegal become effective in states with approved conformity SIPs only when the state includes the amended section in a conformity SIP revision and EPA approves that SIP revision. This is because such provisions of the federal rule that are being changed no longer apply directly in states with approved conformity SIPs covering those provisions. EPA will work with states to approve such revisions as expeditiously as possible through flexible administrative techniques, such as parallel processing or direct final rulemaking. EPA's further guidance, as described above, will assist in conformity SIP revisions for today's final rule.

This same commenter supported a process such as that proposed in the Administration's SAFETEA legislation that would streamline the conformity SIP requirement so that only interagency consultation requirements would need to be included in such SIP revisions. EPA supports this legislation, and if it becomes law, EPA agrees that the conformity SIP requirement will be significantly streamlined without practically affecting the conformity process. However, until such legislation is adopted, EPA is bound by the current Clean Air Act, and § 51.390 of the conformity rule continues to apply for conformity SIP revisions for this final rule.

One commenter requested that EPA coordinate the finalization of the rulemakings that address the new standards and the March 1999 court

decision so that area's will only need to revise their conformity SIPs once. Coordinating the release of the two final rules will assist in using state resources most efficiently and avoid duplication. EPA agrees with this commenter, and recommends that state and local air agencies should address both rulemakings in the same conformity SIP revision, since today's final rule combines the majority of the conformity provisions from the previously separate rulemakings.

XXVI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the 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 result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, 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 entitlements, 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.

Under the terms of Executive Order 12866, it has been determined that amendments in this rule that are related to conformity under the new air quality standards are a "significant regulatory action." As such, this action was submitted to OMB for E.O. 12866 review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements for this final rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and as ICR 2130.02. The information collection requirements are not enforceable until OMB approves them.

Transportation conformity determinations are required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant air quality standards. Transportation conformity applies under EPA's conformity regulations at 40 CFR parts 51.390 and 93 to areas that are designated nonattainment and those redesignated to attainment after 1990 ("maintenance areas" with SIPs developed under Clean Air Act section 175A) for transportation-source criteria pollutants. The Clean Air Act gives EPA the statutory authority to establish the criteria and procedures for determining whether transportation activities conform to the SIP.

Amendments in today's final rule that are related to conformity requirements in existing nonattainment and maintenance areas do not impose any new information collection requirements from EPA that require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* 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 information collection requirements of EPA's existing transportation conformity rule and any revisions in today's action for existing areas are covered under the DOT information collection request (ICR) entitled, "Metropolitan and Statewide Transportation Planning," with the OMB control number of 2132–0529.

EPA provided two opportunities for public comment on the incremental burden estimates for transportation conformity determinations under the new 8-hour ozone and $PM_{2.5}$ standards. First, the November 5, 2003 proposal contained an initial annual burden estimate for conducting conformity determinations of $6,750 and 275 hours for each metropolitan area designated nonattainment for the first time for the 8-hour ozone and $PM_{2.5}$ standards (*e.g.*, areas that have never been subject to transportation conformity for any standard). EPA refined this burden estimate in the ICR that it released for public comment on January 5, 2004 (69 FR 336). As described in the January 2004 ICR (ICR 2130.01), the estimated annual state and local burden for conformity activities in each metropolitan nonattainment area that is expected to incur additional burden under the new ozone and $PM_{2.5}$ standards is estimated at 325 hours/year at a cost of $16,320/year. Additional federal burden associated with conformity for each of these metropolitan nonattainment areas is approximately 127 hours/year at a cost of $6,400/year. Average state and local burden associated with conformity for each isolated rural nonattainment area that incurs new burden under the new standards is 42 hours/year at a cost of $2,111/year. New federal burden associated with each of these areas is calculated to be 10 hours/year at a cost of $503/year.

EPA received comments on both the initial burden estimates provided in the November 5, 2003 proposal and on the revised estimates in the January 2004 ICR. EPA will respond to all of these comments in the final ICR that will be submitted to OMB for approval (ICR 2130.02).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information: adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and, transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When ICR 2130.02 is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires the Agency to conduct a regulatory flexibility analysis of any significant impact a rule will have on a substantial number of small entities. Small entities include small businesses,

small not-for-profit organizations and small government jurisdictions.

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

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

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

EPA has determined that this final rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The primary purpose of this rulemaking is to amend the existing federal conformity regulations to cover areas newly designated nonattainment under the recently promulgated 8-hour ozone and $PM_{2.5}$ air quality standards. Clean Air Act section 176(c)(5) requires the applicability of conformity to such areas as a matter of law one year after nonattainment designations. Thus, although this rule explains how conformity should be conducted, it merely implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year.

This rulemaking also formalizes what the U.S. Court of Appeals for the District of Columbia Circuit has already decided as a legal matter, and that is currently being implemented in practice. Additional rule amendments also addressed in this final rule simply serve to improve the conformity regulation by implementing the rule in a more practicable manner and/or to clarify conformity requirements that already exist. None of these rule amendments impose any additional burdens beyond that already imposed by applicable federal law; thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

E. Executive Order 13132: Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with state and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with state and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met. Also, when EPA transmits a draft rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule, that amends a regulation that is required by statute, will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this final rule merely establishes and revises procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations.

In addition, the U.S. Court of Appeals for the District of Columbia Circuit has determined that projects requiring federal approval and funding are affected when a nonattainment or

maintenance area is unable to demonstrate conformity. Specifically, under Clean Air Act section 176(c) those phases (NEPA approval, right-of-way acquisition, final design, or construction) in a federal project's development that have not received federal approval or funding prior to a conformity lapse cannot be granted approval or funding, and thus proceed during a conformity lapse. Furthermore, the court directed EPA to establish new procedures for determining the adequacy of motor vehicle emissions estimates before such estimates can be used in conformity determinations to comply with Clean Air Act requirements. Similarly, other amendments included in this final rule are the result of either the court's order concerning the proper interpretation of the Clean Air Act and other related administrative matters, or have been proposed simply to make the rule more workable and/or to clarify requirements that already exist under the current conformity regulation.

In summary, this final rule is required primarily by the statutory requirements imposed by the Clean Air Act, and the final rule by itself will not have a substantial impact on states. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule.

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

Executive Order 13175: "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, as the Clean Air Act requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. Specifically, this final rule incorporates into the conformity rule provisions addressing newly designated nonattainment areas subject to conformity requirements under the Act, the court's interpretation of the Act, as well as several other clarifications and improvements, that have no substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Accordingly, the requirements of Executive Order 13175 are not applicable to this rulemaking.

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

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

This final rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and does not involve the consideration of relative environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, "Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

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

This rulemaking does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this final rule.

J. Congressional Review Act

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. The EPA will submit this final 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 final rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on August 2, 2004.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule or action. This action may not be challenged later in proceeding to enforce its requirements. (*See* section 307(b)(2) of the Administrative Procedures Act.)

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Inter governmental relations, Nitrogen Dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: June 14, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is amended as follows:

PART 93—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 93.101 is amended by adding, in alphabetical order, new definitions for "1-hour ozone NAAQS," "8-hour ozone NAAQS," "Donut areas," "Isolated rural nonattainment and maintenance areas," and "Limited maintenance plan," and by revising definitions for "Control strategy implementation plan revision" and "Milestone" to read as follows:

§ 93.101 Definitions.

* * * * *

1-hour ozone NAAQS means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9.

* * * * *

8-hour ozone NAAQS means the 8-hour ozone national ambient air quality standard codified at 40 CFR 50.10.

* * * * *

Control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A), and 189(d); sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment).

* * * * *

Donut areas are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

* * * * *

Isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have Federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas.

* * * * *

Limited maintenance plan is a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

* * * * *

Milestone has the meaning given in CAA sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM_{10} nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

* * * * *

■ 3. Section 93.102 is amended by:
■ a. Revising paragraphs (b)(1), (b)(2) introductory text and (b)(2)(iii);
■ b. Redesignating paragraph (b)(3) as paragraph (b)(4);
■ c. Adding a new paragraph (b)(3);
■ d. Revising paragraph (c); and
■ e. Revising paragraph (d).

The revisions and additions read as follows:

§ 93.102 Applicability.

* * * * *

(b) * * *

(1) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO_2), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}); and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$).

(2) The provisions of this subpart also apply with respect to emissions of the following precursor pollutants:

* * * * *

(iii) VOC and/or NO_X in PM_{10} areas if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of this subpart apply to $PM_{2.5}$ nonattainment and maintenance areas with respect to $PM_{2.5}$ from re-entrained road dust if the EPA Regional Administrator or the director of the State air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

* * * * *

(c) *Limitations.* In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in place at the time of project approval as described in § 93.114, except as provided by § 93.114(b).

(d) *Grace period for new nonattainment areas.* For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM_{10}, $PM_{2.5}$ or NO_2 since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of this subpart shall not apply with respect to that NAAQS for 12 months following the effective date of final designation to nonattainment for each NAAQS for such pollutant.

■ 4. Section 93.104 is amended by:
■ a. Revising the first sentence in paragraph (b)(3);
■ b. Revising the first sentence in paragraph (c)(3), and removing paragraph (c)(4);
■ c. Revising paragraph (d); and
■ d. Removing paragraphs (e)(1) and (e)(4) and redesignating paragraphs (e)(2), (e)(3) and (e)(5) as paragraphs (e)(1), (e)(2) and (e)(3), and by revising newly redesignated paragraphs (e)(2) and (e)(3).

The revisions read as follows:

§ 93.104 Frequency of conformity determinations.

* * * * *

(b) * * *

(3) The MPO and DOT must determine the conformity of the transportation plan (including a new regional emissions analysis) no less frequently than every three years. * * *

(c) * * *

(3) The MPO and DOT must determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every three years. * * *

(d) *Projects.* FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if one of the following occurs: a significant change in the project's design concept and scope; three years elapse since the most recent major step to advance the project; or initiation of a supplemental environmental document for air quality purposes. Major steps include NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; and, construction (including Federal approval of plans, specifications and estimates).

(e) * * *

(2) The effective date of EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget if that budget has not yet been used in a conformity determination prior to approval; and

(3) The effective date of EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget.

■ 5. Section 93.105(c)(1)(vii) is amended by revising the reference "§ 93.109(g)(2)(iii)" to read "§ 93.109(l)(2)(iii)."

■ 6. Section 93.106 is amended by revising paragraph (b) to read as follows:

§ 93.106 Content of transportation plans.

* * * * *

(b) *Two-year grace period for transportation plan requirements in certain ozone and CO areas.* The requirements of paragraph (a) of this section apply to such areas or portions of such areas that have previously not been required to meet these requirements for any existing NAAQS two years from the following:

(1) The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) The official notice by the Census Bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or,

(3) The effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

* * * * *

■ 7. Section 93.109 is amended by:

■ a. Revising the paragraph (b) introductory text;

■ b. In Table 1 of paragraph (b), revising the entry for "§ 93.118 or § 93.119" under "Transportation Plan:" and the entry for "§ 93.118 or § 93.119" under "TIP:", and revising the entry for "§ 93.117" under "Project (From a Conforming Plan and TIP):" and the entries for "§ 93.117" and "§ 93.118 or § 93.119" under "Project (Not From a Conforming Plan and TIP):"

■ c. Revising paragraph (c);

■ d. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (f), (g), (h) and (l);

■ e. Adding new paragraphs (d), (e), (i), (j) and (k);

■ f. Revising newly redesignated paragraphs (f) introductory text, (f)(2), (f)(3) and (f)(4)(i) and (ii);

■ g. Revising newly redesignated paragraphs (g) introductory text, (g)(2), and (g)(3);

■ h. Revising newly redesignated paragraph (h); and

■ i. Revising newly redesignated paragraph (l)(2) introductory text; in newly redesignated paragraph (l)(2)(ii)(B), revising "§ 93.119(d)(2)" to read "§ 93.119(f)(2)" and, in newly redesignated paragraph (l)(2)(iii), revising "paragraph (g)(2)(ii)" and "paragraph (g)(2)(ii)(C)" to read "paragraph (l)(2)(ii)" and "paragraph (l)(2)(ii)(C)", respectively.

The revisions and additions read as follows:

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

* * * * *

(b) Table 1 in this paragraph indicates the criteria and procedures in §§ 93.110 through 93.119 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraphs (c) through (i) of this section explain when the budget, interim emissions, and hot-spot tests are required for each pollutant and NAAQS. Paragraph (j) of this section addresses conformity requirements for areas with approved or adequate limited maintenance plans. Paragraph (k) of this section addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Paragraph (l) of this section addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

TABLE 1.—CONFORMITY CRITERIA

* * * * * * *	
Transportation Plan:	
* * * * * * *	
§ 93.118 and/or § 93.119	Emissions budget and/or Interim emissions.
* * * * * * *	
TIP:	
* * * * * * *	
§ 93.118 and/or § 93.119	Emissions budget and/or Interim emissions.
* * * * * * *	
Project (From a Conforming Plan and TIP):	
* * * * * * *	
§ 93.117	PM_{10} and $PM_{2.5}$ control measures.

TABLE 1.—CONFORMITY CRITERIA—Continued

* * * * * * *	
Project (Not From a Conforming Plan and TIP):	
* * * * * * *	
§ 93.117	PM_{10} and $PM_{2.5}$ control measures.
§ 93.118 and/or § 93.119	Emissions budget and/or Interim emissions.
* * * * * * *	

(c) *1-hour ozone NAAQS nonattainment and maintenance areas.* This paragraph applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (*i.e.*, until the effective date of any revocation of the 1-hour ozone NAAQS for an area). In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In all 1-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 1-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS.

(3) An ozone nonattainment area must satisfy the interim emissions test for NO_X, as required by § 93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_X. The implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan or plan submission contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 1990.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually marginal and below areas) must satisfy one of the following requirements:

(i) The interim emissions tests required by § 93.119; or

(ii) The State shall submit to EPA an implementation plan revision for the 1-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by § 93.118 must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (c)(1) of this section).

(5) Notwithstanding paragraphs (c)(1) and (c)(2) of this section, moderate and above ozone nonattainment areas with three years of clean data for the 1-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 1-hour ozone NAAQS must satisfy one of the following requirements:

(i) The interim emissions tests as required by § 93.119;

(ii) The budget test as required by § 93.118, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 1-hour ozone NAAQS (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 1-hour ozone NAAQS.

(d) *8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area.* This paragraph applies to areas that were never designated nonattainment for the 1-hour ozone NAAQS and areas that were designated nonattainment for the 1-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. This paragraph applies 1 year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to § 93.102(d). In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, part D, subpart 1 areas), the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NO_X, as required by § 93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_X. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan or plan submission contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 2002.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually marginal and certain Clean Air Act, part D, subpart 1 areas) must satisfy one of the following requirements:

(i) The interim emissions tests required by § 93.119; or

(ii) The State shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by § 93.118 must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (d)(1) of this section).

(5) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS must satisfy one of the following requirements:

(i) The interim emissions tests as required by § 93.119;

(ii) The budget test as required by § 93.118, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS (subject to the timing requirements of paragraph (d)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

(e) *8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area.* This provision applies 1 year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to § 93.102(d). In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) Prior to paragraph (e)(1) of this section applying, the following test(s) must be satisfied, subject to the exception in paragraph (e)(2)(v):

(i) If the 8-hour ozone nonattainment area covers the same geographic area as the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by § 93.118 using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission;

(ii) If the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by § 93.118 for either:

(A) The 8-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by § 93.105; or

(B) The 1-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission. If additional emissions reductions are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases, these emissions reductions must come from within the 8-hour nonattainment area;

(iii) If the 8-hour ozone nonattainment area covers a larger geographic area and encompasses the entire 1-hour ozone nonattainment or maintenance area(s):

(A) The budget test as required by § 93.118 for the portion of the 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; and

(B) The interim emissions tests as required by § 93.119 for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state of a multi-state 1-hour nonattainment or maintenance area;

(iv) If the 8-hour ozone nonattainment area partially covers a 1-hour ozone nonattainment or maintenance area(s):

(A) The budget test as required by § 93.118 for the portion of the 8-hour

ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by § 93.105; and

(B) The interim emissions tests as required by § 93.119, when applicable, for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state in a multi-state 1-hour nonattainment or maintenance area.

(v) Notwithstanding paragraphs (e)(2)(i), (ii), (iii), or (iv) of this section, the interim emissions tests as required by § 93.119, where the budget test using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan(s) or implementation plan submission(s) for the relevant area or portion thereof is not the appropriate test and the interim emissions tests are more appropriate to ensure that the transportation plan, TIP, or project not from a conforming plan and TIP will not create new violations, worsen existing violations, or delay timely attainment of the 8-hour ozone standard, as determined through the interagency consultation process required by § 93.105.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NO_X, as required by § 93.119, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_X. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan or plan submission contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 2002. Prior to an adequate or approved NO_X motor vehicle emissions budget in the implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 1990.

(4) Notwithstanding paragraphs (e)(1) and (e)(2) of this section, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS must satisfy one of the following requirements:

(i) The budget test and/or interim emissions tests as required by §§ 93.118 and 93.119 and as described in paragraph (e)(2) of this section;

(ii) The budget test as required by § 93.118, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS (subject to the timing requirements of paragraph (e)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

(f) *CO nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot-spot, budget and/or interim emissions tests are satisfied as described in the following:

* * * * *

(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(3) Except as provided in paragraph (f)(4) of this section, in CO nonattainment areas the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(4) * * *

(i) The interim emissions tests required by § 93.119; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by § 93.118 must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (f)(2) of this section).

(g) *PM_{10} nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in PM_{10} nonattainment and maintenance areas conformity determinations must include a demonstration that the hot-spot, budget and/or interim emissions tests are satisfied as described in the following:

(1) * * *

(2) In PM_{10} nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(3) In PM_{10} nonattainment areas the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made:

(i) If there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy

implementation plan revision or maintenance plan; or

(ii) If the submitted implementation plan revision is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(h) *NO_2 nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in NO_2 nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In NO_2 nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) In NO_2 nonattainment areas the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(i) *$PM_{2.5}$ nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in $PM_{2.5}$ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In $PM_{2.5}$ nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) In $PM_{2.5}$ nonattainment areas the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(j) *Areas with limited maintenance plans.* Notwithstanding the other paragraphs of this section, an area is not required to satisfy the regional emissions analysis for § 93.118 and/or § 93.119 for a given pollutant and NAAQS, if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section is still required, including the hot-spot requirements for projects in CO and PM_{10} areas.

(k) *Areas with insignificant motor vehicle emissions.* Notwithstanding the other paragraphs in this section, an area is not required to satisfy a regional emissions analysis for § 93.118 and/or § 93.119 for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section is still required, including regional emissions analyses for § 93.118 and/or § 93.119 for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO and PM_{10} areas in § 93.116 must also be satisfied, unless EPA determines that the SIP also demonstrates that projects will not create new localized violations and/or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this paragraph would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

(l) * * *

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim emissions tests as described in paragraphs (c) through (k) of this section, with the following modifications:

* * * * *

■ 8. Section 93.110(a) is revised to read as follows:

§ 93.110 Criteria and procedures: Latest planning assumptions.

(a) Except as provided in this paragraph, the conformity determination, with respect to all other applicable criteria in §§ 93.111 through 93.119, must be based upon the most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section using the planning assumptions available at the time the conformity analysis begins as determined through the interagency consultation process required in § 93.105(c)(1)(i). The "time the conformity analysis begins" for a transportation plan or TIP determination is the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan or TIP on travel and/or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through interagency consultation.

* * * * *

■ 9. Section 93.116 is revised to read as follows:

§ 93.116 Criteria and procedures: Localized CO and PM_{10} violations (hot spots).

(a) This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO

or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

(b) This paragraph applies for CO nonattainment areas as described in § 93.109(f)(1). Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

■ 10. Section 93.117 is revised to read as follows:

§ 93.117 Criteria and procedures: Compliance with PM_{10} and $PM_{2.5}$ control measures.

The FHWA/FTA project must comply with any PM_{10} and $PM_{2.5}$ control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM_{10} and $PM_{2.5}$ emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

■ 11. Section 93.118 is amended by:

■ a. Revising the reference "§ 93.109(c) through (g)" in paragraph (a) to read "§ 93.109(c) through (l)";

■ b. Revising paragraphs (b) introductory text and (b)(2)(iii), adding paragraph (b)(2)(iv), and removing the word "and" at the end of paragraph (b)(2)(ii);

■ c. Revising paragraphs (e)(1), (e)(2) and (e)(3); and

■ d. Adding new paragraph (f).

The revisions and additions read as follows:

§ 93.118 Criteria and procedures: Motor vehicle emissions budget.

* * * * *

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the timeframe of the transportation plan), for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

* * * * *

(2) * * *

(iii) If an approved and/or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and

(iv) For any analysis years before the last year of the maintenance plan, emissions must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

* * * * *

(e) * * *

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, and the adequacy finding is effective. However, motor vehicle emissions budgets in submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

(2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emissions tests required by § 93.119 must be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy §§ 93.114 and 93.115, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

* * * * *

(f) *Adequacy review process for implementation plan submissions.* EPA will use the procedure listed in paragraph (f)(1) or (f)(2) of this section to review the adequacy of an implementation plan submission:

(1) When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan,

(i) EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy.

(ii) The public will have a minimum of 30 days to comment on the adequacy of the implementation plan submission. If the complete implementation plan is not accessible electronically through the internet and a copy is requested within 15 days of the date of the website notice, the comment period will be extended for 30 days from the date that a copy of the implementation plan is mailed.

(iii) After the public comment period closes, EPA will inform the State in writing whether EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the State process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under paragraph (f)(2)(iii) of this section.

(iv) EPA will publish a **Federal Register** notice to inform the public of EPA's finding. If EPA finds the submission adequate, the effective date of this finding will be 15 days from the date the notice is published as established in the **Federal Register** notice, unless EPA is taking a final approval action on the SIP as described in paragraph (f)(2)(iii) of this section.

(v) EPA will announce whether the implementation plan submission is

adequate or inadequate for use in transportation conformity on EPA's website. The website will also include EPA's response to comments if any comments were received during the public comment period.

(vi) If after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in paragraphs (f)(1)(i) through (v) or (f)(2) of this section unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission. In all cases where EPA reverses its previous finding to a finding of inadequacy under paragraph (f)(1) of this section, such a finding will become effective immediately upon the date of EPA's letter to the State.

(vii) If after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in paragraphs (f)(1)(i) through (v) or (f)(2) of this section.

(2) When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan,

(i) EPA's **Federal Register** notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy.

(ii) The publication of the notice of proposed rulemaking will start a public comment period of at least 30 days.

(iii) EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in paragraphs (f)(1)(iii) through (v) of this section. If EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of EPA's approval in the **Federal Register**, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking. EPA will respond to comments received directly and review comments submitted through the State process and include the response to comments in the applicable docket.

■ 12. Section 93.119 is amended by:

■ a. Revising the section heading and paragraphs (a) and (b);

■ b. Redesignating paragraphs (c), (d), (e), (f), (g) and (h) as paragraphs (d), (f), (g), (h), (i) and (j);

■ c. Adding new paragraphs (c) and (e);

■ d. Revising newly redesignated paragraphs (d) introductory text and (d)(1);

■ e. Revising newly redesignated paragraph (f)(5), removing the period at the end of newly redesignated paragraph (f)(6) and adding a semicolon in its place, and adding new paragraphs (f)(7) and (f)(8);

■ f. Revising newly redesignated paragraph (g);

■ g. In newly redesignated paragraphs (h) introductory text and (i) introductory text, revising the reference "paragraphs (b) and (c)" to read "paragraphs (b) through (e)"; and,

■ h. In newly redesignated paragraph (j), revising the reference "paragraphs (b) and (c)" to read "paragraphs (b) through (e)".

The revisions and additions read as follows:

§ 93.119 Criteria and procedures: interim emissions in areas without motor vehicle emissions budgets.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must satisfy the interim emissions test(s) as described in § 93.109(c) through (l). This criterion applies to the net effect of the action (transportation plan, TIP, or project not from a conforming plan and TIP) on motor vehicle emissions from the entire transportation system.

(b) *Ozone areas.* The requirements of this paragraph apply to all 1-hour ozone and 8-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met:

(1) In moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (f) of this section:

(i) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(ii) The emissions predicted in the "Action" scenario are lower than:

(A) 1990 emissions by any nonzero amount, in areas for the 1-hour ozone NAAQS as described in § 93.109(c); or

(B) 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as described in § 93.109(d) and (e).

(2) In marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA section 182(b)(1) if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (f) of this section:

(i) The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(ii) The emissions predicted in the "Action" scenario are not greater than:

(A) 1990 emissions, in areas for the 1-hour ozone NAAQS as described in § 93.109(c); or

(B) 2002 emissions, in areas for the 8-hour ozone NAAQS as described in § 93.109(d) and (e).

(c) *CO areas.* This criterion may be met:

(1) In moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas that are subject to CAA section 187(a)(7) if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (f) of this section:

(i) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(ii) The emissions predicted in the "Action" scenario are lower than 1990 emissions by any nonzero amount.

(2) In moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (f) of this section:

(i) The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(ii) The emissions predicted in the "Action" scenario are not greater than 1990 emissions.

(d) *PM_{10} and NO_2 areas.* This criterion may be met in PM_{10} and NO_2 nonattainment areas if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described

in paragraph (f) of this section, one of the following requirements is met:

(1) The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

* * * * *

(e) *$PM_{2.5}$ areas.* This criterion may be met in $PM_{2.5}$ nonattainment areas if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (f) of this section, one of the following requirements is met:

(1) The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) The emissions predicted in the "Action" scenario are not greater than 2002 emissions.

(f) * * *

(5) VOC and/or NO_x in PM_{10} areas if the EPA Regional Administrator or the director of the State air agency has made a finding that one or both of such precursor emissions from within the area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT;

(6) * * *

(7) $PM_{2.5}$ in $PM_{2.5}$ areas; and

(8) Reentrained road dust in $PM_{2.5}$ areas only if the EPA Regional Administrator or the director of the State air agency has made a finding that emissions from reentrained road dust within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT.

(g) *Analysis years.* (1) The regional emissions analysis must be performed for analysis years that are no more than ten years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of the transportation plan's forecast period must also be an analysis year.

(2) For areas using paragraphs (b)(2)(i), (c)(2)(i), (d)(1), and (e)(1) of this section, a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section would not be required for analysis years in which the transportation projects and planning assumptions in the "Action" and "Baseline" scenarios are exactly the same. In such a case, paragraph (a) of this section can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario for such analysis years.

* * * * *

■ 13. Section 93.120 is amended by revising paragraph (a)(2) to read as follows:

§ 93.120 Consequences of control strategy implementation plan failures.

(a) * * *

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming transportation plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to § 93.118 or approves the submission, and conformity to the implementation plan revision is determined.

* * * * *

■ 14. Section 93.121 is amended by:

■ a. Revising paragraph (a)(1), redesignating paragraph (a)(2) as (a)(3), adding a new paragraph (a)(2) and revising newly redesignated paragraph (a)(3);

■ b. Amending paragraph (b) introductory text by removing the reference "§ 93.109(g)" and adding in its place a reference for "§ 93.109(l)", and revising paragraph (b)(1); and

■ c. Adding new paragraph (c).

The revisions and additions read as follows:

§ 93.121 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.

(a) * * *

(1) The project comes from the currently conforming transportation plan and TIP, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;

(2) The project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement) and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or

(3) A new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of §§ 93.118 and/or 93.119 for a project not from a conforming transportation plan and TIP).

(b) * * *

(1) The project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, in nonattainment and maintenance areas subject to § 93.109(j) or (k) for a given pollutant/precursor and NAAQS, no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met for that pollutant/precursor and NAAQS:

(1) The project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or

(2) The project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly.

■ 15. Section 93.122 is amended by:

■ (a) Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e) and (g), respectively;

■ (b) Adding new paragraphs (c) and (f); and

■ (c) Revising newly redesignated paragraphs (g)(1) and (g)(2) introductory text, and adding new paragraph (g)(3).

The revisions and additions read as follows:

§ 93.122 Procedures for determining regional transportation-related emissions.

* * * * *

(c) *Two-year grace period for regional emissions analysis requirements in certain ozone and CO areas.* The requirements of paragraph (b) of this section apply to such areas or portions of such areas that have not previously been required to meet these requirements for any existing NAAQS two years from the following:

(1) The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) The official notice by the Census Bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or,

(3) The effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

* * * * *

(f) *$PM_{2.5}$ from construction-related fugitive dust.* (1) For $PM_{2.5}$ areas in which the implementation plan does not identify construction-related fugitive $PM_{2.5}$ as a significant contributor to the nonattainment problem, the fugitive $PM_{2.5}$ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In $PM_{2.5}$ nonattainment and maintenance areas with implementation plans which identify construction-related fugitive $PM_{2.5}$ as a significant contributor to the nonattainment problem, the regional $PM_{2.5}$ emissions analysis shall consider construction-related fugitive $PM_{2.5}$ and shall account for the level of construction activity, the fugitive $PM_{2.5}$ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(g) * * *

(1) Conformity determinations for a new transportation plan and/or TIP may be demonstrated to satisfy the requirements of §§ 93.118 ("Motor vehicle emissions budget") or 93.119 ("Interim emissions in areas without motor vehicle emissions budgets") without new regional emissions analysis if the previous regional emissions analysis also applies to the new plan and/or TIP. This requires a demonstration that:

(i) The new plan and/or TIP contain all projects which must be started in the plan and TIP's timeframes in order to achieve the highway and transit system envisioned by the transportation plan;

(ii) All plan and TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's and/or TIP's regional emissions at the time of the previous conformity determination;

(iii) The design concept and scope of each regionally significant project in the new plan and/or TIP are not significantly different from that described in the previous transportation plan; and

(iv) The previous regional emissions analysis is consistent with the requirements of §§ 93.118 (including that conformity to all currently applicable budgets is demonstrated) and/or 93.119, as applicable.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of § 93.118 or § 93.119 without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, the previous regional emissions analysis is still consistent with the requirements of § 93.118 (including that conformity to all currently applicable budgets is demonstrated) and/or § 93.119, as applicable, and if the project is either:

* * * * *

(3) A conformity determination that relies on paragraph (g) of this section does not satisfy the frequency requirements of § 93.104(b) or (c).

§ 93.124 [Amended]

■ 16. Section 93.124 is amended by removing paragraph (b) and redesignating paragraphs (c) through (e) as paragraphs (b) through (d).

§ 93.125 [Amended]

■ 17. In § 93.125, paragraph (a) is amended by revising the reference "93.119 ("Emissions reductions in areas without motor vehicle emissions budgets")" to read "93.119 ("Interim emissions in areas without motor vehicle emissions budgets")," and paragraph (d) is amended by revising the phrase "emission reduction requirements of § 93.119" to read "interim emissions requirements of § 93.119."

§ 93.126 [Amended]

■ 18. In § 93.126, Table 2 is amended under the heading "Other" by revising the entry for "Emergency or hardship advance land acquisitions (23 CFR 712.204(d))" to read "Emergency or hardship advance land acquisitions (23 CFR 710.503)."

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July 1, 2004

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Three Threatened Mussels and Eight Endangered Mussels in the Mobile River Basin; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI73

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Three Threatened Mussels and Eight Endangered Mussels in the Mobile River Basin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate 26 river and stream segments (units) in the Mobile River Basin, encompassing a total of approximately 1,760 kilometers (km) (1,093 miles (mi)) of river and stream channels, as critical habitat for three threatened (fine-lined pocketbook, orange-nacre mucket, and Alabama moccasinshell) and eight endangered freshwater mussels (Coosa moccasinshell, ovate clubshell, southern clubshell, dark pigtoe, southern pigtoe, triangular kidneyshell, southern acornshell, and upland combshell), under the Endangered Species Act of 1973, as amended (Act). Critical habitat includes portions of the Tombigbee River drainage in Mississippi and Alabama; portions of the Black Warrior River drainage in Alabama; portions of the Alabama River drainage in Alabama; portions of the Cahaba River drainage in Alabama; portions of the Tallapoosa River drainage in Alabama and Georgia; and portions of the Coosa River drainage in Alabama, Georgia, and Tennessee. We solicited data and comments from the public on all aspects of this designation, including data on economic and other impacts of the designation. This publication also provides notice of the availability of the final economic analysis for this designation.

DATES: This rule is effective August 2, 2004.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Mississippi Ecological Services Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213.

You may obtain copies of the final rule or the economic analysis from the address above, by calling 601/965–4900, or from our Web site at *http://southeast.fws.gov/hotissue.*

If you would like copies of the regulations on listed wildlife or have questions about prohibitions and permits, please contact the appropriate State Ecological Services Field Office: Alabama Field Office, U.S. Fish and Wildlife Service, PO Box 1190, Daphne, AL 36526 (telephone 251–441–5181); Georgia Field Office, USFWS, 247 South Milledge Ave., Athens, GA 30605 (706–613–9493); Mississippi Field Office (*see* **ADDRESSES** section above); Tennessee Field Office, USFWS, 446 Neal Street, Cookeville, TN 38501 (931–528–6481).

FOR FURTHER INFORMATION CONTACT: Paul Hartfield, Mississippi Field Office (telephone 601–321–1125, facsimile 601–965–4340).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 446 or 36 percent of the 1252 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National

Environmental Policy Act (NEPA), all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

This final rule addresses 11 mussels in the family Unionidae that are native to the Mobile River Basin, including the threatened fine-lined pocketbook (*Lampsilis altilis*), orange-nacre mucket (*Lampsilis perovalis*), and Alabama moccasinshell (*Medionidus acutissimus*), and the endangered Coosa moccasinshell (*Medionidus parvulus*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), ovate clubshell (*Pleurobema perovatum*), triangular kidneyshell (*Ptychobranchus greenii*), upland combshell (*Epioblasma metastriata*), and southern acornshell (*Epioblasma othcaloogensis*). It is our intent, in this final rule, to discuss information obtained since the proposed critical habitat designation. Please refer to our proposed critical habitat rule (68 FR 14752, March 26, 2003) for a more detailed discussion of the species' taxonomic history, physical description, and our current understanding of their historic and current range and distribution.

Summary of Factors Affecting the Species

Please refer to our proposed rule (68 FR 14752, March 26, 2003) for a discussion of Factors Affecting the Species for all 11 mussels. We have included here where appropriate only new information for these mussels.

Limited habitat and small population size also render these 11 species vulnerable to competition or predation from nonnative species (Neves *et al.*, 1997). The Asian clam, *Corbicula fluminea*, has invaded all major drainages of the Mobile River Basin, however, little is known of the effects of competitive interaction between Asian clams and native species. Decline and even disappearance of native mussels due to competition with the exotic zebra mussel (*Dreissena polymorpha*) and the quagga mussel (*D. bugensis*) have been documented in the Great Lakes and Mississippi River Basin (Neves *et al.*, 1997). Although zebra and quagga mussels are not currently known to inhabit the Mobile Basin, the Tennessee-Tombigbee Waterway and commercial and recreational boating offer an avenue of introduction. Another potential threat is the black carp (*Mylopharyngodon piceus*), a mollusk-eating Asian fish used to control snails in commercial fish farms. If introduced or established in the Mobile River Basin, the black carp is likely to have a considerable impact on native freshwater mussels and snails (67 FR 49280, July 30, 2002).

Previous Federal Actions

On October 12, 2000, the Southern Appalachian Biodiversity Project filed a lawsuit in U.S. District Court for the Eastern District of Tennessee against the Service, the Director of the Service, and the Secretary of the Department of the Interior, challenging our not determinable findings regarding critical habitat for 9 of the 11 Mobile River Basin listed mussels. On November 8, 2001, the District Court issued an order directing us to make a proposed critical habitat designation for these 11 Mobile River Basin mussels no later than March 17, 2003, and the final designation by March 17, 2004. The District Court later extended our deadline on January 8, 2004 to submit the final rule to the Office of the Federal Register not later than June 17, 2004.

Other Federal actions for these species prior to March 26, 2003, are outlined in our proposed rule to designate critical habitat for 11 Mobile River Basin mussels (68 FR 14752). Publication of the proposed rule opened a 60-day comment period, which closed on June 24, 2003. The comment period was reopened August 14, 2003, through October 14, 2003, in order to receive comments on a draft economic analysis (DEA), and to extend the comment period on the proposed designation to accommodate a public hearing, which was held October 1, 2003, in Birmingham, Alabama (68 FR 48581).

Following closure of the second comment period on October 14, 2003, we became aware that we had not directly notified four of the counties affected by the proposed critical habitat designation, as required under section 4(b)(5) of the Act. We notified the counties and provided them copies of the proposed designation and information on the DEA on December 12, 2003. On January 13, 2004, we reopened the comment period through January 23, 2004, to receive comments from the counties and other interested parties (69 FR 1960).

Summary of Comments and Recommendations

During the open comment periods for the proposed rule (68 FR 14752), public hearing and draft economic analysis (68 FR 48581), and the January 2004 reopening (69 FR 1960), we requested all interested parties to submit comments or information concerning the proposed designation of critical habitat for the 11 mussels. We contacted all appropriate State and Federal agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment. We also published newspaper notices inviting public comment in the following newspapers: The Clarion-Ledger, Jackson, MS; The Commercial Dispatch, Columbus, MS; The Montgomery Advertiser, Montgomery, AL; The Birmingham News, Birmingham, AL; The Clay Times-Journal, Lineville, AL; The Rome News-Tribune, Rome, GA; The Times Georgian, Carolton, GA; The Haralson Gateway Beacon, Bremen, GA; The Douglas County Sentinel, Douglasville, GA; The Cleveland Daily Banner, Cleveland, TN; and The Chattanooga Times Free Press, Chattanooga, TN.

At the public hearing, we received eight oral comments, including three supporting the designation and five opposing it. A transcript of the hearing is available for inspection (*see* **ADDRESSES** section). During the comment periods, we received comments from two State agencies, two counties, four cities, three Federal agencies, one business, 12 groups, and 43 individuals. Of the 90 written comments we received, 37 supported critical habitat designation, 47 opposed designation, and 6 were neutral or provided additional information.

We directly notified and requested comments from all affected States. Georgia Department of Natural Resources submitted comments in support of the designation. The Tombigbee River Valley Water Management District, an agency of the State of Mississippi, opposed designation of units in northeastern Mississippi. The States of Alabama and Tennessee expressed no position.

Peer Review

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we requested the expert opinions of four independent specialists who are recognized authorities on freshwater mussels and the Mobile River Basin regarding pertinent scientific or commercial data and assumptions relating to the supporting biological and ecological information in the proposed designation. The purpose of such review is to ensure that the designation is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and

specialists. All four experts submitted written responses that the proposal included a thorough and accurate review of the available scientific and commercial data on these mussels and their habitats. One peer reviewer supplied several specific edits and additional records. Comments from peer reviewers are included in the summary below and have been incorporated into this final rule.

We reviewed all comments received for substantive issues and new data regarding the mussels and critical habitat, and the draft economic analysis. Written comments and oral statements presented at the public hearing and received during the comment periods are addressed in the following summary. For readers' convenience, we have assigned comments to major issue categories and we have combined similar comments into single comments and responses.

Peer Review Comments

(1) *Comment:* The critical habitat proposal did not outline what actions will be taken or proposed subsequent to critical habitat designation to implement conservation measures in the 26 units.

Response: Conservation measures for these species and their habitats are outlined in the Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service, 2000). Propagation and release protocols for mussels are outlined in the Plan for Controlled Propagation, Augmentation and Reintroduction for Freshwater Mussels and Snails of the Mobile River Basin (U.S. Fish and Wildlife Service, 2003).

(2) *Comment:* There is some taxonomic confusion regarding the ovate clubshell in Units 18 and 25 in the Coosa River drainage.

Response: In the proposed rule, Unit 25 was proposed for designation as currently unoccupied habitat for the ovate clubshell, while Unit 18 was proposed for designation as occupied habitat. There has been some confusion among malacologists over the identity of some collections of small mussel species of the genus *Pleurobema* in the Coosa River drainage. Recent collections have been made of a small species from the Conasauga River (Unit 25) that has been variously identified by researchers as Alabama clubshell (*Pleurobema troschelianum*) or Georgia pigtoe (*P. hanleyanum*), species similar in morphology to the ovate clubshell (*P. perovatum*). Recent collections of mussels referred to as ovate clubshell have also been made in the Coosa River below Weiss Dam (Unit 18). Genetic studies, however, have placed both populations with the Georgia pigtoe, not with the ovate clubshell (Dr. David Campbell, University of Alabama, *in litt.* 2004). The Coosa River drainage is within the historical range of the ovate clubshell, therefore, in this final rule, we are changing Unit 18 from occupied to unoccupied, so both Units 18 and 25 are designated as unoccupied habitat for the ovate clubshell.

(3) *Comment:* The upper boundary of Holly Creek in Unit 25 (confluence of Rock Creek) is incorrectly identified.

Response: The legal description and map of Unit 25, as published in our proposed rule and this final rule, is correct. There are two Rock Creeks in the Holly Creek Drainage. The latitudinal and longitudinal coordinates provided in our regulation are correct to the appropriate Rock Creek confluence.

Public Comments

Issue A: Comments on Adequacy and Extent of Critical Habitat

(4) *Comment:* It is not clear that the amount of habitat proposed is adequate for conservation of the species.

Response: Our analysis identified these 26 critical habitat units as essential to the conservation of the 11 mussel species (see "Analysis Used to Delineate Critical Habitat," below). Based on the best available information, we believe that with special management considerations and protection of these habitats, and the development of appropriate species management technology, protocols, and information, these 11 species can be conserved within these 26 critical habitat units.

(5) *Comment:* Threatened mussels will receive more critical habitat than the endangered species. This tends to protect threatened species more than endangered species.

Response: The disparity in quantity of critical habitat proposed for the individual species is an artifact of the mussel species' historical distributions, their habitats, and their status. For example, all three threatened species historically occurred in a wider variety of habitats (*e.g.*, small headwater streams to large rivers) than most of the endangered species. Therefore, there is more habitat available for their conservation over a wider area. In contrast, the endangered dark pigtoe was restricted to small rivers and large streams in only the Black Warrior River drainage. For several of the other endangered species, a larger proportion of their historic habitats have been rendered unsuitable by impoundment, pollution, etc. Both endangered and threatened species receive the same protection under the Act.

(6) *Comment:* Designation of critical habitat should encompass areas in need of significant restoration and structural change (*e.g.*, impounded reaches), not just those relatively far from the hydrologic control systems. Areas without constituent elements, but with potential of restoration, should be included in the designation.

Response: The Endangered Species Act does not allow us to designate areas that do not now have one or more of the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species. Areas proposed for designation as critical habitat must have one or more primary constituent elements, and the areas must be essential to their conservation (*see* "Critical Habitat," below). Constituent elements required by riverine mussel species are typically no longer present in impounded reaches (*e.g.*, flow, water quality, substrate, host fishes, etc.). In addition, while dams and their impounded waters are not permanent structures from a geological perspective, large hydropower or navigation dams impounding extensive areas and supporting a complex economic infrastructure are unlikely to be removed within the foreseeable future.

(7) *Comment:* The map of the proposed critical habitat designation is a textbook design of fragmentation. The proposed designation fails to allow for reestablishment and recovery by only including areas where the species are currently found and ignoring the larger historical range.

Response: The Mobile River Basin is an example of endangerment and extinction due to habitat fragmentation and population isolation (*see* the Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service, 2000)). We considered the past and future effects of habitat fragmentation on the historical range of all 11 species (*see* "Factors Affecting the Species" in the proposed rule, and "Analysis Used to Delineate Critical Habitat" below), and have designated unoccupied habitat for all 11 species (and for all but one unit occupied by at least one other mussel) to allow for their reestablishment and conservation.

(8) *Comment:* The Service should designate areas upstream from occupied areas and stream side buffers to protect the species.

Response: Critical habitat designations have relevance to section 7 consultations, which apply solely to Federal actions. When evaluating the effects of any Federal action subject to

a section 7 consultation, activities upstream or along the margin of a designated area must be considered for adverse impacts to critical habitat. Therefore, specific designation of areas above or adjacent to stream channel critical habitats are unnecessary. Identification of the stream channel as critical habitat will provide notice to Federal agencies to review activities conducted within the drainage on their potential effects to the channel, and will alert third parties of the importance of the area to the survival of the species.

(9) *Comment:* A habitat focused Population Viability Analysis (PVA) should be conducted to identify areas where habitat restoration should occur.

Response: A great deal of information is necessary before a meaningful PVA can be conducted for a species, *e.g.*, life history, mortality rates, demographics, habitat, and interactions with other species. Most of this information is unavailable for these 11 mussels and we are unable to conduct a meaningful PVA at this time. We will continue to conduct and support research to develop this information on these mussel species.

(10) *Comment:* Mussels require a fish host for juvenile survival and recruitment. Therefore, the range of fish hosts must be considered in the designation.

Response: Information on fish hosts has been considered in this designation (*see* "Analysis Used to Delineate Critical Habitat," below). All of the critical habitat units are within the historic range of the host fishes that have been identified for these mussels, and are known or believed to currently support the host fish for one or more of the mussel species for which they are designated.

(11) *Comment:* The Service failed to demonstrate that areas currently occupied by the mussels are inadequate for their conservation, or that the proposed units are indispensable and absolutely necessary for species' conservation.

Response: The administrative record demonstrates that areas currently occupied by the mussels are inadequate for their conservation. Our final rule listing these species under the Act (58 FR 14330) identified loss of habitat as a primary factor in their status. Our proposed designation (*see* "Factors Affecting the Species") and this final designation (*see* "Analysis Used to Delineate Critical Habitat," below) as well as the Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000) note that recovery of the 11 mussels in the near future is unlikely due to the extent of their decline and the degree of fragmentation and isolation of their habitats. We have designated habitat units 1–25, which are currently occupied by one or more of the 11 mussels, because they are essential for the conservation of the species. However, although each of these units supports small populations of one or more of the 11 species, they are isolated from each other, and are subject to future chance catastrophic events and to changes in human activities and land use practices that may result in the elimination. Therefore, it is essential to identify all opportunities to conserve these mussels. Opportunities for expanding the range of these species outside of currently occupied areas are limited due to the degree of habitat alteration that has occurred in the Basin. Unit 26 represents a rare opportunity in the Basin for extending the range of 9 of the 11 species (see "Analysis Used to Delineate Critical Habitat," above), an action identified as necessary for the recovery of the species. Areas designated as critical habitat have one or more primary constituent elements, and are essential to the conservation of the 11 mussels.

Issue B: Procedural and Legal Comments

(12) *Comment:* Landowners have not been contacted and given the opportunity to respond to the proposed designation. Most landowners and the people of Alabama did not know of the comment deadline, therefore, the comment period should be extended.

Response: When we issue a proposed rule, we want to ensure widespread knowledge and opportunity for the public to comment, particularly among those who may be potentially affected by the action. The proposed designation covered portions of four states; therefore, it was impossible to personally contact all landowners in the area. We attempted to ensure that as many people as possible would be aware of the proposed designation through press releases to all major media in the affected area, including those in State capitols and major cities, publication of newspaper notices, and direct notification of affected State and Federal agencies, environmental groups, major industries, State Governors, Federal and State elected officials, and County Commissions (*see* "Previous Federal Actions," above). We repeated this process upon availability of the draft economic analysis and for the October 1, 2003, public hearing. In January 2004, we reopened the comment period a third time to ensure that all would have the opportunity to comment on the proposed designation and draft economic analysis. We have complied with or exceeded all of the notification requirements of the Act.

(13) *Comment:* The Service did not comply with the National Environmental Policy Act (NEPA). Under NEPA, the magnitude of economic impacts requires preparation of an Environmental Impact Statement.

Response: Environmental assessments and environmental impact statements, as defined under NEPA, are not required for regulations enacted under section 4 of the Act (*see* 48 FR 49244).

(14) *Comment:* The Service has no delegated authority to designate, regulate, or confiscate anything on private land.

Response: The Service is required when prudent to designate critical habitat under the Endangered Species Act. Critical habitat designation does not regulate private actions on private lands or confiscate private property. It does not affect individuals, organizations, States, local governments or other non-Federal entities that do not require Federal permits or funding.

(15) *Comment:* The proposed designation of critical habitat is unconstitutional.

Response: The constitutionality of the Act in authorizing the Service's protection of endangered and threatened species has consistently been upheld by the courts. *See, e.g., GDF Realty Investments, Ltd.* v. *Norton*, 326 F.3d 622 (5th Cir. 2003); *Gibbs* v. *Babbitt*, 214 F.3d 483 (4th Cir. 2000); *National Association of Homebuilders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 524 U.S. 937 (1998); *Rancho Viejo* v. *Norton*, No. 01–5373 (D.C. Cir. 2003); and *United States* v. *Hill*, 896 F. Supp. 1057 (D. Colo. 1995).

(16) *Comment:* The failure to protect these mussels' habitats will result in extinction of the species; therefore, the economic analysis is irrelevant.

Response: Section 4(b)(2) of the Act requires us to consider the economic, national security, and other relevant impacts of designating a particular area as critical habitat.

(17) *Comment:* The needs of the mussel species would be better addressed in the context of the ongoing Alabama-Coosa-Tallapoosa (ACT) River Basin Compact process rather than critical habitat designation.

Response: In the case of these mussels, the Act requires us to designate critical habitat. Critical habitat designation only affects Federal actions or activities or those authorized or funded by the Federal Government. Identification of critical habitat, therefore, should assist Federal agencies

involved in facilitating the ACT Compact negotiations.

(18) *Comment:* The Service must explain why some areas are included as critical habitat and others are not.

Response: The "Analysis Used to Delineate Critical Habitat" (*see* below), discusses why these 26 units were proposed. In summary, 25 of the 26 units currently support one or more of the species. Many river and stream reaches that historically supported the species are impounded or otherwise affected by human activities to the extent that they no longer provide the physical or biological features essential for the species' conservation. In addition, single site occurrence records of a single species were also not considered essential because of limited habitat availability, isolation, degraded habitat, and/or low management value or potential. Unit 26 represents a rare situation where some primary constituent elements (*i.e.*, flow, water quality) have experienced significant improvements during the past decade.

(19) *Comment:* The proposed rule made no determination as to why the units may need special management or protection.

Response: The proposal made a determination that the 26 units may require special management or protection (*see* "Need for Special Management Consideration or Protection," below). In this section, we referred the reader to "Effects of Critical Habitat" section (*see* below), where Federal actions that may destroy or adversely modify these units are outlined. Such activities are individually or collectively responsible for the extirpation of these species from significant portions of their ranges (*see* "Summary of Factors Affecting the Species," in the proposed rule). Habitat fragmentation and isolation render all 26 critical habitat units ever more vulnerable to activities that may affect the primary constituent elements within these units.

(20) *Comment:* Neither the current distribution nor the host fish are known for the upland combshell and southern acornshell, therefore, critical habitat cannot be identified.

Response: Extant populations of the upland combshell and southern acornshell are currently unknown. However, mussels are cryptic species living embedded in the bottom of rivers, and rare species may be difficult to find. For example, the heavy pigtoe (*Pleurobema taitianum*) had not been collected from the Alabama River for 30 years and was thought extirpated prior to being found in 1997. We used collection history, surviving mussel species' assemblages, and habitat conditions in evaluating streams for the upland combshell and southern acornshell. We selected those which have the best potential for, and we believe are essential to, the conservation of these two mussels. Fish hosts are currently unknown for the upland combshell, southern acornshell, and ovate clubshell. However, the units proposed for these species support a diverse assemblage of fish species, including fish species and guilds (*e.g.*, darters, minnows, sculpins, bass, catfish, etc.) that are known as hosts or potential hosts for closely related species.

(21) *Comment:* Scattered collections of an endangered mussel over a reach of river does not suggest an enduring population throughout the reach, therefore, not all of the reach is actually being "occupied." Relic collections in currently degraded habitats should not be used to declare entire reaches of stream as critical habitat.

Response: Rare mussels can be very difficult to locate in their stream and river habitats. There are recent collections of live or freshly dead listed mussel species from all of the occupied units. Designating only the specific locations where mussels have been collected does not take into consideration the habitat requirements of mussels or their host fish, and would not provide for the conservation of the species. Although recent collections may be localized, the physical conditions where they occur are driven by stream channel conditions and dynamics, both up- and downstream. Periodic collections of listed species and other mussel species indicate that the occupied units contain the primary constituent elements necessary for the conservation of the species for which they are designated. The upper and lower limits of the units are generally defined by changes in habitat that may render the areas less valuable for conservation of the species.

(22) *Comment:* Unit 11 (North River) should be excluded from the designation because the dark pigtoe and orange-nacre mucket were not included in the original lawsuit. Therefore, the designation of other Units will satisfy the plaintiff's original intent.

Response: In 1993, we published a final rule listing these 11 species under the Act. In that rule we found that critical habitat was prudent, but not determinable. In making a "not determinable" finding on critical habitat, the Act requires us to publish a final designation of critical habitat within one year of the final regulation implementing endangered or threatened status to a species. The lawsuit was brought because we did not meet the one-year deadline for designating critical habitat for 9 of the 11 species. We are required by the Act to designate critical habitat for all 11 species, therefore, we have determined critical habitat for the two species that were not in the original lawsuit.

Issue C: Comments on Individual Units

(23) *Comment:* The mussel fauna of the North River (Unit 11) is uncommon to rare, and is currently affected by low seasonal flows, heavy siltation, and Asian clams. Therefore, the North River lacks constituent elements as defined in the proposal. Exclusion of Unit 11 will not result in the extinction of the dark pigtoe and orange-nacre mucket, therefore, it is not essential to their conservation.

Response: The primary constituent elements (geomorphology, flow, water quality, etc.) in the North River Unit are adequate to support small populations of the endangered dark pigtoe and the threatened orange-nacre mucket. There are only two known populations of the dark pigtoe, the North River (Unit 11), and Sipsey Fork (Unit 10). As noted in the "Summary of Factors Affecting the Species" in the proposed rule, isolated populations are vulnerable to extirpation by random catastrophic events. For example, in a recently released report on the mussels of the Sipsey Fork of the Black Warrior River drainage, it was found that populations of listed mussels, including the dark pigtoe, were significantly reduced by the 2000 drought (Haag and Warren 2003b). Because of the extent of habitat modification, fragmentation, and isolation, multiple populations are necessary to ensure the conservation of these mussel species (*see* "Analysis Used to Delineate Critical Habitat," below). Therefore, the North River is essential to the conservation of the dark pigtoe and the orange-nacre mucket.

(24) *Comment:* Construction and management plans of the Tom Bevill Reservoir in the North River have undergone Service consultation on effects to the orange-nacre mucket and dark pigtoe. Any further modifications to the reservoir will be unreasonable, unwarranted, and inappropriate.

Response: After reviewing the location of the Tom Bevill Reservoir (which is 2.4 miles above the upper limit of designated critical habitat in the North River) and the Biological Opinion (U.S. Fish and Wildlife Service 1994), we now believe that construction of the reservoir will not adversely modify critical habitat in the designated portion of the North River, if the Reasonable and

Prudent Measures and Terms and Conditions outlined in the Biological Opinion are implemented.

(25) *Comment:* It is not apparent that either the Locust Fork (Unit 12) or Cahaba River (Unit 13) contain viable habitat to sustain the listed mussels due to sedimentation and other water quality problems. Three reaches of the Locust Fork, and the Cahaba River are currently on the draft 2002 Alabama 303d list of impaired waters. Based on existing habitat and species requirements, critical habitat does not occur within the majority of the Locust Fork or Cahaba River systems.

Response: The continued presence of the orange-nacre mucket and triangular kidneyshell in both the Cahaba River and Locust Fork, and the persistence of the fine-lined pocketbook in the Cahaba, indicates that constituent elements are present to a degree that allows for the survival of these and other mussel species. The mussel populations in these two designated reaches have survived decades of periodic water pollution. By placing the Cahaba River and portions of the Locust Fork on the 303d list, the State of Alabama is recognizing ongoing water quality problems and its commitment to address these problems through appropriate management. Improving and protecting water quality in the Cahaba River and Locust Fork will provide a positive conservation benefit to the listed species in these units. Although collections of the listed mussels are site-specific in both the Cahaba and Locust Fork rivers, the physical conditions of their habitats are driven by the conditions and dynamics within the stream channel, both upstream and downstream. The designated portions of the Cahaba and Locust Fork Rivers contain one or more of the primary constituent elements essential to the conservation of these mussels, including flow, water quantity, geomorphic stability, substrates, etc. Because of the extent of habitat loss and fragmentation, both of these Units are essential to the conservation of the species for which they are designated (*see* "Response" to Issue 12, above).

(26) *Comment:* The portion of the Cahaba River (Unit 13) impounded by a diversion dam from just below U.S. Highway 280, upstream to the Cahaba Heights Pump Station, does not contain the constituent element for flow requirements of the mussels and should be removed from the designation.

Response: A low head dam at U.S. 280 impounds a short reach of the Cahaba River main channel during low water conditions. Our regulations allow us to designate inclusive areas where the species is not present if they are adjacent to areas occupied by the species and essential to their management and protection (50 CFR 424.12(d)). The low dam is inundated several times a year during high water conditions allowing movement of host fishes, and possibly attached glochidia. Although the impounded portion does not contain all constituent elements and it is unlikely that the mussels would occur immediately behind the lowhead dam, this short reach is important in maintaining downstream water quality and quantity. It also connects the channel above and below the low dam during high waters where the triangular kidneyshell, orange-nacre mucket, and fine-lined pocketbook are known to survive.

(27) *Comment:* Fresh dead shells of orange-nacre mucket, fine-lined pocketbook and triangular kidneyshell have been recently observed in the Cahaba River from St. Clair County Road 10 to U.S. Highway 78 in Jefferson County, Alabama. Since these species currently occur in this reach, it should be added to Unit 13.

Response: We selected U.S. Highway 82 as the upper extent of critical habitat in the Cahaba River because this was the upper-most location of historic collections of most of the endangered mussels that historically occurred in the drainage, and because above this point, the river undergoes a transition from small river to more stream-like conditions. Collections of a few individuals of these species from the Cahaba River above U.S. Hwy 82 were reported to us in July of 2003, following publication of the proposed rule. At this time, we believe the 124 km (77 mi) of the Cahaba River channel we have designated as critical habitat is adequate for the conservation of the species in this drainage. Endangered or threatened mussels that occur outside of designated critical habitat, however, will continue to receive the protection of the Act's section 7 consultation requirements and section 9 take prohibitions. Under the Act, we can revise critical habitat in the future if it is appropriate, based on the best available information.

(28) *Comment:* The Service does not have sufficient data to designate Unit 14, Alabama River, as critical habitat.

Response: The section of the Alabama River designated under Unit 14 is known to support a small population of the southern clubshell within one mussel bed near Selma, Alabama (Hartfield and Garner 1998). The Alabama River contains one or more primary constituent elements throughout the designated reach, as demonstrated by the presence of mussel beds with similar species composition, and it is likely that the southern clubshell occurs in other areas within this reach. The Alabama River unit supports the last surviving large coastal plain river population of southern clubshell, and is representative of the historical, geographical and ecological distribution of the species. This area also may be suitable for the reintroduction of the orange-nacre mucket.

(29) *Comment:* FWS has not demonstrated that Unit 26, Coosa River, is essential to the conservation of the species.

Response: Conservation of the species requires ensuring survival through establishing multiple populations by expanding their ranges into currently unoccupied portions of their historic habitats. The Coosa moccasinshell occupies one unit, Unit 25, which makes the population for this species especially vulnerable to stochastic events. The Coosa River in Unit 26 presents the best opportunity for reestablishing populations of 9 of the 11 species, including the Coosa moccasinshell (*see* "Analysis Used to Delineate Critical Habitat," below). Unit 26 is also representative of a historic habitat (Coosa River "reefs") that is no longer occupied by any of these 9 species.

Issue D: Comments on Science

(30) *Comment:* There is no scientific support for the proposed rule. The public cannot comment on science that the Service failed to present. The Service has failed to use the best scientific data available.

Response: The Service has conducted, sponsored, and/or funded most scientific research performed over the past 10 years for these 11 species. Information from this research, and all other available scientific information, was used to prepare the proposed and final designations. During the comment periods, only a single study was brought to our attention that was not used in the development of this designation. This study was published after the proposed rule was published, and it supports our position that host fishes are essential components of the mussels' constituent elements. We received no additional scientific data during the comment periods that we have not previously considered. In addition, all four peer reviewers submitted written responses that the proposal included a thorough and accurate review of the available scientific and commercial data on these mussels and their habitats. Therefore, we believe that we have used the best scientific information available in

making this final rule. A list of scientific literature used to prepare this rule is available upon request from the Mississippi Ecological Services Field Office (*see* **ADDRESSESS**, above).

(31) *Comment:* Spotted bass and largemouth bass failed to successfully transform orange-nacre mucket glochidia in some trials conducted by Haag and Warren (1997), indicating they may not be suitable hosts.

Response: Haag and Warren (1997) conducted two glochidia transformation trials with spotted bass. In the first, all of the fish died for unknown reasons before termination of the trial. In the second trial, over 300 orange-nacre mucket juveniles/fish were successfully transformed. They also conducted three trials using largemouth bass. In the first two trials, all fish died prior to transformation. In the third, over 100 juveniles/fish were successfully transformed. Since both spotted and largemouth bass occur naturally with the orange-nacre mucket, these data indicate, and Haag and Warren (1997) concluded, that spotted and largemouth bass are suitable hosts for the mussel.

(32) *Comment:* The proposal notes the need to reintroduce species into historical portions of their range now proposed for critical habitat. If constituent elements are present at these sites then why are the mussels no longer present?

Response: The listing regulation for these 11 species, the Recovery Plan (U.S. Fish and Wildlife Service, 2000), the proposed rule (*see* "Factors Affecting the Species"), and basic population biology note that small populations, isolated to fragments of their former range are vulnerable to extirpation from natural or human-induced catastrophic events. Following catastrophic events temporary in nature, such as droughts, pollution, and sedimentation, the habitat may recover to a point where the species could survive, if reintroduced. The drainages of the Mobile River Basin have experienced both natural and human perturbations that have changed over time. For example, streams and river segments have been affected in the past by droughts, severe storms, unregulated coal mining, unregulated pollution discharges, and/or poor agricultural and silvicultural practices. Many of the human-induced perturbations that may have led or contributed to the extirpation of species from some of the designated units have been reduced during the past few decades by State and Federal regulation and the adoption of best management practices. Currently, one or more of the 11 mussels continue to survive in 25 of the units. Because of the extent of habitat modification, fragmentation, and isolation, multiple populations are necessary to ensure the conservation of these mussels. Therefore, conditions within these units may now be adequate for reintroduction of one or more of the extirpated species.

(33) *Comment:* Using listed species as transplants into unoccupied areas is a highly risky conservation technique. The use of artificially propagated individuals for reintroducing species is not addressed in the proposed designation.

Response: Neither the proposed rule nor this final regulation address methods and protocols for the reintroduction of endangered or threatened mussels into unoccupied habitats. We have developed a Plan for Controlled Propagation, Augmentation and Reintroduction for Freshwater Mussels and Snails of the Mobile River Basin (U.S. Fish and Wildlife Service, 2003), in accordance with our Policy Regarding Controlled Propagation of Species Listed Under the Endangered Species Act (65 FR 56916). The plan promotes the use of hatchery propagated individuals for reintroduction of rare mussels into historic habitats, and establishes basic protocols for propagating endangered and threatened mussels and snails, and for population augmentation or reintroduction. Copies of this working document are available from our Jackson, Mississippi Field Office (*see* **ADDRESSES**, above).

(34) *Comment:* Reintroduction of mussels into historic habitats should be declared as nonessential experimental populations.

Response: Section 10(j)(2) of the Act prohibits designation of critical habitat for any nonessential experimental population of an endangered or threatened species. With this rule, we have designated critical habitat units that are essential to the conservation of the mussel species. We will not be determining that any of these units are nonessential experimental population areas or reintroducing any nonessential experimental populations into these units.

(35) *Comment:* The proposal did not adequately convey the growing level of threat to mussels. It did not address the impacts of impervious area runoff, or the effects of illegal and irresponsible off road vehicle (ORVs) use.

Response: The proposed rule summarize threats to the mussels, particularly as they relate to habitat needs, and refer the reader to sources for more information (*see* "Summary of Factors Affecting the Species" in the proposed rule). We believe that the greatest factor in the conservation of these species is the high degree of habitat loss, and the resulting fragmentation and isolation of their habitats (*see* "Analysis Used to Delineate Critical Habitat," below). Site-specific threats, such as impervious surface runoff and ORV use in streams, are compounded by habitat fragmentation and isolation.

Issue E: Comments on Primary Constituent Elements

(36) *Comment:* The assumption that all 11 listed mussel species each possess identical principal biological or physical constituent elements essential to their conservation is scientifically invalid. The proposal provided no evidence, explanations, or citations quantifying the primary constituent elements (*e.g.*, geomorphic stability, water quantity and quality, etc.) Broadly stated constituent elements provide no guidance whatsoever for needs of individual mussel species.

Response: The Endangered Species Act and Service implementing regulations (50 CFR 424.12) require us to use the best scientific data available to identify known primary constituent elements. Unfortunately, knowledge of the essential features required for the survival of any particular freshwater mussel species consists primarily of basic concepts with few specifics (Jenkinson and Todd 1997). Among the difficulties in defining habitat parameters for mussels are that physical and chemical conditions (*e.g.*, water chemistry, flow, etc.) within stream channel habitats may vary widely according to season, precipitation, and human activities within the watershed. In addition, conditions between different streams, even those occupied by the same species, may vary greatly due to geology, geography, and/or human population density and land use. A review of the available scientific information shows that loss of mussel life stages, species, and even entire communities can be attributed to a variety of physical and biological factors, including loss of channel stability (*e.g.*, Hartfield, 1993; Neves *et al.*, 1997; etc.), changes in flow and water quality (*e.g.*, Layzer *et al.*, 1993; McMurray *et al.*, 1999; Williams *et al.*, 1993; Naimo, 1995; Strayer, 1999a; etc.), sedimentation and other changes in substrate (*e.g.*, Ellis, 1936; Hartfield and Hartfield, 1996; Brim Box and Mossa, 1999; etc.), loss of fish hosts, and competition from nonnative species (*e.g.*, Neves *et al.*, 1997; Strayer, 1999b; etc.). Therefore, we used the best available scientific information to broadly define six primary constituent

elements. Although we are currently unable to quantify them for any of these 11 mussel species, these six constituent elements describe physical and biological features essential to the conservation of the species that may require special management considerations and protection.

We recognize that this situation represents a less than ideal situation. The Act requires the use of the best available scientific and commercial data, without regard to whether that is sufficient to make a fully informed determination. At best, the Act gives us through section 4(b)(6)(C)(ii) only a one-year window of opportunity to further investigate if we find that critical habitat is not determinable, for reasons such as lack of information about the primary constituent elements for the species in question.

Within these limitations, we have utilized the best available scientific data in making our determinations here.

(37) *Comment:* It appears the Service simply identified 25 reaches within the Basin currently occupied by one or more of the 11 species and then assumed that those reaches contained primary constituent elements.

Response: In making this designation, we used the best available science to describe six primary constituent elements required for the conservation of these species in their aquatic habitats. We then considered all reaches currently occupied by one or more of the species. The long-term persistence of imperiled mussels and mussel communities within a stream reach indicates the presence of physical, chemical, and biological features essential to the survival of freshwater mussels. After considering the mussels' historic ranges, conditions within the range, and the value of the occupied reaches for the conservation of the species (*see* "Analysis Used to Delineate Critical Habitat," below), we eliminated areas with limited habitat availability, degraded habitat, and/or low management value or conservation potential (*e.g.*, Etowah River, Big Wills Creek, Little River, Euharlee Creek, Limestone Creek, etc.). We believe that the primary constituent elements are present in the 26 designated critical habitat units to a degree that permits the survival of mussels, and with appropriate protection and management will allow conservation of the listed species in those reaches.

(38) *Comment:* The proposal failed to define "geomorphically stable stream and river channels and banks."

Response: Geomorphology refers to the size, shape, and dimensions of a river channel and their relationships to valley and channel slope, local geology, and water and sediment budgets (Patrick *et al.*, 1994). Geomorphic instability can be triggered by impoundment, navigational and flood-control improvements, riparian mining operations, regional land use, or a combination of these and other human activities (Patrick *et al.*, 1982). Such activities may disrupt the energy conditions of the affected river or stream channel by changing down-stream base levels, channel slopes, or sediment/water balances which, in turn, result in accelerated erosion or sedimentation processes. As these geomorphic processes occur, freshwater mussels may be adversely affected by the loss of stable banks, scouring and deepening of channel beds, and the smothering effects of excessive sedimentation (Hartfield 1993). Therefore, geomorphically stable channels and banks are not experiencing accelerated erosion or sedimentation processes. Stream channels in the Mobile River Basin have been variously affected by geomorphic instability (U.S. Fish and Wildlife Service, 2000). Geomorphic effects of activities that may affect stream channels can be reduced and managed with appropriate planning and implementation of common engineering practices (*e.g.*, grade control structures) and Best Management Practices (*e.g.*, sediment stabilization, and minimization of instream work).

(39) *Comment:* The Service must identify recovery criteria for conservation of the 11 mussels before it can identify the primary constituent elements essential for their conservation.

Response: We considered the recovery and conservation needs of these species in preparing this designation (*see* "Analysis Used to Delineate Critical Habitat," below). The recovery objective for these 11 mussel species is to prevent further decline by protecting their surviving populations and the habitats where they occur (U.S. Fish and Wildlife Service, 2000). Stable or increasing populations over time will demonstrate that the objective is being met. The best available scientific information was used to identify physical and biological features essential to the conservation of these mussels, including the Recovery Plan (U.S. Fish and Wildlife Service, 2000) and other documents (*see* "Response" to Comment 36, above).

(40) *Comment:* The proposal provided no citations, data, or explanation of "* * * normal behavior, growth and viability of all life stages of mussels and their fish hosts * * *" in the identification of primary constituent elements.

Response: The proposal summarizes the complex life history of unionid mussels, which includes sexual reproduction, a parasitic larval stage, and a juvenile stage, and identifies host fish where known (*see* proposed rule). A complete list of all references cited in this rule including those citations and data on the life history of the mussels is available upon request from the Mississippi Ecological Services Field Office. The language used in the "Primary Constituent Elements" section alerts Federal agencies to consider the effects of their actions on habitat as they may affect all life stages of the mussels and their host fishes.

(41) *Comment:* The Service failed to articulate the required connection between the primary constituent elements and the proposed units, and failed to perform any scientific analysis or review to ensure that units contain primary constituent elements for each specific mussel.

Response: In evaluating streams for critical habitat, we considered all information available to us on the biology, habitat, and current distribution of these 11 mussel species (*see* "Background," and "Response" to Comment 36, above). We selected as critical habitat units 25 stream reaches where one or more of the listed mussel species continues to survive. The continued persistence of the mussels in these units is evidence of the presence of the primary constituent elements for their survival (*see* "Analysis Used to Delineate Critical Habitat," below) now and at the time of the species' listing. We selected the unoccupied Unit 26 because it was historically occupied and PCEs have improved due to significant improvement in flow and water quality (primary constituent elements) over the past decade (*see* "Analysis Used to Delineate Critical Habitat," below). We also identified the listed mussels currently surviving in each unit and those which historically occurred there (*see* "Critical Habitat Unit Descriptions," below).

(42) *Comment:* The proposal failed to provide a unit by unit assessment of whether or not any nonnative competitors are present.

Response: The asian clam (*Corbicula fluminea*) is present in portions of most of the designated units. This nonnative species has been coexisting with the native mussel fauna for several decades. We are also concerned with the spread or introduction of the highly competitive zebra mussel (*Dreissena polymorpha*), quagga mussel (*Dreissena bugensis*), and the mollusk predator,

black carp (*Mylopharyngodon piceus*). None of these three nonnative species are currently known to inhabit any of the designated units.

(43) *Comment:* The proposal states in several places that proposed critical habitat units contain one or more of the primary constituent elements. All primary constituent elements must be present for designation of critical habitat, not just one or more.

Response: Critical habitat is defined under the Act as those specific areas within the geographical area occupied by the species on which are found those features essential to the conservation of the species (*i.e.*, primary constituent elements) and which may require special management or protection (*see* "Critical Habitat," below). Known primary constituent elements must be listed with the critical habitat description. We use the language "* * * one or more * * *" in recognition that all areas essential to the conservation of a species may not contain all primary constituent elements, based on the biology of the species. For example, a species may require one area for feeding and growing, another for reproduction or roosting, and still other areas for passage between feeding and growing areas. So while all areas may not contain the same constituent elements, they may be important at some life stage or during some time of the year and collectively they are essential to the conservation of the species. In addition, Service regulations allow us to designate inclusive areas where all constituent elements are not present if they are adjacent to areas occupied by the species and essential to their management and protection (50 CFR 424.12(d)). For example, upland areas can be designated as critical habitat for aquatic species if it is concluded they are essential to the conservation of the species. We believe that the primary constituent elements enumerated within this rule are essential to the conservation of these mussel species and are present in all of the units to a degree that allows survival of the mussels. However, all of the six primary constituent elements may require special management, and can be protected or improved with appropriate management.

(44) *Comment:* Listed species that have been collected from a proposed unit but are showing no active recruitment may need further study to justify designation of critical habitat. The proposal states that there is evidence of local population decline within some units, therefore, primary constituent elements may not be present.

Response: With only a few exceptions, there is little information on recruitment for these mussel species in most units. As a group, mussels are long-lived with life spans of 20 years or more. However, their complex reproductive relationships with fish hosts render them vulnerable to recruitment failure due to environmental conditions or other factors that disrupt interactions between the mussels and their host fishes. Therefore mussel populations, particularly those under environmental stress, may go several years with low levels of recruitment, or even no recruitment. Listed mussel populations inhabiting most of the designated units are currently characterized by low numbers of individuals and some level of environmental stress, conditions that make recruitment difficult to measure. These 11 mussel species are threatened and endangered because the limited extent and isolation of their populations renders them vulnerable to natural or human induced changes in their habitats (*see* "Factors Affecting the Species" in the proposed rule). The effects of land uses or weather patterns may be reflected in abundance and demographics of a localized mussel community, and there is evidence of both positive and negative population trends in some units. For example, Haag and Warren (2003b) recently documented declines in the abundance of mussels, including several listed mussels, in portions of Unit 10 (Sipsey Fork drainage) due to drought. The channels and flowing waters of all 26 critical habitat units are dynamic and contain a mosaic of habitat conditions. The six primary constituent elements that we have identified are present within these units, and may require special management considerations and protection if these 11 species are to be conserved (*see* "Response" to Comment 36 and 37, above).

Issue F: Comments on Economic Impacts and Economic Analysis

(45) *Comment:* The proposed designation will harm private landowners through increased government regulation, and will add unnecessary red tape and bureaucracy in the use of surface waters and the disposal of waste waters.

Response: The designation of critical habitat will not increase government regulation of private land. The effects of private activities are not subject to the Act's consultation requirements, unless they are connected to a Federal action. Federal activities conducted in or adjacent to areas designated as critical habitat are already subject to section 7 consultation requirements of the Act because of the presence of one or more species currently listed under the Act. We do not anticipate that this designation will impose any additional direct regulatory steps to private landowners.

(46) *Comment:* Designation of critical habitat devalues land and makes it impossible to sell.

Response: In some cases, the public may perceive that property adjacent to a stream channel designated as critical habitat will have lower market value than an identical property that is not adjacent to critical habitat. Conversely, others may believe that critical habitat designation will increase property values, especially adjacent property, if they believe that the designation will slow sprawling development in a given community (*i.e.*, protect the rural character of an area) or protect and improve water quality of neighborhood streams and rivers. As noted above (*see* "Response" to Comment 45), critical habitat designation does not affect private land activities that do not involve a Federal Action. Most lands adjacent to stream channels designated as critical habitat are flood prone and used for silviculture and/or agriculture, activities that have little effect on the stream channel when Best Management Practices are employed. As the public becomes aware of the true regulatory burden imposed by critical habitat, the impact of the designation on property markets is anticipated to be minimal. Therefore, we do not believe the designation of these stream channels as critical habitat will result in any significant additional regulatory burden on landowners or affect the use or value of their property.

(47) *Comment:* Regulatory measures resulting from critical habitat designation may hamper expansion of recreational activities in the Coosa River.

Response: Critical habitat applies only to Federal actions and activities. This designation will not affect private recreational activities in the Coosa River or other designated units.

(48) *Comment:* Critical habitat designation could limit or restrict use of farm pesticides, and stop dredging in the Alabama River.

Response: Under the Act, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) are required to consult with us over their actions which may affect listed species or their critical habitats. These 11 mussels have been protected under the Act since 1993, and we have

conducted both formal and informal consultations with EPA and the USACE regarding their actions, including pesticide registration and navigation maintenance. Since actions that might destroy or adversely modify these critical habitat units may also jeopardize mussels, it is unlikely that critical habitat designation will significantly change the outcome of future consultations on these species.

(49) *Comment:* Designation of critical habitat will create bureaucratic delays in flood reduction measures authorized and funded by Congress. For example, there has been an ongoing consultation since 1988 for the purpose of obtaining a biological opinion to permit routine maintenance of the East Fork Tombigbee River (Unit 1).

Response: Section 7(a)(2) of the Act requires Federal agencies to consult with us to insure that their actions do not jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The Act also requires us to conclude these consultations in a timely manner, unless an extended period of consultation is agreed upon by the Service, the Federal agency, and any concerned applicant. In 1988, the USACE, Mobile District (Corps), requested formal consultation on the effects of channel clearing and snagging operations on five species of listed mussels that were believed to be present in the East Fork Tombigbee River. During the preparation of a draft biological opinion, information became available that the mussels were located in the middle reaches of the East Fork, remote from the areas in the headwaters that were affected by channel obstructions. The Corps used this information to confine the location, and modify the timing and method of the action, such that it no longer had the potential to jeopardize the mussels. As a result, the consultation was concluded informally and a biological opinion was not required, and the clearing and snagging of channel obstructions in the East Fork Tombigbee were completed.

(50) *Comment:* The critical habitat designation may impact future water supplies in the Birmingham Metropolitan Area by forcing the relocation of a potential water reservoir on the Locust Fork (Unit 12).

Response: Although there has been no request for consultation, we are aware that the Birmingham Water Works Board (BWWB) is considering future construction of a water supply reservoir on the Locust Fork within critical habitat Unit 12. This reach of the Locust Fork is designated as occupied critical habitat for the triangular kidneyshell and orange-nacre mucket, and as unoccupied critical habitat for four other mussel species. It also supports the only surviving population of the plicate rocksnail (*Leptoxis plicata*), and one of only two known populations of the Cahaba shiner (*Notropis cahabae*). Both of these species are listed as endangered, without critical habitat, and must also be considered in regard to any future permit to impound this habitat. One of the benefits of critical habitat designation is to inform Federal agencies and other parties of the importance of habitats to the conservation of species, and thus allow for the early consideration of alternatives to actions that might destroy or adversely affect critical habitat. The costs of a future consultation on water supply in the Locust Fork, as well as the costs of alternative locations considered by BWWB outside of the critical habitat area, have been included in our final Economic Analysis.

(51) *Comment:* The draft economic analysis did not consider impacts to small entities as a result of the inability of the BWWB to provide wholesale water to small counties if the Locust Fork reservoir is not built.

Response: Impacts to small governments were considered in the Economic Analysis and are summarized in this rule (*see* "Regulatory Flexibility Act," below). The Economic Analysis does not anticipate that the BWWB water supply reservoir will not be built, but rather that it may be relocated to a site that will be able to meet the demand for water supply to the same extent or greater than if it were located at the proposed site at Locust Fork. Although this project is not proposed within a small county it is likely that costs of project modifications may impact residents of counties that are considered small (*i.e.*, have a population below the 50,000 threshold), if they are included in the consumer base of the reservoir. The economic impact of regional effects to State, local, and tribal governments and the private sector, are considered below (*see* "Unfunded Mandates Reform Act Analysis," below).

(52) *Comment:* The draft economic analysis did not explain potential impacts to minorities or low-income groups that will result from water shortages, higher water costs, or the inability to develop and expand business.

Response: Neither minorities nor low-income populations are anticipated to be disproportionately affected by this designation. Economic impacts to private parties are considered below (*see* "Unfunded Mandates Reform Act Analysis").

(53) *Comment:* The draft Economic Analysis did not include the economic impacts to hydropower operations at Carters Lake.

Response: The draft economic analysis forecast one informal and one formal consultation regarding flow regime at Carters Reregulation Dam (Rereg Dam) over 10 years. In the final Economic Analysis, we have considered impacts to Carters Dam operations that might result from modifications to flow rates at the Rereg Dam.

(54) *Comment:* The costs associated with coal generation as substitute for electric power generation at hydroelectric dams in the draft Economic Analysis is appropriate for base load generation, but not for peaking power.

Response: The final Economic Analysis uses gas production as the substitute energy source for peaking power, and coal as the most appropriate substitute for base load.

(55) *Comment:* It is not possible for the Service to quantify potential economic impacts of the proposed designation without specific information regarding primary constituent elements. It is not possible to estimate the economic impact of an uncertain change in flow below Weiss Dam to provide for mussels and their habitat.

Response: We have used the best scientific information available in identifying primary constituent elements essential to the conservation of these 11 Mobile River Basin mussels (*see* "Response" to Issue 37). Mussels live embedded in the river bottom and filter water for food and oxygen. Formal and informal consultations that have been conducted since these species were listed have focused on minimizing impacts to their habitats (*i.e.*, primary constituent elements) in order to avoid or reduce incidental take of the species. Therefore, we have used the 11-year consultation history over a wide array of actions that may affect these mussels to identify the outcomes and costs associated with previous consultations, and to predict the number and potential costs of future consultations. In order to ensure that we captured the full cost of designation, we have attempted to use conservative (*i.e.*, high end) estimates of future costs. For example, the fine-lined pocketbook and southern clubshell mussels have survived in the Coosa River channel below Weiss Dam under leakage and tributary flows for about four decades. An increase in flow from Weiss Dam would expand riverine habitat, improve water quality and flow

conditions during drier periods, and possibly allow these species to expand their range in the Weiss Bypass Channel. However, significant increases in flows through Weiss Dam may change patterns of erosion and deposition within the channel, affect movement and behavior of fish hosts, and affect water temperature and chemistry, possibly to the detriment of the species. Consultation on relicensing of Weiss Dam is currently ongoing. In order to capture the outcome of potential flow recommendations that may result from this consultation, we have conservatively used 200 cubic feet per second (cfs) as a low estimate of flow recommendations, and 2000 cfs as the high estimate. It is likely that the Service will recommend flows closer to the low-end estimates used in the economic analysis.

(56) *Comment:* The draft Economic Analysis did not distinguish costs between Federal dams and Federal Energy Regulatory Commission (FERC) licensed dams, and did not include costs of modifications or lost energy.

Response: The final Economic Analysis uses the best available information to estimate a range of potential modification costs and lost energy production at each hydropower operation within the designation.

(57) *Comment:* The draft Economic Analysis failed to adequately assess the potential economic benefits of the critical habitat designation, and did not address whether the benefits of excluding areas outweigh the benefits of designation.

Response: There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species. A regional economy can benefit from the preservation of healthy populations of endangered and threatened species and the habitat on which they depend. In the final Economic Analysis of critical habitat designation for the mussels, additional discussion has been provided concerning the potential economic benefits associated with measures implemented for the protection of water and habitat quality that may occur and be attributable to the effects of future section 7 consultations. It is not feasible, however, due to the scarcity of available studies and information relating to the size and value of potential beneficial changes that are likely to occur as a result of the listing of the species or the designation of their critical habitat, to fully describe and accurately quantify all the benefits of potential future section 7 consultation in the context of the economic analysis. While the economic analysis concludes that many of the benefits of critical habitat designation are difficult to estimate, it does not necessarily lead to the conclusion that the benefits are exceeded by the costs. We use the economic analysis and other relevant information to conduct analyses under section 4(b)(2) of the Act. If relevant to a particular critical habitat designation, these considerations are included in the final rule (50 CFR 424.19) (*see* "Exclusions Under Section 4(b)(2)," below).

(58) *Comment:* The ten-year time-frame of the economic analysis is inadequate, as it is likely that costs will extend into the future.

Response: To be credible, the economic analysis must estimate economic impacts based on activities that are reasonably foreseeable. A ten-year time horizon is used because many landowners and managers do not have specific plans for projects beyond ten years, and forecasting beyond ten years increases the subjectivity of estimating potential economic impacts. In addition, the forecasts in the analysis of future economic activity are based on current socioeconomic trends and the current level of technology, both of which are likely to change over the long term. If information is available for particular projects where costs may be incurred over a different period of time, the appropriate time-frame is employed. For example, the final Economic Analysis applies a 30-year time-frame to annual lost energy production costs at Carters and Weiss Dam, as licenses for hydropower projects are typically renewed on a 30- to 50-year schedule. Applying the same lost power costs over 30 years, however, may overstate the real annual impacts as is it likely that changes to rate structures will be brought about through broader market adjustments in the long term. Further, costs associated with the potential relocation of the water supply reservoir at Locust Fork are anticipated to be incurred over a 25-year time-frame as the project is anticipated to take 25 years to complete.

(59) *Comment:* The economic analysis overestimates the costs resulting from designation of critical habitat by including costs of listing (*i.e.*, all section 7 costs, regardless of critical habitat designation).

Response: Certain legal decisions, specifically the decision *New Mexico Cattlegrowers Association* v. *U.S. Fish and Wildlife Service*, 248 F3d 1277 (10th Cir. 2001), require us to look at co-extensive costs (consideration of the impact of all section 7 effects that could be a result of the designation), even if they are the same as those that arise from the listing.

(60) *Comment:* The draft Economic Analysis was based on guesses and caveats that can readily and substantially affect cost estimates. The solicitation of specific information during the comment periods belies uncertainty in the analysis.

Response: The draft Economic Analysis was based on the best available information. Solicitation of additional information during the open comment periods ensured that the economic analysis incorporates the best available information regarding economic impacts of the designation. The final Economic Analysis incorporates new information brought to our attention during the open comment periods.

(61) *Comment:* The draft Economic Analysis assumed that consultations will continue into the future at the same rate and costs as in the past, leading to an understatement of potential economic activity. It failed to employ forecasting methods that reflect future cost increases.

Response: The economic analysis does not assume that future consultations will occur at the same rate as in the past. The estimated future consultations are based on conversations with action agencies and third parties and reflect, where appropriate, trends in consultation rates. As a result, the analysis forecasts a much greater rate of consultation in the future than has occurred historically. This may be due in part to economic growth and expansion, and in part due to education on the specific locations of the species, and on activities that require consultation. The economic analysis employs a cost model that applies appropriate discount rates to account for the rate of time preference in determining the present value of total costs.

(62) *Comment:* The draft Economic Analysis ignored costs to third parties and relied entirely on the direct costs associated with section 7 consultations, writing off costs to third parties as insignificant.

Response: The draft Economic Analysis concluded that the plurality of costs associated with critical habitat designation will be borne by third parties, including State and local governments (approximately 57 percent of total estimated costs) and private entities (approximately 36 percent of total estimated costs). In addition, the final Economic Analysis is not limited to direct costs related to complying with section 7 consultations. For example, it is noted that the cost of lost energy

production at the affected hydropower projects may be passed on to the power consumers as a direct "fuel adjustment" increase to their power bill.

(63) *Comment:* It is unclear how average administrative costs of consultations were determined in the economic analysis, and whether these averages are representative.

Response: The economic analysis employs a consultation cost model to estimate the likely range of administrative costs of informal and formal consultations, and technical assistance efforts associated with the designation of critical habitat. This cost model is based on anticipated administrative effort at a number of Service Field Offices across the country, including those Field Offices relevant to this designation. The administrative effort is typically defined in number of hours spent, and then translated into a dollar value by applying the appropriate average government salary rates. Further, administrative costs to action agencies are estimated based on a similar survey of agencies across the country. In interviewing the agencies relevant to this analysis, the representatives were asked if the estimated administrative costs seemed reasonable. In the case that the agency anticipated a different range of costs for their particular activities within the proposed designation that cost range was applied to the relevant consultations in place of the generic cost model estimates.

(64) *Comment:* Critical habitat designation could have a detrimental impact on future growth and development around the designated units.

Response: With the exception of cases in which critical habitat designation excludes a portion of available land from development, and where substitutes are limited, designation is unlikely to substantially affect the course of regional economic development. In cases where an industry requires the direct use of the natural resources of mussel habitat (*e.g.*, large volume of water for cooling or discharge), the presence of the mussels or critical habitat may impact a decision to locate in that area. Environmental regulations such as critical habitat designation likely constitute some fraction of the many factors involved in the decision to locate a facility. However, in the absence of information on the type of economic activity being considered, it is not feasible to determine what level of economic impact the designation may create on the activity. Therefore, the economic analysis recognizes, but does not quantify, impacts to the future growth and development.

(65) *Comment:* The critical habitat designation will shut down the timber, lumber, and chip business around the affected areas.

Response: The economic analysis does not anticipate impacts to the silviculture industry. The concern of timber harvest activities related to the mussels and their habitat is implementation of buffer zones and other silvicultural Best Management Practices (BMPs). Silvicultural BMPs provide for the protection of riparian buffers and reduce erosion and other forms of nonpoint source pollution that result from common silvicultural practices. BMPs must be followed in order to retain exemption from 404 permits, and they are in general practice within the designated areas. The majority of silviculture is practiced on private, non-industrial land, without a Federal nexus.

(66) *Comment:* In conducting our economic analyses of critical habitat designations pursuant to section 4(b)(2) of the Act, we must solicit data regarding all economic impacts associated with a listing as part of the critical habitat designation, including sections 9 and 10 of the Act.

Response: Because it may be difficult to distinguish potential economic effects resulting from a species being listed as endangered or threatened relative to those potential economic effects resulting from designating critical habitat for a species, we often collect economic data associated with the species being listed to provide for a better understanding of the current economic baseline as we conduct our required analyses under section 4(b)(2) of the Act. This approach is consistent with the ruling *New Mexico Cattlegrowers Association* v. *U.S. Fish and Wildlife Service*, 248 F3d 1277 (10th Cir. 2001).

(67) *Comment:* The final rule designating critical habitat for the 11 mussels must include an explanation of the cost/benefit analysis for both why an area was included and why an area was excluded.

Response: Pursuant to section 4(b)(2) of the Act, we are required to take into consideration the economic impact, impacts to national security, and any other relevant impact of specifying any particular area as critical habitat. We may exclude any area from critical habitat if we determine that the benefits of such exclusion outweighs the benefits of specifying such area as part of the critical habitat, providing that the failure to designate such area will not result in the extinction of the species. A decision to exclude an area is discretionary. We use information from our economic analysis, or other sources such as public comments, management plans, etc., to conduct the analysis for any exclusion we might consider making. For us to consider excluding an area from the designation, we are required to determine that the benefits of the exclusion outweighs the benefits (*i.e.*, biological or conservation benefits) of including the specific area in the designation. This is not simply a cost/benefit analysis, however. This is a policy analysis, and can include consideration of the impacts of the designation, the benefits to the species of the designation as well as policy considerations such as national security, tribal relationships, impacts on conservation partnerships and other public policy concerns. This evaluation was done on a case-by-case basis for particular individual units using the best available scientific and commercial data. Based on the best available information including the prepared economic analysis, we believe that all of the 26 units are essential for the conservation of these species and have identified no areas where the benefits of exclusion outweigh the benefits of designation (*see* "Exclusions under Section 4(b)(2)" below). Contrary to the comment, there is no requirement in the Act that we provide an economic justification for including an area in critical habitat, or that we perform a traditional cost-benefit analysis as part of our determination as to whether to designate or exclude particular areas.

Section 4(i) Comments From States

(68) *Comment:* The designation could affect activities the Tombigbee River Valley Water Management District (TRVWMD) conducts with Federal agencies such as the USACE, and cripple or unnecessarily delay their ability to perform future water related projects. The designation of units in northeast Mississippi will conflict with existing Federal flood control measures.

Response: Activities which require Federal permits or funding are already subject to consultation requirements of the Act within the designated units because one or more listed species occur there. Consultation outcomes in the Tombigbee drainage units are not likely to be significantly affected by the designation, since activities which would adversely modify critical habitat would also result in adverse effects to the species. TRVWMD activities which do not require Federal participation or funding are unaffected by the designation.

(69) *Comment:* TRVWMD is concerned that the designation will have adverse effects on attracting new industry to northeast Mississippi.

Response: See comment 64.

(70) *Comment:* The designation will add unnecessary red tape and bureaucracy.

Response: See comment 45.

(71) *Comment:* TRVWMD recommended deletion of Units 1, 2, 3, and 4, because the mussels could be protected within the other designated units.

Response: "Conservation" is defined in section 3(3) of the Act as the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary. Therefore, we must consider the quantity of habitat needed to conserve these species. The primary threats affecting the Mobile River Basin mussels are their limited distribution, habitat fragmentation, and population isolation. Due to these threats, it is unlikely that currently occupied habitat is adequate for the conservation of all 11 species. Because small, isolated, aquatic populations are subject to chance catastrophic events and to changes in human activities and land use practices that may result in their elimination, protection of surviving populations and their habitats reduces the threat of extinction and increases the opportunities for conservation of the species. Therefore, we have determined that all 26 units, including those units in northeast Mississippi, are essential for the conservation of the species for which they are designated. Eliminating Units 1, 2, 3, and 4 would increase the risk of extinction and reduce the potential for conservation of the species.

(72) *Comment:* Designation of the East Fork Tombigbee (Unit 1) will exacerbate bureaucratic gridlock and delays that are preventing flood damage reduction measures. A consultation to permit routine maintenance has been on-going for more than 18 years.

Response: See comment 49.

(73) *Comment:* Substantial future economic benefits associated with flood control projects will likely evaporate with critical habitat designation. These were not considered in the economic analysis.

Response: Ongoing flood control projects in northeast Mississippi have already considered effects on listed mussels in the critical habitat units, and are unlikely to be significantly affected by the designation. No significant future projects that are likely to occur in the designated units in northeast Mississippi were brought to our attention by the USACE or others during the open comment periods for the proposed rule or the draft economic analysis. In the absence of information on the type of economic activity that might occur in these units in the future, it is not feasible to determine what level of economic impact the designation may create on the activity. Therefore, the economic analysis recognizes, but does not quantify, impacts to future growth and development.

(74) *Comment:* The Service did not comply with the National Environmental Policy Act in making this action.

Response: See comment 13.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat.

To be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).)

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Critical habitat designations do not signal that habitat outside the designation is unimportant to these 11 mussels. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods and Criteria Used To Identify Critical Habitat for 11 Mussel Species

As required by section 4(b)(2) of the Act and implementing regulations (50 CFR 424.12), we used the best scientific and commercial information available to determine critical habitat areas that contain the physical and biological features that are essential for the conservation of the Coosa moccasinshell, southern clubshell, dark

pigtoe, southern pigtoe, ovate clubshell, triangular kidneyshell, southern acornshell, upland combshell, fine-lined pocketbook, orange-nacre mucket, and Alabama moccasinshell. We reviewed the available information pertaining to the historic and current distributions, life histories, host fishes, and habitats of, and threats to these species. The information used in the preparation of this designation includes: our own site-specific species and habitat information; unpublished survey reports, notes, and communications with other qualified biologists or experts; peer reviewed scientific publications; the final listing rule for 11 mussels in the Mobile River Basin (58 FR 14330); and the Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service, 2000). In determining the areas that are essential to the conservation of the 11 mussels, we considered all streams currently or historically known to be occupied by one or more of the species (see ATaxonomy, Life History, and Distribution" above). It is likely that other occupied stream or stream segments exist that may be essential to the survival and conservation of these mussels, but we do not currently know where these are, and therefore cannot include them in this critical habitat designation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

As detailed in the Background section in the proposed critical habitat rule (refer to 68 FR 14752, March 26, 2003), these 11 mussels, in general, live embedded in the bottom sand, gravel, and/or cobble substrates of rivers and streams. They also have a unique life cycle that involves a parasitic stage on host fish. Juvenile mussels require stable substrates with low to moderate amounts of sediment and low amounts of filamentous algae, and correct flow and water quality to continue to develop. The presence of suitable host fish is considered an essential element in these mussels' life cycles. In addition, because of their life cycle, small population sizes, and limited habitat availability, they are highly susceptible to competitive or predaceous nonnative species.

Unfortunately, knowledge of the essential features required for the survival of any particular freshwater mussel species consists primarily of basic concepts with few specifics (Jenkinson and Todd 1997). Among the difficulties in defining habitat parameters for mussels are that physical and chemical conditions (*e.g.*, water chemistry, flow, etc.) within stream channel habitats may vary widely according to season, precipitation, and human activities within the watershed. In addition, conditions between different streams, even those occupied by the same species, may vary greatly due to geology, geography, and/or human population density and land use. See comment 36 for further detail. Therefore, we used the best available scientific information to broadly define six primary constituent elements.

Based on the best available information, primary constituent elements essential for the conservation of these 11 mussel species include the following:

1. Geomorphically stable stream and river channels and banks;

2. A flow regime (*i.e.*, the magnitude, frequency, duration, and seasonality of discharge over time) necessary for normal behavior, growth, and survival of all life stages of mussels and their fish hosts in the river environment;

3. Water quality, including temperature, pH, hardness, turbidity, oxygen content, and other chemical characteristics necessary for normal behavior, growth, and viability of all life stages;

4. Sand, gravel, and/or cobble substrates with low to moderate amounts of fine sediment, low amounts of attached filamentous algae, and other physical and chemical characteristics necessary for normal behavior, growth, and viability of all life stages;

5. Fish hosts with adequate living, foraging, and spawning areas for them; and,

6. Few or no competitive or predaceous nonnative species present.

All areas designated as critical habitat for the 11 mussels are within the species' historic ranges and contain one or more of the physical or biological features (primary constituent elements) identified as essential for the conservation of these species. We believe these physical and biological features are essential to the conservation of the species and provide space for individual and population growth and for normal behavior [Constituent elements 1, 2, 3, 4, and 6]; food, water, air, light, minerals, or other nutritional or physiological requirements [Constituent elements 1 and 2]; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring [Constituent elements 4 and 5]; and habitats that are protected from disturbance [Constituent element 1].

In identifying these primary constituent elements, we have taken into account the dynamic nature of riverine systems. We recognize that riparian areas and floodplains are integral parts of the stream ecosystem, important in maintaining channel geomorphology, and providing nutrient input, and buffering from sediments and pollution; and that side channel and backwater habitats may be important in the life cycle of fish that serve as hosts for mussel larvae.

Analysis Used To Delineate Critical Habitat

We are proposing to designate critical habitat on lands that we have determined are essential to the conservation of the 11 mussels. These areas have the primary constituent elements described above.

Currently, the greatest general threat to the survival and recovery of these 11 Mobile River Basin mussel species is the small size, extent, and isolation of their remaining populations. With the exception of the dark pigtoe, which is believed to be naturally restricted to streams and rivers in the Black Warrior drainage, these mussel species were once widespread in the Basin, found in a continuum of small streams to large rivers in 2 or more major drainages. As discussed under the "Summary of Factors Affecting the Species," above, and the Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service, 2000), 30 major dams were constructed in the Basin during the 20th century. These dams and their impounded waters present physical barriers to the natural dispersal of mussels (they prevent emigration (dispersal) of host fishes), and effectively isolate surviving mussel populations in limited portions of the Basin's major drainages. Small isolated aquatic populations are subject to natural random events (droughts, floods), and to changes in human activities and land use practices (urbanization, industrialization, mining, certain agricultural activities and

practices, etc.), that may severely impact aquatic habitats (Neves *et al.*, 1997). Without avenues of emigration to less-affected watersheds, mussel populations gradually disappear where land use activities result in deterioration of aquatic habitats. Local random events, and changes in human activities within the Basin's unimpounded watersheds are believed to have caused or contributed to the disappearance of mollusks from significant portions of isolated stream habitats, resulting in the extinction of as many as 13 mussels, as well as a number of freshwater snail species (U.S. Fish and Wildlife Service, 2000).

Most of the 11 mussel species considered in this final designation are currently represented by one or more small, restricted, and isolated populations. These surviving populations have been isolated from one another by dams and impounded reaches for 20 to 50 years, and remain vulnerable to the progressive degradation of their habitats from land surface runoff or random natural events such as droughts. In many of these surviving populations, there is also evidence of local population decline during the same time period (*e.g.*, Evans, 2001; Hartfield and Jones, 1990; Williams and Hughes, 1998; McGregor *et al.*, 2000).

The Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service, 2000), recognized the complexity of conserving the Basin's imperiled species, and considered that downlisting or delisting these 11 mussels was unlikely in the foreseeable future because of the extent of their decline, the fragmentation and isolation of their habitats, and continuing impacts upon their habitats. Compounding these problems is an overall lack of detailed information on specific habitat and life history requirements of these species, or on the physical threats that confront them (*e.g.*, sediment, nutrient, and other pollutant sensitivities, etc.). Threats compounded by habitat fragmentation and isolation can be reduced by increasing the number, expanding the range, and increasing the density of populations. Preventing the extinction of those species listed as endangered, and arresting the continued decline of those species listed as threatened are the recovery objectives outlined in the recovery plan for these 11 mussels. The recovery plan emphasizes: (1) Protection of surviving populations of these mussels and their stream and river habitats; (2) enhancement and restoration of habitats; and (3) population management, including augmentation and reintroduction of the 11 mussels into portions of their historic ranges to obtain these recovery objectives. In determining which areas to propose as critical habitat for these 11 mussels, we considered the factors discussed in the recovery plan, as well as the mussels' historical distributions and the extent of current occupied habitats and their management potential.

We began our analysis by considering the historic ranges of the 11 mussel species. A large proportion of the Basin's streams and rivers that historically supported these mussels has been modified by existing dams and their impounded waters. Therefore, extensive portions of the upper Tombigbee River, Black Warrior River, Tallapoosa River, Alabama River, and Coosa River cannot be considered essential to the conservation of these species because they no longer provide the physical and biological features that are essential for their conservation (*see* APrimary Constituent Elements' section).

Free-flowing river segments and their tributaries peripheral to the known historic range of the 11 mussels, and without any records of the species, also cannot be considered to be essential to the conservation of these species (*e.g.*, Mobile/Tensas River, lower Tombigbee River, etc.) and so were not considered further. Several streams with single site occurrence records of a single species were also not considered essential because of limited habitat availability, isolation, degraded habitat, and/or low management value or potential (*e.g.*, Etowah River, Big Wills Creek, Little River, Armuchee Creek, Euharlee Creek, Limestone Creek, etc.).

We then evaluated streams and rivers within the historic ranges of these 11 species which had evidence that these mussels had occurred there at some point (*i.e.*, collection records). We eliminated from consideration areas from which there have been no collection records for several decades and/or are remote from currently occupied areas (*e.g.*, portions of the lower Alabama River, lower Cahaba River, Mulberry Fork, Noxubee River, Talladega Creek, and others). In evaluating streams for the upland combshell and southern acornshell, specifically, we considered their historic ranges (Black Warrior, Cahaba, and Coosa River drainages). We selected those areas which have the best potential for and we believe are essential to the conservation of these two mussels based on collection history, surviving mussel species assemblages, and habitat conditions.

This analysis resulted in the identification of 25 stream or river reaches within the Basin (habitat units) occupied by one or more of the 11 species and that contain one or more of the primary constituent elements as indicated by the presence and persistence of one or more of the listed mussels (Figure 1, Units 1 to 25). We believe that these areas also support darters, minnows, and other fishes that have been identified as hosts or potential hosts for one or more of the mussels, as evidenced by fish collection records (Mettee *et al.*, 1996), the persistence of the mussels over extended periods of time, or field evidence of recruitment (Evans, 2001; Hartfield and Jones, 1990; and Herod *et al.*, 2001). We consider all of these 25 reaches essential for the conservation of these species. As discussed in the Recovery Plan, long-term conservation of these 11 mussels is unlikely in their currently reduced and fragmented state. Therefore, at a minimum, it is essential to designate the reaches within the historic range that still contain mussels and the primary constituent elements of the habitat.

We then considered whether this essential area was adequate for the conservation of each of the 11 mussel species. Given that threats to the species are compounded by their limited distribution and isolation, it is unlikely that currently occupied habitat is adequate for the conservation of all 11 species. Conservation of these species requires expanding their ranges into currently unoccupied portions of their historic habitat because small, isolated, aquatic populations are subject to chance catastrophic events and to changes in human activities and land use practices that may result in their elimination. Larger, more contiguous populations can reduce the threat of extinction due to habitat fragmentation and isolation.

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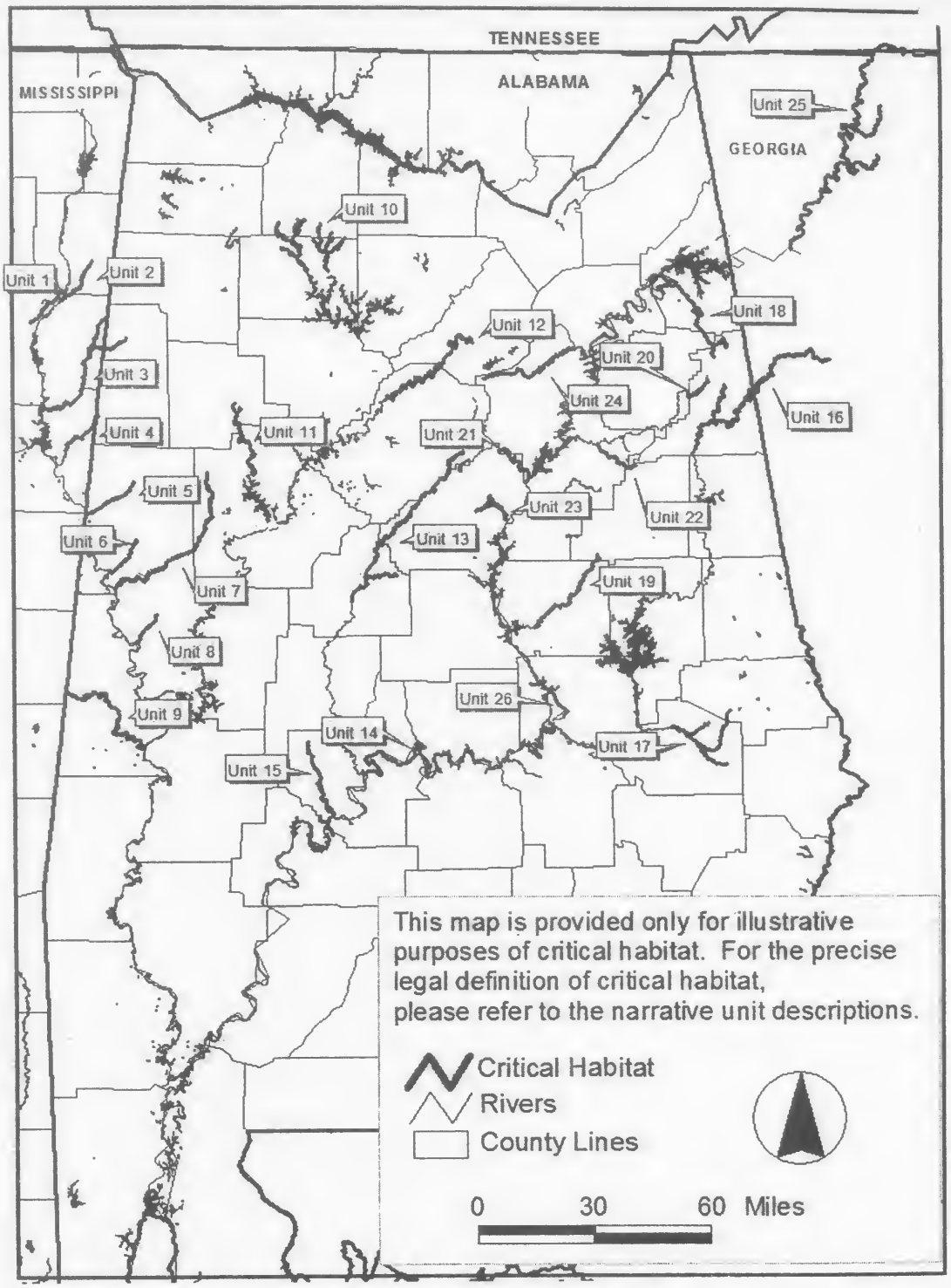

General locations of designated critical habitat in the Mobile River Basin

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Because portions of the historic range of each of the 11 mussels were shared with 4 or more of the other mussel species, there is considerable overlap

between species' current and historical distributions within these 25 habitat units. This offers opportunities to increase each species' current range and number of extant populations into units currently occupied by other listed species included in this designation. For example, the Alabama moccasinshell historically inhabited 16 of the units, and currently inhabits 7; fine-lined pocketbook was known from 12 of the units, and currently inhabits 10; orange-nacre mucket historically occupied 15 units, and is currently found in 12; and Coosa moccasinshell historically occupied 9 of the units, but is currently found in only 1. Successful reintroduction of the species into units that they historically occupied (and that are currently occupied by 1 or more of the 11 species) would expand the number of populations, thereby reducing threat of extinction. Each of the 25 habitat units (Units 1–25) are currently occupied by 1 or more of the listed mussels. Only two occupied habitat units and one unoccupied habitat unit are designated for the dark pigtoe because its range was naturally restricted to the Black Warrior River drainage, and we are unable to identify any other unoccupied habitat units in the drainage that provide constituent elements.

As noted above, conservation of these species requires expanding their ranges into unoccupied portions of historic habitat. Therefore, in addition to these 25 habitat units, we also designate the Coosa River below Jordan Dam (Unit 26) as critical habitat for 9 of the 11 mussel species. Shells of the fine-lined pocketbook were last collected from this reach in 1989 (Pierson, 1991a), and it is also within the historic range of 8 other species. This is the only unit currently not occupied by at least 1 of the 11 species (Johnson, 2002). This area has recently been identified as presenting high potential for the successful reintroduction of imperiled mussels in the Coosa River drainage (Johnson, 2002). In 1990, the Alabama Power Company increased minimum flows below Jordan Dam into the Coosa River channel from about 70 cubic feet per second (cfs) to 2000 cfs (Federal Energy Regulatory Commission (FERC), 1990), greatly improving aquatic habitat quality. The lower Coosa River not only offers high-quality riverine habitat, but due to local geology, it is relatively protected from non-point runoff, a major threat to all existing populations of these species. There are historic records of fine-lined pocketbook and southern clubshell from this 13 km (8 mi) reach of river (Johnson, 2002; Pierson, 1991a), and it is within the historic range of Alabama moccasinshell, Coosa moccasinshell, ovate clubshell, southern pigtoe, triangular kidneyshell, southern acornshell, and upland combshell. As noted above, threats to these species can be reduced by expanding their current ranges through reintroduction into suitable habitats. Since the Coosa River below Jordan Dam is viewed by experts as a high-quality example of remaining mussel habitat in the Basin, and is recognized as presenting the best opportunity for reestablishing mussel populations (Johnson 2002), we believe it is also essential for the conservation of these 9 mussel species, and designate it as unoccupied habitat.

As a result, we have defined 26 habitat units encompassing approximately 1,760 km (1,093 mi) of stream and river channels in Alabama, Mississippi, Georgia, and Tennessee, for these 11 mussel species (Figure 1). Although this represents only a small proportion of each species' historic range, these habitat units include a significant proportion of the Basin's remaining, highest quality, free-flowing rivers and streams, and reflect the variety of small stream to large river habitats historically occupied by each species. Because mussels are naturally restricted by certain physical conditions within a stream or river reach (*i.e.*, flow, substrate), they may be unevenly distributed within these habitat units. Uncertainty on upstream and downstream distributional limits of some populations may have resulted in small areas of occupied habitat excluded from, or areas of unoccupied habitat included in, the designation.

We recognize that both historic and recent collection records upon which we relied are incomplete, and that there are river segments or small tributaries not included in this final designation that may harbor small, limited populations of one or more of the 11 species considered in this designation, or that others may become suitable in the future. The exclusion of such areas does not diminish their potential individual or cumulative importance to the conservation of these species. However, we believe that with proper management each of the 26 habitat units are capable of supporting 1 or more of these 11 species, and will serve as source populations for artificial reintroduction into designated stream units, as well as assisted or natural migration into adjacent undesignated streams within the Basin.

At this time, the habitat areas contained within the units described below constitute our best evaluation of areas needed for the conservation of these species at this time. Critical habitat may be revised for any or all of these species should new information become available.

Need for Special Management Consideration or Protection

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. All 26 critical habitat units identified in this final designation may require special management considerations or protection to maintain geomorphic stability, water quantity or quality, substrates, presence of fish hosts, or to prevent or control exotic competing or predaceous species. All of these units are threatened by actions that alter he stream slope (*e.g.*, channelization, instream mining, impoundment) or create significant changes in the annual water or sediment budget (*e.g.*, urbanization, deforestation, water withdrawal); point and/or nonpoint source pollution that results in contamination, nutrification, or sedimentation; and the introduction or augmentation of nonnative species that may compete with or prey on the mussel species inhabiting the units (*e.g.*, Asian clams, zebra or quagga mussels, black carp). Habitat fragmentation, population isolation, and small population size compounds these threats to the species. Various activities in or adjacent to each of the critical habitat units described in this final rule may affect one or more of the primary constituent elements that are found in the unit. These activities include, but are not limited to, those listed below in the "Effects of Critical Habitat" section as "Federal Actions That May Affect Critical Habitat and Require Consultation." None of the critical habitat units is presently under special management or protection provided by a legally operative plan or agreement for the conservation of these mussels. These threats may render the habitat less suitable for these 11 mussels, therefore, we have determined that the critical habitat units may require special management or protection. At this time, special management considerations under 3(5)(a) of the Act warrant designating these units as critical habitat.

Critical Habitat Designation

The areas that we are designating as critical habitat for the 11 mussel species provide one or more of the primary constituent elements described above. In accordance with the Mobile River Aquatic Ecosystem Recovery Plan

(2000), protection of the habitat in these units and their surviving populations is essential to the conservation of these 11 mussel species. All of the designated areas require special management considerations to ensure their contribution to the conservation of these mussels. For each stream reach identified as a critical habitat unit, the up- and downstream boundaries are described in general detail below; more precise estimates are provided in the Regulation Promulgation of this rule.

Critical Habitat Unit Descriptions

The critical habitat units described below include the stream and river channels within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. We are designating the following areas as critical habitat for the 11 mussel species (Refer to Table 1 for the location and extent of critical habitat designated for each species and more specifically to § 17.95, Critical habitat-fish and wildlife, at the end of this rule).

TABLE 1.—APPROXIMATE RIVER DISTANCES, BY DRAINAGE, FOR OCCUPIED AND UNOCCUPIED CRITICAL HABITAT FOR THE 11 MUSSEL SPECIES *

Species, status, critical habitat unit, and state	Current occupied		Currently unoccupied	
	Kilometers	Miles	Kilometers	Miles
Alabama moccasinshell—THREATENED				
1. East Fork Tombigbee River, MS	.....	.....	26	16
2. Bull Mountain Creek, MS	34	21		
3. Buttahatchee River, MS, AL	110	68		
4. Luxapalila Creek, MS, AL	29	18		
5. Coalfire Creek, AL	.....	.....	32	20
6. Lubbub Creek, AL	31	19		
7. Sipsey River, AL	90	56		
8. Trussels Creek, AL	.....	.....	21	13
9. Sucarnoochee River, AL	.....	.....	90	56
10. Sipsey Fork, AL	147	91		
11. North River, AL	.....	.....	47	29
12. Locust Fork, AL	.....	.....	102	63
13. Cahaba River, AL	.....	.....	124	77
15. Bogue Chitto Creek, AL	.....	.....	52	32
25. Oostanuala complex, GA, TN	16	10	191	119
26. Lower Coosa River, AL	.....	.....	13	8
Total	457	283	698	433
Fine-lined pocketbook—THREATENED				
13. Cahaba River, AL	124	77		
16. Tallapoosa River, AL, GA	161	100		
17. Uphapee complex, AL	74	46		
18. Coosa River, AL	78	48		
19. Hatchet Creek, AL	66	41		
20. Shoal Creek, AL	26	16		
21. Kelly Creek, AL	34	21		
22. Cheaha Creek, AL	27	17		
23. Yellowleaf Creek, AL	39	24		
24. Big Canoe Creek, AL	.....	.....	29	18
25. Oostanaula complex, GA, TN	115	71	92	57
26. Lower Coosa River, AL	.....	.....	13	8
TOTAL	744	461	134	83
Orange-nacre mucket—THREATENED				
1. East Fork Tombigbee River, MS	26	16		
2. Bull Mountain Creek, MS	.....	.....	34	21
3. Buttahatchee River, MS, AL	87	54	23	14
4. Luxapalila Creek, MS, AL	29	18		
5. Coalfire Creek, AL	32	20		
6. Lubbub Creek, AL	31	19		
7. Sipsey River, AL	90	56		
8. Trussels Creek, AL	21	13		
9. Sucarnoochee River, AL	.....	.....	90	56
10. Sipsey Fork, AL	147	91		
11. North River, AL	47	29		
12. Locust Fork, AL	102	63		
13. Cahaba River, AL	124	77		
14. Alabama River, AL	.....	.....	73	45

TABLE 1.—APPROXIMATE RIVER DISTANCES, BY DRAINAGE, FOR OCCUPIED AND UNOCCUPIED CRITICAL HABITAT FOR THE 11 MUSSEL SPECIES*—Continued

Species, status, critical habitat unit, and state	Current occupied		Currently unoccupied	
	Kilometers	Miles	Kilometers	Miles
15. Bogue Chitto Creek, AL	52	32		
Total	788	480	220	136
Coosa moccasinshell—ENDANGERED				
18. Coosa River, AL			78	48
19. Hatchet Creek, AL			66	41
20. Shoal Creek, AL			26	16
21. Kelly Creek, AL			34	21
22. Cheaha Creek, AL			27	17
23. Yellowleaf Creek, AL			39	24
24. Big Canoe Creek, AL			29	18
25. Oostanaula Complex, GA, TN	115	71	92	57
26. Lower Coosa River, AL			13	8
Total	115	71	404	250
Dark pigtoe—ENDANGERED				
10. Sipsey Fork, AL	147	91		
11. North River, AL	47	29		
12. Locust Fork, AL			102	63
Total	194	120	102	63
Ovate clubshell—ENDANGERED				
1. East Fork Tombigbee River, MS			26	16
2. Bull Mountain Creek, MS			34	21
3. Buttahatchee River, MS, AL	87	54	23	14
4. Luxapalila Creek, MS, AL	29	18		
5. Coalfire Creek, AL	32	20		
6. Lubbub Creek, AL			31	19
7. Sipsey River, AL	90	56		
8. Trussels Creek, AL			21	13
9. Sucarnoochee River, AL	90	56		
10. Sipsey Fork, AL			147	91
11. North River, AL			47	29
12. Locust Fork, AL			102	63
13. Cahaba River, AL			124	77
17. Uphapee complex, AL	74	46		
18. Coosa River, AL			78	48
19. Hatchet Creek, AL			66	41
21. Kelly Creek, AL			34	21
24. Big Canoe Creek, AL			29	18
25. Oostanaula complex, GA, TN			206	128
26. Lower Coosa River, AL			13	8
Total	402	250	981	607
Southern clubshell—ENDANGERED				
1. East Fork Tombigbee River, MS	26	16		
2. Bull Mountain Creek, MS	34	21		
3. Buttahatchee River, MS, AL	87	54	23	14
4. Luxapalila Creek, MS, AL	29	18		
5. Coalfire Creek, AL			32	20
6. Lubbub Creek, AL	31	19		
7. Sipsey River, AL	90	56		
8. Trussels Creek, AL			21	13
9. Sucarnoochee River, AL			90	56
13. Cahaba River, AL			124	77
14. Alabama River, AL	73	45		
15. Bogue Chitto Creek, AL	52	32		
17. Uphapee Complex, AL	74	46		
18. Coosa River, AL	71	44	7	4
19. Hatchet Creek, AL			66	41
21. Kelly Creek, AL	26	16	8	5
24. Big Canoe Creek, AL	29	18		

TABLE 1.—APPROXIMATE RIVER DISTANCES, BY DRAINAGE, FOR OCCUPIED AND UNOCCUPIED CRITICAL HABITAT FOR THE 11 MUSSEL SPECIES *—Continued

Species, status, critical habitat unit, and state	Current occupied		Currently unoccupied	
	Kilometers	Miles	Kilometers	Miles
25. Oostanaula Complex, GA, TN	15	9	193	120
26. Lower Coosa River, AL	.....	.....	13	8
Total	637	394	577	358
Southern pigtoe—ENDANGERED				
18. Coosa River, AL	.....	.....	78	48
19. Hatchet Creek, AL	.....	.....	66	41
20. Shoal Creek, AL	26	16		
21. Kelly Creek, AL	.....	.....	34	21
22. Cheaha Creek, AL	27	17		
23. Yellowleaf Creek, AL	.....	.....	39	24
24. Big Canoe Creek, AL	29	18		
25. Oostanaula Complex, GA, TN	115	71	92	57
26. Lower Coosa River, AL	.....	.....	13	8
Total	197	122	322	199
Triangular kidneyshell—ENDANGERED				
10. Sipsey Fork, AL	147	91		
11. North River, AL	.....	.....	47	29
12. Locust Fork, AL	102	63		
13. Cahaba River, AL	105	65	19	12
18. Coosa River, AL	.....	.....	78	48
19. Hatchet Creek, AL	.....	.....	66	41
20. Shoal Creek, AL	26	16		
21. Kelly Creek, AL	26	16	8	5
22. Cheaha Creek, AL	.....	.....	27	17
23. Yellowleaf Creek, AL	.....	.....	39	24
24. Big Canoe Creek, AL	29	18		
25. Oostanaula Complex, GA, TN	206	128		
26. Lower Coosa River, AL	.....	.....	13	8
Total	641	397	297	184
Southern acornshell—ENDANGERED				
13. Cahaba River, AL	.....	.....	124	77
18. Coosa River, AL	.....	.....	78	48
19. Hatchet Creek, AL	.....	.....	66	41
21. Kelly Creek, AL	.....	.....	34	21
24. Big Canoe Creek, AL	.....	.....	29	18
25. Oostanaula Complex, GA, TN	.....	.....	205	128
26. Lower Coosa River, AL	.....	.....	13	8
Total	.....	.....	549	341
Upland combshell—ENDANGERED				
12. Locust Fork, AL	.....	.....	102	63
13. Cahaba River, AL	.....	.....	124	77
18. Coosa River, AL	.....	.....	78	48
19. Hatchet Creek, AL	.....	.....	66	41
21. Kelly Creek, AL	.....	.....	34	21
24. Big Canoe Creek, AL	.....	.....	29	18
25. Oostanaula Complex, GA, TN	.....	.....	205	128
26. Lower Coosa River, AL	.....	.....	13	8
Total	.....	.....	651	404

* Table 1 refers to the location and extent of critical habitat designated for each species. For more detail, refer to § 17.95. Table 1 will reflect totals on a species level only, because units are listed under each species as appropriate.

Upper Tombigbee River Drainage, Alabama, Mississippi

The Tombigbee River and several of its tributaries above the confluence of the Black Warrior River historically supported robust populations of the orange-nacre mucket, Alabama moccasinshell, southern clubshell, and ovate clubshell. Construction of navigation dams has eliminated these species from the mainstem river, and the dams and impounded waters isolate all surviving tributary populations from each other. The river and stream reaches identified in the nine units below contain primary constituent elements (*e.g.*, flow, water quality, substrate, channel stability) to a degree that allows the survival of one or more of the four species listed above and may be suitable for reintroduction of one or more of the four mussels. Fish hosts for these species are known or believed to be present (Mettee *et. al*, 1996; Ross, 2001). The introduced Asian clam is locally present in low to moderate numbers.

Unit 1. East Fork Tombigbee River, Monroe, Itawamba Counties, Mississippi

Unit 1 encompasses 26 km (16 mi) of the East Fork Tombigbee River channel in Mississippi extending from Mississippi Highway 278, Monroe County, upstream to the confluence of Mill Creek, Itawamba County, Mississippi. This reach of the East Fork Tombigbee River continues to support the southern clubshell and orange-nacre mucket (Hartfield and Jones, 1989; Miller and Hartfield, 1988; Mississippi Museum of Natural Science (MMNS) mussel collections, 1984–2001). This unit is within the historic range of the Alabama moccasinshell and ovate clubshell.

Unit 2. Bull Mountain Creek, Itawamba County, Mississippi

Unit 2 encompasses 34 km (21 mi) of the Bull Mountain Creek stream channel in Mississippi extending from Mississippi Highway 25, upstream to U.S. Highway 78, Itawamba County, Mississippi. Bull Mountain Creek supports the southern clubshell and Alabama moccasinshell (Jones and Majure, 1999). This unit is within the historic range of the orange-nacre mucket (records are from the early 1980's (MMNS mussel collections)) and the ovate clubshell.

Unit 3. Buttahatchee River and tributary, Lowndes/Monroe County, Mississippi; Lamar County, Alabama

Unit 3 encompasses 110 km (68 mi) of river and stream channel in Mississippi and Alabama, including 87 km (54 mi) of the Buttahatchee River, extending from its confluence with the impounded waters of Columbus Lake (Tombigbee River), Lowndes/Monroe County, Mississippi, upstream to the confluence of Beaver Creek, Lamar County, Alabama; and 23 km (14 mi) of Sipsey Creek, extending from its confluence with the Buttahatchee River, upstream to the Mississippi/Alabama State Line, Monroe County, Mississippi. The Buttahatchee River continues to support and provide habitat for the southern clubshell, orange-nacre mucket, ovate clubshell, and Alabama moccasinshell (Haag and Warren, 2001; Hartfield and Jones, 1989; Jones, 1991; McGregor, 2000). The current distribution of the Alabama moccasinshell also extends into its tributary Sipsey Creek (McGregor, 2000).

Unit 4. Luxapalila Creek and tributary, Lowndes County, Mississippi; Lamar County, Alabama

Unit 4 encompasses 29 km (18 mi) of stream channel, including 15 km (9 mi) of Luxapalila Creek, extending from Waterworks Road, Columbus, Mississippi, upstream to approximately 1.0 km (0.6 mi) above Steens Road, Lowndes County, Mississippi; and 15 km (9 mi) of Yellow Creek extending from its confluence with Luxapalila Creek, upstream to the confluence of Cut Bank Creek, Lamar County, Alabama. Luxapalila and Yellow Creeks support and provide habitat for the southern clubshell, orange-nacre mucket, ovate clubshell, and Alabama moccasinshell (Hartfield and Bowker, 1992; McGregor, 2000; Miller, 2000; Yokley 2001).

Unit 5. Coalfire Creek, Pickens County, Alabama

Unit 5 encompasses 32 km (20 mi) of the Coalfire Creek stream channel extending from its confluence with the impounded waters of Aliceville Lake (Tombigbee River), upstream to U.S. Highway 82, Pickens County, Alabama. Coalfire Creek supports the orange-nacre mucket and ovate clubshell (P. Hartfield, Service field records 1991; McGregor, 2000). The creek is in the historic range of the southern clubshell and Alabama moccasinshell.

Unit 6. Lubbub Creek, Pickens County, Alabama

Unit 6 encompasses 31 km (19 mi) of the Lubbub Creek stream channel extending from its confluence with the impounded waters of Gainesville Lake (Tombigbee River), upstream to the confluence of Little Lubbub Creek, Pickens County, Alabama. This stream supports the southern clubshell, orange-nacre mucket, and Alabama moccasinshell (P. Hartfield, Service field records, 1991; McGregor, 2000; Pierson, 1991a). It is in the historic range of the ovate clubshell.

Unit 7. Sipsey River, Greene/Pickens, Tuscaloosa Counties, Alabama

Unit 7 encompasses 90 km (56 mi) of the Sipsey River channel from the confluence with the impounded waters of Gainesville Lake (Tombigbee River), Greene/Pickens County, upstream to Alabama Highway 171 crossing, Tuscaloosa County, Alabama. This small river supports and provides some of the best remaining habitat for the southern clubshell, orange-nacre mucket, ovate clubshell, and Alabama moccasinshell (Haag and Warren, 1997; McCullagh *et al.*, 2002; McGregor, 2000; MMNS Mussel Collection; Pierson, 1991 a, b).

Unit 8. Trussels Creek, Greene County, Alabama

Unit 8 encompasses 21 km (13 mi) of creek channel extending from its confluence with the impounded waters of Demopolis Lake (Tombigbee River), upstream to Alabama Highway 14, Greene County, Alabama. The orange-nacre mucket continues to survive in Trussels Creek, and it is in the historic range of the ovate clubshell, Alabama moccasinshell, and southern clubshell (P. Hartfield field records, 1993; McGregor, 2000).

Unit 9. Sucarnoochee River, Sumter County, Alabama

Unit 9 encompasses 90 km (56 mi) of the Sucarnoochee River channel in Alabama, extending from its confluence with the Tombigbee River, upstream to the Mississippi/Alabama State Line, Sumter County, Alabama. The ovate clubshell continues to survive in the Sucarnoochee River (McGregor *et al.*, 1996). The river is within the historic range of the southern clubshell, orange-nacre mucket, and Alabama moccasinshell.

Black Warrior River Drainage, Alabama

The Black Warrior River and its tributaries historically supported populations of the orange-nacre mucket, Alabama moccasinshell, Coosa moccasinshell, southern clubshell, ovate clubshell, dark pigtoe, triangular kidneyshell, and upland combshell. There are also records of the fine-lined pocketbook from the drainage. Dam construction for navigation and hydropower and episodic water pollution resulted in the extirpation of the Coosa moccasinshell, southern

clubshell, ovate clubshell, and upland combshell from this drainage. The tributary drainages identified in the three units below contain primary constituent elements (*e.g.*, flow, water quality, substrate, channel stability) to a degree that allows the survival of two or more endangered or threatened mussels and may be suitable for reintroduction of one or more of the mussels. Fish hosts for these species are also known to be present (Mettee *et. al.*, 1996). The introduced Asian clam is locally present in these drainages in low to high densities. Dams and impounded waters currently isolate these drainages from each other.

Unit 10. Sipsey Fork drainage, Winston, Lawrence Counties, Alabama

Unit 10 encompasses 147 km (91 mi) of stream channel in Alabama, including: Sipsey Fork, 31 km (19 mi), from section 11/12 line, T10S R8W, Winston County, upstream to the confluence of Hubbard Creek, Lawrence County, Alabama; Thompson Creek, 8 km (5 mi), from confluence with Hubbard Creek, upstream to section 2 line, T8S R9W, Lawrence County, Alabama; Brushy Creek, 35 km (22 mi), from the confluence of Glover Creek, Winston County, Alabama, upstream to section 9, T8S R7W, Lawrence County, Alabama; Capsey Creek, 15 km (9 mi), from confluence with Brushy Creek, Winston County, upstream to the confluence of Turkey Creek, Lawrence County, Alabama; Rush Creek, 10 km (6 mi), from confluence with Brushy Creek, upstream to Winston/Lawrence County Line, Winston County, Alabama; Brown Creek, 5 km (3 mi), from confluence with Rush Creek, Winston County, upstream to section 24 line, T8S R7W Lawrence County, Alabama; Beech Creek, 3 km (2 mi), from confluence with Brushy Creek, to confluence of East and West Forks, Winston County, Alabama; Caney Creek and North Fork Caney Creek, 13 km (8 mi), from confluence with Sipsey Fork, upstream to section 14 line, Winston County, Alabama; Borden Creek, 18 km (11 mi), from confluence with Sipsey Fork, Winston County, Alabama, upstream to the confluence of Montgomery Creek, Lawrence County, Alabama; Flannagin Creek, 10 km (6 mi), from confluence with Borden Creek, upstream to confluence of Dry Creek, Lawrence County, Alabama. The upper Sipsey Fork drainage currently supports the most robust and extensive populations of the dark pigtoe, orange-nacre mucket, Alabama moccasinshell, and triangular kidneyshell (Haag and Warren, 1997; Haag *et al.*, 1995; Hartfield, 1991; Hartfield and Butler, 1997; Hartfield and Hartfield, 1996; McGregor, 1992; Warren and Haag, 1994). Ovate clubshell have been reported from this drainage (Dodd *et al.*, 1986).

Unit 11. North River and tributary, Tuscaloosa, Fayette Counties, Alabama

Unit 11 encompasses 47 km (29 mi) of river and stream channel in Alabama, including: North River, 42 km (26 mi) extending from Tuscaloosa County Road 38, Tuscaloosa County, upstream to confluence of Ellis Creek, Fayette County, Alabama; Clear Creek, 5 km (3 mi), from its confluence with North River, to Bays Lake Dam, Fayette County, Alabama. Small numbers of the dark pigtoe and orange-nacre mucket continue to survive in the North River and Clear Creek (McGregor and Pierson, 1999; Pierson, 1992a; Vittor and Associates, 1993). This area is in the historic range of the Alabama moccasinshell, triangular kidneyshell, and ovate clubshell.

Unit 12. Locust Fork and tributary, Jefferson, Blount Counties, Alabama

Unit 12 encompasses 102 km (63 mi) of river and stream channel in Alabama, including: Locust Fork, 94 km (58 mi) extending from U.S. Highway 78, Jefferson County, upstream to the confluence of Little Warrior River, Blount County, Alabama; Little Warrior River, 8 km (5 mi), from its confluence with the Locust Fork, upstream to the confluence of Calvert Prong and Blackburn Fork, Blount County, Alabama. Scattered collections of the orange-nacre mucket and triangular kidneyshell suggest an enduring population of these species in the Locust Fork (P. Johnson pers. comm., 2002; Hartfield, 1991; Shepard *et al.*, 1988). This stream is also in the historic range of the dark pigtoe, Alabama moccasinshell, ovate clubshell, and upland combshell.

Cahaba River Drainage, Alabama

The Cahaba River and tributaries historically supported the orange-nacre mucket, fine-lined pocketbook, Alabama moccasinshell, southern clubshell, ovate clubshell, triangular kidneyshell, upland combshell, and southern acornshell. Episodic and persistent pollution events have caused the decline of the mussel community throughout the drainage, as well as the extirpation of five of the listed mussels. The habitat unit described below contains primary constituent elements (*e.g.*, flow, water quality, substrate, channel stability) to a degree that allows the survival of the orange-nacre mucket, fine-lined pocketbook, and triangular kidneyshell and may be suitable for reintroduction of five of the 11 mussels. Fish hosts for these species are also known to be present (Mettee *et. al.*, 1996). The introduced Asian clam is locally present in these drainages in low to high densities.

Unit 13. Cahaba River and tributary, Jefferson, Shelby, Bibb Counties, Alabama

Unit 13 encompasses 124 km (77 mi) of river channel in Alabama, including: Cahaba River, 105 km (65 mi) extending from U.S. Highway 82, Centerville, Bibb County, upstream to Jefferson County Road 143, Jefferson County, Alabama; Little Cahaba River, 19 km (12 mi), from its confluence with the Cahaba River, upstream to the confluence of Mahan and Shoal Creeks, Bibb County, Alabama. Scattered individuals of triangular kidneyshell, orange-nacre mucket, and fine-lined pocketbook continue to be collected from the Cahaba drainage (R. Haddock, Cahaba River Society, pers. comm., 2002; McGregor *et al.*, 2000; Shepard *et al.*, 1994). The river is historic habitat for the Alabama moccasinshell, southern clubshell, ovate clubshell, upland combshell, and southern acornshell.

Alabama River Drainage, Alabama

The Alabama River mollusk community has been reduced due to the effects of historic pollution events and impoundment for navigation. Historical records from this river include the Alabama moccasinshell, orange-nacre mucket, fine-lined pocketbook, triangular kidneyshell, and southern clubshell. The habitat units defined below contain primary constituent elements (*e.g.*, flow, water quality, substrate, channel stability) to a degree that allows the survival of two of these mussels. Fish hosts for these species are also known to be present (Mettee *et al.*, 1996). The introduced Asian clam is locally present in these drainages in low to moderate densities.

Unit 14. Alabama River, Autauga, Lowndes, Dallas Counties, Alabama

Unit 14 encompasses 73 km (45 mi) of the Alabama River channel, extending from the confluence of the Cahaba River, Dallas County, upstream to the confluence of Big Swamp Creek, Lowndes County, Alabama. The southern clubshell is known to occur within this reach (Hartfield and Garner, 1998). This area may become suitable for reintroduction of the orange-nacre mucket.

Unit 15. Bogue Chitto Creek, Dallas County, Alabama

Unit 15 encompasses 52 km (32 mi) of the Bogue Chitto Creek channel in Alabama, extending from its confluence with the Alabama River, Dallas County, upstream to U.S. Highway 80, Dallas County, Alabama. This stream continues to support the southern clubshell and orange-nacre mucket (McGregor *et al.*, 1996; P. Hartfield field notes, 1984; Pierson, 1991a). The habitat offers potential for the Alabama moccasinshell.

Tallapoosa River Drainage, Alabama, Georgia

Historical and recent records indicate that the Tallapoosa River drainage supported a diverse mussel community, although numbers of all mussel species have apparently always been low in this system. The two habitat units identified below contain primary constituent elements (*e.g.*, flow, water quality, substrate, channel stability) to a degree that allows the survival of three of the listed mussels and may be suitable for reintroduction of one or more of the 11 mussels. Fish hosts for these species are also known to be present (Mettee *et al.*, 1996). The introduced Asian clam is locally present in these drainages in low to moderate densities.

Unit 16. Tallapoosa River and tributary, Cleburne County, Alabama and Haralson and Paulding Counties, Georgia

Unit 16 encompasses 161 km (100 mi) of river and stream channel in Alabama and Georgia, including: Tallapoosa River. 137 km (85 mi) extending from U.S. Highway 431, Cleburne County, Alabama, upstream to the confluence of McClendon and Mud Creeks, Paulding County, Georgia; and Cane Creek, 24 km (15 mi), from confluence with Tallapoosa River, upstream to Section 33/4 Line (T15S, R11E), Cleburne County, Alabama. This extensive area of main channel and tributary habitat supports scattered, small numbers of the fine-lined pocketbook (Devris, 1997; Irwin *et al.*, 1998; Irwin pers. comm., 2000). There have been site collections of fine-lined pocketbook in the extreme lowest reaches of several small tributaries to the Tallapoosa Unit, including Little Cane Creek, Big Creek, McClendon Creek, and Muscadine Creek, and there are likely to be others. We believe these small populations are dependent upon the main stem Tallapoosa River for recruitment.

Unit 17. Uphapee/Choctafaula/ Chewacla Creeks, Macon, Lee Counties, Alabama

Unit 17 encompasses 74 km (46 mi) of stream channel in Alabama, including: Uphapee Creek, 18 km (11 mi) of river channel extending from Alabama Highway 199, upstream to confluence of Opintlocco and Chewacla Creeks, Macon County, Alabama; Choctafaula Creek, 11 km (7 mi), from confluence with Uphapee Creek, upstream to Macon County Road 54, Macon County, Alabama; Chewacla Creek, 29 km (18 mi), from confluence with Opintlocco Creek, Macon County, Alabama, upstream to Lee County Road 159, Lee County, Alabama; Opintlocco Creek, 16 km (10 mi), from confluence with Chewacla Creek, upstream to Macon County Road 79, Macon County, Alabama. This stream network supports small and localized populations of the fine-lined pocketbook, ovate clubshell, and southern clubshell (M. Gangloff, Auburn University, *in litt.*, 2001; Gangloff, 2002; McGregor, 1993; Pierson, 1991a).

Coosa River Drainage, Alabama, Georgia, Tennessee

Extensive impoundment for hydropower during the 20th century along with episodic pollution events severely reduced one of the most diverse endemic freshwater mollusk communities in the world. The river and stream reaches in eight of the nine units identified below contain primary constituent elements (*e.g.*, flow, water quality, substrate, channel stability) to a degree that allows the survival of two or more endangered or threatened mussels and may be suitable for reintroduction of one or more of the 11 mussels. Fish hosts for these species are also known to be present (Mettee *et al.*, 1996). Constituent elements in Unit 26 have improved to a degree that survival of extirpated endangered and threatened species may now be possible (Johnson, 2002). The introduced Asian clam is locally present in these units in low to high densities.

Unit 18. Coosa River (Old River Channel) and tributary, Cherokee, Calhoun, Cleburne Counties, Alabama

Unit 18 encompasses 78 km (48 mi) of river channel in Alabama, including: Coosa River, 18 km (11 mi) extending from the powerline crossing southeast of Maple Grove, Alabama, upstream to Weiss Dam, Cherokee County, Alabama; Terrapin Creek, 53 km (33 mi) extending from its confluence with the Coosa River, Cherokee County, upstream to Cleburne County Road 49, Cleburne County, Alabama; South Fork Terrapin Creek, 7 km (4 mi) from its confluence with Terrapin Creek, upstream to Cleburne County Road 55, Cleburne County, Alabama. The short reach of the Coosa River continues to support a fairly robust population of the southern clubshell, and a few individuals of the fine-lined pocketbook (Herod *et al.*, 2001). The fine-lined pocketbook and southern clubshell have also been recently collected from Terrapin Creek (Feminella and Gangloff, 2000). This area is within the range of the Coosa moccasinshell, southern pigtoe, ovate clubshell, triangular kidneyshell, upland combshell, and southern acornshell.

Unit 19. Hatchet Creek, Coosa, Clay Counties, Alabama

Unit 19 encompasses 66 km (41 mi) of the Hatchet Creek channel in Alabama, extending from the confluence of Swamp Creek at Coosa County Road 29, Coosa County, Alabama, upstream to Clay County Road 4, Clay County, Alabama. The fine-lined pocketbook occurs within this reach (Feminella and Gangloff, 2000; Pierson, 1992b). Hatchet Creek is within the historic range of the Coosa moccasinshell, southern pigtoe, ovate clubshell, southern clubshell, triangular kidneyshell, upland combshell, and southern acornshell.

Unit 20. Shoal Creek, Calhoun, Cleburne Counties, Alabama

Unit 20 encompasses 26 km (16 mi) of stream channel in Alabama, extending from the headwater of Whitesides Mill Lake, Calhoun County, Alabama, upstream to the tailwater of Coleman Lake Dam, Cleburne County, Alabama. The fine-lined pocketbook, southern pigtoe, and triangular kidneyshell survive in Shoal Creek (Haag *et al.*, 1999; Feminella and Gangloff, 2000; Gangloff *in litt.*, 2001; Pierson, 1992b). Shoal Creek is within historic range of the Coosa moccasinshell.

Unit 21. Kelly Creek and tributary, Shelby, St. Clair Counties, Alabama

Unit 21 encompasses 34 km (21 mi) of stream channel in Alabama, including: Kelly Creek, 26 km (16 mi) extending from the confluence with the Coosa River, upstream to the confluence of Shoal Creek, St. Clair County, Alabama; Shoal Creek, 8 km (5 mi), from confluence with Kelly Creek, St. Clair County, Alabama, upstream to St. Clair/ Shelby County Line, St. Clair County, Alabama. Kelly/Shoal Creeks continue to support scattered individuals of the fine-lined pocketbook, and the southern clubshell and triangular kidneyshell

survive in Kelly Creek (Pierson pers. comm., 1995; Feminella and Gangloff, 2000; Gangloff *in litt.*, 2001). This stream complex is historic habitat for the southern pigtoe, Coosa moccasinshell, ovate clubshell, upland combshell, and southern acornshell.

Unit 22. Cheaha Creek, Talladega, Clay Counties, Alabama

Unit 22 encompasses 27 km (17 mi) of the Cheaha Creek channel, extending from its confluence with Choccolocco Creek, Talladega County, Alabama, upstream to the tailwater of Chinnabee Lake, Clay County, Alabama. The fine-lined pocketbook and southern pigtoe survive within this reach (Feminella and Gangloff, 2000; Gangloff *in litt.*, 2001; Pierson, 1992b, 1993). Cheaha Creek is in the historic range of the Coosa moccasinshell and triangular kidneyshell.

Unit 23. Yellowleaf Creek and tributary, Shelby County, Alabama

Unit 23 encompasses 39 km (24 mi) of stream channel, including: Yellowleaf Creek, 32 km (20 mi), extending from Alabama Highway 25, upstream to Shelby County Road 49; Muddy Prong, 7 km (4 mi), extending from confluence with Yellowleaf Creek, upstream to U.S. Highway 280, Shelby County, Alabama. Yellowleaf and Muddy Prong Creeks are currently inhabited by the fine-lined pocketbook (Feminella and Gangloff, 2000; Gangloff *in litt.*, 2001; Pierson *in litt.*, 2000). Yellowleaf Creek is in the historic range of the Coosa moccasinshell, southern pigtoe, and triangular kidneyshell.

Unit 24. Big Canoe Creek, St. Clair County, Alabama

Unit 24 encompasses 29 km (18 mi) of the Big Canoe Creek channel, extending from its confluence with Little Canoe Creek at the St. Clair/Etowah County line, St. Clair County, upstream to the confluence of Fall Branch, St. Clair County, Alabama. The southern clubshell, southern pigtoe, and triangular kidneyshell are surviving in low numbers in Big Canoe Creek (Feminella and Gangloff, 2000; Gangloff *in litt.*, 2001). This stream is also historic habitat for the fine-lined pocketbook, ovate clubshell, Coosa moccasinshell, upland combshell, and southern acornshell.

Unit 25. Oostanaula River/Coosawattee River/Conasauga River/Holly Creek, Floyd, Gordon, Whitfield, Murray Counties, Georgia; Bradley, Polk Counties, Tennessee

Unit 25 encompasses 206 km (128 mi) of river and stream channel in Georgia and Tennessee, including: Oostanaula River, 77 km (48 mi) extending from its confluence with the Etowah River, Floyd County, upstream to the confluence of the Conasauga and Coosawattee River, Gordon County, Georgia; Coosawattee River, 15 km (9 mi), from confluence with the Conasauga River, upstream to Georgia State Highway 136, Gordon County, Georgia; Conasauga River, 98 km (61 mi), from confluence with the Coosawattee River, Gordon County, Georgia, upstream through Bradley and Polk Counties, Tennessee, to the Murray County Road 2, Murray County, Georgia; Holly Creek, 16 km (10 mi), from confluence with Conasauga River, upstream to its confluence with Rock Creek, Murray County, Georgia. This extensive riverine reach continues to support small and localized populations of fine-lined pocketbook, southern pigtoe, triangular kidneyshell, Alabama moccasinshell, and Coosa moccasinshell. The triangular kidneyshell survives throughout this unit, while the fine-lined pocketbook, southern pigtoe, and Coosa moccasinshell appear to be currently restricted to the Conasauga River and Holly Creek and the southern clubshell appears restricted to a small 15 km (9 mi) reach of the Conasauga River (Evans, 2001; Johnson and Evans, 2000; Pierson *in litt.*, 1993; Williams and Hughes, 1998). The Alabama moccasinshell is currently known to survive only in the Holly Creek portion of this Unit (Evans, 2001; Johnson and Evans, 2000). The Oostanaula/Coosawattee/Conasauga Unit also contains historic habitat for the southern clubshell, ovate clubshell, upland combshell, and southern acornshell.

Unit 26. Lower Coosa River, Elmore County, Alabama

Unit 26 encompasses 13 km (8 mi) of the Lower Coosa River channel, extending from Alabama State Highway 111 bridge, upstream to Jordan Dam, Elmore County, Alabama. This river reach is within the historic range of fine-lined pocketbook, southern clubshell, Alabama moccasinshell, Coosa moccasinshell, ovate clubshell, southern pigtoe, triangular kidneyshell, upland combshell, and southern acornshell. (Johnson, 2002; Pierson, 1991a).

Land Ownership

Table 2 summarizes primary adjacent riparian landowners in each of the proposed critical habitat units by private, State, or Federal ownership.

TABLE 2.—ADJACENT RIPARIAN LAND OWNERSHIP (KM[MI]) IN CRITICAL HABITAT UNITS FOR 11 THREATENED AND ENDANGERED MUSSELS IN THE MOBILE RIVER BASIN

Critical habitat unit	Private	State	Federal	Total
1. East Fork Tombigbee River	19(12)	.....	6(4)	26(16)
2. Bull Mountain Creek	34(21)	.....	.....	34(21)
3. Buttahatchee River	110(68)	.....	.....	110(68)
4. Luxapalila Creek	29(18)	.....	.....	29(18)
5. Coalfire Creek	32(20)	.....	.....	32(20)
6. Lubbub Creek	31(19)	.....	.....	31(19)
7. Sipsey River	74/(46)	16(10)	.....	90(56)
8. Trussels Creek	21(13)	.....	.....	21(13)
9. Sucarnoochee River	90(56)	.....	.....	90(56)
10. Sipsey Fork	15(9)	.....	132(82)	147(91)
11. North River	47(29)	.....	.....	47(29)
12. Locust Fork	102(63)	.....	.....	102(63)
13. Cahaba River	92(57)	26(16)	6(4)	124(77)
14. Alabama River	73(45)	.....	.....	73(45)
15. Bogue Chitto	52(32)	.....	.....	52(32)
16. Tallapoosa River	161(100)	.....	.....	161(100)
17. Uphapee complex	56(35)	.....	18(11)	74(46)
18. Coosa River	63(39)	.....	15(9)	78(48)

TABLE 2.—ADJACENT RIPARIAN LAND OWNERSHIP (KM[MI]) IN CRITICAL HABITAT UNITS FOR 11 THREATENED AND ENDANGERED MUSSELS IN THE MOBILE RIVER BASIN—Continued

Critical habitat unit	Private	State	Federal	Total
19. Hatchet Creek	55(34)	.....	11(7)	66(41)
20. Shoal Creek	.....	.....	26(16)	26(16)
21. Kelly Creek	34(21)	.....	.....	34(21)
22. Cheaha Creek	16(10)	.....	11(7)	27(17)
23. Yellowleaf Creek	39(24)	.....	.....	39(24)
24. Big Canoe Creek	29(18)	.....	.....	29(18)
25. Oostanaula Complex	188(117)	.....	18(11)	206(128)
26. Lower Coosa River	13(8)	.....	.....	13(8)
Total	1,475(914)	42(26)	243(151)	1,760(1,093)

Public lands adjacent to critical habitat units consist of approximately 288 km (179 mi) of riparian lands, including Canal Section Wildlife Management Area in Unit 1 (6 km (4 mi)); Sipsey River Natural Area in Unit 7 (16 km (10 mi)); William B. Bankhead National Forest in Unit 10 (134 km (83 mi)); Cahaba River National Wildlife Refuge (6 km (4 mi)) and Cahaba River Wildlife Management Area (28 km (17 mi)) in Unit 13; Tuskegee National Forest in Unit 17 (16 km (10 mi)); Talladega National Forest in Unit 18 (15 km (9 mi)), Unit 19 (11 km (7 mi)), Unit 20 (27 km (17mi)), and Unit 22 (11 km (7 mi)); and Chattahoochee National Forest in Unit 25 (18 km (11 mi)).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Activities on Federal lands that may affect these 11 mussels or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the USACE under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat to the 11 mussels. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical

habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat to the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would often result in jeopardy to the species concerned when the area of the proposed action is occupied by the species concerned.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Actions that would alter the minimum flow or the existing flow regime to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, impoundment, channelization, water diversion, and hydropower generation.

(2) Actions that would significantly alter water chemistry or temperature to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(3) Actions that would significantly increase sediment deposition within the stream channel to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances.

(4) Actions that would significantly increase the filamentous algal community within the stream channel to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(5) Actions that would significantly alter channel morphology or geometry to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, destruction of riparian vegetation.

(6) Actions that would introduce, spread, or augment nonnative aquatic species into critical habitat to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, stocking for sport, biological control, or other purposes; aquaculture; and construction and operation of canals.

We consider 25 of the 26 critical habitat units to be occupied by the species because at least one of the 11 mussels occurs in these units. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species.

Previous Section 7 Consultations

Federal actions that we have reviewed since these 11 mussel species received protection under the Act include Federal land management plans, Federal land acquisition and disposal, road and bridge maintenance and construction, water diversion, timber harvest on Federal land, channelization, flood control, channel maintenance, water quality standards, dam construction and operation, and issuance of permits under section 404 of the Clean Water Act. Federal agencies involved with these activities included the U.S. Army Corps of Engineers (USACE), U.S. Forest Service, Natural Resources Conservation Service, Environmental Protection Agency, and Federal Highway Administration. Since the original listing of these 11 mussel species, seven formal consultations have been conducted. None of these resulted in a finding that the proposed action would jeopardize the continued existence of any of the 11 species.

In each of the biological opinions resulting from these consultations, we included discretionary conservation recommendations to the action agency. Conservation recommendations are activities that would avoid or minimize the adverse effects of a proposed action on a listed species or its critical habitat, help implement recovery plans, or develop information useful to the species' conservation.

Previous biological opinions also included nondiscretionary reasonable and prudent measures, with implementing terms and conditions, which are designed to minimize the proposed action's incidental take of these 11 mussels. Section 3(18) of the Act defines the term take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct." Harm is further defined in our regulations (50 CFR 17.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Conservation recommendations and reasonable and prudent measures provided in previous biological opinions for these mussels have included maintaining State water quality standards, maintaining adequate stream flow rates, minimizing work in the wetted channel, restricting riparian clearing, monitoring channel morphology and mussel populations, installing signage, protecting buffer zones, avoiding pollution, using cooperative planning efforts, minimizing ground disturbance, using sediment barriers, relocating recreational trails, using best management practices to minimize erosion, and funding research useful for mussel conservation.

The designation of critical habitat will have no impact on private landowner activities that do not require Federal funding or permits. Designation of critical habitat is only applicable to activities approved, funded, or carried out by Federal agencies.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, you may contact the following Service offices:

Alabama—Daphne, FWS Ecological Services Office (251/441–5181)
Georgia—Athens, FWS Ecological Services Office (706/613–9493)
Mississippi—Jackson, FWS Ecological Services Office (601/965–4900)
Tennessee—Cookeville, FWS Ecological Services Office (931/528–6481)

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and any other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We have prepared an economic analysis that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS*, and that was available for public review and comment during the comment periods for the proposed rule. The final economic analysis is available from our Web site at *http://southeast.fws.gov/hotissue*. Since the critical habitat designation includes only aquatic areas that are generally held in public trust, involves no Tribal lands, and includes no areas presently under special management or protection provided by a legally operative plan or agreement for the conservation of these mussels, we believe, other than economics, there are no other relevant impacts to evaluate under section 4(b)(2).

Based on the best available information including the prepared economic analysis, we believe that all of the 26 units are essential for the conservation of these species and have identified no areas where the benefits of exclusion outweigh the benefits of designation. As detailed in our economic analysis, Units 12 and 18 are likely to engender the highest costs on a unit-by-unit basis, accounting for approximately 81 percent of the total costs of the designation. The high cost associated with Unit 12 is attributed to the relocation of a potential reservoir from the Locust Fork River outside of critical habitat to an alternate site in the drainage. The economic analysis for this action includes a range of impacts for this project of $0 to $154 million. However, a previous proposal to impound the Locust Fork River was withdrawn due to public opposition for reasons other than impacts to endangered or threatened species. Exclusion of Unit 12 from the designation will not resolve the existing concerns associated with the potential reservoir site and will not reduce any regulatory requirements under section 7 of the Act because these would already be required due to the existing presence of federally listed species. Moreover, Unit 12 is currently occupied by one endangered and one threatened mussel, in addition to an endangered fish and an endangered snail; all of which are extremely limited in range and threatened with increasing habitat loss, fragmentation, and modification. Therefore, it is not reasonably foreseeable that exclusion of Unit 12 from designation would prevent relocation of the reservoir. On the other hand, Unit 12 is essential to the conservation of both the threatened orange-nacre mucket and endangered triangular kidneyshell, and may be suitable for reintroduction of the dark pigtoe, Alabama moccasinshell, ovate clubshell, and upland combshell.

As to Unit 18, power production losses resulting in annual costs to consumers of up to $2.84 million are attributable to a range of minimum flows that might be recommended for Weiss Dam. The high costs for Unit 18 detailed in our economic analysis are attributed to the use of conservative high-end estimates of potential minimum flow recommendations at Weiss Dam. However due to concerns over negative impacts to mussels and their habitats that might result from high increases in minimum flows from Weiss Dam, it is likely that the Service will recommend flows closer to the low-end estimates used in the economic analysis (see response to Comment 56 above). Exclusion of Unit 18 from the designation will have little impact on consultation issues or outcomes under section 7 of the Act due to relicensing because the unit is currently occupied by two federally listed mussels. On the other hand, Unit 18 is essential to the conservation of both the threatened fine-lined pocketbook and endangered southern clubshell, and may be suitable for reintroduction of 6 of the 11 mussel species.

Similarly, in Unit 25 decreased power generation and lost dependable capacity at Carters Dam stemming from anticipated flow changes at Carters ReRegulation Dam led to an estimate of potential costs of up to $794,000 per year, representing nine percent of the total costs as detailed in our economic analysis. Exclusion of Unit 25 from the designation will have little impact on consultation issues or outcomes under section 7 of the Act due to relicensing. The unit is currently occupied by four federally listed mussels, so consultation would already be necessary and costs incurred regardless of whether this unit was designated. On the other hand, Unit 25 is essential to the conservation of the fine-lined pocketbook, southern pigtoe, triangular kidneyshell, Alabama moccasinshell, and Coosa moccasinshell, and may be suitable for reintroduction of 4 of the 11 mussel species.

Finally, economic activity in Unit 14, including the USACE dredging of the Federal Navigation Channel on the Alabama River, contributes approximately three percent of the total costs, as estimated in the economic analysis. The high costs attributed to Unit 14, over $8 million, is due to concerns by the USACE that the Service may require upland disposal of maintenance dredge material if this reach of the Alabama River is designated as critical habitat. We believe that current navigation channel maintenance, specifically dredging and dredge material disposal in channel, in Unit 14 has little effect on mussels and their habitats, due to the location and limited frequency and extent of the activity. In addition, there is evidence that the removal of dredge materials from the channel may cause an increase in bed and bank erosion, to the detriment of the mussel community (Hartfield and Garner 1988). We do not anticipate recommending upland disposal of dredge material associated with Federal Navigation Channel maintenance in the Alabama River. These costs were included in our economic analysis for conservative purposes only. Exclusion of Unit 14, which is occupied by two listed mussels, will not alter consultation requirements under section 7 of the Act.

Other than the high-end, conservative estimates, our economic analysis indicates an overall small economic impact will result from this designation. Furthermore, the remaining designated Units are anticipated to generate less than one percent of the total costs of section 7 consultation regarding the mussels. In our economic analysis, we have conservatively included all costs attributed to consultation requirements resulting from the listing of these species and designation of critical habitat; because of this, the economic impacts that may result from this designation alone are minimal. The recovery of these 11 mussels in the near future, however, is unlikely due to the extent of their decline and the degree of fragmentation and isolation of their habitats. As explained in this rule, the areas currently occupied by the mussels are inadequate for their conservation. Therefore, we believe all 26 units are essential to the conservation of these species and have identified no areas where the benefits of exclusion outweigh the benefits of this designation.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is found to be a significant regulatory action. Because of the Court Ordered deadline, formal Office of Management and Budget (OMB) review was not undertaken. We prepared an economic analysis of this action. The draft economic analysis was made available for public comment and we considered those comments during the preparation of this rule. The economic analysis indicates that this rule will not have an *annual* economic effect of $100 million or more; the economic analysis indicates that this rule will have an annual economic effect of $2 to $13.6 million. This rule is not expected to adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Under the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions related to critical habitat on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Because of the potential for impacts on other Federal agencies' activities, we reviewed this action for any inconsistencies with other Federal agency actions. We believe that this rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, except those involving Federal agencies, which would be required to ensure that their activities do not destroy or adversely modify designated critical habitat. As discussed above, we do not anticipate that the adverse modification prohibition (from critical habitat designation) will have any significant economic effects such that it will have an annual economic effect of $100 million or more. The final rule follows the requirements for designating critical habitat required in the Act.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this rule will not have a significant effect on a substantial number of small entities: The following discussion explains our rationale for certification.

According to the Small Business Administration, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121 and *http://www.sba.gov/size/*). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result.

The economic analysis determined whether this critical habitat designation potentially affects a "substantial number" of small entities in counties supporting critical habitat areas. It also quantified the probable number of small businesses that experience a "significant effect." SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA (*Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C.* and *America Trucking Associations, Inc.* v. *EPA.*).

The economic analysis identified activities that are within, or will otherwise be affected by, section 7 of the Act for the mussels. After excluding exclusively Federal consultations and those that do not involve small businesses or governments from the total universe of potential impacts identified in the body of the economic analysis, the following consultations and Action agencies remain: (1) Agriculture and ranching-related activities (USACE and USDA); (2) Hydropower (FERC and USACE); (3) Water supply dams (USACE); and (4) Dredging activities (USACE). This subset represents the group of consultations and Action agencies that may produce significant impacts on small entities. Specifically, these actions feature activities that do not occur exclusively on Federal lands and may directly regulate small entities.

To be conservative, this analysis assumes that a unique entity will undertake each of the projected consultations in a given year, and so the number of entities affected is equal to the total annual number of consultations (both formal and informal). While it is possible that the same entity could consult with the Service more than once, it is unlikely to do so during the one-year timeframe addressed in this analysis. However, should such multiple consultations occur, effects of the designation would be concentrated on fewer entities. In such a case, the approach outlined here likely would overstate the number of affected entities. This analysis also limits the universe of potentially affected entities to include only those within the 36 counties in which critical habitat units occur. This interpretation produces more conservative results than including all entities nationwide.

For the analysis, the first step was to estimate the number of small entities affected. As shown in Table 3, the following calculations yield this estimate:

- Estimate the number of entities within the study area affected by section 7 implementation annually (assumed to be equal to the number of annual consultations);
- Calculate the percent of entities in the affected industry that are likely to be small;
- Calculate the number of affected small entities in the affected industry;
- Calculate the percent of small entities likely to be affected by critical habitat.

TABLE 3.—ESTIMATED ANNUAL NUMBER OF SMALL ENTITIES AFFECTED BY CRITICAL HABITAT DESIGNATION: THE "SUBSTANTIAL NUMBER" TEST

Industry Name	Agriculture and ranching NAICS 111, 112 (SIC 01, 02)	Hydro-electric power generation NAICS 221111 (SIC 4911) [1]	Water supply activities: small government	Heavy construction NAICS 234990 (SIC 1629)
By formal consultation:				
Annual number of affected entities in industry	0.6	0.1	0.1	0.0
(Equal to number of annual consultations)	3.8	0.1		0.1
Total number of all entities in industry within study area	1,712	106	36	223
Number of small entities in industry within study area	1,637		22	210
Percent of entities that are small (Number of small entities)/(Total number of entities)	96%	100%	61%	94%
Annual number of small entities affected (Number of affected entities)* (Percent of small entities)	4.2	0.2	0.06	0.1
Annual percentage of small entities affected (Number of small entities affected)/(Total number of small entities)	0.6%	0.2%	0.3%	0.04%

[1] Actual estimates of small hydroelectric power generation facilities are not available, therefore this analysis conservatively assumes 100% of hydroelectric power generation facilities in the affected areas to be small.

This calculation reflects conservative assumptions and nonetheless yields an estimate that less than one percent of small entities in affected areas will potentially be affected by implementation of section 7 of the Act for the mussels. As a result, this analysis concludes that a significant economic impact on a substantial number of small entities will *not* result from the designation of critical habitat for the 11 mussels. Nevertheless, an estimate of the number of small businesses that will experience effects at a significant level is provided below.

Costs of critical habitat designation to individual small businesses consist primarily of the cost of participating in section 7 consultations and the cost of project modifications. To calculate the likelihood that a small business will experience a significant effect from critical habitat designation for the mussels, the following calculations were made:

- Calculate the per-business cost. This consists of the cost to a third party of participating in a section 7 consultation and the cost of associated project modifications. To be conservative, this analysis uses the high-end estimate for each cost, and includes all project modifications for that activity.
- Distribute the total number of affected small businesses across revenue levels. This is done by distributing the annual number of affected small businesses across different revenue bins as categorized by Robert Morris Associates (RMA) Annual Statement Studies: 2001–2002, which provides data on the distribution of annual sales within an industry across the following ranges: $0–1 million, $1–3 million, $3–5 million, $5–10 million, $10–25 million, and greater than $25 million (for some industries, fewer bins are included when revenues are much lower than $25 million). The SBA sets the small business size standard for "crop production" and "animal production" at $0.75 million in annual receipts, with the exception of "cattle feedlots" and "chicken egg production" that are set at $1.5 million and $10.5 million respectively. In these industries, 96 percent of small businesses have annual revenues less than $1 million. The size standard for "hydroelectric power generation" is set at less than four million megawatt hours generated per year. "Hydroelectric power generation" is identified by North American Industry Classification System (NAICS) code #221111. U.S. Small Business Administration, "Small Business Size Standards matched to North American Industry Classification System," accessed at *http://www.sba.gov/size/sizetable2002.html* on March 14, 2003. A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed four million megawatt hours. In the case of the heavy construction industry, the SBA sets the small business size standard at $17 million in annual receipts. "Heavy construction" which includes "dredging and surface clean-up activities" is identified by NAICS code 234990. U.S. Small Business Administration, "Small Business Size Standards matched to NAICS," accessed at *http://www.sba.gov/size/sizetable2002.html* on May 13, 2003.
- Estimate the level of effect on small businesses per bin level. This is calculated by taking the per-business cost and dividing it by the per-business revenue in each bin to determine the percent of revenue represented by the per-business cost.

Calculations for costs associated with section 7 implementation for the mussels are provided in Table 4 below.

TABLE 4.—ESTIMATED ANNUAL EFFECTS ON SMALL BUSINESSES: THE "SIGNIFICANT EFFECT" TEST

Agriculture and Ranching NAICS 111, 112 (SIC 01, 02)

Annual Number of Small Businesses Affected						4.1
Per-Business Cost						$14,000
RMA Revenue Bin	$0–1M	$1–3M	$3–5M	$5–10M	$10–25M	$25+M
Per Business Revenue[1]	$0.5M[3]	$1M	$3M	$5M	$10M	$25M
Distribution	96%	2%	1%	2%		
Annual number of affected small businesses	3.9	0.1	0.0	0.1		

TABLE 4.—ESTIMATED ANNUAL EFFECTS ON SMALL BUSINESSES: THE "SIGNIFICANT EFFECT" TEST—Continued

Per-Business effect	2.8%	1.4%	0.5%	0.3%		
Hydroelectric Power Generation NAICS 221111 (SIC 4911)[2]						
Annual Number of Small Businesses Affected						0.2
Per-Business Cost						$4,100
RMA Revenue Bin	$0–1M	$1–3M	$3–5M	$5–10M	$10–25M	$25+M
Per Business Revenue[1]	$0.5M[3]	$1M	$3M	$5M	$10M	$25M
Distribution	9%	17%	10%	5%	22%	37%
Annual number of affected small businesses	0.02	0.03	0.02	0.01	0.04	0.07
Per-Business effect	0.8%	0.4%	0.1%	0.08%	0.04%	0.01%
Heavy Construction, nec NAICS 234990 (SIC 1629)						
Annual Number of Small Businesses Affected						0.1
Per-Business Cost						$248,000
RMA Revenue Bin	$0–1M	$1–3M	$3–5M	$5–10M	$10–25M	$25+M
Per Business Revenue[1]	$0.5M[3]	$1M	$3M	$5M	$10M	$25M
Distribution	4%	26%	16%	41%	13%	
Annual number of affected small businesses	0.004	0.03	0.02	0.04	0.01	
Per-Business effect	49.6%	24.8%	8.3%	5.0%	2.5%	

[1] In order to be conservative, this analysis assumes that the small businesses in each bin have revenue equal to the low end of the range within a bin. Thus, percent of revenue impacts may appear larger than would be likely for that business.
[2] Actual estimates of small hydroelectric power generation facilities are not available, therefore this analysis conservatively assumes 100% of hydroelectric power generation facilities in the affected areas to be small.
[3] Because this bin ranges from $0 to $1 million, this analysis uses the mid-point of the range.

As presented in Exhibit 4, of the four agriculture and ranching industries impacted annually by this designation, an average of 3.9 businesses with revenues less than $1 million will experience a 2.8 percent effect on revenues, and less than one business per year with greater than $1 million in revenues will experience an effect on revenues of less than two percent. Therefore, the economic analysis concludes that a significant economic impact on a substantial number of small businesses will *not* result from the designation of critical habitat for the 11 mussels.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Under SBREFA, this rule is not a major rule (see Regulatory Flexibility Act section). Our assessment of the economic effects of this designation is described in the economic analysis. Based upon the effects identified in the economic analysis, this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Please refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The purpose of this requirement is to ensure that all Federal agencies "appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy." The Office of Management and Budget has provided guidance for implementing this executive order that outlines nine outcomes that may constitute "a significant adverse effect" when compared without the regulatory action under consideration:

- Reductions in crude oil supply in excess of 10,000 barrels per day;
- Reductions in fuel production in excess of 4,000 barrels per day;
- Reductions in coal production in excess of 5 million tons per year;
- Reductions in natural gas production in excess of 25 million metric cubic feet;
- Reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity;
- Increases in energy use required by the regulatory action that exceed the thresholds above;
- Increases in the cost of energy production in excess of one percent;
- Increases in the cost of energy distribution in excess of one percent; or
- Other similarly adverse outcomes.

Three of these criteria are relevant to this analysis: (1) Reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity; (2) increases in the cost of energy production in excess of one percent; and (3) increases in the cost of energy distribution in excess of one percent. The following analysis determines whether the electricity industry, specifically related to hydroelectric production and distribution, is likely to experience "a significant adverse effect" as a result of section 7 implementation for the mussels.

The relicensing of hydropower facilities is subject to the requirements of the Clean Water Act, Dam Safety Control Act and the Federal Power Act as well as implementation of section 7 of the Endangered Species Act. Hydropower facility owners/operators are therefore required to consider the impacts of their actions on sensitive species, regardless of the implementation of section 7 of the Act. As it is difficult to separate the economic impacts associated with the baseline regulations from the requirement of section 7, however, the analysis makes the conservative assumption that all of the costs for

project modifications to hydropower facilities are attributable to implementation of section 7 of the Act.

Evaluation of Whether Section 7 Implementation Will Result in a Reduction in Electricity Production in Excess of 500 Megawatts of Installed Capacity

Installed capacity is "the total manufacturer-rated capacity for equipment such as turbines, generators, condensers, transformers, and other system components" and represents the maximum rate of flow of energy from the plant or the maximum output of the plant. Table 5 lists the installed capacity of each of the hydropower projects likely to impact critical habitat for the mussels. The Alabama Power Company (APC) owns and operates two hydropower facilities within the critical habitat designation for the mussels, Jordan Dam in Unit 26 and Weiss Dam in Unit 18. The Fall Line Hydro Company has been licensed to operate a hydropower facility at Carters Reregulation Dam on the Coosawattee River in Unit 25. The Fall Line Hydro facility is licensed by FERC, but has not yet been constructed. The USACE owns and operates Carters Dam approximately 1.5 miles upstream of the Carters Reregulation Dam on the Coosawattee River.

The total installed capacity of the Jordan, Weiss, Carters, and Carters Reregulation dams is 692.25 MW (692,250 KW) of hydroelectricity. The average annual generation at these facilities is 760.3 million KWhr. The impact threshold for installed capacity is 500 MW (500,000 KW) and the threshold for annual generation is one billion KWhr. For this analysis, annual generation is the most appropriate metric for evaluating the impact on energy production as the affected parties provided information on the potential impact of critical habitat in terms of anticipated decreased power generation, and not impact on installed capacity.

Using the most conservative assumption of future flow requirements for the mussels, the APC estimates that a change in minimum flow regime to 2000 cfs at Weiss Dam will result in a reduction in average annual energy production of 53,336,000 kilowatt-hours and has not estimated potential impact to installed capacity. However, it is likely that the Service will recommend flows closer to the low-end estimates used in the economic analysis (*see* response to Comment 56 above). No changes in operations are anticipated at Jordan Dam as the current flow regime provides adequate habitat for the mussels. Accordingly, no decreases in annual power generation are anticipated at Jordan Dam. Specific impacts to energy production at Carters Dam and Carters Reregulation Dam are unknown as the level of flow that may be recommended to provide for the mussels is unclear.

For the purpose of this screening analysis, the most conservative assumption is applied that both Carters Dam and Carters Reregulation Dam will not be able to produce power. Annual hydropower generation is expected to decrease approximately by a total of 446 million Kwhr assuming losses in production of 53.3 kilowatt-hours at Weiss Dam and complete losses at Carters Dam and Carters Reregulation Dam. The impact to hydropower production is therefore not expected to surpass the threshold of one billion KWhr. Table 5 outlines the installed capacity for all four hydropower projects. Table 6 outlines the change in average annual production that may result.

TABLE 5.—INSTALLED CAPACITY OF HYDROPOWER PROJECTS LIKELY TO IMPACT CRITICAL HABITAT FOR THE MOBILE RIVER BASIN MUSSELS

Name of facility	Owner	Installed capacity		Average annual generation 1,000 KWhr
		MW	KW	
Jordan Dam	Alabama Power Company (APC)	100	100,000	152,600
Weiss Dam	Alabama Power Company (APC)	87.75	87,750	215,500
Carters Dam	USACE	500	500,000	375,700
Carters Reregulation Dam	Fall Line Hydro Company	4.5	4,500	16,500
Total		692.25	692,250	760,300

Source: Federal Energy Regulatory Commission, "Hydroelectric Power Resources of the United States: Developed and Undeveloped," January 1, 1992. Federal Energy Regulatory Records Information System (FERRIS) on-line database, *http://www.ferc.gov/Ferris.htm;* Individual Conventional Developed and Undeveloped Hydroelectric Plants and Sites by Geographic Division, State, and Stream, Federal Energy Regulatory Commission; Army Corps of Engineers Pertinent Data on Carters Dam, accessed at *http://water.sam.usace.army.mil/cart-pert.htm* on December 4, 2003; Public comment letter from U.S. Army Corps of Engineers, Mobile District, October 14, 2003.

TABLE 6.—AVERAGE ANNUAL GENERATION OF HYDROPOWER PROJECTS LIKELY TO IMPACT CRITICAL HABITAT FOR THE MOBILE RIVER BASIN MUSSELS

Name of facility	Owner	Assumed project modifications	Deceased average annual generation 1,000 KWhr
Jordan Dam	Alabama Power Company (APC)	None	0
Weiss Dam	Alabama Power Company (APC)	Increase flow to 2,000 cfs	53,336
Carters Dam	USACE	Natural stream flow	283
Carters Reregulation Dam	Fall Line Hydro Company	Natural stream flow	
Total			53,619

Source: Federal Energy Regulatory Commission, "Hydroelectric Power Resources of the United States: Developed and Undeveloped," January 1, 1992. Personal communication with John D. Grogan, Manager of Environmental Compliance, Alabama Power Company, December 11, 2003.

Evaluation of Whether Section 7 Implementation Will Result in an Increase in the Cost of Energy Production in Excess of One Percent

In order to determine whether implementation of section 7 of the Act will result in an increase in the cost of energy production, this analysis considers the maximum possible increase in energy production costs. Under the high-cost scenario, all decreased hydropower generation is substituted with the more expensive gas-driven turbine combustion production. Gas-driven turbine combustion production has production costs of $0.07 per kilowatt-hour, $0.06 greater than the cost of hydropower production. Under this scenario, $3.1 million in additional production costs will be incurred, an increase in production costs of approximately 0.07 percent. This analysis therefore does not anticipate an increase in the cost of energy production in excess of one percent. Table 7 summarizes the cost of energy production in Alabama and Georgia according to two scenarios, Scenario I in which there is no change due to critical habitat, and Scenario II in which the lost power generation due to the designation of critical habitat is substituted with gas-driven turbine combustion production.

TABLE 7.—AVERAGE PRODUCTION AND ASSOCIATED COSTS FOR ENERGY PRODUCERS IN ALABAMA AND GEORGIA

Fuel type	Net generation (1000 KWhrs)	Weighted average of total production (percent)	Production costs ($/KWhr)	Total costs
SCENARIO I				
Hydro	3,454,699	1.56	$0.01	$34,536,990
Gas	6,706,320	3.02	$0.04	268,252,800
Coal	149,336,218	67.31	$0.02	2,986,726,360
Nuclear	62,371,516	28.11	$0.02	1,247,410,320
Total	221,866,753	100		4,536,924,470
SCENARIO II				
Hydro	3,400,080	1.353	$0.01	34,000,800
Gas Powered Turbine Combustion	53,619	0.02	$0.07	3,608,021
Gas	6,706,320	3.02	$0.04	268,252,800
Coal	149,336,218	67.31	$0.02	2,986,724,360
Nuclear	62,370,516	28.11	$0.02	1,247,410,320
Total	221,866,753	100		4,539,996,301

Sources: Federal Energy Regulatory Commission, "Hydroelectric Power Resources of the United States: Developed and Undeveloped," January 1, 1992. Electric Power Annual 2000: Volume I, Energy Information Administration, U.S. Department of Energy, August 2001, accessed at *http://www.eia.doe.gov/cneaf/electricity/epav2/html_tables/epav2t13p.html*; State Electricity Profiles, Alabama and Georgia, Energy Information Administration, U.S. Department of Energy, May 2003; Average Operating Expenses for Major U.S. Investor-Owned Electric Utilities, 1996 Through 2000, *http://www.eia.doe.gov/cneaf/electricity/epav2/html_tables/epav2t13pl.html*; New York Mercantile Exchange, Natural Gas Futures accessed at *http://nymex.com/jsp/markets/ng_fut_csf.jsp*.

The difference in total costs between these two scenarios represents an estimate of the total increased costs of power production in the region of $3.1 million. This additional production cost represents a high-end estimate due to the following conservative assumptions:

- This methodology estimates whether the designation will result in a one percent increase in energy costs within Alabama and Georgia, as opposed to nationwide. The nationwide change in power production cost is, therefore, even less than the 0.07 percent change as estimated.
- This methodology assumes that all lost hydropower production will be replaced by gas-powered turbine combustion, a high-cost energy substitute typically used to mitigate losses in peaking power production. Whereas Carters Dam supplies peaking power, Weiss Dam generates base load power.

Evaluation of Whether Section 7 Implementation Will Result in an Increase in the Cost of Energy Distribution in Excess of One Percent

As described in the final economic analysis, TVA anticipates two informal consultations on transmission line construction and maintenance with no project modifications. Thus, the total costs incurred by TVA as a result of section 7 implementation range from $2,600 to $7,800. Total operating expenses for TVA in 2002 were $5.2 billion. The total costs incurred as a result of section 7 are less than one ten-thousandth of one percent of TVA's operating expenses. The impact to energy distribution is therefore not anticipated to exceed the one percent threshold.

Even in the highest cost scenario, where all lost hydropower production is replaced with gas-driven combustion turbine facilities, implementation of section 7 for the mussels will not result in "reductions in electricity production in excess of 1 billion kilowatt-hours per year," an "increase in the cost of energy production in excess of one percent," or an "increase in the cost of energy distribution in excess of one percent." Consequently, this rule is not anticipated to have a significant adverse effect on the supply, distribution, or use of energy.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. Based on information contained in our economic analysis, this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat or take the species under section 9.

b. This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act).

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating approximately 1,760 kilometers (km) (1,093 miles (mi)) of river and stream channels in portions of the Tombigbee River drainage in Mississippi and Alabama; portions of the Black Warrior River drainage in Alabama; portions of the Alabama River drainage in Alabama; portions of the Cahaba River drainage in Alabama; portions of the Tallapoosa River drainage in Alabama and Georgia; and portions of the Coosa River drainage in Alabama, Georgia, and Tennessee, as critical habitat for these 11 Mobile River Basin mussels, in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Mississippi, Alabama, Tennessee, and Georgia, as well as during the listing process. The impact of the designation on State and local governments and their activities was fully considered in the Economic Analysis. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of these 11 mussels.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain new or revised collections of information that require OMB approval under the Paperwork Reduction Act. Information collections associated with certain permits pursuant to the Endangered Species Act are covered by an existing OMB approval, and are assigned clearance No. 1018–0094, with an expiration date of July 31, 2004. Detailed information for Act documentation appears at 50 CFR 17. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 (NEPA) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of the 11 mussels and have not designated critical habitat on Tribal lands.

References Cited

A complete list of all references is available upon request from the Mississippi Ecological Services Field Office (*see* **ADDRESSES** section).

Author

The author of this notice is the Mississippi Ecological Services Field Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ For the reasons outlined in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise each of the entries here listed, in alphabetical order under "CLAMS", in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
CLAMS							
Acornshell, southern	*Epioblasma othcaloogensis.*	U.S.A. (AL,GA,TN) ..	NA	E	495	17.95 (f)	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Clubshell, ovate	*Pleurobema perovatum.*	U.S.A. (AL,TN,GA,MS).	NA	E	495	17.95 (f)	NA
Clubshell, southern	*Pleurobema decisum.*	U.S.A. (AL,TN,GA,MS).	NA	E	495	17.95 (f)	NA
*	*	*	*	*	*		*
Combshell, upland	*Epioblasma metastriata.*	U.S.A. (AL,GA,TN)	NA	E	495	17.95 (f)	NA
*	*	*	*	*	*		*
Kidneyshell, triangular.	*Ptychobranchus greenii.*	U.S.A. (AL,GA,TN)	NA	E	495	17.95 (f)	NA
*	*	*	*	*	*		*
Moccasinshell, Alabama.	*Medionidus acutissimus.*	U.S.A. (AL,GA,MS)	NA	T	495	17.95 (f)	NA
Moccasinshell, Coosa	*Medionidus parvulus*	U.S.A. (AL,GA,TN)	NA	E	495	17.95 (f)	NA
*	*	*	*	*	*		*
Mucket, orange-nacre	*Lampsilis perovalis*	U.S.A. (AL,MS)	NA	T	495	17.95 (f)	NA
*	*	*	*	*	*		*
Pigtoe, dark	*Pleurobema furvum*	U.S.A. (AL)	NA	E	495	17.95 (f)	NA
*	*	*	*	*	*		*
Pigtoe, southern	*Pleurobema georgianum.*	U.S.A. (AL,GA,TN)	NA	E	495	17.95 (f)	NA
*	*	*	*	*	*		*
Pocketbook, fine-lined.	*Lampsilis altilis*	U.S.A. (AL,GA)	NA	T	495	17.95 (f)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95, at the end of paragraph (f), add an entry for Eleven Mobile River Basin mussel species'' to read as follows:

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(f) *Clams and snails.*

* * * * *

Eleven Mobile River Basin mussel species: Southern acornshell (*Epioblasma othcaloogensis*), ovate clubshell (*Pleurobema perovatum*), southern clubshell (*Pleurobema decisum*), upland combshell (*Epioblasma metastriata*), triangular kidneyshell (*Ptychobranchus greenii*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), orange-nacre mucket (*Lampsilis perovalis*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), and fine-lined pocketbook (*Lampsilis altilis*)

(1) The primary constituent elements essential for the conservation of the southern acornshell (*Epioblasma othcaloogensis*), ovate clubshell (*Pleurobema perovatum*), southern clubshell (*Pleurobema decisum*), upland combshell (*Epioblasma metastriata*); triangular kidneyshell (*Ptychobranchus greenii*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), orange-nacre mucket (*Lampsilis perovalis*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), and fine-lined pocketbook (*Lampsilis altilis*) are those habitat components that support feeding, sheltering, reproduction, and physical features for maintaining the natural processes that support these habitat components. The primary constituent elements include:

(i) Geomorphically stable stream and river channels and banks;

(ii) A flow regime (*i.e.*, the magnitude, frequency, duration, and seasonality of discharge over time) necessary for normal behavior, growth, and survival of all life stages of mussels and their fish hosts in the river environment;

(iii) Water quality, including temperature, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages;

(iv) Sand, gravel, and/or cobble substrates with low to moderate amounts of fine sediment, low amounts of attached filamentous algae, and other physical and chemical characteristics necessary for normal behavior, growth, and viability of all life stages;

(v) Fish hosts, with adequate living, foraging, and spawning areas for them; and

(vi) Few or no competitive nonnative species present.

(2) Critical habitat unit descriptions and maps.

(i) Index map. The index map showing critical habitat units in the States of Mississippi, Alabama, Georgia, and Tennessee for the 11 Mobile River Basin mussel species follows:

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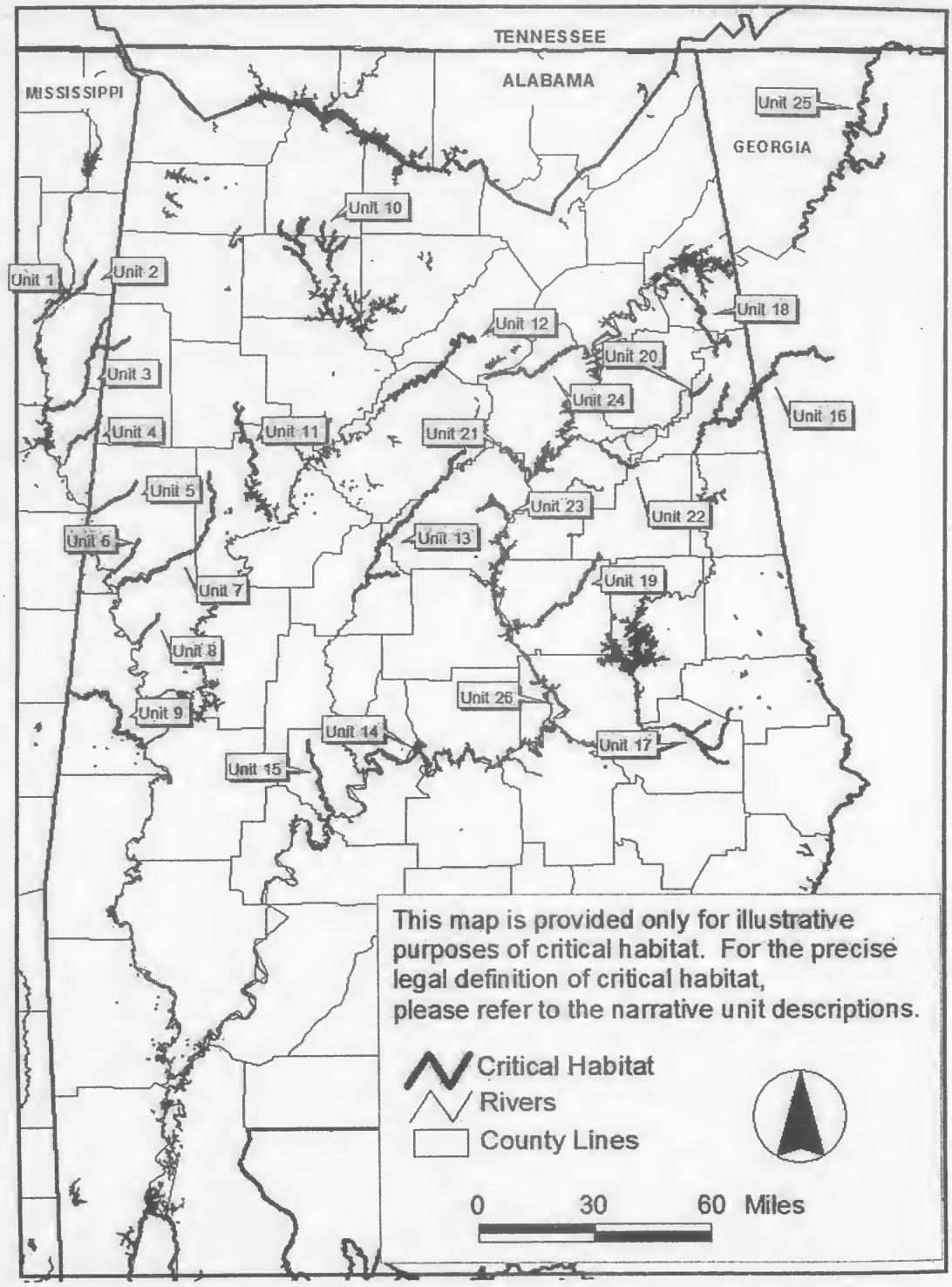


General locations of designated critical habitat in the Mobile River Basin

(ii) *Protected species and critical habitat units.* A table listing the protected species, their respective critical habitat units, and the States that contain those habitat units follows. Detailed critical habitat unit

descriptions and maps appear below the table.

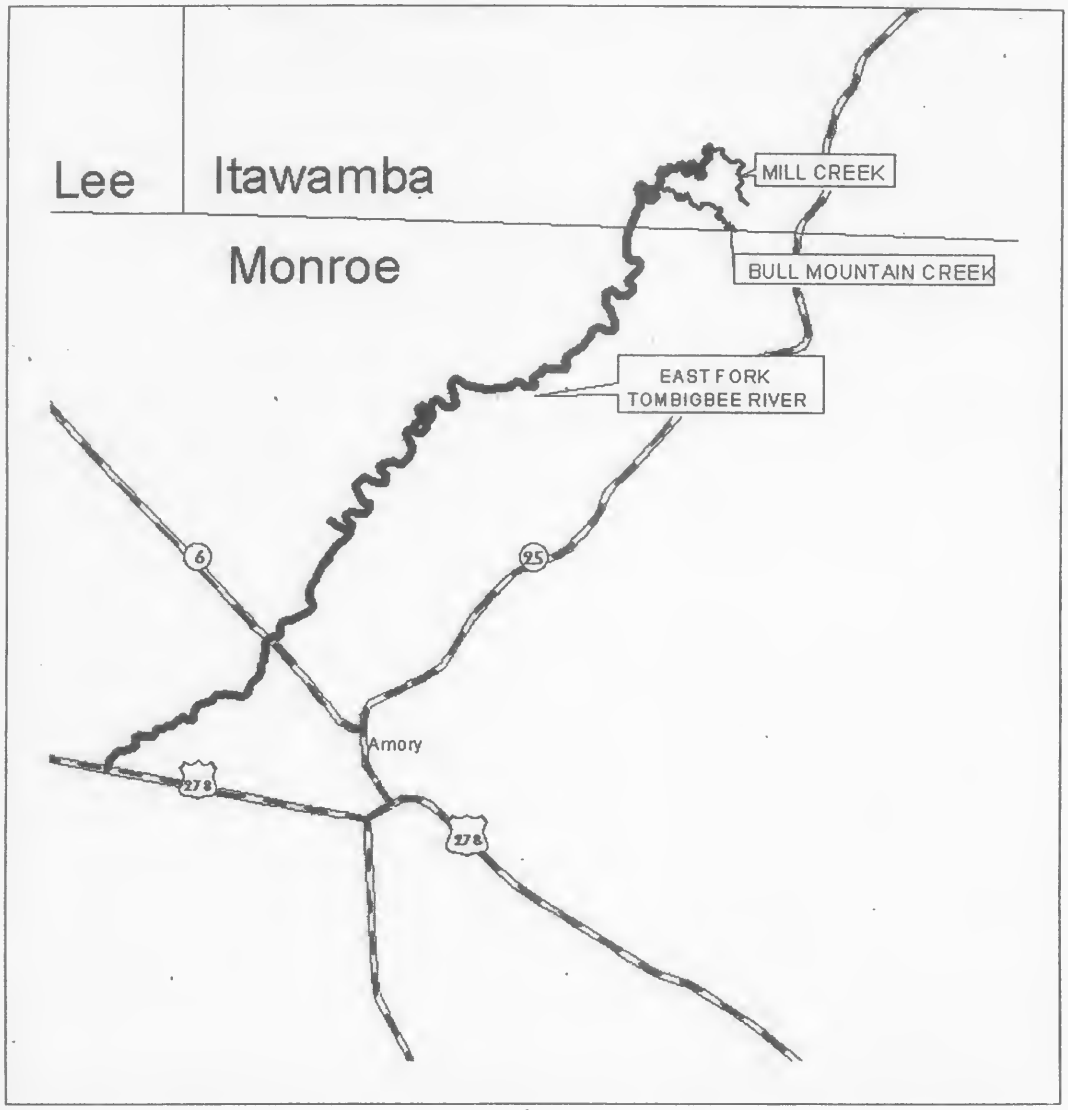
Species	Critical habitat units	States
Southern acornshell (*Epioblasma othcaloogensis*)	Units 13, 18, 19, 21, 24, 25, 26	AL, GA, TN
Ovate clubshell (*Pleurobema perovatum*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18, 19, 21, 24, 25, 26.	AL, GA, MS, TN
Southern clubshell (*Pleurobema decisum*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 17, 18, 19, 21, 24, 25, 26.	AL, GA, MS, TN
Upland combshell (*Epioblasma metastriata*)	Units 12, 13, 18, 19, 21, 24, 25, 26	AL, GA, TN
Triangular kidneyshell (*Ptychobranchus greenii*)	Units 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN
Alabama moccasinshell (*Medionidus acutissimus*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 25, 26	AL, GA, MS, TN
Coosa moccasinshell (*Medionidus parvulus*)	Units 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN
Orange-nacre mucket (*Lampsilis perovalis*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15	AL, MS
Dark pigtoe (*Pleurobema furvum*)	Units 10, 11, 12	AL
Southern pigtoe (*Pleurobema georgianum*)	Units 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN
Fine-lined pocketbook (*Lampsilis altilis*)	Units 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN

(iii) Unit 1. East Fork Tombigbee River, Monroe, Itawamba County, Mississippi. This is a critical habitat unit for the ovate clubshell, southern clubshell, Alabama moccasinshell, and orange-nacre mucket.

(A) Unit 1 includes the East Fork Tombigbee River main stem from Mississippi Highway 278 (T13S R7E S3), Monroe County, upstream to the confluence of Mill Creek (T11S R8E S24), Itawamba County, Mississippi.

(B) Map of Unit 1 follows:

Unit 1: Ovate Clubshell, Southern Clubshell, Alabama Moccasinshell, Orange-nacre Mucket



Proposed Critical Habitat
Roads
Rivers
County Lines

0 2 4 6 Miles

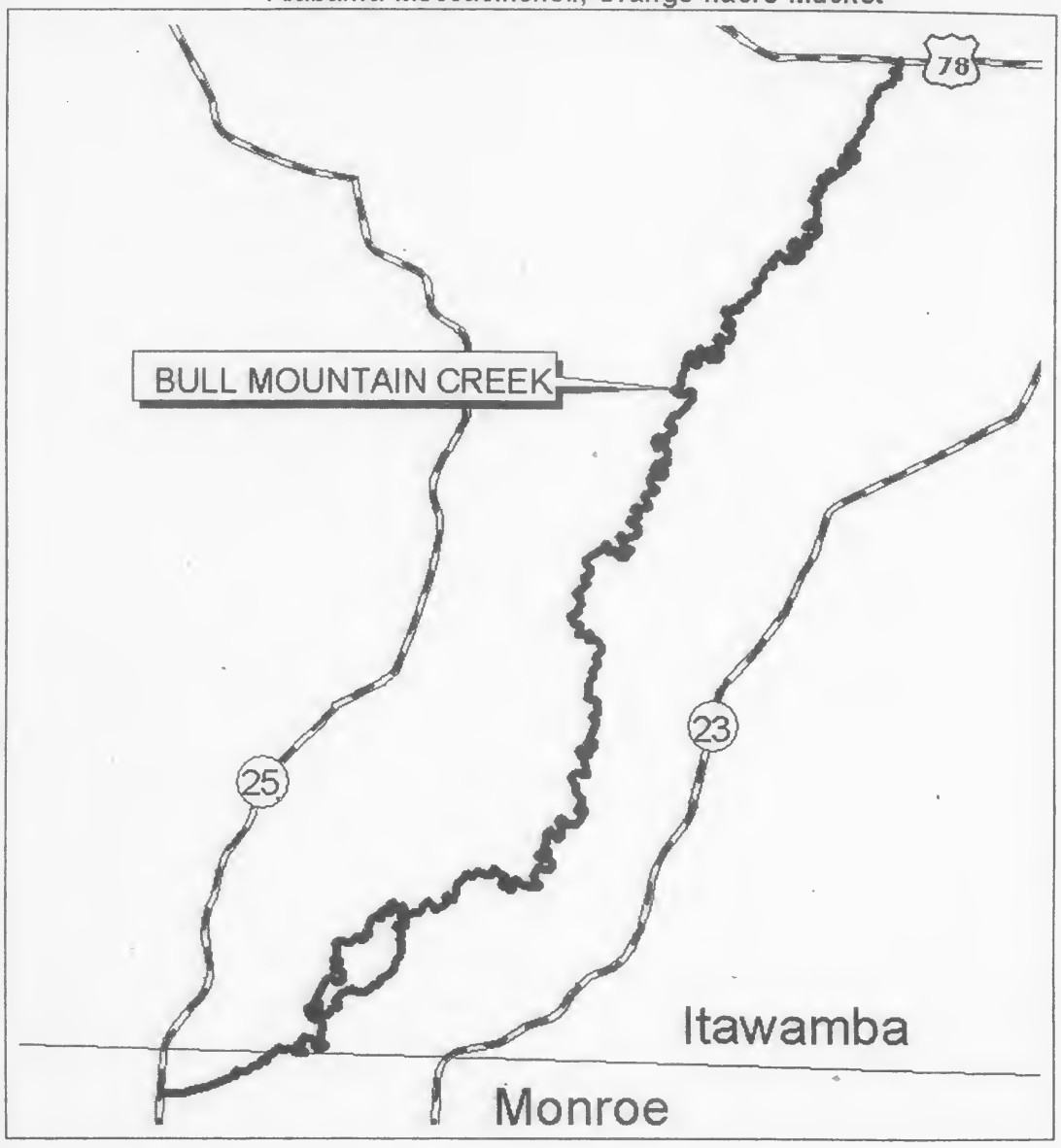
0 3000 6000 9000 Meters

(iv) Unit 2. Bull Mountain Creek, Itawamba County, Mississippi. This is a critical habitat unit for the ovate clubshell, southern clubshell, Alabama moccasinshell, and orange-nacre mucket.

(A) Unit 2 includes the main stem of Bull Mountain Creek from Mississippi Highway 25 (T11S R9E S30), upstream to U.S. Highway 78 (T10S R10E S6), Itawamba County, Mississippi.

(B) Map of Unit 2 follows:

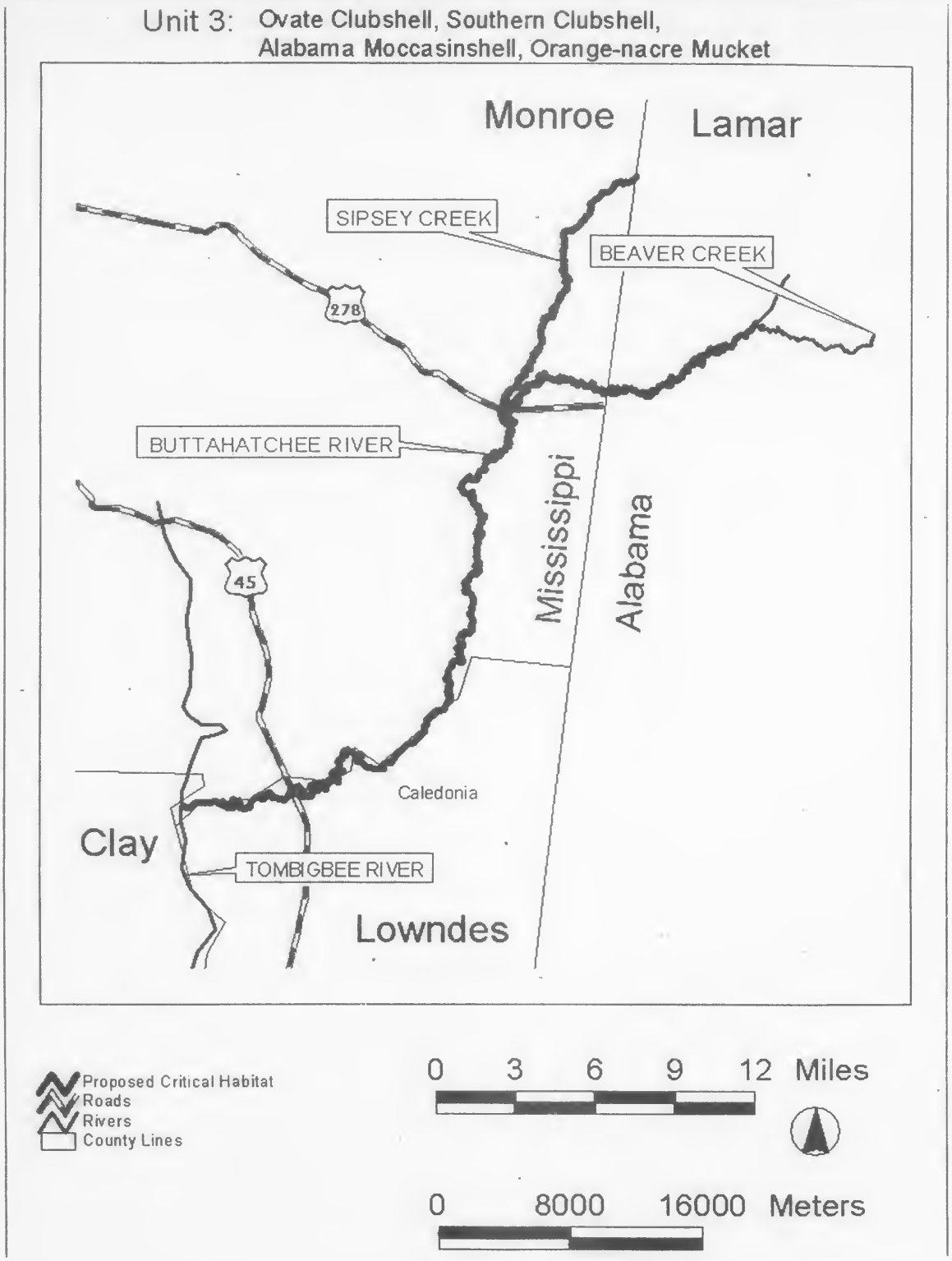
Unit 2: Ovate Clubshell, Southern Clubshell, Alabama Moccasinshell, Orange-nacre Mucket



(v) Unit 3. Buttahatchee River and Sipsey Creek, Lowndes/Monroe County, Mississippi; Lamar County, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, Alabama moccasinshell, and orange-nacre mucket.

(A) Unit 3 includes the Buttahatchee River main stem from its confluence with the impounded waters of Columbus Lake (Tombigbee River, T16S R19W S23), Lowndes/Monroe County, Mississippi, upstream to the confluence of Beaver Creek (T13S R15W S17), Lamar County, Alabama; and Sipsey Creek, from its confluence with the Buttahatchee River (T14S R17W S2), upstream to the Mississippi/Alabama State Line (T12S R10E S21), Monroe County, Mississippi.

(B) Map of Unit 3 follows:



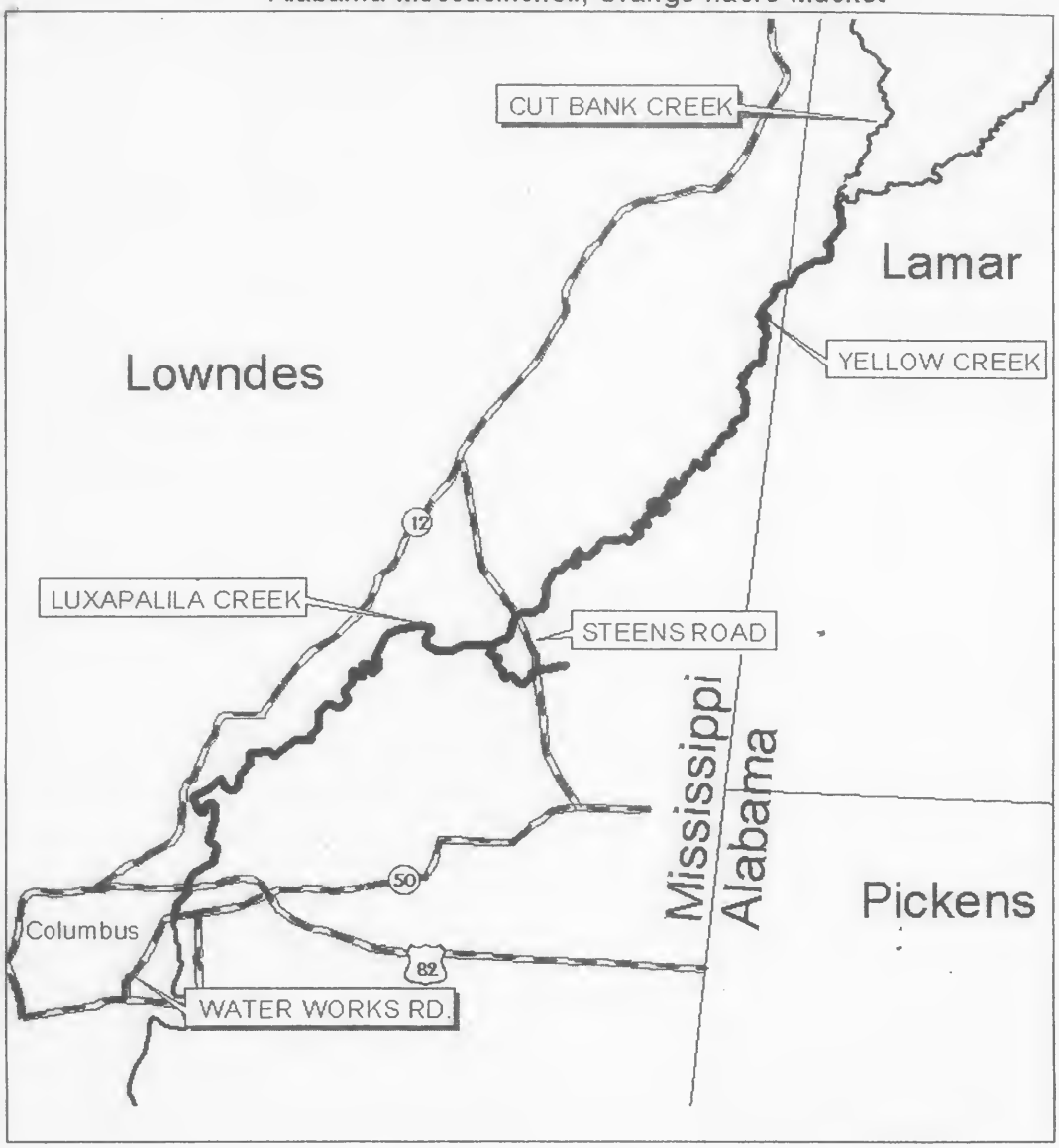
(vi) Unit 4. Luxapalila Creek and Yellow Creek, Lowndes County, Mississippi; Lamar County, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell,

Alabama moccasinshell, and orange-nacre mucket.

(A) Unit 4 includes the Luxapalila Creek main stem from Waterworks Road (T18S R18W S11), Columbus, Mississippi, upstream to approximately 1.0 km (0.6 mi) above Steens Road (T17S R17W S27), Lowndes County, Mississippi; and the Yellow Creek main stem from its confluence with Luxapalila Creek (T17S R17W S21), Lowndes County, Mississippi, upstream to the confluence of Cut Bank Creek (T16S R16W S30), Lamar County, Alabama.

(B) Map of Unit 4 follows:

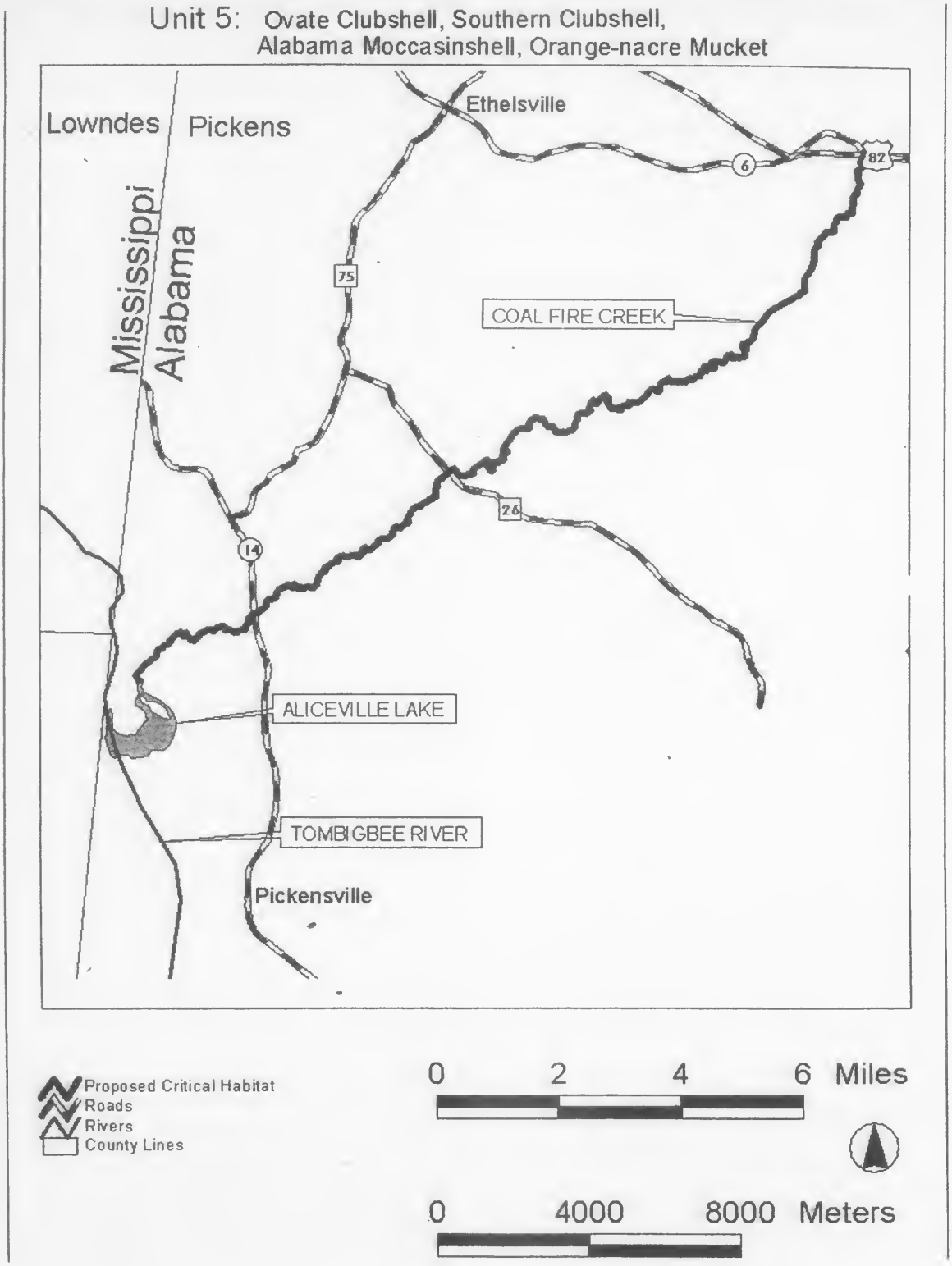
Unit 4: Ovate Clubshell, Southern Clubshell, Alabama Moccasinshell, Orange-nacre Mucket



(vii) Unit 5. Coalfire Creek, Pickens County, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, Alabama moccasinshell, and orange-nacre mucket.

(A) Unit 5 includes the Coalfire Creek main stem from its confluence with the impounded waters of Aliceville Lake (Tombigbee River, T20S R17W S26), upstream to U.S. Highway 82 (T19S R15W S15), Pickens County, Alabama.

(B) Map of Unit 5 follows:

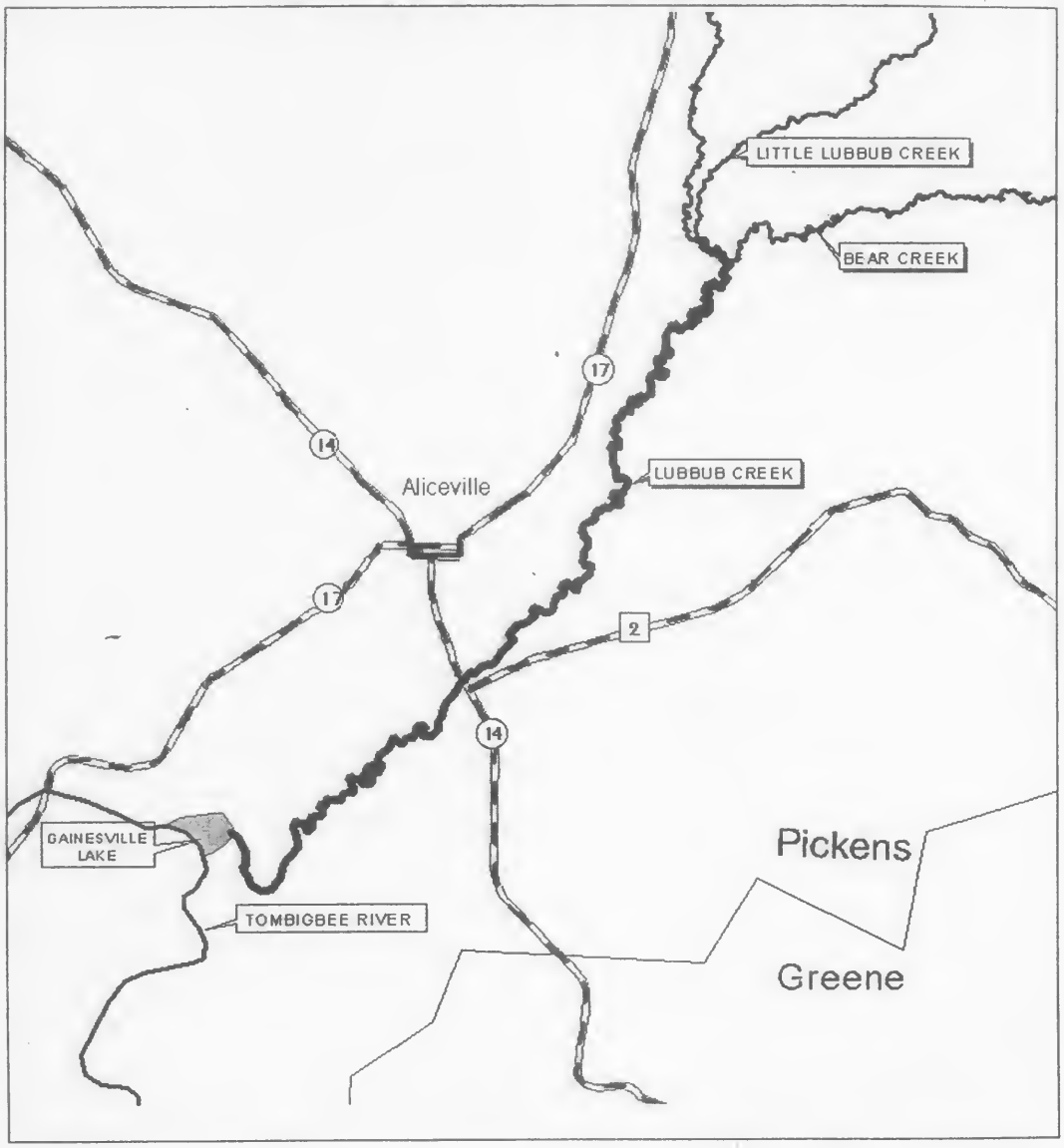

Unit 5: Ovate Clubshell, Southern Clubshell, Alabama Moccasinshell, Orange-nacre Mucket
Lowndes
Pickens
Mississippi
Alabama
Ethelsville
6
82
75
COAL FIRE CREEK
26
14
ALICEVILLE LAKE
TOMBIGBEE RIVER
Pickensville
Proposed Critical Habitat
Roads
Rivers
County Lines
0 2 4 6 Miles
0 4000 8000 Meters

(viii) Unit 6. Lubbub Creek, Pickens County, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, Alabama moccasinshell, and orange-nacre mucket.

(A) Unit 6 includes the main stem of Lubbub Creek from its confluence with the impounded waters of Gainesville Lake (Tombigbee River, T24N R2W S11), upstream to the confluence of Little Lubbub Creek (T21S R1W S34), Pickens County, Alabama.

(B) Map of Unit 6 follows:

Unit 6: Ovate Clubshell, Southern Clubshell, Alabama Moccasinshell, Orange-nacre Mucket



Proposed Critical Habitat
Roads
Rivers
County Lines

0 3 6 Miles

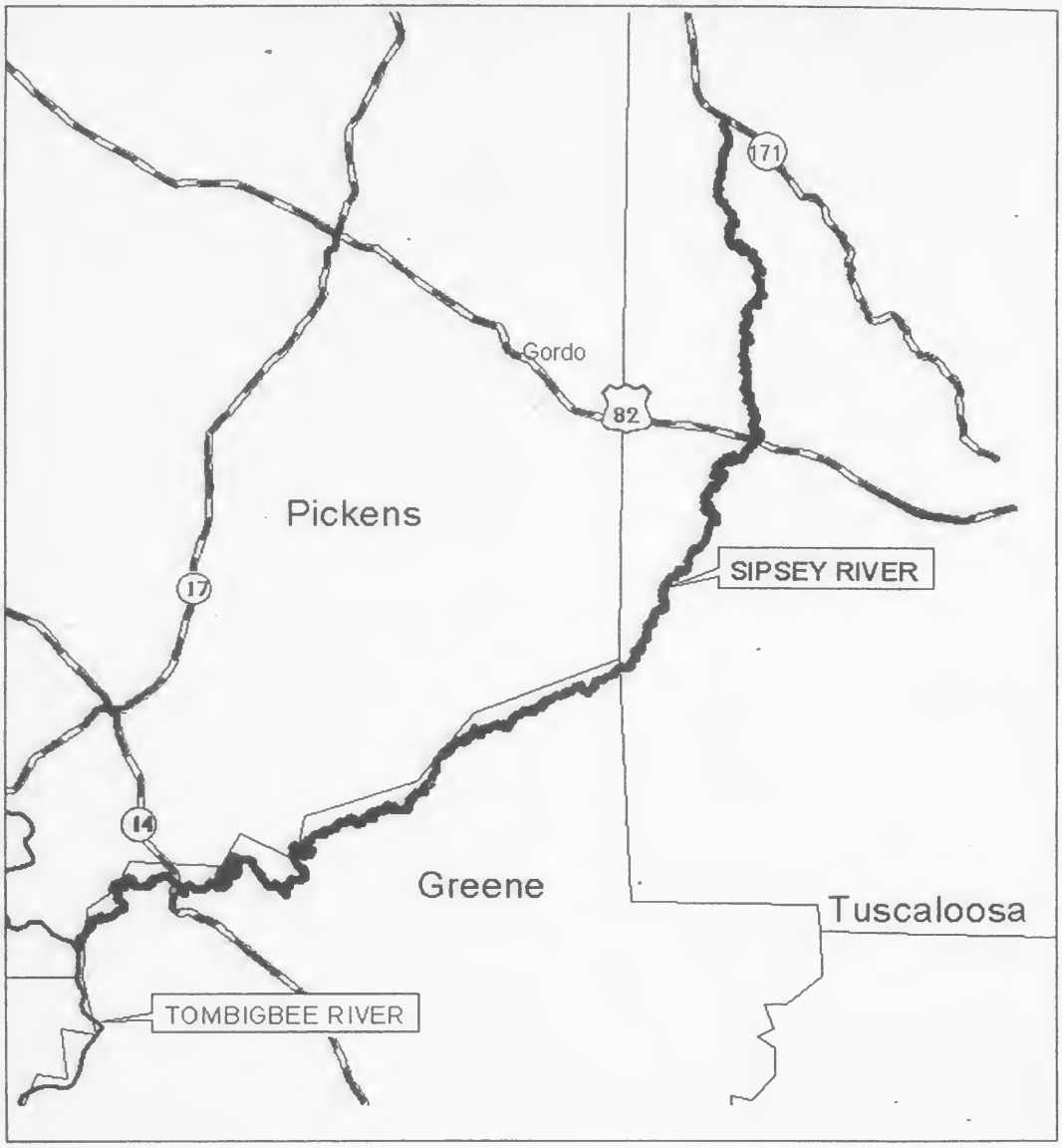
0 4000 8000 Meters

(ix) Unit 7. Sipsey River, Greene/Pickens, Tuscaloosa Counties, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, Alabama moccasinshell, and orange-nacre mucket.

(A) Unit 7 includes the Sipsey River main stem from its confluence with impounded waters of Gainesville Lake (Tombigbee River, T24N R1W S30), Greene/Pickens County, upstream to Alabama Highway 171 crossing (T18S R12W S34), Tuscaloosa County, Alabama.

(B) Map of Unit 7 follows:

Unit 7: Ovate Clubshell, Southern Clubshell, Alabama Moccasinshell, Orange-nacre Mucket

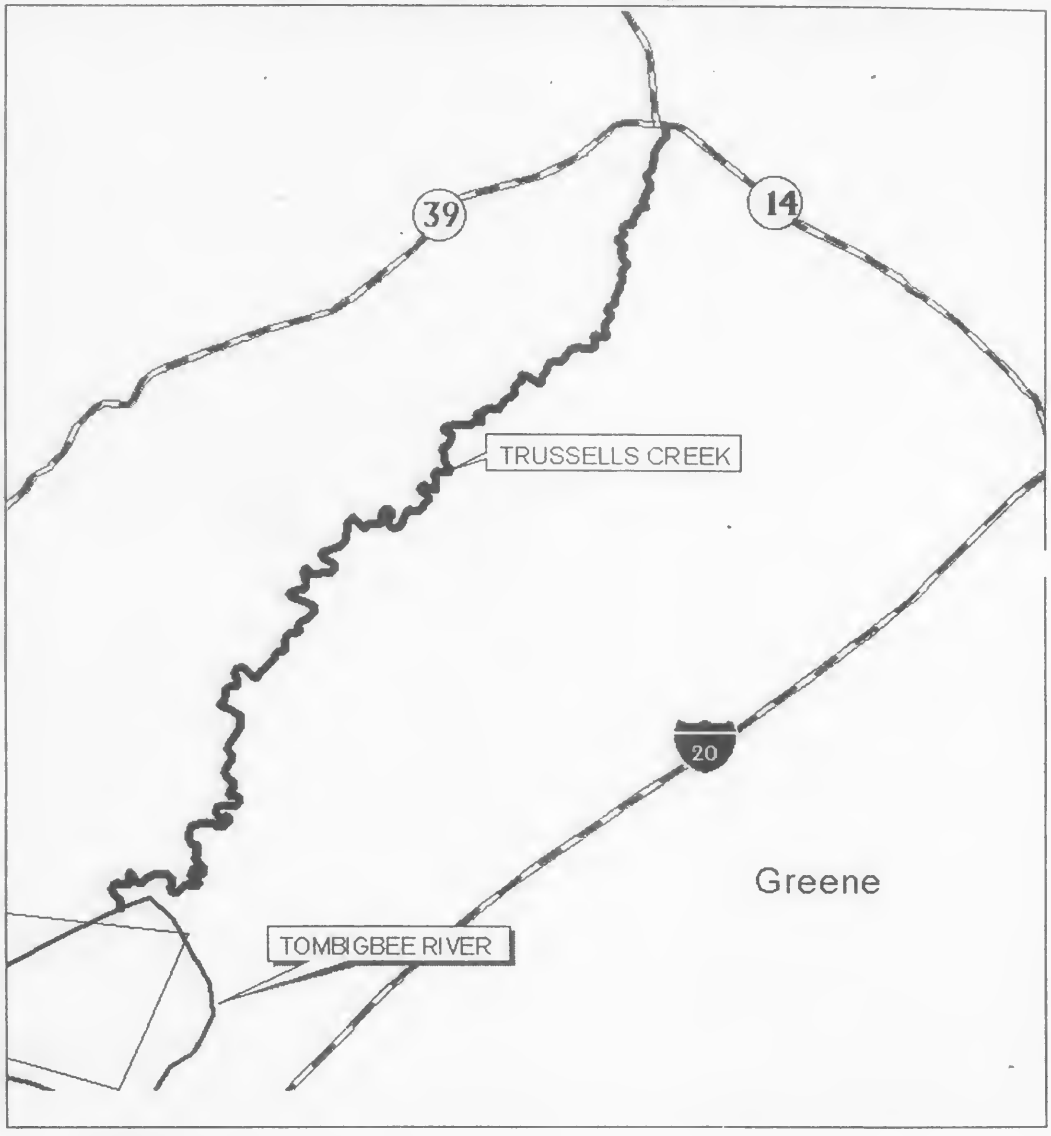


(x) Unit 8. Trussels Creek, Greene County, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, Alabama moccasinshell, and orange-nacre mucket.

(A) Unit 8 includes the Trussels Creek main stem from its confluence with the impounded waters of Demopolis Lake (Tombigbee River, T21N R2W S15), upstream to Alabama Highway 14 (T22N R1E S4), Greene County, Alabama.

(B) Map of Unit 8 follows:

Unit 8: Ovate Clubshell, Southern Clubshell, Alabama Moccasinshell, Orange-nacre Mucket



Proposed Critical Habitat
Roads
Rivers
County Lines

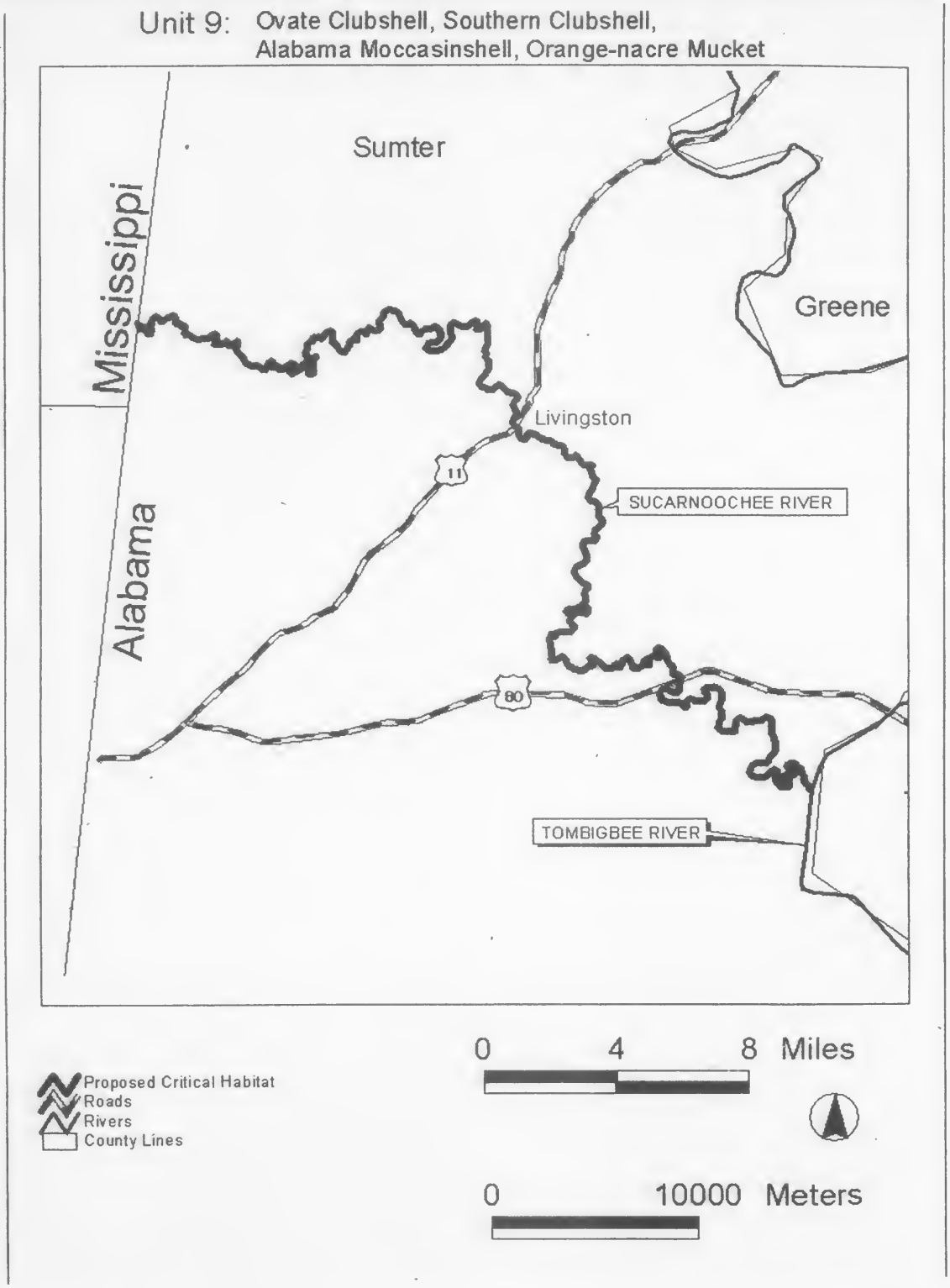
0 2 4 Miles

0 3000 6000 Meters

(xi) Unit 9. Sucarnoochee River, Sumter County, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, Alabama moccasinshell, and orange-nacre mucket.

(A) Unit 9 includes the Sucarnoochee River main stem from its confluence with the Tombigbee River (T17N R1W S26), upstream to the Mississippi/Alabama State Line (T19N R4W S15), Sumter County, Alabama.

(B) Map of Unit 9 follows:

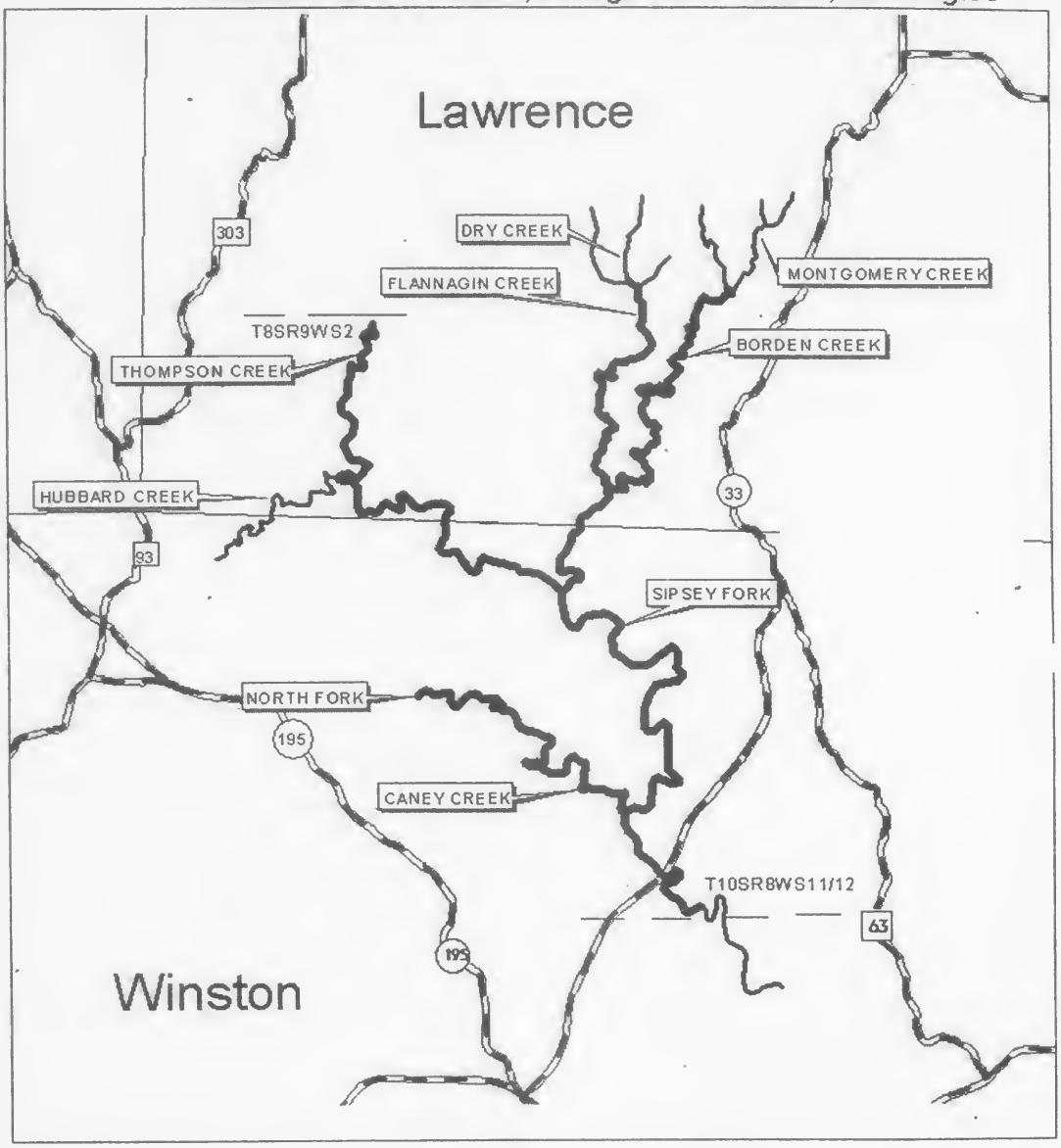


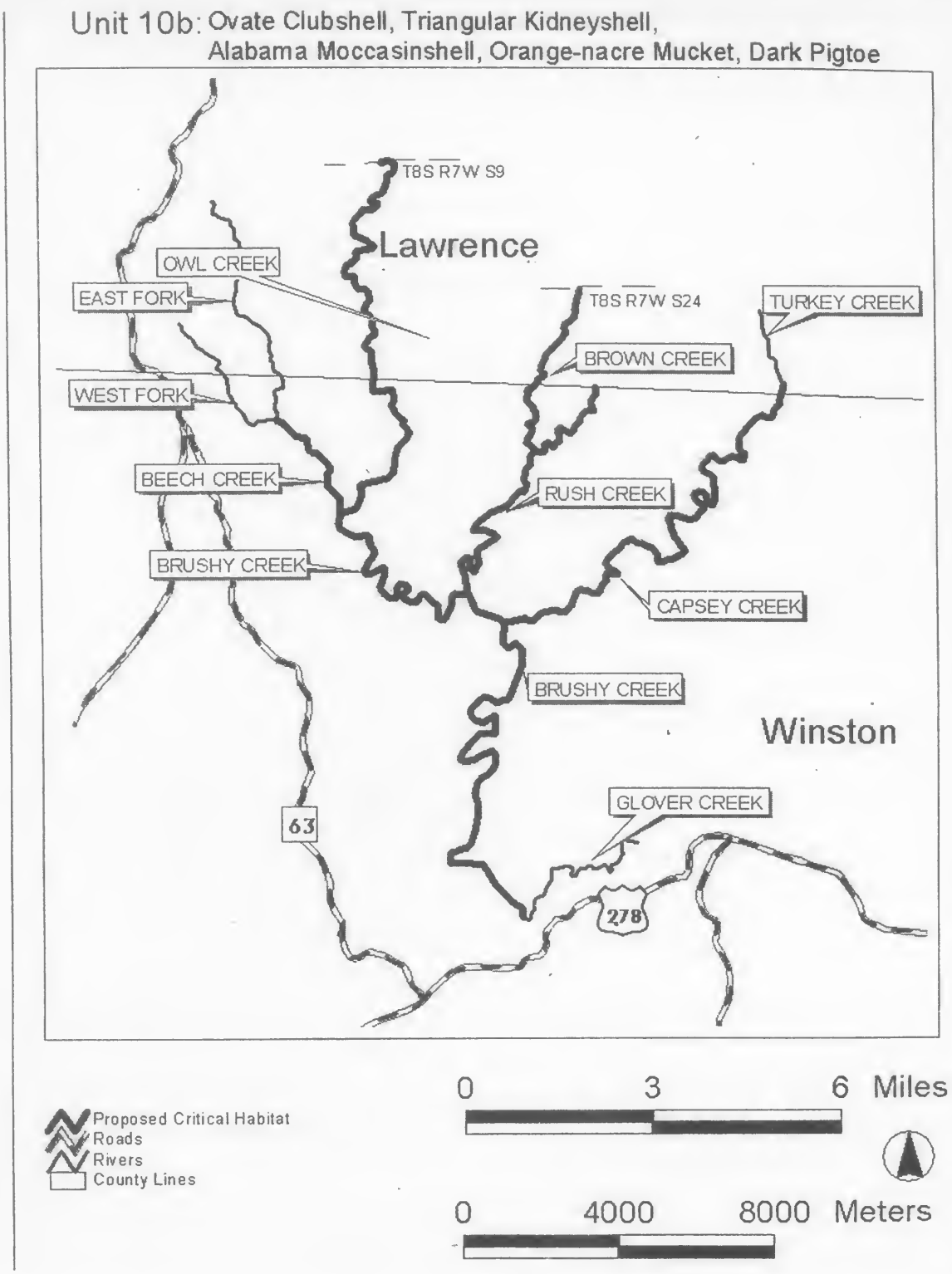
(xii) Unit 10. Sipsey Fork and tributaries, Winston, Lawrence Counties, Alabama. This is a critical habitat unit for the ovate clubshell, triangular kidneyshell, Alabama

moccasinshell, orange-nacre mucket, and dark pigtoe.

(A) Unit 10 includes the Sipsey Fork main stem from the section 11/12 line (T10S R8W), Winston County, Alabama, upstream to the confluence of Hubbard Creek (T8S R9W S27), Lawrence County, Alabama; Thompson Creek, from its confluence with Hubbard Creek (T8S R9W S27), upstream to section 2 line (T8S R9W) Lawrence County; Brushy Creek, from the confluence of Glover Creek (T10S R7W S11), Winston County, upstream to section 9 (T8S R7W), Lawrence County; Capsey Creek, from confluence with Brushy Creek (T9S R7W S23), Winston County, upstream to the confluence of Turkey Creek (T8S R6W S33), Lawrence County; Rush Creek, from confluence with Brushy Creek (T9S R7W S15), upstream to Winston/Lawrence County Line (T9S R7W S1), Winston County; Brown Creek, from confluence with Rush Creek (T9S R7W S2), Winston County, upstream to section 24 line (T8S R7W), Lawrence County; Beech Creek, from confluence with Brushy Creek (T9S R7W S8), to confluence of East and West Forks (T9S R7W S6), Winston County; Caney Creek and North Fork Caney Creek, from confluence with Sipsey Fork (T9S R8W S28), upstream to section 14 line (T9S R9W), Winston County; Borden Creek, from confluence with Sipsey Fork (T8S R8W S5), Winston County, upstream to the confluence of Montgomery Creek (T8S R8W S10), Lawrence County; and Flannagin Creek, from confluence with Borden Creek (T8S R8W S28), upstream to confluence of Dry Creek (T8S R8W S4), Lawrence County.

Unit 10a: Ovate Clubshell, Triangular Kidneyshell, Alabama Moccasinshell, Orange-nacre Mucket, Dark Pigtoe



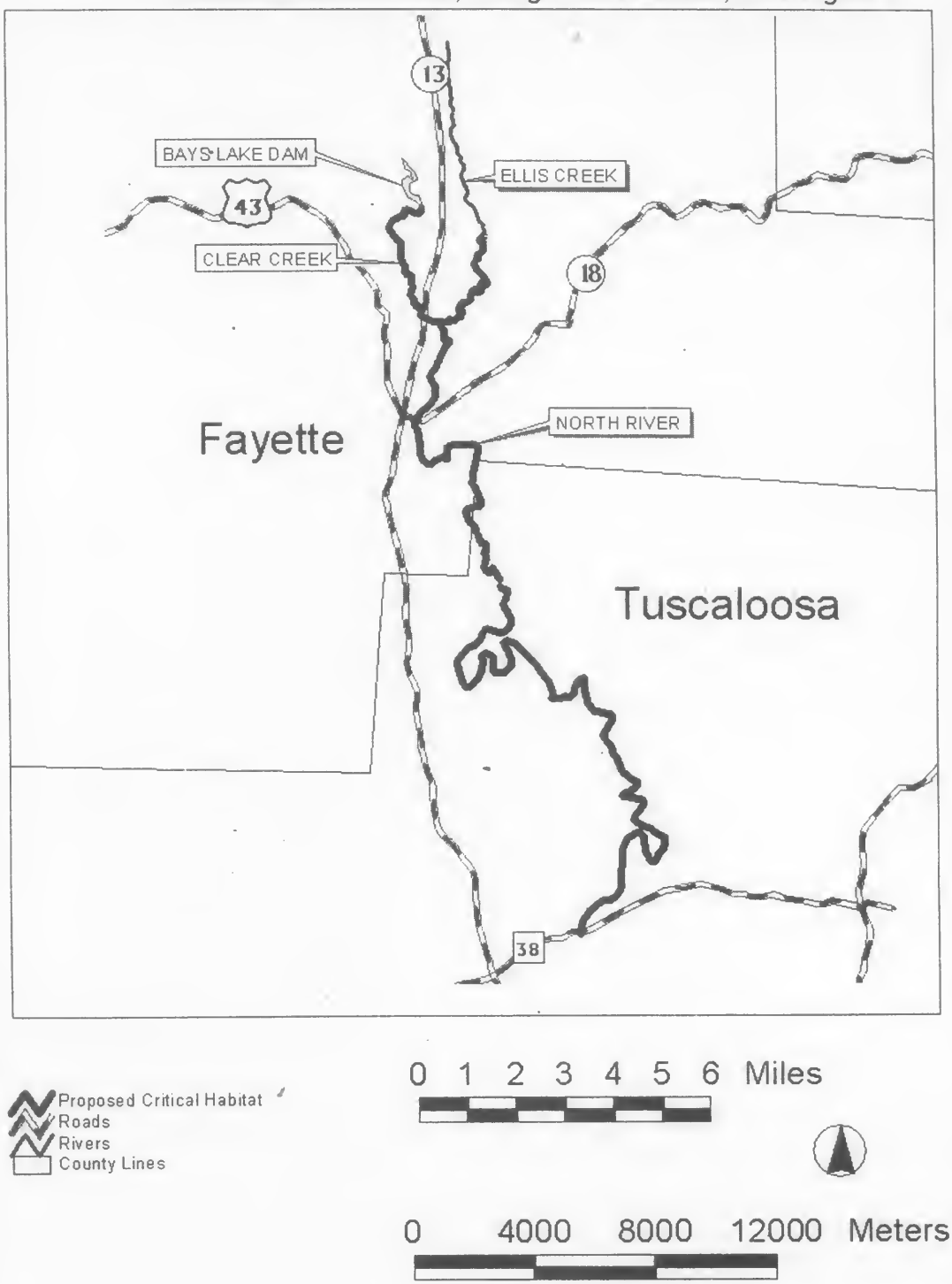

Unit 10b: Ovate Clubshell, Triangular Kidneyshell,
Alabama Moccasinshell, Orange-nacre Mucket, Dark Pigtoe
T8S R7W S9
Lawrence
OWL CREEK
EAST FORK
T8S R7W S24
TURKEY CREEK
BROWN CREEK
WEST FORK
BEECH CREEK
RUSH CREEK
BRUSHY CREEK
CAPSEY CREEK
BRUSHY CREEK
Winston
GLOVER CREEK
63
278
Proposed Critical Habitat
Roads
Rivers
County Lines
0 3 6 Miles
0 4000 8000 Meters

(xiii) Unit 11. North River and Clear Creek, Tuscaloosa, Fayette Counties, Alabama. This is a critical habitat unit for the ovate clubshell, triangular kidneyshell, Alabama moccasinshell, orange-nacre mucket, and dark pigtoe.

(A) Unit 11 includes the main stem of the North River from Tuscaloosa County Road 38 (T18S R10W S16), Tuscaloosa County, upstream to confluence of Ellis Creek (T16S R10W S6), Fayette County, Alabama; and Clear Creek from its confluence with North River (T16S R11W S13) to Bays Lake Dam (T16S R11W S2), Fayette County, Alabama.

(B) Map of Unit 11 follows:

Unit 11: Ovate Clubshell, Triangular Kidneyshell, Alabama Moccasinshell, Orange-nacre Mucket, Dark Pigtoe

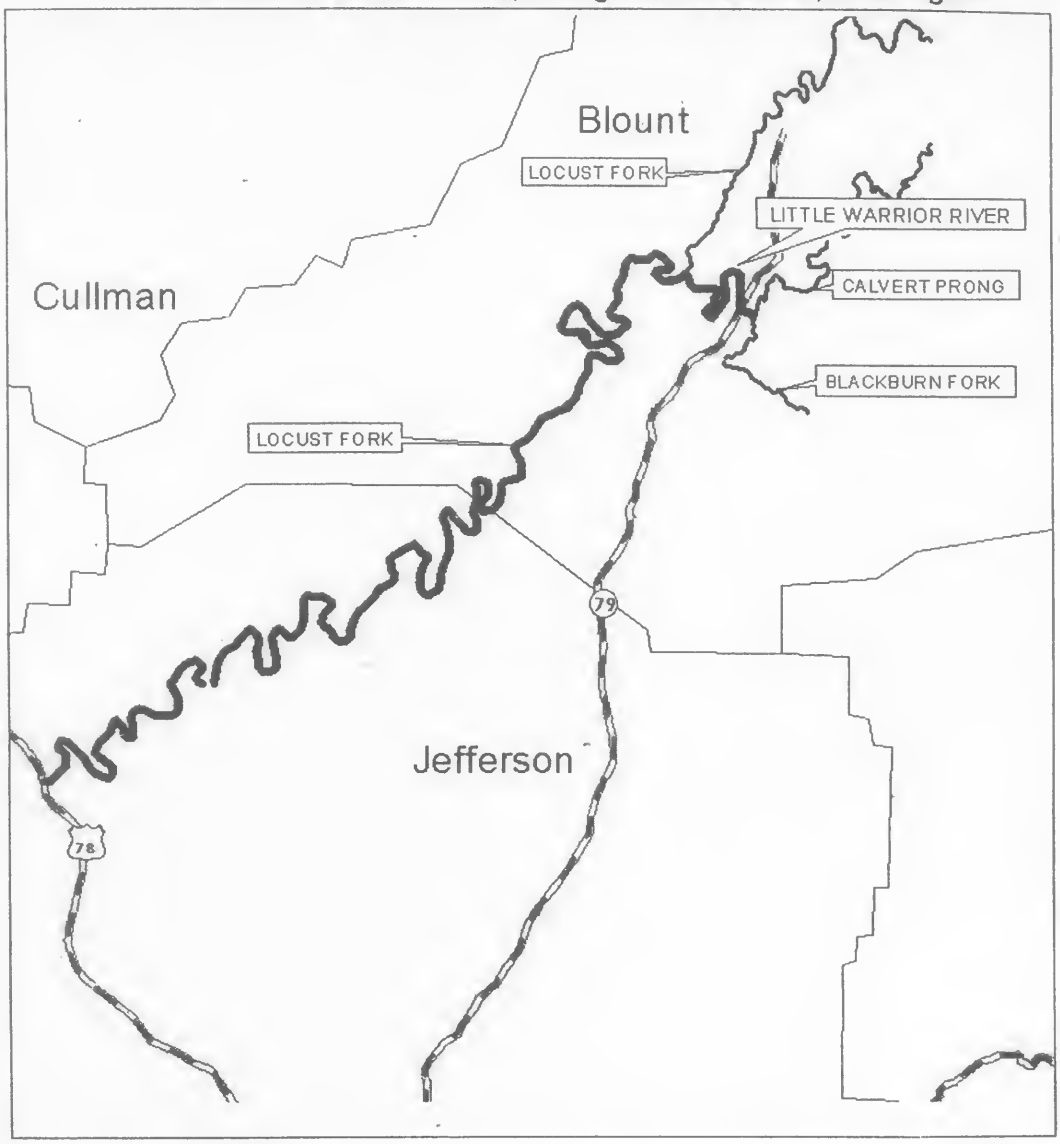


(xiv) Unit 12. Locust Fork and Little Warrior Rivers, Jefferson, Blount Counties, Alabama. This is a critical habitat unit for the ovate clubshell, upland combshell, triangular kidneyshell, Alabama moccasinshell, orange-nacre mucket, and dark pigtoe.

(A) Unit 12 includes the Locust Fork main stem from U.S. Highway 78 (T15S R4W S30), Jefferson County, upstream to the confluence of Little Warrior River (T13S R1W S3), Blount County, Alabama; and Little Warrior River from its confluence with the Locust Fork (T13S R1W S3), upstream to the confluence of Calvert Prong and Blackburn Fork (T13S R1W S12), Blount County, Alabama.

(B) Map of Unit 12 follows:

Unit 12: Ovate Clubshell, Upland Combshell, Triangular Kidneyshell, Alabama Moccasinshell, Orange-nacre Mucket, Dark Pigtoe



Proposed Critical Habitat
Roads
Rivers
County Lines

0 2 4 6 8 10 12 Miles

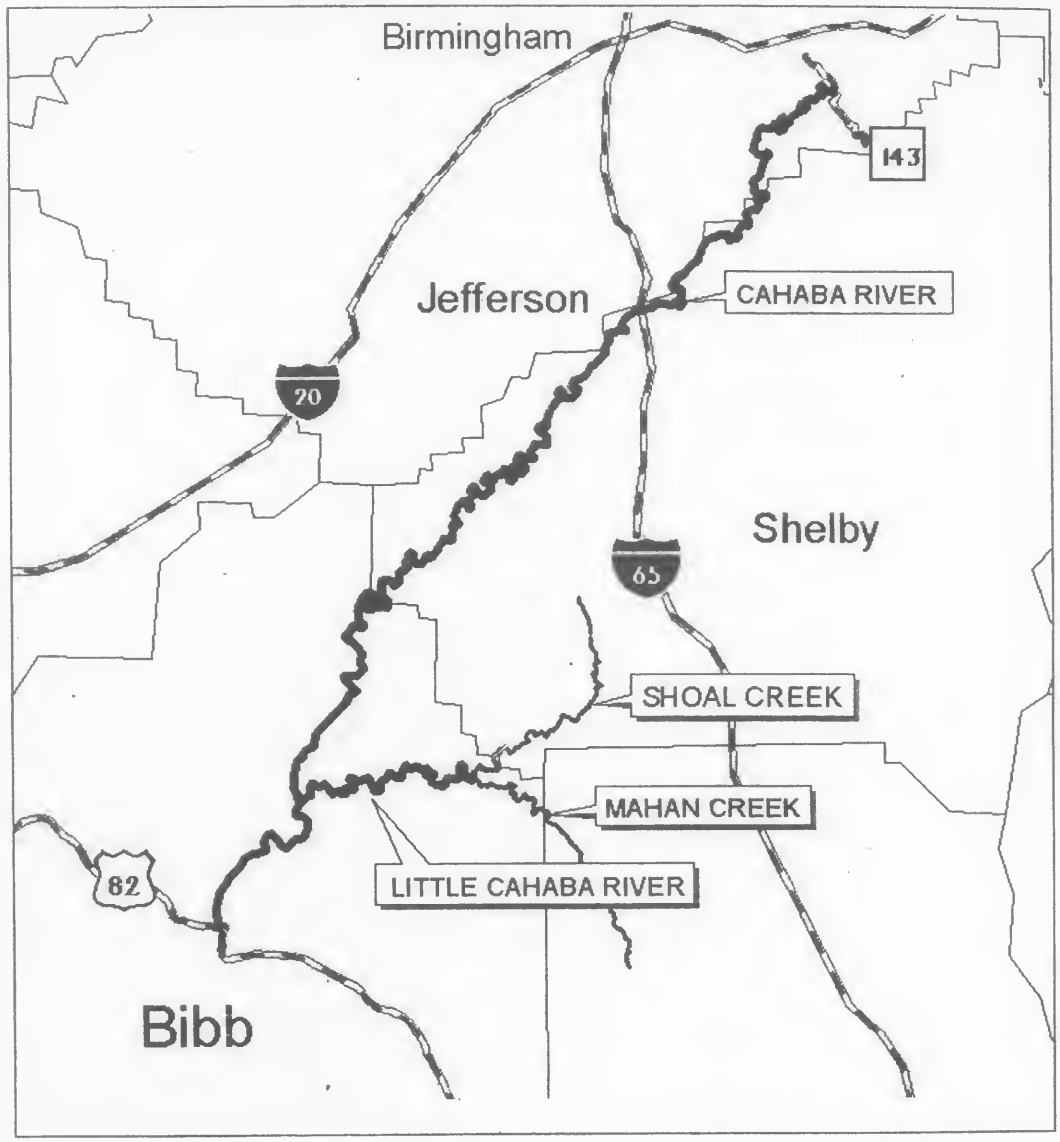
0 10000 20000 Meters

(xv) Unit 13. Cahaba River and Little Cahaba River, Jefferson, Shelby, Bibb Counties, Alabama. This is a critical habitat unit for the southern acornshell, ovate clubshell, southern clubshell, upland combshell, triangular kidneyshell, Alabama moccasinshell, orange-nacre mucket, and fine-lined pocketbook.

(A) Unit 13 includes the Cahaba River from U.S. Highway 82 (T23N R9E S26), Centerville, Bibb County, upstream to Jefferson County Road 143 (T18S R1E S33), Jefferson County, Alabama; and the Little Cahaba River from its confluence with the Cahaba River (T24N R10E S21), upstream to the confluence of Mahan and Shoal Creeks (T24N R11E S14), Bibb County, Alabama.

(B) Map of Unit 13 follows:

Unit 13: Southern Acornshell, Ovate Clubshell, Southern Clubshell, Upland Combshell, Triangular Kidneyshell, Alabama Moccasinshell, Orange-nacre Mucket, Finelined Pocketbook

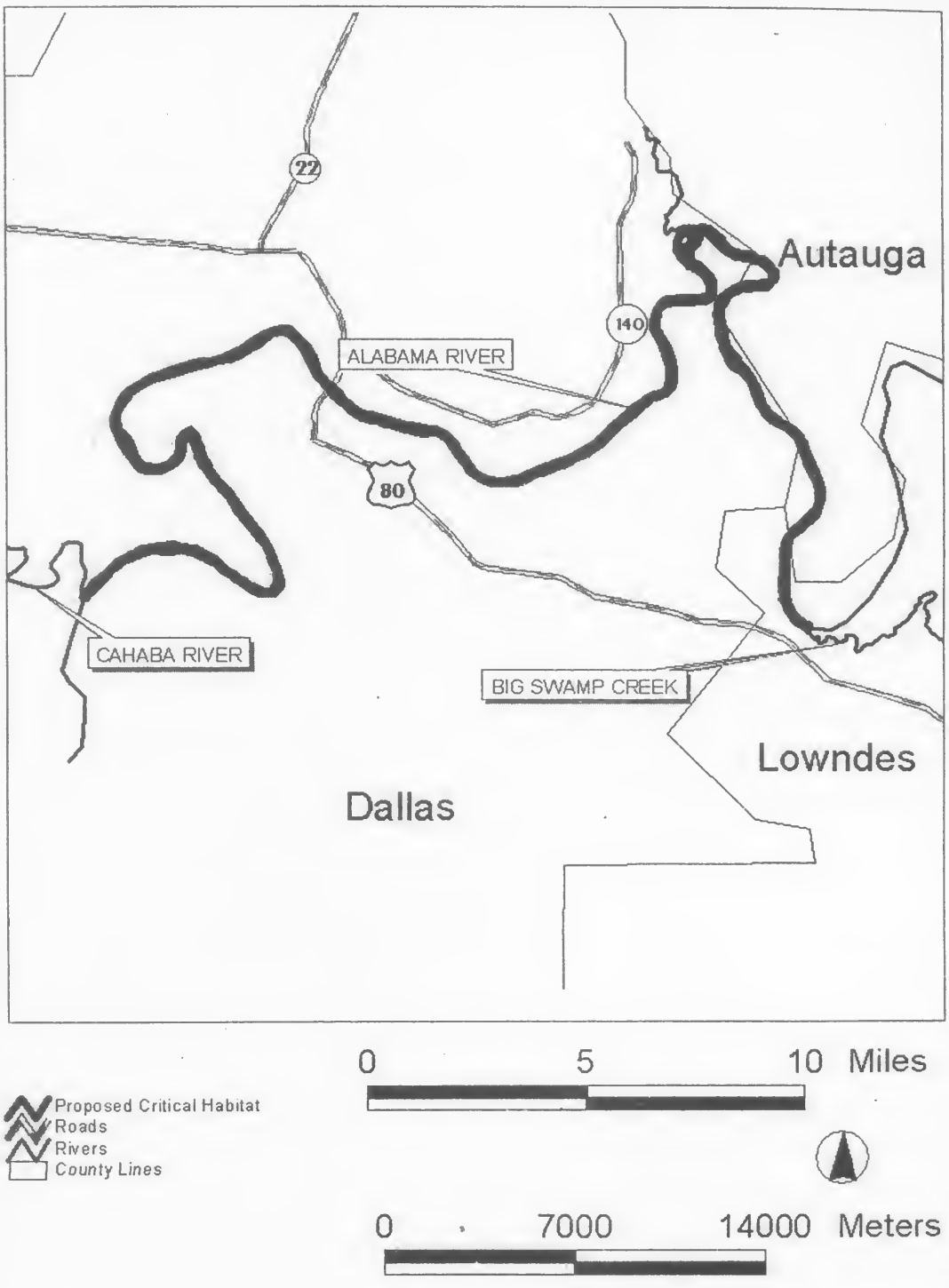


(xvi) Unit 14. Alabama River, Autauga, Lowndes, Dallas Counties, Alabama. This is a critical habitat unit for the southern clubshell and orange-nacre mucket.

(A) Unit 14 includes the Alabama River from the confluence of the Cahaba River (T16N R10E S32), Dallas County, upstream to the confluence of Big Swamp Creek (T15N R12E S1), Lowndes County, Alabama.

(B) Map of Unit 14 follows:

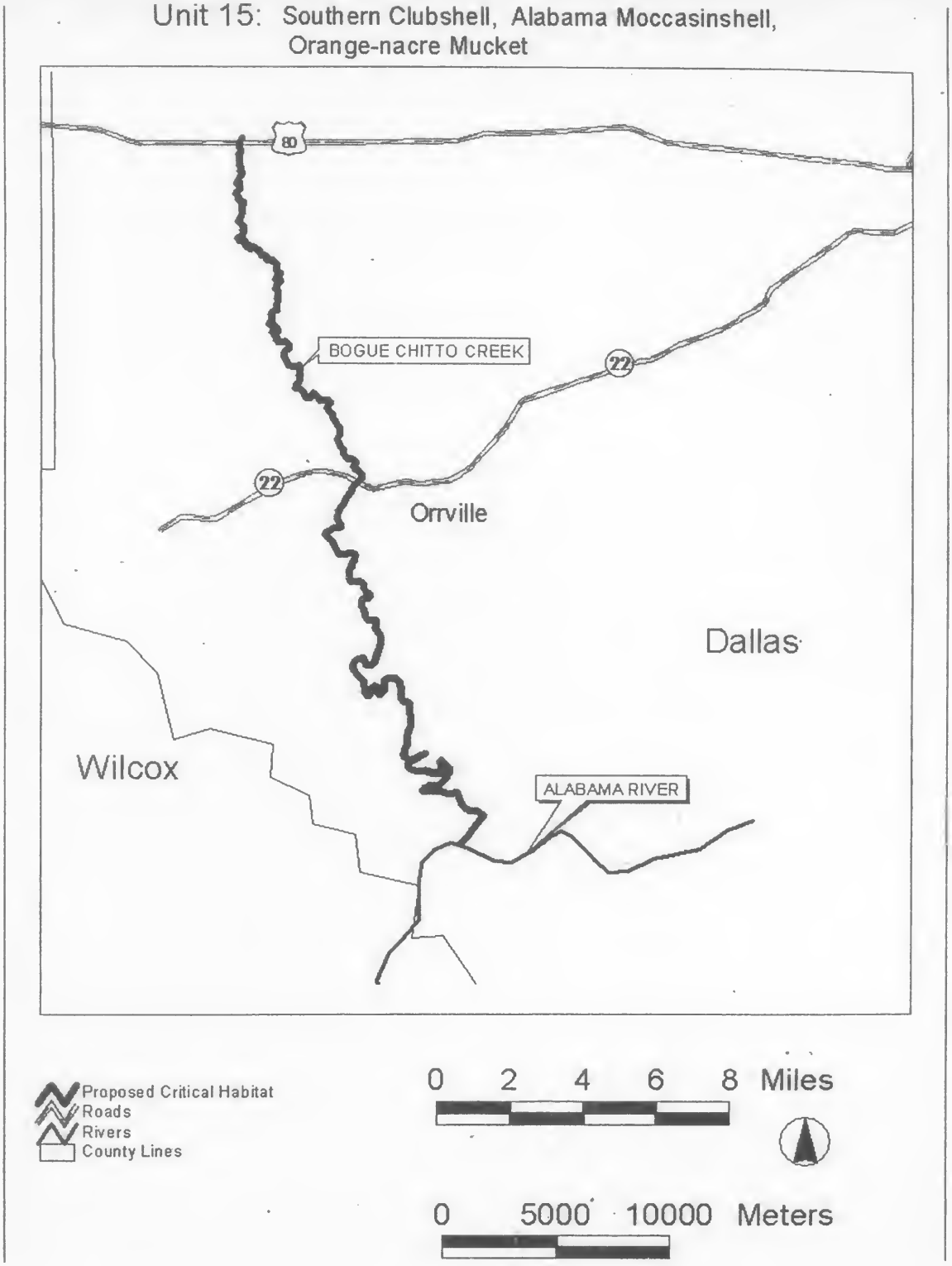
. Unit 14: Southern Clubshell, Orange-nacre Mucket



(xvii) Unit 15. Bogue Chitto Creek, Dallas County, Alabama. This is a critical habitat unit for the southern clubshell, Alabama moccasinshell, and orange-nacre mucket.

(A) Unit 15 includes the Bogue Chitto Creek main stem from its confluence with the Alabama River (T14N R8E S24), Dallas County, upstream to U.S. Highway 80 (T17N R7E S24), Dallas County, Alabama.

(B) Map of Unit 15 follows:

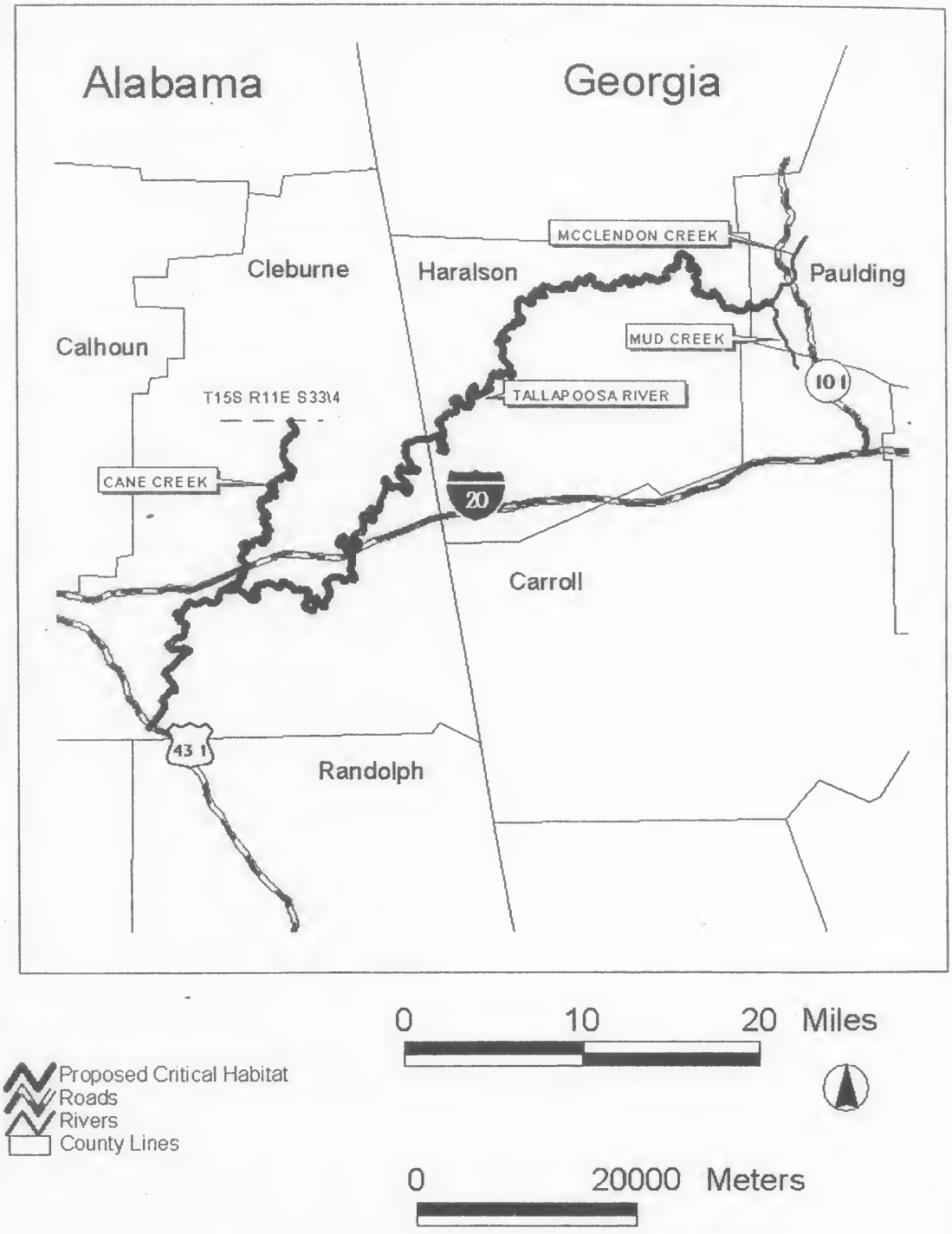


(xviii) Unit 16. Tallapoosa River, Cleburne County, Alabama, and Paulding, Haralson Counties, Georgia; Cane Creek, Cleburne County, Alabama. This is a critical habitat unit for the fine-lined pocketbook.

(A) Unit 16 includes the main stem Tallapoosa River from U.S. Highway 431 (T17S R10E S31), Cleburne County, Alabama, upstream to the confluence of McClendon and Mud Creeks (33 °50′ 43″ N 85 °00′45″W), Paulding County, Georgia; and Cane Creek from its confluence with Tallapoosa River (T16S R10E S24), upstream to section 33/4 Line (T15S, R11E), Cleburne County, Alabama.

(B) Map of Unit 16 follows:

Unit 16: Fine-lined Pocketbook

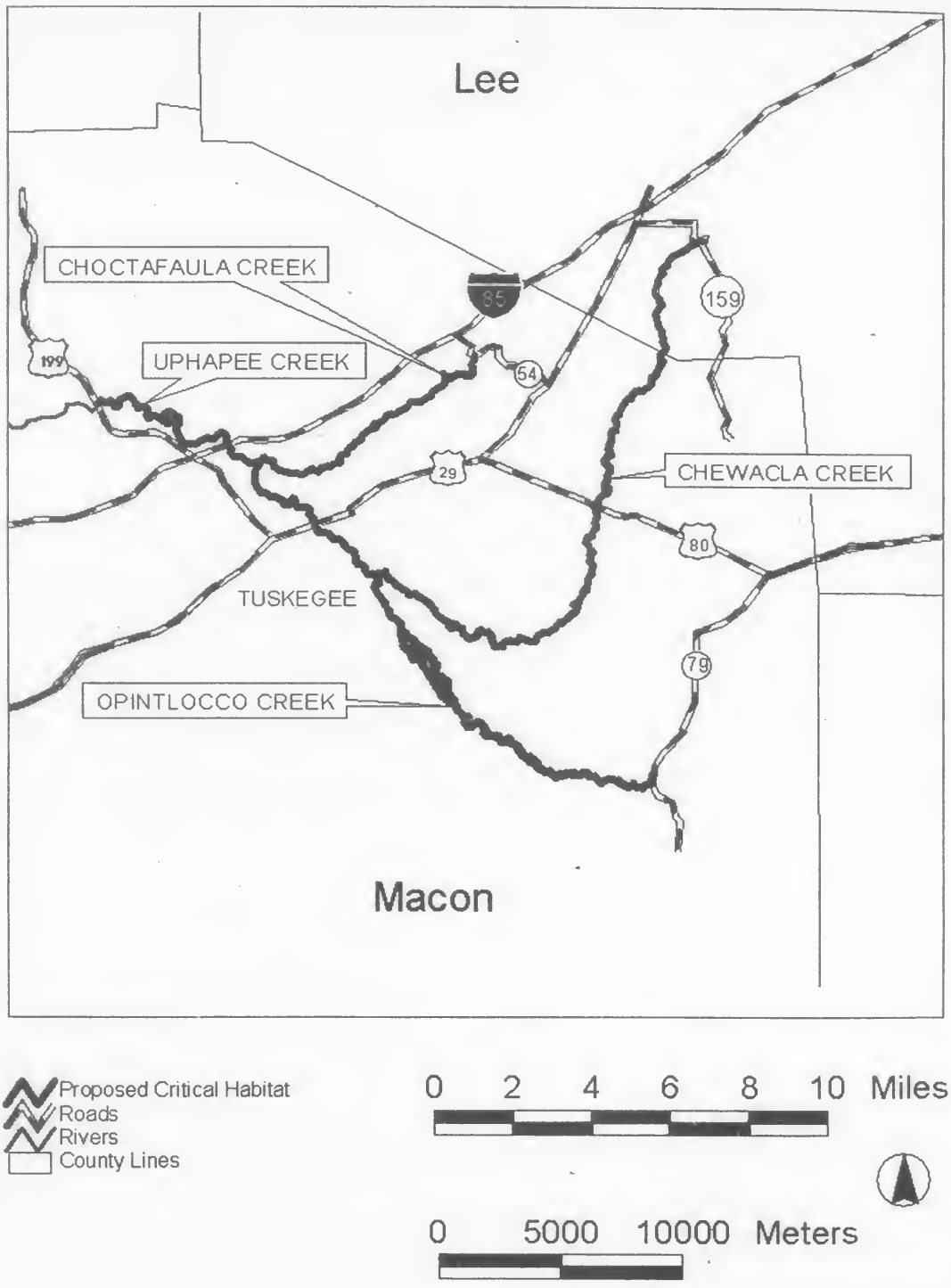


(xix) Unit 17. Uphapee, Choctafaula, and Chewacla Creeks, Macon, Lee Counties, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, and fine-lined pocketbook.

(A) Unit 17 includes the mainstem of Uphapee Creek from Alabama Highway 199 (T17N R23E S3), upstream to the confluence of Opintlocco and Chewacla Creeks (T17N R24E S26), Macon County, Alabama; Choctafaula Creek, from confluence with Uphapee Creek (T17N R24E S8), upstream to Macon County Road 54 (T18N R 25E S31), Macon County, Alabama; Chewacla Creek, from confluence with Opintlocco Creek (T17N R24E S26), Macon County, Alabama, upstream to Lee County Road 159 (T18N R26E S18), Lee County, Alabama; Opintlocco Creek, from confluence with Chewacla Creek (T17N R24E S26), upstream to Macon County Road 79 (T16N R25E S25) Macon County, Alabama.

(B) Map of Unit 17 follows:

Unit 17: OvateClubshell, Southern Clubshell, Fine-lined Pocketbook

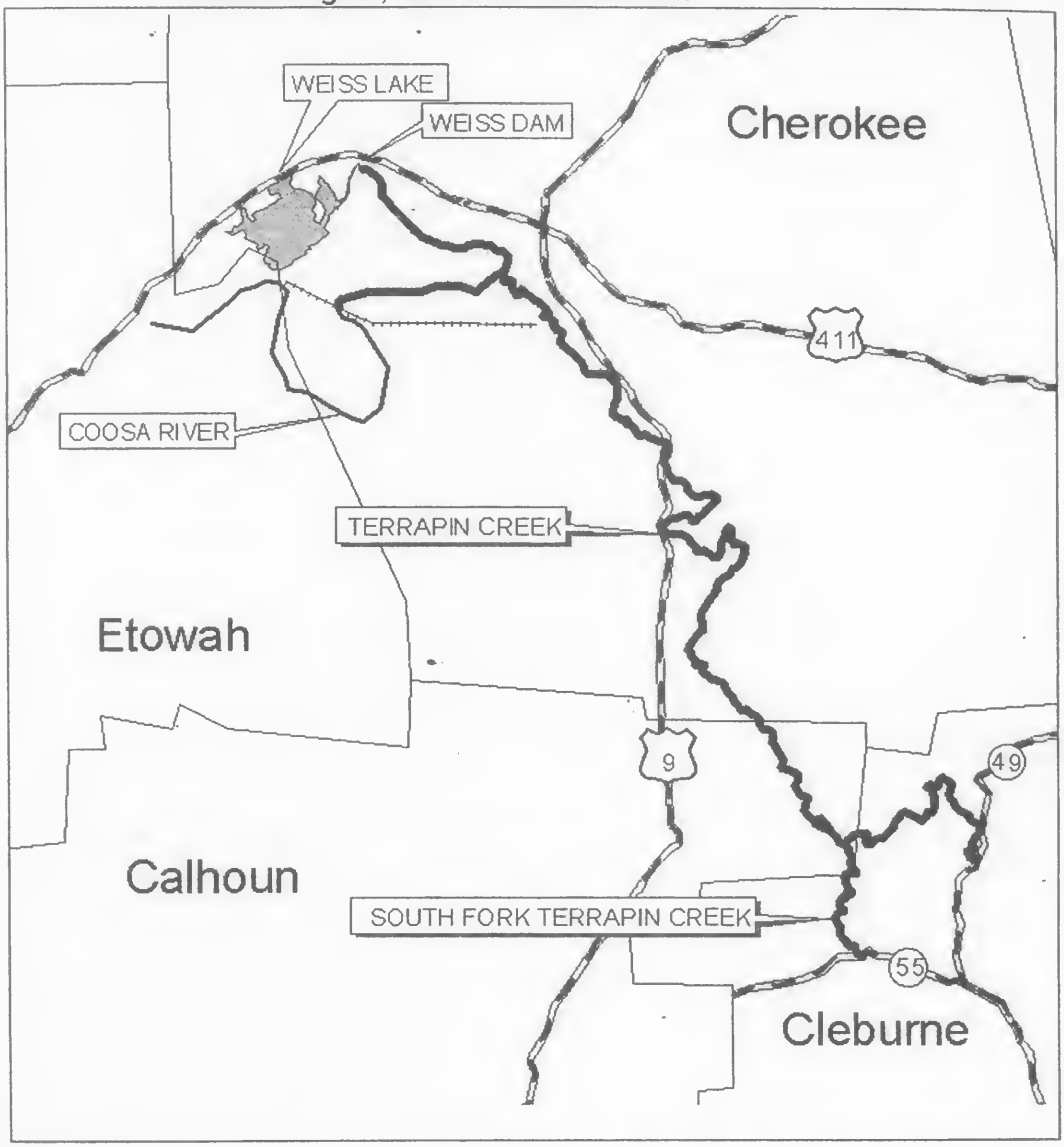


(xx) Unit 18. Coosa River (Old River Channel) and Terrapin Creek, Cherokee, Calhoun, Cleburne Counties, Alabama. This is a critical habitat unit for the southern acornshell, ovate clubshell, southern clubshell, upland combshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 18 includes the Coosa River main stem from the power line crossing southeast of Maple Grove, Alabama (T10S R8E S35), upstream to Weiss Dam (T10S R8E S13), Cherokee County, Alabama; Terrapin Creek, 53 km (33 mi) extending from its confluence with the Old Coosa River channel (T10S R9E S28), Cherokee County, upstream to Cleburne County Road 49 (T13S R11E S15), Cleburne County, Alabama; South Fork Terrapin Creek, 7 km (4 mi), from its confluence with Terrapin Creek (T13S R11E S18), upstream to Cleburne County Road 55 (T13S R11E S30), Cleburne County, Alabama.

(B) Map of Unit 18 follows:

Unit 18: Southern Acornshell, Ovate Clubshell, Southern Clubshell, Upland Combshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-lined Pocketbook

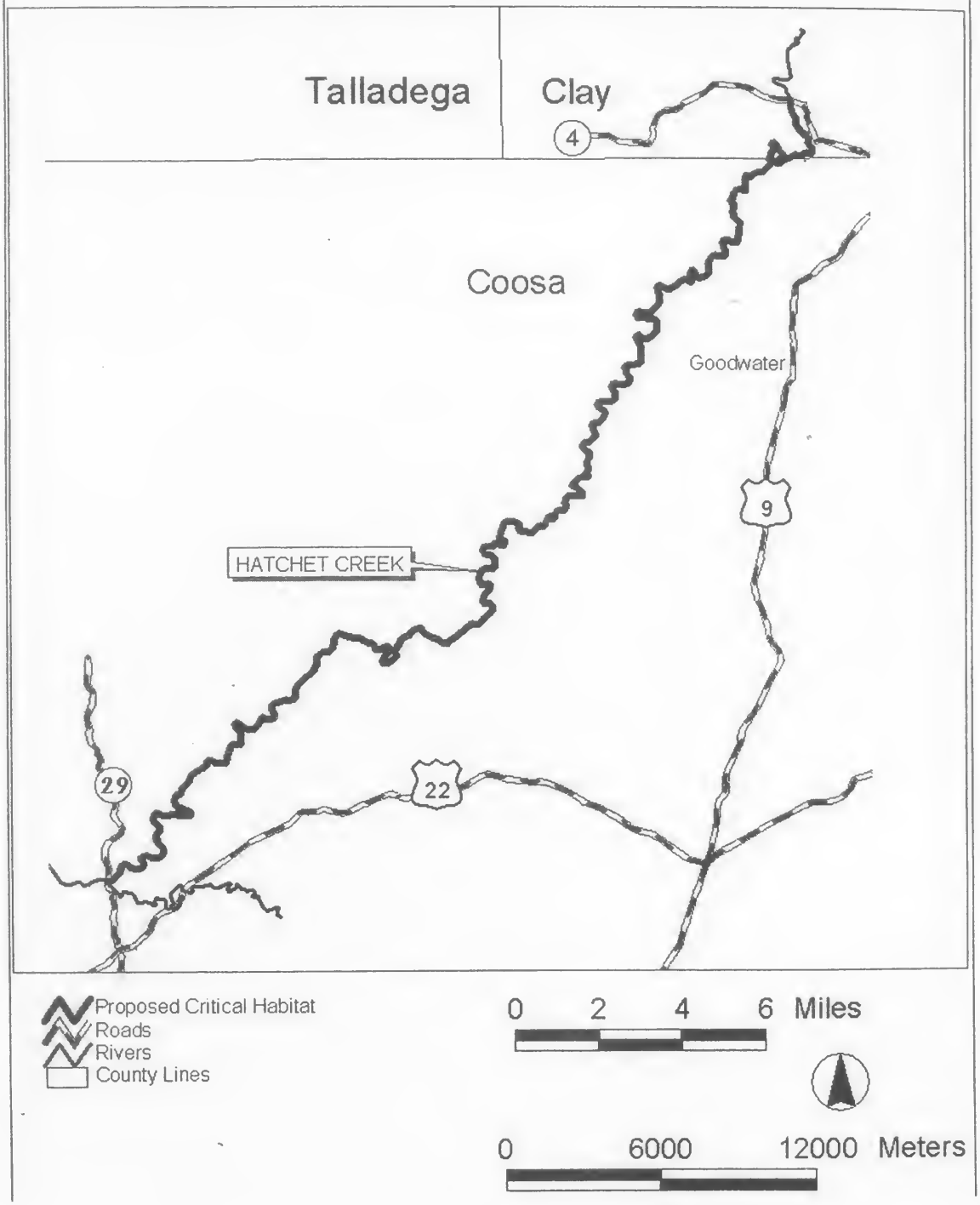


(xxi) Unit 19. Hatchet Creek, Coosa, Clay Counties, Alabama. This is a critical habitat unit for the southern acornshell, ovate clubshell, southern clubshell, upland combshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 19 includes the main stem of Hatchet Creek from the confluence of Swamp Creek at Coosa County Road 29 (T22N R17E S26), Coosa County, Alabama, upstream to Clay County Road 4 (T22S R6E S17) Clay County, Alabama.

(B) Map of Unit 19 follows:

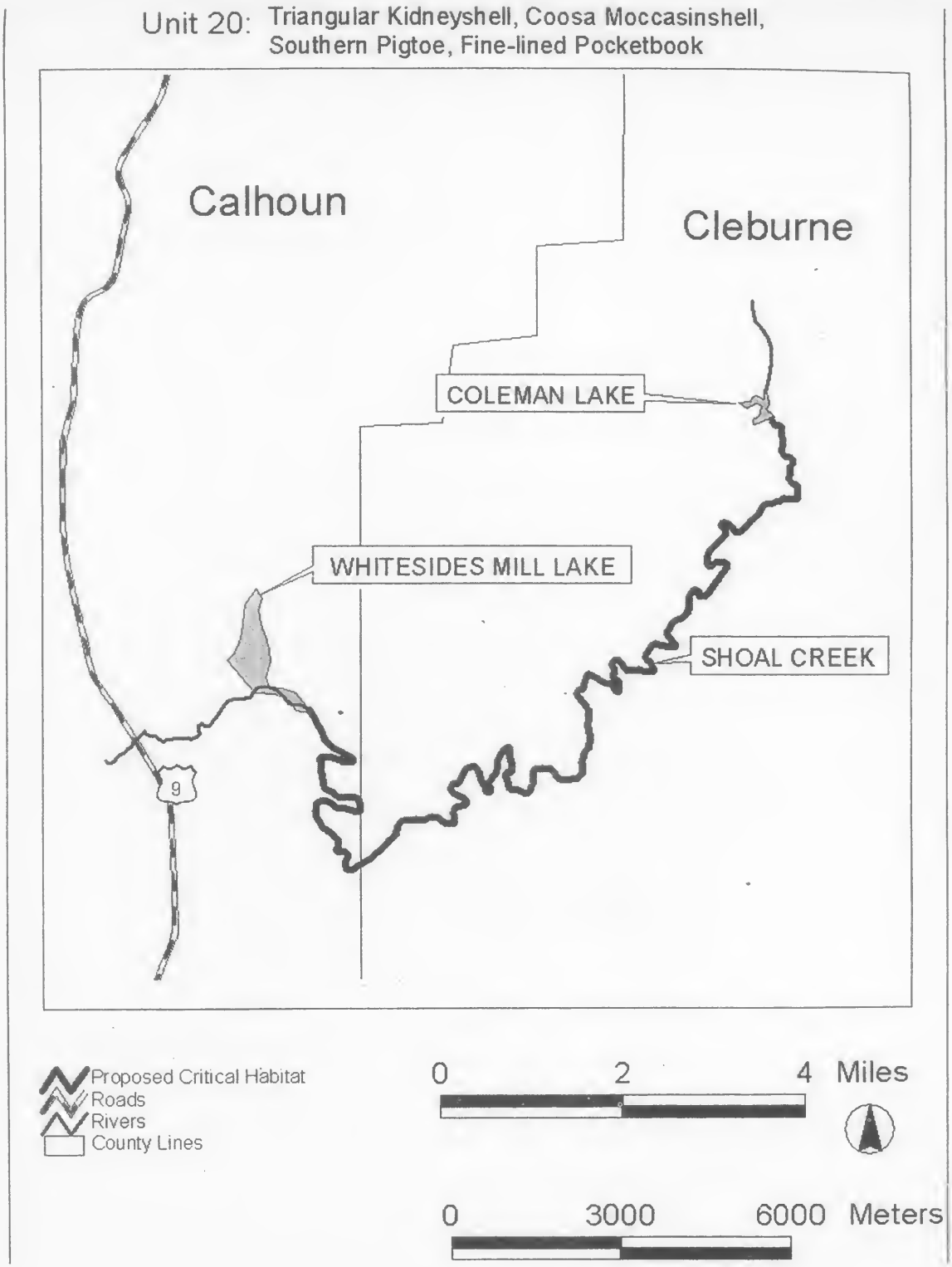
Unit 19: Southern Acornshell, Ovate Clubshell, Southern Clubshell, Upland Combshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-lined Pocketbook



(xxii) Unit 20. Shoal Creek, Calhoun, Cleburne Counties, Alabama. This is a critical habitat unit for the triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 20 includes the main stem of Shoal Creek from the headwater of Whitesides Mill Lake (T15S R9E S12), Calhoun County, Alabama, upstream to the tailwater of Coleman Lake Dam (T14S R10E S26), Cleburne County, Alabama.

(B) Map of Unit 20 follows:

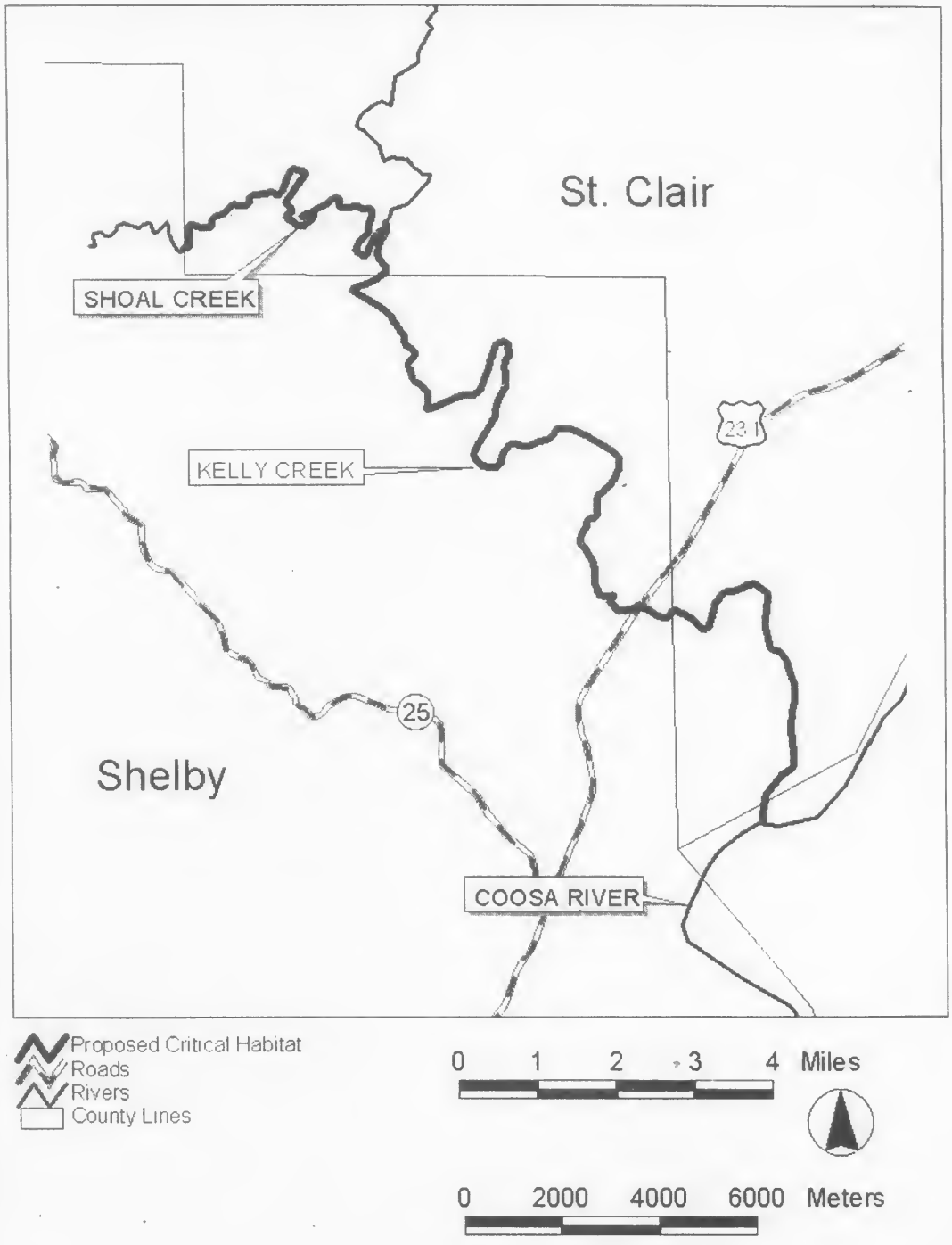

Unit 20: Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-lined Pocketbook
Calhoun
Cleburne
COLEMAN LAKE
WHITESIDES MILL LAKE
SHOAL CREEK
9
Proposed Critical Habitat
Roads
Rivers
County Lines
0 2 4 Miles
0 3000 6000 Meters

(xxiii) Unit 21. Kelly Creek and Shoal Creek, Shelby, St. Clair Counties, Alabama. This is a critical habitat unit for the southern acornshell, ovate clubshell, southern clubshell, upland combshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 21 includes the Kelly Creek main stem extending from the confluence with the Coosa River (T19S R3E S5), upstream to the confluence of Shoal Creek (T17S R2E S28), St. Clair County, Alabama; and the main stem of Shoal Creek from the confluence with Kelly Creek (T17S R2E S28), St. Clair County, Alabama, upstream to the St. Clair/Shelby County Line (T17S R2E S30), St. Clair County, Alabama.

(B) Map of Unit 21 follows:

Unit 21: Southern Acornshell, Ovate Cubshell, Southern Clubshell, Upland Combshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-lined Pocketbook

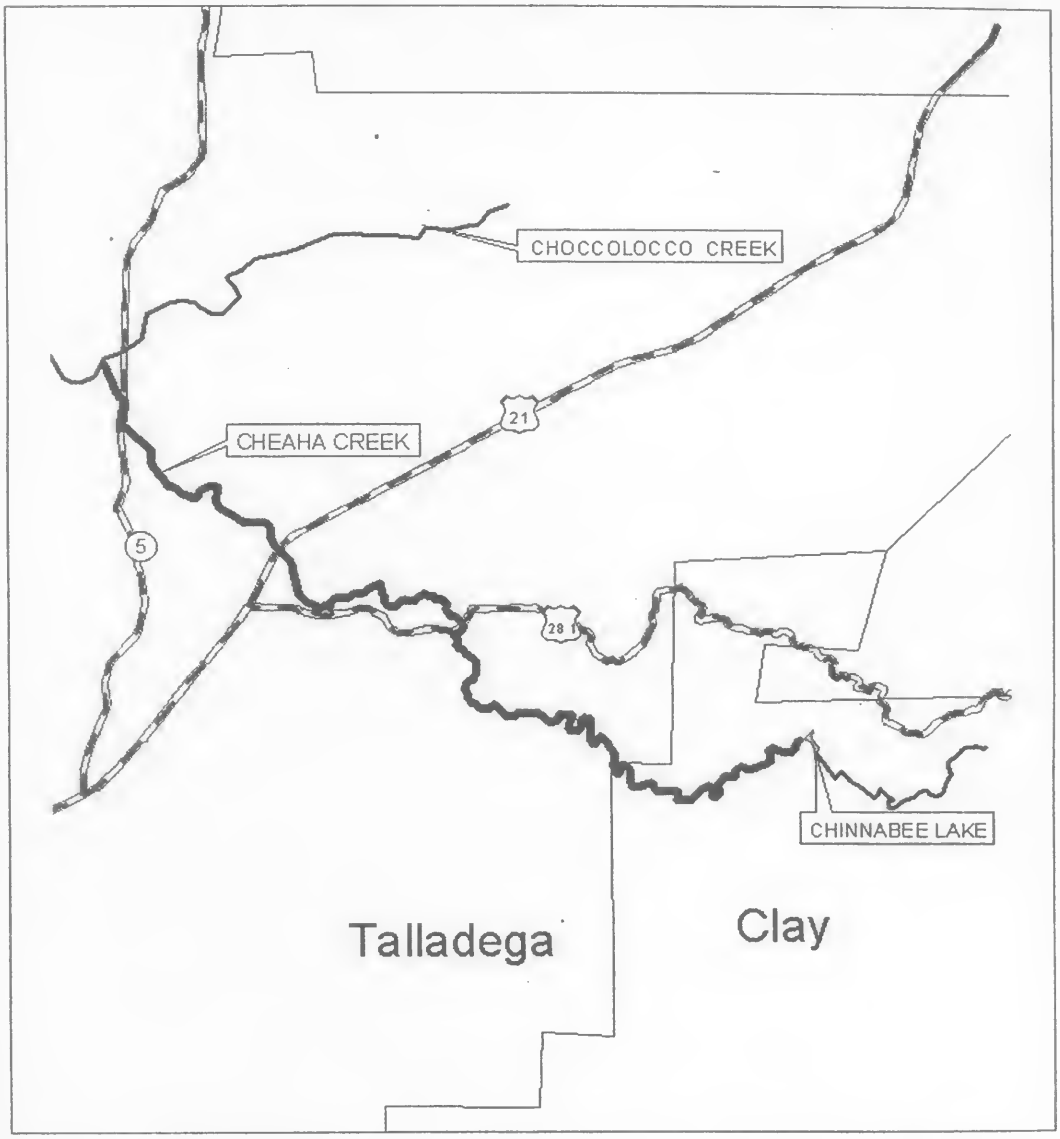


(xxiv) Unit 22. Cheaha Creek, Talladega, Clay Counties, Alabama. This is a critical habitat unit for the triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 22 includes the main stem of Cheaha Creek from its confluence with Choccolocco Creek (T17S R6E S19), Talladega County, Alabama, upstream to the tailwater of Chinnabee Lake Dam (T18S R7E S14), Clay County, Alabama.

(B) Map of Unit 22 follows:

Unit 22: Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-lined Pocketbook

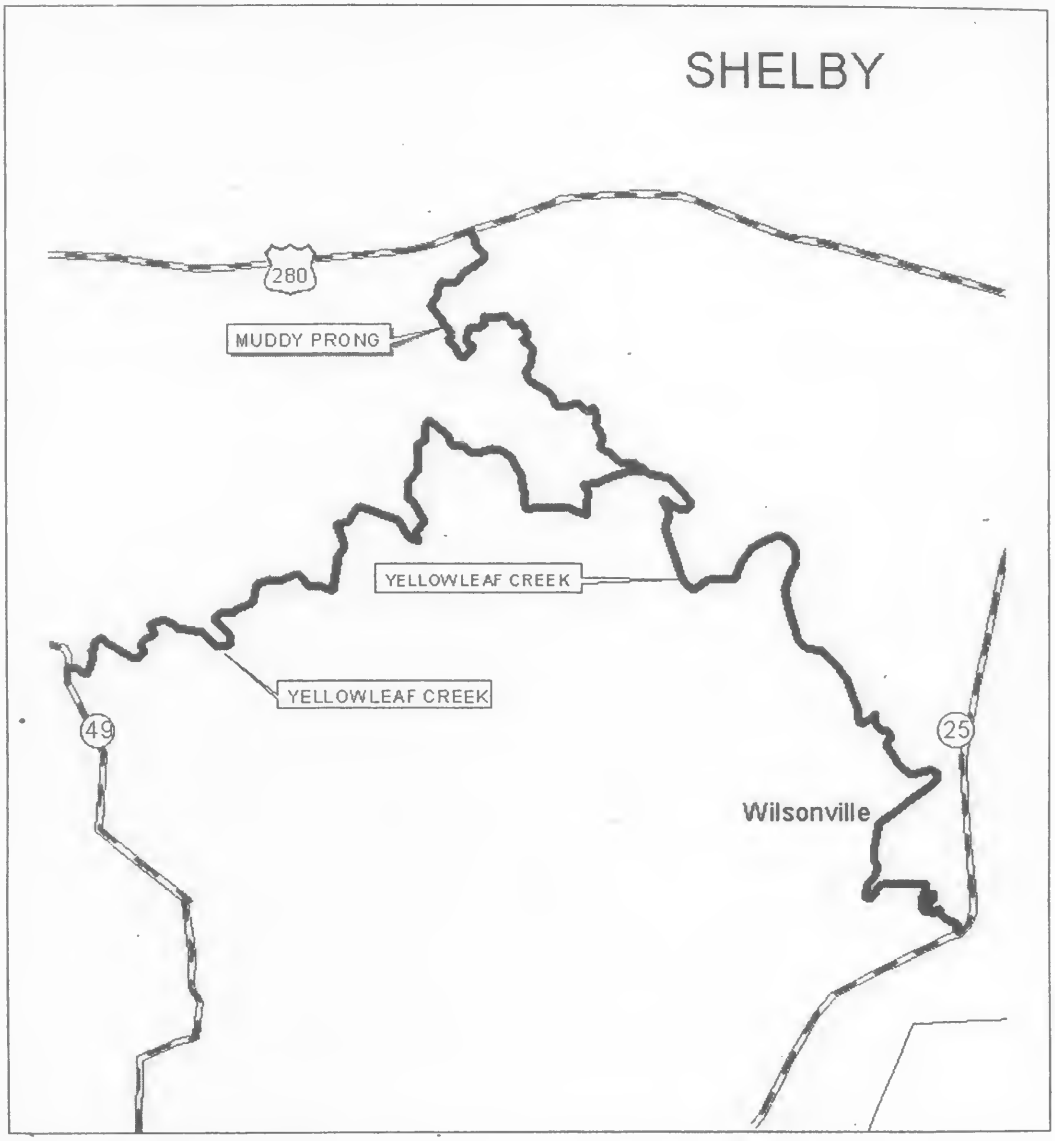


(xxv) Unit 23. Yellowleaf Creek and Mud Creek, Shelby County, Alabama. This is a critical habitat unit for the triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 23 includes the Yellowleaf Creek main stem from Alabama Highway 25 (T20S R2E S29), upstream to Shelby County Road 49 (T20S R1W S13); and the Muddy Prong main stem extending from its confluence with Yellowleaf Creek (T20S R1E S1), upstream to U.S. Highway 280 (T19S R1E S28), Shelby County, Alabama.

(B) Map of Unit 23 follows:

Unit 23: Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-lined Pocketbook

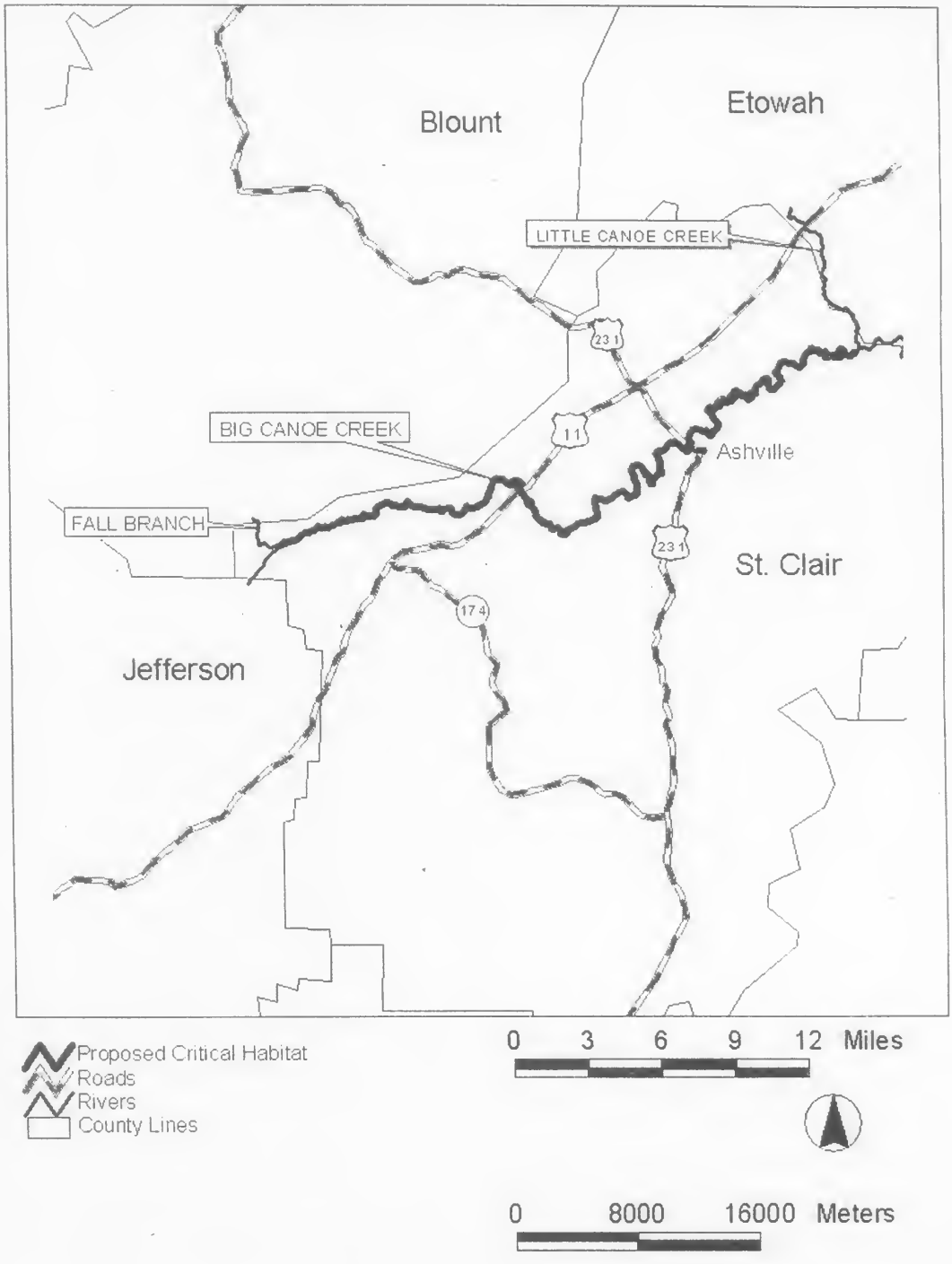


(xxvi) Unit 24. Big Canoe Creek, St. Clair County, Alabama. This is a critical habitat unit for the southern acornshell, ovate clubshell, southern clubshell, upland combshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 24 includes the main stem of Big Canoe Creek from its confluence with Little Canoe Creek at the St. Clair/Etowah County line (T13S R5E S17), St. Clair County, upstream to the confluence of Fall Branch (T14S R1E S28) St. Clair County, Alabama.

(B) Map of Unit 24 follows:

Unit 24: Southern Acornshell, Ovate Clubshell, Southern Clubshell, Upland Combshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-lined Pocketbook



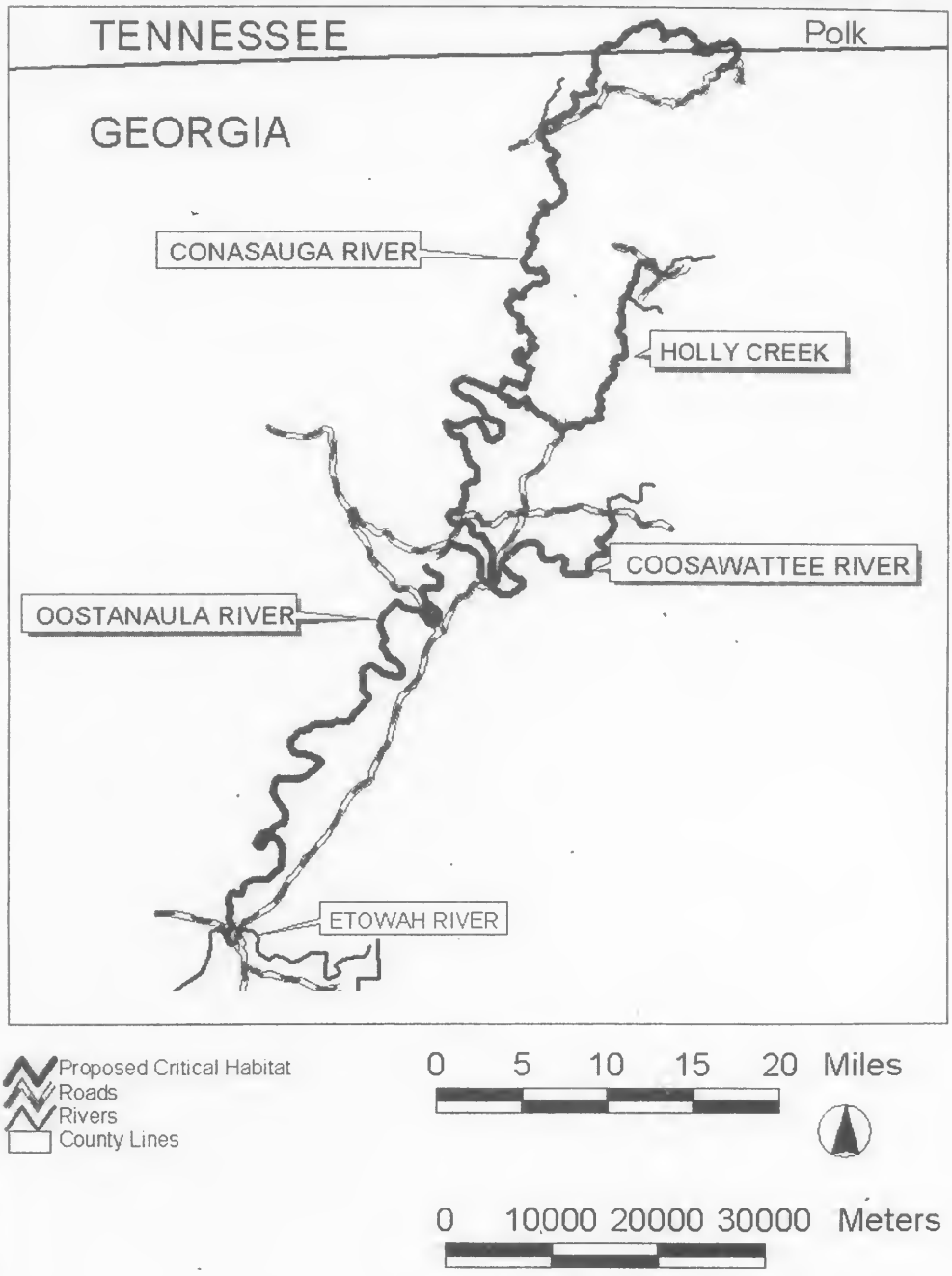
(xxvii) Unit 25. Oostanaula, Coosawattee, and Conasauga Rivers, and Holly Creek, Floyd, Gordon, Whitfield, Murray Counties, Georgia; Bradley, Polk Counties, Tennessee. This is a critical habitat unit for the southern acornshell,

ovate clubshell, southern clubshell, upland combshell, triangular kidneyshell, Alabama moccasinshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 25 includes the Oostanaula River main stem from its confluence with the Etowah River, Floyd County, Georgia (34°15′13″ N, 85°10′35″ W). upstream to the confluence of the Conasauga and Coosawattee River, Gordon County, Georgia (34°32′32″ N, 84°54′12 ″ W); the Coosawattee River main stem from its confluence with the Conasauga River (34°32′32 ″ N, 84°54′12 ″ W), upstream to Georgia State Highway 136, Gordon County, Georgia (34°36′49 ″ N, 84°46′43 ″ W); the Conasauga River main stem from confluence with the Coosawattee River (34°32′32 ″ N, 84°54′13 ″ W), Gordon County, Georgia, upstream through Bradley and Polk Counties, Tennessee, to Murray County Road 2 (34°58′27 ″ N, 84°38′43 ″ W), Murray County, Georgia; and the mainstem of Holly Creek from its confluence with the Conasauga River (34°42′12 ″ N, 84°53′29 ″ W), upstream to its confluence with Rock Creek, Murray County, Georgia (34°46′59 ″ N, 84°45′25 ″ W).

(B) Map of Unit 25 follows:

Unit 25: Southern Acornshell, Ovate Clubshell, Southern Clubshell, Upland Combshell, Triangular Kidneyshell, Alabama Moccasinshell, Coosa Moccasinshell, Southern Pigtoe, Fine-lined Pocketbook

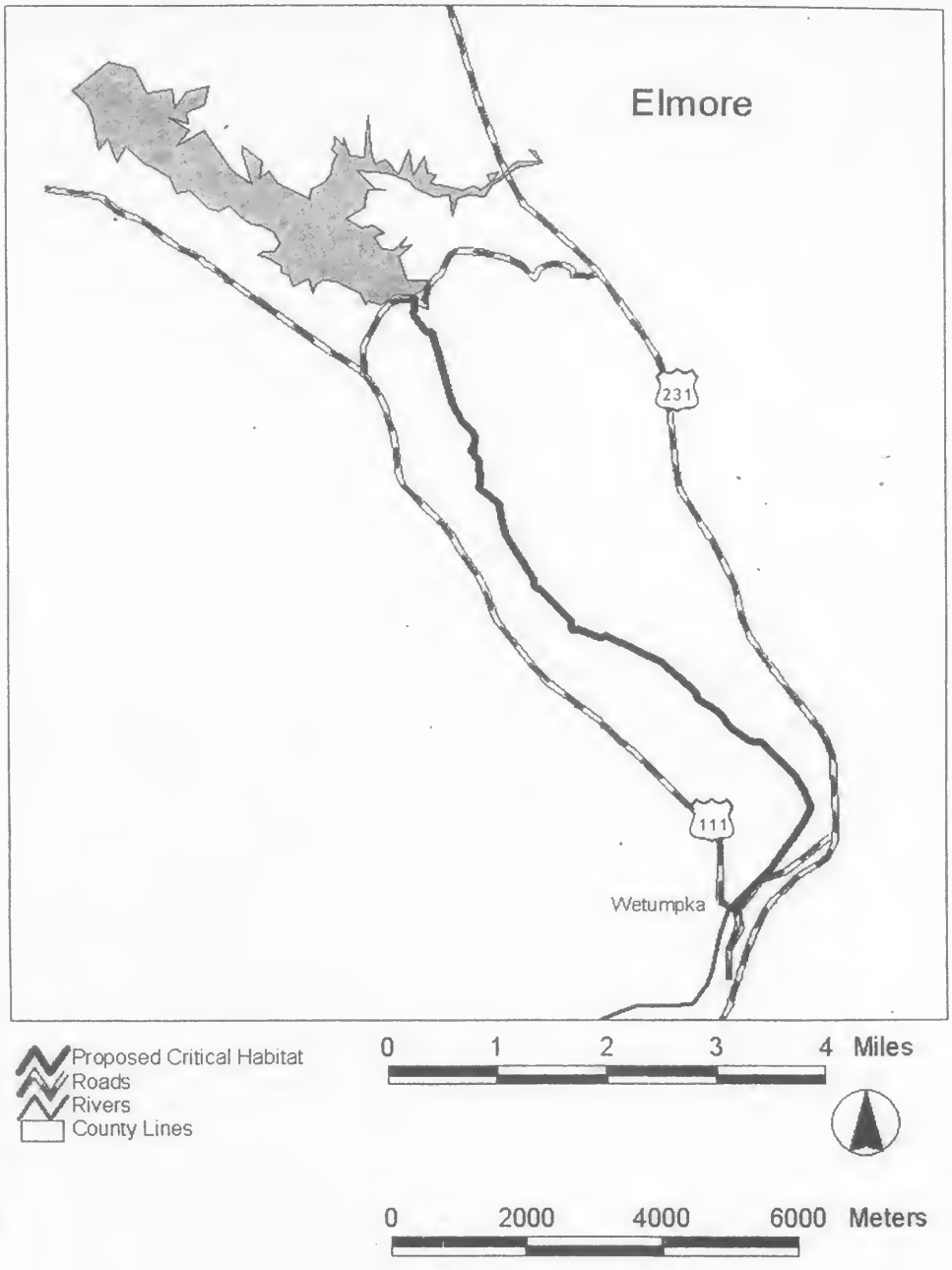


(xxviii) Unit 26. Lower Coosa River, Elmore County, Alabama. This is a critical habitat unit for the southern acornshell, ovate clubshell, southern clubshell, upland combshell, triangular kidneyshell, Alabama moccasinshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 26 includes the Coosa River main stem from Alabama State Highway 111 bridge (T18N R18/19E S24/19), upstream to Jordan Dam (T19N R18E S22), Elmore County, Alabama.

(B) Map of Unit 26 follows:

Unit 26: Southern Acornshell, Ovate Clubshell, Southern Clubshell, Upland Combshell, Triangular Kidneyshell, Alabama Moccasinshell, Coosa Moccasinshell, Southern Pigtoe, Fine-lined Pocketbook



* * * * *

Dated: June 17, 2004.

Craig Manson,

Assistant Secretary, Fish, Wildlife, and Parks.

[FR Doc. 04–14279 Filed 6–30–04; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
July 1, 2004

Part IV

Department of Agriculture

Forest Service

Department of the Interior

Fish and Wildlife Service

36 CFR Part 242 and 50 CFR Part 100
Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2004–05 Subsistence Taking of Fish and Wildlife Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AJ25

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2004–05 Subsistence Taking of Fish and Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses in Alaska during the 2004–05 regulatory year. The rulemaking is necessary because the regulations governing the subsistence harvest of wildlife in Alaska are subject to an annual public review cycle. This rulemaking replaces the wildlife regulations that expire on June 30, 2004. This rule also amends the regulations that establish which Alaska residents are eligible to take specific species for subsistence uses.

DATES: Sections __.24(a)(1) and __.25 are effective July 1, 2004. Section __.26 is effective July 1, 2004, through June 30, 2005.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

In Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), Congress found that "the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses * * *" and that "continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened * * *." As a result, Title VIII requires, among other things, that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA.

The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from its subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990. As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114).

As a result of this joint process between Interior and Agriculture, these regulations can be found in both Code of Federal Regulations (CFR) title 36, "Parks, Forests, and Public Property," and title 50, "Wildlife and Fisheries," at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; subpart B, Program Structure; subpart C, Board Determinations; and subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subparts A, B, and C of these regulations, as revised May 7, 2002 (67 FR 30559), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participated in the development of regulations for subparts A, B, and C, and the annual subpart D regulations.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2002) and 50 CFR 100.11 (2002), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents, who have personal knowledge of local conditions and resource requirements, to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

Current Rule

Because the subpart D regulations, which establish seasons and harvest limits and methods and means, are subject to an annual cycle, they require development of an entire new rule each year. Customary and traditional use determinations (Subpart C) are also subject to an annual review process providing for modification each year. Section __.24 (Customary and traditional use determinations) was originally published in the **Federal Register** (57 FR 22940) on May 29, 1992. The regulations at 36 CFR 242.4 and 50 CFR 100.4 define "customary and traditional use" as "a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. * * *" Since that time, the Board has made a number of Customary and Traditional Use Determinations at the request of impacted subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** as follows:

MODIFICATIONS TO § __.24

Federal Register citation	Date of publication:	Rule made changes to the following provisions of __.24:
59 FR 27462	May 27, 1994	Wildlife and Fish/Shellfish.
59 FR 51855	October 13, 1994	Wildlife and Fish/Shellfish.
60 FR 10317	February 24, 1995	Wildlife and Fish/Shellfish.
61 FR 39698	July 30, 1996	Wildlife and Fish/Shellfish.
62 FR 29016	May 29, 1997	Wildlife and Fish/Shellfish.
63 FR 35332	June 29, 1998	Wildlife and Fish/Shellfish.
63 FR 46148	August 28, 1998	Wildlife and Fish/Shellfish.
64 FR 1276	January 8, 1999	Fish/Shellfish.
64 FR 35776	July 1, 1999	Wildlife.
65 FR 40730	June 30, 2000	Wildlife.
66 FR 10142	February 13, 2001	Fish/Shellfish.
66 FR 33744	June 25, 2001	Wildlife.
67 FR 5890	February 7, 2002	Fish/Shellfish.
67 FR 43710	June 28, 2002	Wildlife.
68 FR 7276	February 12, 2003	Fish/Shellfish.
During its May 20–22, 2003, meeting, the Board did not make any additional customary and traditional use determinations.		
69 FR 5018	February 3, 2004	Fish/Shellfish.

The Departments of the Interior and Agriculture published a proposed rule on August 19, 2003 (68 FR 49734), to amend subparts C and D of 36 CFR 242 and 50 CFR 100. The proposed rule opened a comment period, which closed on October 24, 2003. The Departments advertised the proposed rule by mail, radio, and newspaper. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received a total of 86 proposals for changes to subparts C and D. Subsequent to the review period, the Board prepared a booklet describing the proposals and distributed it to the public. The public had an additional 30 days in which to comment on the proposals for changes to the regulations. The 10 Regional Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting of May 18–20, 2004. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments. The public has had extensive opportunity to review and comment on all changes. Additional details on the recent Board modifications are contained below in Analysis of Proposals Adopted by the Board.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 apply to regulations found in this subpart.

Analysis of Proposals Rejected by the Board

The Board rejected or took no action on 34 proposals and parts of 2 others. All these rejections were based on recommendations from the respective Regional Council and additional factors.

Three proposals requested placing antler restrictions on deer harvested in various units in southeast Alaska. The Board rejected these proposals as being unnecessary restrictions on subsistence users.

Twelve proposals requested revising the deer hunting regulations for Prince of Wales Island in Unit 2. The Board took no action on these proposals because they were rendered moot by Board action on another proposal.

One proposal requested the establishment of a customary and traditional use determination for moose in Unit 1(A). The Board rejected this proposal based on the recommendations of the Regional Council that the existing "no determination" would best meet the needs of subsistence users.

One proposal requested the prohibition of the use of guides by subsistence users. The Board rejected this proposal as being an unnecessary restriction on subsistence users.

One proposal requested a customary and traditional use determination and harvest opportunity for bison in Units 11 and 13. This proposal was rejected based on a Regional Council recommendation that the harvest of bison was not a customary practice in this area.

One proposal requested a designated hunter option for an elder hunt for sheep in Unit 11. This proposal was rejected based on a Regional Council recommendation that the harvest opportunity was intended for elders only.

Two proposals requested the shortening of moose seasons in parts of Units 13 and 15. The Board rejected these proposals as being an unnecessary restriction on subsistence users.

Two proposals requested allowing same-day airborne hunting of caribou and moose in Units 9 and 17. The Board rejected these proposals as having a potential conservation impact on these populations.

Two proposals requested changing the moose season and harvest limits, or closing Federal lands to nonqualified users for moose in Unit 17(A). The Board rejected these proposals since they were superseded by another proposal adopted by the Board addressing similar issues.

One proposal requested allowing the sale of bear parts. The Board rejected this proposal as it is partially covered by another adopted proposal allowing sale of handicrafts made from the fur or claws of brown bears in certain units, and also because the sale of other bear parts creates a significant conservation concern.

One proposal requested the closing of Federal lands in Unit 21(E) for hunting of black bear, brown bear, or moose by non-federally qualified users. The Board rejected this proposal as an unnecessary restriction on nonsubsistence users.

Two proposals requested revising the customary and traditional use determination for caribou in Units 24 and 26(B). The Board rejected one based on a lack of information supporting the request and took no action on the other because it was rendered moot by Board action on another proposal.

Two proposals requested changes in the moose season in parts of Unit 21. The Board rejected these proposals as being an unnecessary restriction on subsistence users.

One proposal requested a change in beaver trapping seasons. The Board rejected this proposal based on the recommendation of the Regional Council that harvest during the requested time period was not a customary practice.

Two proposals requested deletion of the requirement to devaluate the horns of sheep taken in Unit 23. The Board rejected these as they were rendered moot by Board action on another proposal.

One proposal requested reduction in the harvest limit for sheep in Unit 26(C). The Board rejected this proposal as being an unnecessary restriction on subsistence users.

The Board deferred action on part of one proposal in order to allow communities or Regional Councils additional time to review the issues and provide additional information. Four of the originally submitted proposals and part of one other were withdrawn from consideration by their originators.

Summary of Proposals Adopted by the Board

The Board adopted 45 proposals and parts of 3 others. Some of these proposals were adopted as submitted. Others were adopted with modifications suggested by the respective Regional Council, modifications developed during the analysis process, or modifications developed during the Board's public deliberations.

All of the adopted proposals were recommended for adoption by at least one of the Regional Councils, although further modifications may have been made during Board discussions, and were based on meeting customary and traditional uses or harvest practices, or on protecting wildlife populations. Detailed information relating to justification for the action on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska, or on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/home.html*). Additional minor technical clarifications have been made, resulting in a more readable document.

Multiple Regions

The Board adopted one proposal, resulting in the following changes in the regulations found in § ____.25, which affect residents of multiple Regions.

- Clarified that handicrafts for sale could be made from the fur or claws of black bears.
- Provided for the sale of handicrafts made from the fur or claws of brown bears in certain units.

Southeast Region

The Board adopted three proposals affecting residents of the Southeast Region, resulting in the following change to the regulations found in § ____.26.

- Shortened the closure period on Prince of Wales Island for deer for non-Federally qualified users.
- Removed the vehicle access restrictions for marten, mink, and weasel trapping in a portion of Unit 4.
- In a portion of Unit 5(A), revised the regulatory language for moose harvest to utilize a joint State/Federal registration permit and removed the antler requirement for the bull harvest.

Southcentral Region

The Board adopted 14 proposals affecting residents in the Southcentral Region, resulting in the following changes to the regulations found in § ____.26.

- Provided for the harvest of two caribou and one bull moose in Unit 13 for the Hudson Lake Residential Treatment Camp.
- Provided for the harvest of either two caribou or one bull moose in Unit 13 for the Ahtna Heritage Foundation Camp culture camp.
- Lengthened the coyote hunting season in Unit 11 and the season and harvest limit in Unit 13.
- Increased the harvest limit and expanded the hunting season for red fox in Units 11 and 13.
- Lengthened the lynx hunting season in Unit 11.
- Lengthened the lynx hunting season in Unit 13.
- Lengthened the beaver trapping season in Unit 13.
- Lengthened the marten trapping season in a portion of Unit 13.
- Lengthened the muskrat trapping season in Unit 13.
- Revised the moose harvest limit in Unit 16(B) to bulls only.
- Lengthened the marten trapping season in a portion of Unit 16.
- Delegated increased authority to the Office of Subsistence Management to adjust lynx trapping seasons and harvest limits in various units in the Southcentral and Eastern Interior Regions in accordance with the ADF&G Lynx Harvest Management Strategy.

Kodiak/Aleutians Region

The Board adopted one proposal affecting residents in the Kodiak/Aleutians Region, resulting in the following changes to the regulations found in § ____.26.

- Increased the harvest limits for caribou in Unit 9(D) and a portion of Unit 10.

Bristol Bay Region

The Board adopted five proposals affecting residents in the Bristol Bay Region, resulting in the following changes to the regulations found in § ____.26.

- Revised the sealing requirements for brown bear in Unit 9(E).
- Revised the harvest limit and season for caribou in portions of Unit 9 and 17.
- Established a hunting season and harvest limit for beaver in parts of Unit 9.
- Established a winter hunt for moose in a portion of Unit 17(A).

Yukon/Kuskokwim Region

The Board adopted three proposals affecting residents of the Yukon/Kuskokwim Region, resulting in the following change to the regulations found in § ____.26.

- Extended the caribou season, revised the harvest limit, and simplified the hunt areas in Unit 18.
- Extended the moose season in one portion of Unit 18 and closed another portion of the unit.
- Extended the requirement that meat of the front and hind quarters of caribou and moose to remain on the bone until the quarters are removed from the field to all of Unit 18.

Western Interior Region

The Board adopted nine proposals affecting residents of the Western Interior Region, resulting in the following change to the regulations found in §§ ____.24 and ____.26.

- Revised the harvest limit and the season dates for moose in Units 19(A) and 19(B).
- Reduced the harvest limit for moose in Unit 19 for Lime Village.
- Required the use of a State registration permit for the harvest of moose in Unit 21(B).
- Removed the ½-mile moose hunting restriction along the Yukon River for Unit 21(D).

- Revised the season and harvest limits for moose in portions of Units 21(D) and 24.
- Revised the description of the Koyukuk Controlled Use Area.
- Revised the customary and traditional use determination for brown bear in Unit 24.
- Revised the customary and traditional use determination for caribou in Unit 26(B).
- Revised the season for sheep in a portion of Unit 24.

Seward Peninsula Region

The Board adopted three proposals affecting residents of the Seward Peninsula Region, resulting in the following changes to the regulations found in §§ ____.24 and ____.26.

- Revised the hunt dates for the ceremonial harvest of a moose and muskox in Unit 22(E).
- Shortened the moose season, eliminated the winter hunt, and closed public lands in Unit 22(A) to non-Federally qualified users.
- Revised the customary and traditional use determination for muskox for Units 22(B) and (D).

Northwest Arctic Region

The Board adopted two proposals affecting residents in the Northwest Arctic Region, resulting in the following changes to the regulations found in § ____.26.

- Changed the harvest limit and season for sheep in the Baird and DeLong Mountains in Units 23 and 26; removed the provision to devalue the horns; and placed a limitation on designated hunters, allowing each designated hunter to hunt only for one other person in the course of a season.

Eastern Interior Region

The Board adopted four proposals affecting residents of the Eastern Interior Region, resulting in the following changes to the regulations found in §§ ____.24 and ____.26.

- Simplified regulations, extended seasons, and revised harvest limits for brown bear in Units 19–21 and 24–26.
- Deleted the cow harvest during the fall caribou season in a portion of Unit 20(F).
- Established an elder hunt for sheep in a portion of Unit 12.
- Established a customary and traditional use determination for moose for Unit 20(E).

Additionally, the U.S. Fish and Wildlife Service, Office of Subsistence Management, used its delegated authority to adjust lynx seasons and harvest limits consistent with the ADF&G Lynx Harvest Management Strategy. The Office of Subsistence Management, in May 2004, exercised this authority and adjusted the lynx trapping season in Unit 12 and part of Unit 20.

North Slope Region

The Board adopted two proposals affecting residents of the North Slope Region, resulting in the following change to the regulations found in § ____.26.

- Expanded the aircraft restriction dates and revised the harvest limit for moose in a portion of Unit 26(A).
- Provided for a limited hunt for moose in Unit 26(B) and (C).

These additional modifications to the regulations have been included. We removed references to "Brown Bear Management Areas" but did not change the regulations for brown bears in these areas. We added a definition of "fur" and clarified and corrected the regulations to specify that the sale of handicrafts made from the fur of black bears does include claws. We also clarified that the skins of furbearers may be sold. Section ____.25(g) has been removed based on Board action in November 2003 that delegated the issuance of subsequent permits for the harvest of wildlife for culture camps/educational camps to field managers.

These final regulations reflect Board review and consideration of Regional Council recommendations and public comments. All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Administrative Procedure Act Compliance

The Board finds that additional public notice under the Administrative Procedure Act (APA) for this final rule is unnecessary, and contrary to the public interest. The Board has provided extensive opportunity for public input and involvement in excess of standard APA requirements, including participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change. Over the 14 years the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of the regulations. A lapse in regulatory control could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d) to make this rule effective less than 30 days after publication.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analyses and examined the environmental consequences of four alternatives. Proposed regulations (subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture—Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C, implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. The following **Federal Register** documents pertain to this rulemaking:

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE

Federal Register citation:	Date of publication:	Category:	Details:
57 FR 22940	May 29, 1992	Final Rule	"Subsistence Management Regulations for Public Lands in Alaska; Final Rule" was published in the **Federal Register.**
64 FR 1276	January 8, 1999	Final Rule	Amended to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or to an Alaska Native Corporation. Specified and clarified Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559	May 7, 2002	Final Rule	In response to comments the June 12, 2003, interim rule, amended the operating regulations. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct Final Rule	This rule clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule.	Received no adverse comments on the direct final rule (67 FR 30559). Adopted direct final rule.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT.** The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment, and has, therefore, signed a Finding of No Significant Impact.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

This rule does not contain any new information collection requirements that need Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule applies to the use of public lands in Alaska. The information collection requirements described in this rule are already approved by OMB and have been assigned control number 1018–0075, which expires August 31, 2006. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

This rule was not deemed significant for OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that the effects will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given

an estimated dollar value of $3.00 per pound, would equate to about $6 million in food value Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information—William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; and Steve Kessler, Alaska Regional Office, USDA—Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

■ 2. In subpart C of 36 CFR part 242 and 50 CFR part 100, § ____.24(a)(1) is reprinted without change to read as follows:

§ ____.24 Customary and traditional use determinations.

(a) * * *

(1) *Wildlife determinations.* The rural Alaska residents of the listed communities and areas have a customary and traditional use of the specified species on Federal public lands within the listed areas:

Area	Species	Termination
Unit 1(C)	Black Bear	Residents of Unit 1(C), 1(D), 3, Hoonah, Pelican, Point Baker, Sitka, and Tenakee Springs.
1(A)	Brown Bear	Residents of Unit 1(A), except no subsistence for residents of Hyder.
1(B)	Brown Bear	Residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Residents of Unit 1(C), Haines, Hoonah, Kake, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Residents of 1(A) and 2.
1(B)	Deer	Residents of Unit 1(A), residents of 1(B), 2, and 3.
1(C)	Deer	Residents of 1(C), 1(D), Hoonah, Kake, and Petersburg.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Kake, Klukwan, Petersburg, and Hoonah.
1(B)	Moose	Residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Residents of Unit 1(A), 2, and 3.
Unit 3	Deer	Residents of Unit 1(B), 3, Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.

Area	Species	Termination
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Goat	Residents of Unit 5(A).
5	Moose	Residents of Unit 5(A).
5	Wolf	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and Unit 6(C) and 6(D), except no subsistence for Whittier.
6, remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6(A)	Goat	Residents of Unit 5(A), 6(C), Chenega Bay, and Tatitlek.
6(C) and (D)	Goat	Residents of Unit 6(C) and (D).
6(A)	Moose	Residents of Units 5(A), 6(A), 6(B) and 6(C).
6(B) and (C)	Moose	Residents of Units 6(A), 6(B) and 6(C).
6(D)	Moose	No Federal subsistence priority.
6(A)	Wolf	Residents of Units 5(A), 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
6, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 7	Brown Bear	No Federal subsistence priority.
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and Nanwalek.
7, that portion draining into Kings Bay	Moose	Residents of Chenega Bay and Tatitlek.
7, remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
7	Ruffed Grouse	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9(A) and (B)	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A)	Brown Bear	Residents of Pedro Bay.
9(B)	Brown Bear	Residents of Unit 9(B).
9(C)	Brown Bear	Residents of Unit 9(C).
9(D)	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island).
9(E)	Brown Bear	Residents of Chignik, Chignik Lagoon, Chignik Lake, Egegik, Ivan of Bay, Perryville, Pilot Point, Ugashik, and Port Heiden/Meshik.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17, and Egegik.
9(D)	Caribou	Residents of Unit 9(D), Akutan, False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C), and (E).
9(D)	Moose	Residents of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, and residents of Lake Clark National Park and Preserve within Unit 9(B).
9, remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
9(A), (B), (C), & (E)	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island).
Unit 10 Unimak Island	Caribou	Residents of Akutan, False Pass, King Cove, and Sand Point.
10, remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 11	Bison	No Federal subsistence priority.
11, north of the Sanford River	Black Bear	Residents of Chistochina, Chitina, Cooper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Units 11 and 12.
11, remainder	Black Bear	Residents of Chistochina, Chitina, Cooper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Brown Bear	Residents of Chistochina, Chitina, Cooper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Units 11 and 12.

Area	Species	Termination
11, remainder	Brown Bear	Residents of Chistochina, Chitina, Cooper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, 13(A)–(D), Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Caribou	Residents of Units 11, 13(A)–(D), and Chickaloon.
11	Goat	Residents of Unit 11, Chitina, Chistochina, Cooper Center, Gakona, Glennallen, Gulkana, Mentasta Lake, Slana, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of 11, 12, 13(A)–(D), Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Moose	Residents of Units 11, 13(A)–(D), and Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12, Chistochina, Chitina, Cooper Center, Dot Lake, Gakona, Glennallen, Gulkana, Healy Lake, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11, remainder	Sheep	Residents of Chistochina, Chitina, Cooper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; residents along the Tok Clutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milesposts 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12, Dot Lake, Chistochina, Gakona, Mentasta Lake, and Slana.
12	Caribou	Residents of Unit 12, Dot Lake, Healy Lake, and Mentasta Lake.
12, south of a line from Noyes Mountain, southeast of the confluence of Taschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel, Unit 12, 13(A)–(D) and the residents of Chickaloon, Dot Lake, and Healy Lake.
12, east of Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12 and Healy Lake.
12, remainder	Moose	Residents of Unit 12, Dot Lake, Healy Lake, and Mentasta Lake.
12	Sheep	Residents of Unit 12, Chistochina, Dot Lake, Healy Lake, and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 13	Brown Bear	Residents of Unit 13 and Slana.
13(B)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, residents of Unit 20(D) except Fort Greely, and the residents of Chickaloon.
13(C)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, Chickaloon, Dot Lake and Healy Lake.
13(A) & (D)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon.
13(E)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, Chickaloon, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Goat	No Federal subsistence priority.
13(A) and (D)	Moose	Residents of Unit 13, Chickaloon, and Slana.
13(B)	Moose	Residents of Units 13, 20(D) except Fort Greely, and the residents of Chickaloon and Slana.
13(C)	Moose	Residents of Uints 12, 13 and the residents of Chickaloon, Healy Lake, Dot Lake and Slana.
13(E)	Moose	Residents of Unit 13, Chickaloon, McKinley Village, Slana, and the area along the Parks Highway between mileposts 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.

Area	Species	Termination
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and (COPY MISSING).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14(A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15, remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas	Goat	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area	Goat	Residents Seldovia area.
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16(B)	Black Bear	Residents of Unit 16(B).
16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce and Ruffed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17(A) and that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake.	Black Bear	Residents of Units 9(A) and (B), 17, Akiak, and Akiachak.
17, remainder	Black Bear	Residents of Units 9(A) and (B), and 17.
17(A)	Brown Bear	Residents of Unit 17, Akiak, Akiachak, Goonews Bay, and Platinum.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the sourher point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17(B), that portion draining into Nuyakuk Lake and Tikchik Lake.	Brown Bear	Residents of Akiak and Akiachak.
17(B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17, Lime Village and Stony River.
Unit 17(A, that portion west of the Izavieknik River, Upper Togiak Lake, Togiak Lake, and the main course of the Togiak River.	Caribou	Residents of Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak.
Unit 17(A)—That portion north of Togiak Lake that includes Izavieknik River drainages.	Caribou	Residents of Akiak, Akiachak, and Tuluksak.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the souther point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
Unit 17(b), that portion of Togiak National Wildlife Refuge within Unit 17(B).	Caribou	Residents of Bethel, Goodnews Bay, Platinum, Quinhagak, Eek, Akiak, Akiachak, Tuluksak, Tuntutuliak, and Napakiak.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenovok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the pont where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17, Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.

Area	Species	Termination
Unit 17(A)—That portion north of Togiak Lake that includes Izavieknik River drainages.	Moose	Residents of Akiak, Akiachak.
Unit 17(B)—That portion within the Togiak National Wildlife Refuge.	Moose	Residents of Akiak, Akiachak.
17(B) and (C)	Moose	Residents of Unit 17, Nondalton, Levelock, Goodnews Bay, and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 18	Black Bear	Residents of Unit 18, Unit 19(A) living downstream of the Holokuk River, Holy Cross, Stebbins, St. Michael, Twin Hills, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Marys, and Tuluksak.
18	Caribou	Residents of Unit 18, Manokotak, Stebbins, St. Michael, Togiak, Twin Hills, and Upper Kalskag.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage.	Moose	Residents of Unit 18, Upper Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18, Upper Kalskag, and Lower Kalskag.
18	Muskox	No Federal subsistence priority.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 19(C), (D)	Bison	No Federal subsistence priority.
19(A) and (B)	Brown Bear	Residents of Units 19 and 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River.
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Units 19(A) and (D), Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Units 19(A) and 19(B), Unit 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River, and residents of St. Marys, Marshall, Pilot Station, Russian Mission.
19(C)	Caribou	Residents of Unit 19(C), Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), Lime Village, Sleetmute, and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
Unit 19(B), west of the Kogrukluk River	Moose	Residents of Eek and Quinhagak.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chicakloon, and 16–26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F), Stevens Village, and Manley.
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F), Stevens Village, and Manley.
20(A)	Caribou	Residents of Cantwell, Nenana, and those domiciled between mileposts 216 and 239 of the Parks Highway. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(B)	Caribou	Residents of Unit (B), Nenana, and Tanana.
20(C)	Caribou	Residents of Unit 20(C) living east of the Teklanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenana, Nikolai, Tanana, Talida, and those domiciled between mileposts 216 and 239 of the Parks Highway and between mileposts 300 and 309. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(D) and (E)	Caribou	Residents of 20(D), 20(E), and Unit 12 north of the Wrangell-St. Elias National Park and Preserve.
20(F)	Caribou	Residents of 20(F), 25(D), and Manley.
20(A)	Moose	Residents of Cantwell, Minto, Nenana, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B), Minto Flats Management Area	Moose	Residents of Minto and Nenana.
20(B), remainder	Moose	Residents of Unit 20(B), Nenana, and Tanana.

Area	Species	Termination
20(C)	Moose	Residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D)	Moose	Residents of Unit 20(D) and residents of Tanacross.
20(E)	Moose	Residents of Unit 20(E), Unit 12 north of the Wrangell-St. Elias National Preserve, Circle, Central, Dot Lake, Healy Lake, and Mentasta Lake.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto, and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F), Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
20(D)	Grouse, (Spruce, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
20(D)	Ptarmigan (Rock and Willow).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 21	Brown Bear	Residents of Units 21 and 23.
21(A)	Caribou	Residents of Units 21(A), 21(D), 21(E), Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(B) & (C)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Tanana.
21(D)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Huslia.
21(E)	Caribou	Residents of Units 21(A), 21(E), Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(A)	Moose	Residents of Units 21(A), (E), Takotna, McGrath, Aniak, and Crooked Creek.
21(B) and (C)	Moose	Residents of Units 21(B) and (C), Tanana, Ruby, and Galena.
21(D)	Moose	Residents of Units 21(D), Huslia, and Ruby.
21(E)	Moose	Residents of Unit 21(E) and Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22(C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22.
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, 22 (except residents of St. Lawrence Island), 23, 24, Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, Nunam Iqua, and Alakanuk.
22, remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, 22 (except residents of St. Lawrence Island), 23, and 24.
22	Moose	Residents of Unit 22.
22(B), west of the Darby Mountains	Muskox	Residents of Unit 22(B) and 22(C).
22(B), remainder	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
Unit 22(D), that portion within the Kougarok, Kuzitrin, and Pilgrim River drainages.	Muskox	Residents of Unit 22(C), White Mountain, and Unit 22(D) excluding St. Lawrence Island.
22(D), remainder	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and Kotlik.
22	Grouse (Spruce)	Residents of Units 11, 13, and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
22	Ptarmigan (Rock and Willow).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 23	Black Bear	Residents of Unit 23, Alatna, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk.
23	Brown Bear	Residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, Galena, 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23	Moose	Residents of Unit 23.
23, south Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 south of Kotzebue Sound and west of and including the Buckland River drainage.
23, remainder	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23	Sheep	Residents of Point Lay and Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.

Area	Species	Termination
23	Grouse (Spruce and Ruffed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear	Residents of Stevens Village, Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24.
24, remainder	Brown Bear	Residents of Unit 24.
24	Caribou	Residents of Unit 24, Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, Koyukuk, and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle, Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D)	Black Bear	Residents of Unit 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	Residents of Unit 25 and Eagle.
25(D)	Caribou	Residents of 20(F), 25(D), and Manley.
25(A)	Moose	Residents of Units 25(A) and 25(D).
25(D) West	Moose	Residents of Unit 25(D) West.
25(D), remainder	Moose	Residents of remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkyitsik, Fort Yukon, Kaktovik, and Venetie.
25(B) and (C)	Sheep	No Federal subsistence priority.
25(D)	Wolf	Residents of Unit 25(D).
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex), Anaktuvuk Pass, and Point Hope.
26(A) and (C)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and residents of Unit 24 within the Dalton Highway Corridor Management Area.
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), Point Hope, and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Point Hope and Wiseman.
26(C)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkyitsik, Fort Yukon, Point Hope, and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.

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Subpart D—Subsistence Taking of Fish and Wildlife

■ 3. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § ____.25 is revised to read as follows:

§ ____.25 Subsistence taking of fish, wildlife, and shellfish: general regulations.

(a) *Definitions.* The following definitions shall apply to all regulations contained in this part:

Abalone iron means a flat device which is used for taking abalone and which is more than 1 inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

ADF&G means the Alaska Department of Fish and Game.

Airborne means transported by aircraft.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Anchor means a device used to hold a fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, elk, or moose.

Antlered means any caribou, deer, elk, or moose having at least one visible antler.

Antlerless means any caribou, deer, elk, or moose not having visible antlers attached to the skull.

Bait means any material excluding a scent lure that is placed to attract an animal by its sense of smell or taste; however, those parts of legally taken animals that are not required to be salvaged and which are left at the kill site are not considered bait.

Beach seine means a floating net which is designed to surround fish and is set from and hauled to the beach.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, elk, or musk oxen.

Cast net means a circular net with a mesh size of no more than ½ inches and weights attached to the perimeter which, when thrown, surrounds the fish and closes at the bottom when retrieved.

Char means the following species: Arctic char (*Salvelinus alpinis*); lake trout (*Salvelinus namaycush*); brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

Closed season means the time when fish, wildlife, or shellfish may not be taken.

Crab means the following species: red king crab (*Paralithodes camshatica*); blue king crab (*Paralithodes platypus*); brown king crab (*Lithodes aequispina*); *Lithodes couesi*; all species of tanner or snow crab (*Chionoecetes* spp.); and Dungeness crab (*Cancer magister*).

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Depth of net means the perpendicular distance between cork line and lead line expressed as either linear units of measure or as a number of meshes, including all of the web of which the net is composed.

Designated hunter or fisherman means a Federally qualified hunter or fisherman who may take all or a portion of another Federally qualified hunter's or fisherman's harvest limit(s) only under situations approved by the Board.

Dip net means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed 5 feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving gear means any type of hard hat or skin diving equipment, including SCUBA equipment; a tethered, umbilical, surface-supplied unit; or snorkel.

Drainage means all of the lands and waters comprising a watershed, including tributary rivers, streams, sloughs, ponds, and lakes, which contribute to the water supply of the watershed.

Drift gillnet means a drifting gillnet that has not been intentionally staked, anchored, or otherwise fixed in one place.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of caribou, deer, elk, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption, which are: The meat of the ribs, neck, brisket, front quarters as far as the distal (bottom) joint of the radius-ulna (knee), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed in this definition does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera. For black bear, brown and grizzly bear, "edible meat" means the meat of the front quarter and hindquarters and meat along the backbone (backstrap).

Federally-qualified subsistence user means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

Field means an area outside of established year-round dwellings, businesses, or other developments usually associated with a city, town, or village; *field* does not include permanent hotels or roadhouses on the State road system or at State or Federally maintained airports.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Fish wheel means a fixed, rotating device, with no more than four baskets on a single axle, for catching fish, which is driven by river current or other means.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn headland to headland across the mouth as the waters flow into the sea.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Fur means a mammal's hairy coating with or without the skin attached. It does not include claws, hooves, teeth, horns, or antlers.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf, or wolverine.

Fyke net means a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gillnet means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

Grappling hook means a hooked device with flukes or claws, which is attached to a line and operated by hand.

Groundfish or *bottomfish* means any marine fish except halibut, osmerids, herring and salmonids.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse, and sharp-tailed grouse.

Hand purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Handicraft means a finished product in which the shape and appearance of the natural material has been substantially changed by the skillful use of hands, such as sewing, carving, etching, scrimshawing, painting, or other means, and which has substantially greater monetary and

aesthetic value than the unaltered natural material alone.

Handline means a hand-held and operated line, with one or more hooks attached.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person or designated group, per specified time period, in a Unit or portion of a Unit in which the taking occurs even if part or all of the harvest is preserved. A fish, when landed and killed by means of rod and reel becomes part of the harvest limit of the person originally hooking it.

Herring pound means an enclosure used primarily to contain live herring over extended periods of time.

Highway means the drivable surface of any constructed road.

Household means that group of people residing in the same residence.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Hydraulic clam digger means a device using water or a combination of air and water used to harvest clams.

Jigging gear means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice, or from shore ice and which are drawn through the water by hand.

Lead means either a length of net employed for guiding fish into a seine, set gillnet, or other length of net, or a length of fencing employed for guiding fish into a fish wheel, fyke net, or dip net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district, or section.

Long line means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Mechanical clam digger means a mechanical device used or capable of being used for the taking of clams.

Mechanical jigging machine means a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

Mile means a nautical mile when used in reference to marine waters or a statute mile when used in reference to fresh water.

Motorized vehicle means a motor-driven land, air, or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance that is toxic or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Possession limit means the maximum number of fish, grouse, or ptarmigan a person or designated group may have in possession if they have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15-day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ram means a male Dall sheep.

Registration permit means a permit that authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Ring net means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

Rockfish means all species of the genus *Sebastes*.

Rod and reel means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole. In either case, bait or an artificial fly or lure is used as terminal tackle. This definition does not include the use of rod and reel gear for snagging.

Salmon means the following species: pink salmon (*Oncorhynchus gorbuscha*); sockeye salmon (*Oncorhynchus nerka*); chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

Salmon stream means any stream used by salmon for spawning, rearing, or for traveling to a spawning or rearing area.

Salvage means to transport the edible meat, skull, or hide, as required by regulation, of a regulated fish, wildlife, or shellfish to the location where the edible meat will be consumed by humans or processed for human consumption in a manner which saves or prevents the edible meat from waste, and preserves the skull or hide for human use.

Scallop dredge means a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

Sea urchin rake means a hand-held implement, no longer than 4 feet, equipped with projecting prongs used to gather sea urchins.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

Set gillnet means a gillnet that has been intentionally set, staked, anchored, or otherwise fixed.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eights (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Shovel means a hand-operated implement for digging clams.

Skin, hide, or pelt means any tanned or untanned external covering of an animal's body. However, for bear, the

skin, hide, or pelt means the entire external covering with claws attached.

Spear means a shaft with a sharp point or fork-like implement attached to one end which is used to thrust through the water to impale or retrieve fish and which is operated by hand.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Stretched measure means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet; the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under 5-pound weight.

Subsistence fishing permit means a subsistence harvest permit issued by the Alaska Department of Fish and Game or the Federal Subsistence Board.

Take or *Taking* means to fish, pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

To operate fishing gear means any of the following: To deploy gear in the water; to remove gear from the water; to remove fish or shellfish from the gear during an open season or period; or to possess a gillnet containing fish during an open fishing period, except that a gillnet which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Transportation means to ship, convey, carry, or transport by any means whatever and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish, and includes beam, otter, or pelagic trawl.

Troll gear means a power gurdy troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy; hand troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing, or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical, or other assisting device or attachment; or dinglebar troll gear consisting of one or more lines, retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

Trout means the following species: cutthroat trout (*Oncorhynchus clarki*) and rainbow/steelhead trout (*Oncorhynchus mykiss*).

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions in this paragraph (a), or regulated under other Federal law as listed in paragraph (i) of this section.

Ungulate means any species of hoofed mammal, including deer, caribou, elk, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in this section as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Taking fish, wildlife, or shellfish for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting, trapping, or fishing during a closed season or in an area closed by this part is prohibited. You may not take for subsistence fish, wildlife, or shellfish outside established Unit or Area seasons, or in excess of the established Unit or Area harvest limits, unless otherwise provided for by the Board. You may take fish, wildlife, or shellfish under State regulations on public lands, except as otherwise restricted at §§ ____.26 through ____.28. Unit/Area-specific restrictions or allowances for subsistence taking of fish, wildlife, or shellfish are identified at §§ ____.26 through ____.28.

(c) *Harvest limits.* (1) Harvest limits authorized by this section and harvest limits established in State regulations may not be accumulated.

(2) Fish, wildlife, or shellfish taken by a designated individual for another person pursuant to § ____.10(d)(5)(ii) counts toward the individual harvest limit of the person for whom the fish, wildlife, or shellfish is taken.

(3) A harvest limit applies to the number of fish, wildlife, or shellfish that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(4) Unless otherwise provided, any person who gives or receives fish, wildlife, or shellfish shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: Names and addresses of persons who gave and received fish, wildlife, or shellfish; the time and place that the fish, wildlife, or shellfish was taken; and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take fish, wildlife, or shellfish on his or her behalf in accordance with § ____.10(d)(5)(ii), the permit shall be furnished in place of a signed statement.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user, you (beneficiary) may designate another Federally-qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Hunting by designated harvest permit.* In Units 1–8, 9(D), 10–16, or 18–26, if you are a Federally qualified subsistence user (recipient), you may designate another Federally qualified subsistence user to take deer, moose and caribou on your behalf unless you are a member of a community operating under a community harvest system or unless Unit specific regulations in Section ____.26 preclude or modify the use of the designated hunter system or allow the harvest of additional species by a designated hunter. The designated

hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time, unless otherwise specified in unit-specific regulations in § ____.26.

(f) A rural Alaska resident who has been designated to take fish, wildlife, or shellfish on behalf of another rural Alaska resident in accordance with § ____.10(d)(5)(ii) shall promptly deliver the fish, wildlife, or shellfish to that rural Alaska resident and may not charge the recipient for his/her services in taking the fish, wildlife, or shellfish or claim for themselves the meat or any part of the harvested fish, wildlife, or shellfish.

(g) [Reserved].

(h) *Permits.* If a subsistence fishing or hunting permit is required by this part, the following permit conditions apply unless otherwise specified in this section:

(1) You may not take more fish, wildlife, or shellfish for subsistence use than the limits set out in the permit;

(2) You must obtain the permit prior to fishing or hunting;

(3) You must have the permit in your possession and readily available for inspection while fishing, hunting, or transporting subsistence-taken fish, wildlife, or shellfish;

(4) If specified on the permit, you shall keep accurate daily records of the harvest, showing the number of fish, wildlife, or shellfish taken by species, location and date of harvest, and other such information as may be required for management or conservation purposes; and

(5) If the return of harvest information necessary for management and conservation purposes is required by a permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(i) You may not possess, transport, give, receive, or barter fish, wildlife, or shellfish that was taken in violation of Federal or State statutes or a regulation promulgated hereunder.

(j) *Utilization of fish, wildlife, or shellfish.* (1) You may not use wildlife as food for a dog or furbearer, or as bait, except as allowed for in § ____.26, § ____.27, or § ____.28, or except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse, or ptarmigan; however, you may not use the breast meat of grouse and ptarmigan as animal food or bait;

(iv) Unclassified wildlife.

(2) If you take wildlife for subsistence, you must salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel, or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in Units 5, 9(B), 17, 18, portions of 19(A) and 19(B), 21(D), 22, 23, 24, and 26(A) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) You must salvage the edible meat of ungulates, bear, grouse, and ptarmigan.

(4) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes whitefish, herring, and species for which bag limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally-taken subsistence fish.

(5) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested fish, wildlife, or shellfish, unanticipated weather conditions, or unavoidable loss to another animal.

(6) You may sell handicraft articles made from the fur or claws of a black bear.

(7) You may sell handicraft articles made from the fur or claws of a brown bear taken from Units 1–5, 9(A)–(C), 9(E), 12, 17, 20, and 25.

(8) You may sell the raw fur or tanned pelt with or without claws attached from legally harvested furbearers.

(k) The regulations found in this part do not apply to the subsistence taking and use of fish, wildlife, or shellfish regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 1091, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or to any amendments to these Acts. The taking and use of fish, wildlife, or shellfish, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(l) Rural residents, nonrural residents, and nonresidents not specifically prohibited by Federal regulations from fishing, hunting, or trapping on public lands in an area, may fish, hunt, or trap on public lands in accordance with the appropriate State regulations.

■ 4. In subpart D of 36 CFR part 242 and 50 CFR part 100, § ____.26 is added effective July 1, 2004, through June 30, 2005, to read as follows:

§ ____.26 Subsistence taking of wildlife.

(a) You may take wildlife for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(b) Except for special provisions found at paragraphs (n)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(1) Shooting from, on, or across a highway;

(2) Using any poison;

(3) Using a helicopter in any manner, including transportation of individuals, equipment, or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life-threatening situation;

(4) Taking wildlife from a motorized land or air vehicle, when that vehicle is in motion or from a motor-driven boat when the boat's progress from the motor's power has not ceased;

(5) Using a motorized vehicle to drive, herd, or molest wildlife;

(6) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(7) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle, or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves, or wolverine, except that—

(i) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine;

(ii) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, elk, moose, musk oxen, and mountain goat;

(8) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke,

chemical, conventional steel trap with a jaw spread over 9 inches, or conibear style trap with a jaw spread over 11 inches;

(9) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(10) Using a trap to take ungulates or bear;

(11) Using hooks to physically snag, impale, or otherwise take wildlife; however, hooks may be used as a trap drag;

(12) Using a crossbow to take ungulates, bear, wolf, or wolverine in any area restricted to hunting by bow and arrow only;

(13) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a ⅞ inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least 1 ounce (437.5 grains);

(14) Using bait for taking ungulates, bear, wolf, or wolverine; except, you may use bait to take wolves and wolverine with a trapping license, and you may use bait to take black bears with a hunting license as authorized in Unit-specific regulations at paragraphs (n)(1) through (26) of this section. Baiting of black bears is subject to the following restrictions:

(i) Before establishing a black bear bait station, you must register the site with ADF&G;

(ii) When using bait, you must clearly mark the site with a sign reading "black bear bait station" that also displays your hunting license number and ADF&G-assigned number;

(iii) You may use only biodegradable materials for bait; you may use only the head, bones, viscera, or skin of legally harvested fish and wildlife for bait;

(iv) You may not use bait within ¼ mile of a publicly maintained road or trail;

(v) You may not use bait within 1 mile of a house or other permanent dwelling, or within 1 mile of a developed campground, or developed recreational facility;

(vi) When using bait, you must remove litter and equipment from the bait station site when done hunting;

(vii) You may not give or receive payment for the use of a bait station, including barter or exchange of goods;

(viii) You may not have more than two bait stations with bait present at any one time;

(15) Taking swimming ungulates, bears, wolves, or wolverine;

(16) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer, the setting of snares or traps, or the removal of furbearers from traps or snares;

(17) Taking a bear cub or a sow accompanied by cub(s).

(c) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(d) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b) of this section:

(1) Disturbing or destroying a den, except that you may disturb a muskrat pushup or feeding house in the course of trapping;

(2) Disturbing or destroying any beaver house;

(3) Taking beaver by any means other than a steel trap or snare, except that you may use firearms in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(4) Taking otter with a steel trap having a jaw spread of less than 5⅞ inches during any closed mink and marten season in the same Unit;

(5) Using a net, or fish trap (except a blackfish or fyke trap);

(6) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(e) *Possession and transportation of wildlife.* (1) Except as specified in paragraph (e)(2) or (f)(1) of this section, or as otherwise provided, you may not take a species of wildlife in any unit, or portion of a unit, if your total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § ____.10(d)(5)(iii) or as otherwise provided for by this Part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(f) *Harvest limits.* (1) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that if you have taken a harvest limit for a particular species under a trapping season, you may take additional animals under the harvest limit specified for a hunting season or vice versa.

(2) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of "one brown/grizzly bear per year" counts against a "one brown/grizzly bear every four regulatory years" harvest limit in other Units. You may not take more than one brown/grizzly bear in a regulatory year.

(3) The Assistant Regional Director for Subsistence Management, FWS, is authorized to open, close, or adjust Federal subsistence lynx trapping seasons and to set harvest and possession limits for lynx in Units 6, 7, 11, 12, 13, 14, 15, 16, 20(A), 20(B), 20(C) east of the Teklanika River, 20(D), and 20(E), with a maximum season of November 1–February 28. This delegation may be exercised only when it is necessary to conserve lynx populations or to continue subsistence uses, only within guidelines listed within the ADF&G Lynx Harvest Management Strategy, and only after staff analysis of the potential action, consultation with the appropriate Regional Council Chairs, and Interagency Staff Committee concurrence.

(g) *Evidence of sex and identity.* (1) If subsistence take of Dall sheep is restricted to a ram, you may not possess or transport a harvested sheep unless both horns accompany the animal.

(2) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, you may not possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal, except in Units 11, 13, 19, 21, and 24 where you may possess either sufficient portions of the external sex organs (still attached to a portion of the carcass) or the head (with or without antlers attached; however, the antler stumps must remain attached), to indicate the sex of the harvested moose; however, this paragraph (g)(2) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(3) If a moose harvest limit requires an antlered bull, an antler size, or configuration restriction, you may not possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. If you possess a set of antlers with less than the required number of brow tines on one antler, you must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (g)(3) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(h) You must leave all edible meat on the bones of the front quarters and hind quarters of caribou and moose harvested in Units 9(B), 17, 18, and 19(B) prior to October 1 until you remove the meat from the field or process it for human consumption. You must leave all edible meat on the bones of the front quarters, hind quarters, and ribs of moose harvested in Unit 21 prior to October 1 until you remove the meat from the field or process it for human consumption. You must leave all edible meat on the bones of the front quarters, hind quarters, and ribs of caribou and moose harvested in Unit 24 prior to October 1 until you remove the meat from the field or process it for human consumption. Meat of the front quarters, hind quarters, or ribs from a harvested moose or caribou may be processed for human consumption and consumed in the field; however, meat may not be removed from the bones for purposes of transport out of the field.

(i) If you take an animal that has been marked or tagged for scientific studies, you must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. You also must retain any ear tag, collar, radio, tattoo, or other identification with the hide until it is sealed, if sealing is required; in all cases, you must return any identification equipment to the ADF&G or to an agency identified on such equipment.

(j) *Sealing of bear skins and skulls.* (1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified in this paragraph, and black bears of all color phases taken in Units 1–7, 11–17, and 20.

(2) You may not possess or transport from Alaska the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in Units 5, 9(B), 9(E), 17, 18, 19(A) and 19(B) downstream of and including the Aniak River drainage, 21(D), 22, 23, 24, and 26(A) need not be sealed unless removed from the area.

(3) You must keep a bear skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within Units 5, 9(B), 9(E), 17, 18, 19(A) and 19(B) downstream of and including the Aniak River drainage, 21(D), 22, 23, 24, and 26(A) which are not removed from the Unit.

(i) In areas where sealing is required by Federal regulations, you may not possess or transport the hide of a bear that does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in Units 9(B), 17, 18, and 19(A) and 19(B) downstream of and including the Aniak River drainage is removed from the area, you must first have it sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If you remove the skin or skull of a bear taken in Units 21(D), 22, 23, 24, and 26(A) from the area or present it for commercial tanning within the area, you must first have it sealed by an ADF&G representative in Barrow, Galena, Nome, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If you remove the skin or skull of a bear taken in Unit 5 from the area, you must first have it sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(v) If you remove the skin or skull of a bear taken in Unit 9(E) from Unit 9, you must first have it sealed by an authorized sealing representative. At the time of sealing, the representative shall remove and retain the skin of the skull and front claws of the bear.

(4) You may not falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(k) *Sealing of beaver, lynx, marten, otter, wolf, and wolverine.* You may not possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the State, unless the skin has been sealed by an authorized representative in accordance with State or Federal regulations. In Unit 18, you must obtain an ADF&G seal for beaver skins only if they are to be sold or commercially tanned.

(1) You must seal any wolf taken in Unit 2 on or before the 30th day after the date of taking.

(2) You must leave the radius and ulna of the left foreleg naturally attached to the hide of any wolf taken in Units 1–5 until the hide is sealed.

(l) If you take a species listed in paragraph (k) of this section but are unable to present the skin in person, you must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (k) of this section.

(m) You may take wildlife, outside of established season or harvest limits, for food in traditional religious ceremonies, that are part of a funerary or mortuary cycle, including memorial potlatches, under the following provisions:

(1) The harvest does not violate recognized principles of wildlife conservation and uses the methods and means allowable for the particular species published in the applicable Federal regulations. The appropriate Federal land manager will establish the number, species, sex, or location of harvest, if necessary, for conservation purposes. Other regulations relating to ceremonial harvest may be found in the unit-specific regulations in § ____.26(n).

(2) No permit or harvest ticket is required for harvesting under this section; however, the harvester must be a Federally qualified subsistence user with customary and traditional use in the area where the harvesting will occur.

(3) In Units 1–26 (except for Koyukon/Gwich'in potlatch ceremonies in Units 20(F), 21, 24, or 25):

(i) A tribal chief, village council president or the chief's or president's designee for the village in which the religious ceremony will be held, or a Federally qualified subsistence user outside of a village or tribal-organized ceremony, must notify the nearest Federal land manager that a wildlife harvest will take place. The notification must include the species, harvest location, and number of animals expected to be taken.

(ii) Immediately after the wildlife is taken, the tribal chief, village council president or designee, or other Federally qualified subsistence user must create a

list of the successful hunters and maintain these records including the name of the decedent for whom the ceremony will be held. If requested, this information must be available to an authorized representative of the Federal land manager.

(iii) The tribal chief, village council president or designee, or other Federally qualified subsistence user outside of the village in which the religious ceremony will be held must report to the Federal land manager the harvest location, species, sex, and number of animals taken as soon as practicable, but not more than 15 days after the wildlife is taken.

(4) In Units 20(F), 21, 24, and 25 (for Koyukon/Gwich'in potlatch ceremonies only):

(i) Taking wildlife outside of established season and harvest limits is authorized if it is for food for the traditional Koyukon/Gwich'in Potlatch Funerary or Mortuary ceremony and if it is consistent with conservation of healthy populations.

(ii) Immediately after the wildlife is taken, the tribal chief, village council president, or the chief's or president's designee for the village in which the religious ceremony will be held must create a list of the successful hunters and maintain these records. The list must be made available, after the harvest is completed, to a Federal land manager upon request.

(iii) As soon as practical, but not more than 15 days after the harvest, the tribal chief, village council president, or designee must notify the Federal land manager about the harvest location, species, sex, and number of animals taken.

(n) *Unit regulations.* You may take for subsistence unclassified wildlife, all squirrel species, and marmots in all Units, without harvest limits, for the period of July 1–June 30. Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (n)(1) through (26) of this section.

(1) *Unit 1.* Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound, and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage within one mile of Anan Creek downstream from the mouth of Anan Lake, including the area within a one mile radius from the mouth of Anan Creek Lagoon, is closed to the taking of black bear and brown bear;

(D) Unit 1(C):

(*1*) You may not hunt within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area;

(*2*) You may not take mountain goat in the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier;

(vi) You may not trap furbearers for subsistence uses in Unit 1(C), Juneau area, on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) Unit-specific regulations:

(A) You may hunt black bear with bait in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1(A)—4 antlered deer	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered deer	Aug. 1–Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion north of LeConte Bay. 1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec.31.

Harvest limits	Open season
Unit 1(A) and 1(B), that portion on the Cleveland Peninsula south of the divide between Yes Bay and Santa Anna Inlet.	No open season.
Unit 1(A) and Unit 1(B)—remainder—2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat. The taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River, and all drainages of the Chilkat Range south of the Endicott River—1 goat by State registration permit only.	Oct. 1–Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier.	No open season.
Unit 1(C)—remainder—1 goat by State registration permit only	Aug. 1–Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Unit 1(D)—remainder—1 goat by State registration permit only.	Aug. 1–Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull by Federal registration permit	Sept. 5–Oct. 15.
Unit 1(B)—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(C), that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(C)—remainder, excluding drainages of Berners Bay—1 antlered bull by State registration permit only	Sept. 15–Oct. 15.
Unit 1(D)	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: Unit 1(A), (B), and (C)—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(2) *Unit 2.* Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the westernmost point on Warren Island.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
4 deer by Federal registration permit; however, no more than one may be an antlerless deer. Antlerless deer may be taken only during the period Oct. 15–Dec. 31.	July 24–Dec. 31.
The Federal public lands on Prince of Wales Island are closed to hunting of deer from Aug. 1 to Aug. 15, except by Federally-qualified subsistence users holding a Federal registration permit.	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves. The Forest Supervisor (or designee) may close the Federal hunting and trapping season in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council, when the combined Federal-State harvest quota is reached.	Sept. 1–Mar. 31.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce and Ruffed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.

Harvest limits	Open season
Trapping	
Beaver: No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 15–Mar. 15.
Wolverine: No limit	Nov. 10–Apr. 30.

(3) *Unit 3.* (i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, you may not take ungulates, bear, wolves, and wolverine along a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground;

(B) You may not take black bears in the Petersburg Creek drainage on Kupreanof Island;

(C) You may not hunt in the Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
Unit 3—Mitkof, Woewodski, and Butterworth Islands—1 antlered deer	Oct. 15–Oct. 31.
Unit 3—remainder—2 antlered deer	Aug. 1–Nov. 30.
Moose: 1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only.	Sept. 15–Oct. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
Unit 3—Mitkof Island—No limit	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(4) *Unit 4.* (i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take bears in the Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands;

(B) You may not take bears in the Salt Lake Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay;

(C) You may not take brown bears in the Port Althorp Closed Area (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock);

(D) You may not use any motorized land vehicle for brown bear hunting in the Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island

north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay.

(iii) Unit-specific regulations:

(A) You may shoot ungulates from a boat. You may not shoot bear, wolves, or wolverine from a boat, unless you are certified as disabled;

(B) Five Federal registration permits will be issued for the taking of brown bear for educational purposes associated with teaching customary and traditional subsistence harvest and use practices. Any bear taken under an educational permit does not count in an individual's one bear every four regulatory years limit.

Harvest limits	Open season
Hunting	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58N° N. lat., 136° 21′ W. long.) to Rodgers Point (57° 35′ N. lat., 135° 33° W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.) to the entrance of Gut Bay (56° 44° N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 20 15–Dec. 31. Mar. 15–May 31.
Unit 4—remainder—1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer: 6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31	Aug. 1–Jan. 31.
Goat: 1 goat by State registration permit only	Aug. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1.–May 15.
Trapping	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit	Dec. 1–May 15.
Remainder of Unit 4	No open season.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(5) *Unit 5.* (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5.

(ii) You may not take wildlife for subsistence uses on public lands within Glacier Bay National Park.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled;

(C) You may hunt brown bear in Unit 5 with a Federal registration permit in lieu of a State metal locking tag; if you have obtained a Federal registration permit prior to hunting.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept.–June 30.
Brown Bear: 1 bear by Federal registration permit only	Sept. 1–May 31.
Deer:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B)	No open season.
Goat:	
Unit 5(A)—that area between the Hubbard Glacier and the West Nunatak Glacier on the north and east sides of Nunatak Fjord—1 goat by Federal registration permit. The Yakutat District Ranger and ADF&G will jointly announce the harvest quota prior to the season. A minimum of two goats in the harvest quota will be reserved for Federally qualified subsistence users. The season will be closed by local announcement when the quota has been taken. The harvest quota and season announcements will be made in consultation with NPS and local residents.	Aug. 1–Jan. 31.

Harvest limits	Open season
Unit 5(A)—remainder—1 goat by Federal registration permit. The Yakutat District Ranger and ADF&G will jointly announce the harvest quota prior to the season. A minimum of four goats in the harvest quota will be reserved for Federally qualified subsistence users. The season will be closed by local announcement when the quota has been taken. The harvest quota and season announcements will be made in consultation with NPS and local residents.	Aug. 1–Jan. 31.
Unit 5(B)—1 goat by Federal registration permit only	Aug. 1–Jan. 31.
Moose:	
Unit 5(A), Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench.	Nov. 15–Feb. 15.
Unit 5(A), except Nunatak Bench—1 bull by joint State/Federal registration permit only. The season will be closed when 60 bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 bulls have been taken in that area. From Oct. 8–Oct. 21, public lands will be closed to taking of moose, except by residents of Unit 5(A).	Oct. 8–Nov. 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day	Sept 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce and Ruffed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Nov. 10–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 15.
Mink and Weasel: No limit	Nov. 10–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Nov. 10–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(6) *Unit 6.* (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6.

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take mountain goat in the Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River;

(B) You may not take mountain goat in the Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may take coyotes in Units 6(B) and 6(C) with the aid of artificial lights;

(C) One permit will be issued to the Native Village of Eyak to take one bull moose from Federal lands in Units 6(B) or (C) for their annual Memorial/Sobriety Day potlatch;

(D) A Federally-qualified subsistence user (recipient) who is either blind, 65 years of age or older, at least 70 percent disabled, or temporarily disabled may designate another Federally-qualified subsistence user to take any moose, deer, black bear and beaver on his or her behalf in Unit 6, unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients, but may have no more than one harvest limit in his or her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 1 bear	Sept. 1–June 30.
Deer: 4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31	Aug. 1–Dec. 31.
Goats:	
Unit 6(A), (B)—1 goat by State registration permit only	Aug. 20–Jan. 31.

Harvest limits	Open season
Unit 6(C)	No open season.
Unit 6(D) (subareas RG242, RG243, RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only. In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—4 goats, RG244—2 goats, RG249—4 goats, RG266—4 goats, RG252—1 goat.	Aug. 20–Jan. 31.
Unit 6(D) (subarea RG245)—Federal public lands are closed to all taking of goats	No open season.
Moose:	
Unit 6(C)—1 cow by Federal registration permit only	Sept. 1–Oct. 31.
Unit 6(C)—1 bull by Federal registration permit only	Sept. 1–Dec. 31.
(In Unit 6(C), only one moose permit may be issued per household. A household receiving a State permit may not receive a Federal permit. The annual harvest quota will be announced by the U.S. Forest Service, Cordova Office, in consultation with ADF&G. The Federal harvest allocation will be 100% of the cow permits and 75% of the bull permits.).	
Unit 6—remainder	No open season.
Beaver: 1 beaver per day, 1 in possession	May 1–Oct. 31.
Coyote:	
Unit 6(A) and (D)—2 coyotes	Sept. 1–Apr. 30.
Unit 6(B) and 6(C)—No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	No open season.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx:	No open season.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Dec. 1–Apr. 30.
Coyote:	
Unit 6(C)—south of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Unit 6(A), (B), (C)—remainder, and (D)—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Kenai Fjords National Park;

(B) You may not hunt in the Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek, and Byron Glacier; however, you may hunt grouse, ptarmigan, hares, and squirrels with shotguns after September 1.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15; except in the drainages of Resurrection Creek and its tributaries.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: Unit 7—3 bears	July 1–June 30.
Moose:	
Unit 7—that portion draining into Kings Bay—1 bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler may be taken by the community of Chenega Bay and also by the community of Tatitlek. Public lands are closed to the taking of moose except by eligible rural residents.	Aug. 10–Sept. 20.
Unit 7—remainder	No open season.
Beaver: 1 beaver per day, 1 in possession	May 1–Oct. 10.
Coyote: No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce): 10 per day, 20 in possession	Aug. 10–Mar. 31.
Grouse (Ruffed):	No open season

Harvest limits	Open season
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 20 beaver per season	Nov. 10–Mar. 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(8) *Unit 8.* Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) If you have a trapping license, you may take beaver with a firearm in Unit 8 from Nov. 10–Apr. 30.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Brown Bear: 1 bear by Federal registration permit only. Up to 1 permit may be issued in Akhiok; up to 1 permit may be issued in Karluk; up to 3 permits may be issued in Larsen Bay; up to 2 permits may be issued in Old Harbor; up to 2 permits may be issued in Ouzinkie; and up to 2 permits may be issued in Port Lions.	Dec. 1–Dec. 15. Apr. 1–May 15.
Deer: Unit 8—all lands within the Kodiak Archipelago within the Kodiak National Wildlife Refuge, including lands on Kodiak, Ban, Uganik, and Afognak Islands—3 deer; however, antlerless deer may be taken only from Nov. 1–Jan. 31.	Aug. 1–Jan. 31.
Elk: Kodiak, Ban, Uganik, and Afognak Islands—1 elk per household by Federal registration permit only. The season will be closed by announcement of the Refuge Manager, Kodiak National Wildlife Refuge when the combined Federal/State harvest reaches 15% of the herd.	Sept. 15–Nov. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Jan. 31.

(9) *Unit 9.* (i) Unit 9 consists of the Alaska Peninsula and adjacent islands, including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay, including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in Katmai National Park;

(B) You may not use motorized vehicles, except aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts from Aug. 1 through Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, you may use a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 9(B) from April 1 through May 31 and in the remainder of Unit 9 from April 1 through April 30;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in Unit 9(E) or 9(B), except that portion within the Lake Clark National Park and Preserve, if you have obtained a State registration permit prior to hunting.

(C) In Unit 9(B), Lake Clark National Park and Preserve, residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth may hunt brown bear by Federal registration permit in lieu of a resident tag; ten permits will be available with at least one permit issued in each community; however, no more than five permits will be issued in a single community. The season will be closed when four females or ten bears have been taken, whichever occurs first;

(D) Residents of Newhalen, Nondalton, Iliamna, Pedro Bay, and Port Alsworth may take up to a total of 10 bull moose in Unit 9(B) for ceremonial purposes, under the terms of a Federal registration permit from July 1 through June 30. Permits will be issued to individuals only at the request of a local organization. This 10-moose limit is not cumulative with that permitted for potlatches by the State;

(E) For Units 9(C) and (E) only, a Federally-qualified subsistence user (recipient) of Units 9(C) and (E) may designate another Federally-qualified subsistence user of Units 9(C) and (E) to take bull caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report and turn over all meat to the recipient. There is no restriction on the number of possession limits the designated hunter may have in his/her possession at any one time;

(F) For Unit 9(D), a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time;

(G) The communities of False Pass, King Cove, Cold Bay, Sand Point, and Nelson Lagoon annually may each take, from October 1 through December 31 or May 10 through May 25, one brown bear for ceremonial purposes, under the terms of a Federal registration permit. A permit will be issued to an individual only at the request of a local organization. The brown bear may be taken from either Unit 9(D) or Unit 10 (Unimak Island) only;

(H) You may hunt brown bear in Unit 9(E) with a Federal registration permit in lieu of a State locking tag if you have obtained a Federal registration permit prior to hunting.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 9(B)—Lake Clark National Park and Preserve—Rural residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only—1 bear by Federal registration permit only.	July 1–June 30.
Unit 9(B), remainder—1 bear by State registration permit only	Sept. 1–May 31.
Unit 9(E)—1 bear by Federal registration permit	Sept. 25–Dec. 31. Apr. 15–May 25.
Caribou:	
Unit 9(A)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(B)—5 caribou; however, no more than 1 bull may be taken from July 1–Nov. 30	July 1–Apr. 15.
Unit 9(C), that portion within the Alagnak River drainage—1 caribou	Aug. 1–Mar. 31.
Unit 9(C), remainder—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E).	Aug. 10–Sept. 20. Nov. 15–Feb. 28.
Unit 9(D)—2 caribou by Federal registration permit	Aug. 1–Sept. 30. Nov. 15–Mar. 31.
Unit 9(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E).	Aug. 10–Sept. 20. Nov. 1–Apr. 30.
Sheep:	
Unit 9(B)—Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, and residents of Lake Clark National Park and Preserve within Unit 9(B).—1 ram with 7/8 curl or larger horn by Federal registration permit only.	Aug. 10–Oct. 10.
Remainder of Unit 9—1 ram with 7/8 curl or larger horn	Aug. 10–Sept. 20.
Moose:	
Unit 9(A)—1 bull	Sept. 1–Sept. 15.
Unit 9(B)—1 bull	Aug. 20–Sept. 15. Dec. 1–Jan 15.
Unit 9(C)—that portion draining into the Naknek River from the north—1 bull	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 bull. However, during the period Aug. 20–Aug. 31, bull moose may be taken by Federal registration permit only. During the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—remainder—1 bull	Sept. 1–Sept. 15. Dec. 15–Jan 15.
Unit 9(D)—1 bull by Federal registration permit. Federal public lands will be closed to the harvest of moose when a total of 10 bulls have been harvested between State and Federal hunts.	Dec. 15–Jan 20.
Unit 9(E)—1 bull	Aug. 20–Sept. 20. Dec. 1–Jan. 20.
Beaver: Unit 9(B) and (E)—2 beaver per day	Apr. 15–May 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10– Feb. 28.
Wolf: 10 wolves	Aug. 10– Apr. 30.
Wolverine: 1 wolverine	Sept. 1– Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession	Aug. 10– Apr. 30.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
No limit	Oct. 10–Mar. 31.
2 beaver per day; only firearms may be used	Apr. 15–May 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White): No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Island, and the Pribilof Islands.

(ii) You may not take any wildlife species for subsistence uses on Otter Island in the Pribilof Islands.

(iii) In Unit 10—Unimak Island only, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time.

(iv) The communities of False Pass, King Cove, Cold Bay, Sand Point, and Nelson Lagoon annually may each take, from October 1 through December 31 or May 10 through May 25, one brown bear for ceremonial purposes, under the terms of a Federal registration permit. A permit will be issued to an individual only at the request of a local organization. The brown bear may be taken from either Unit 9(D) or Unit 10 (Unimak Island) only.

Harvest limits	Open season
Hunting	
Caribou:.	
Unit 10—Unimak Island only—4 caribou by Federal registration permit only	Aug. 1–Sept. 30.
Unit 10—remainder—No limit	July 1–June 30.
	Nov. 15–Mar. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) One moose without calf may be taken from June 20–July 31 in the Wrangell-St. Elias National Park and Preserve in Unit 11 or 12 for the Batzulnetas Culture Camp. Two hunters from either Chistochina or Mentasta Village may be designated by the Mt. Sanford Tribal Consortium to receive the Federal subsistence harvest permit. The permit may be obtained from a Wrangell-St. Elias National Park and Preserve office.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear	Aug. 10–June 15.

Harvest limits	Open season
Caribou:	No open season
Sheep:	
1 sheep	Aug. 10–Sept. 20.
1 sheep by Federal registration permit only by persons 60 years of age or older	Sept. 21–Oct. 20.
Goat: Unit 11—that portion within the Wrangell-St. Elias National Park and Preserve—1 goat by Federal registration permit only. Federal public lands will be closed to the harvest of goats when a total of 45 goats have been harvested between Federal and State hunts.	Aug. 25–Dec. 31.
Moose: 1 antlered bull by Federal registration permit only	Aug. 20–Sept. 20.
Beaver: 1 beaver per day, 1 in possession	June 1–Oct. 10.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Jan. 31.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Jan. 15.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Jan. 31.

(12) *Unit 12.* Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap coyotes or wolves in Unit 12 during April and October;

(C) One moose without calf may be taken from June 20—July 31 in the Wrangell-St. Elias National Park and Preserve in Unit 11 or 12 for the Batzulnetas Culture Camp. Two hunters from either Chistochina or Mentasta Village may be designated by the Mt. Sanford Tribal Consortium to receive the Federal subsistence harvest permit. The permit may be obtained from a Wrangell-St. Elias National Park and Preserve office.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear	Aug. 10–June 30.
Caribou:	
Unit 12—that portion of the Nabesna River drainage within the Wrangell-St. Elias National Park and Preserve and all Federal lands south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on Federal public lands.	No open season.
Unit 12—remainder—1 bull	Sept. 1–Sept. 20.
Unit 12—remainder—1 caribou may be taken by a Federal registration permit during a winter season to be announced. Dates for a winter season to occur between Oct. 1 and Apr. 30 and sex of animal to be taken will be announced by Tetlin National Wildlife Refuge Manager in consultation with Wrangell-St. Elias National Park and Preserve Superintendent, Alaska Department of Fish and Game area biologists, and Chairs of the Eastern Interior Regional Advisory Council and Upper Tanana/Fortymile Fish and Game Advisory Committee.	Winter season to be announced.
Sheep:	
1 ram with full curl or larger horn	Aug. 10–Sept. 20.
Unit 12—that portion within Wrangell-St. Elias National Park and Preserve—1 ram with full curl horn or larger by Federal registration permit only by persons 60 years of age or older.	Sept. 21–Oct. 20
Moose:	
Unit 12—that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to the southern boundary of the Tetlin National Wildlife Refuge—1 antlered bull. The November season is open by Federal registration permit only.	Aug. 24–Aug. 28. Sept. 8–Sept. 17. Nov. 20–Nov. 30.
Unit 12—that portion lying east of the Nabesna River and Nabesna Glacier and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull.	Aug. 24–Sept. 30.
Unit 12—remainder—1 antlered bull with spike/fork antlers	Aug. 15–Aug. 28.
Unit 12—remainder—1 antlered bull	Sept. 1–Sept. 15.

Harvest limits	Open season
Beaver: Unit 12 B Wrangell-Saint Elias National Park and Preserve—6 beaver per season. Meat from harvested beaver must be salvaged for human consumption.	Sept. 20–May 15.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Mar. 15.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: 15 beaver per season. Only firearms may be used during Sept. 20–Oct. 31 and Apr. 16–May 15, to take up to 6 beaver. Only traps or snares may be used Nov. 1–Apr. 15. The total annual harvest limit for beaver is 15, of which no more than 6 may be taken by firearm under trapping or hunting regulations. Meat from beaver harvested by firearm must be salvaged for human consumption.	Sept. 20–May 15.
Coyote: No limit	Oct. 15–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit; however, no more than 5 lynx may be taken between Nov. 1 and Nov. 30	Nov. 1–Dec. 31.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Sept. 20–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Oct. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Feb. 28.

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north and east bank of the Talkeetna River including the Talkeetna River to its confluence with Clear Creek, the eastside drainages of a line going up the south bank of Clear Creek to the first unnamed creek on the south, then up that creek to lake 4408, along the northeast shore of lake 4408, then southeast in a straight line to the northern most fork of the Chickaloon River; the drainages into the east bank of the Chickaloon River below the line from lake 4408; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (m)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5—Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along

the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Cantwell Glacier and Miller Creek to the Delta River;

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, you may not use motorized vehicles for subsistence hunting in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Middle Fork Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning;

(D) You may not use any motorized vehicle or pack animal for hunting, including the transportation of hunters, their hunting gear, and/or parts of game from July 26 to September 30 in the Tonsina Controlled Use Area. The Tonsina Controlled Use Area consists of that portion of Unit 13(D) bounded on the west by the Richardson Highway from the Tiekel River to the Tonsina River at Tonsina, on the north along the south bank of the Tonsina River to where the Edgerton Highway crosses the Tonsina River, then along the Edgeton Highway to Chitina, on the east by the Copper River from Chitina to the Tiekel River, and on the south by the north bank of the Tiekel River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) Upon written request by the Camp Director to the Glennallen Field Office, 2 caribou, sex to be determined by the Glennallen Field Office Manager of the BLM, may be taken from Aug. 10 through Sept. 30 or Oct. 21 through Mar. 31 by Federal registration permit for the Hudson Lake Residential Treatment Camp. Additionally, 1 bull moose may be taken Aug. 1 through Sept. 20. The animals may be taken by any Federally-qualified hunter designated by the Camp Director. The hunter must have in his/her possession the permit and a designated hunter permit during all periods that are being hunted;

(C) Upon written request from the Ahtna Heritage Foundation to the Glennallen Field Office, either 1 bull moose or 2 caribou, sex to be determined by the Glennallen Field Office Manager of the Bureau of Land Management, may be taken from Aug. 1 through Sept. 20 for 1 moose or Aug. 10 through Sept. 20 for 2 caribou by Federal registration permit for the Ahtna Heritage Foundation's culture camp. The permit will expire on September 20 or when the camp closes, whichever comes first. No combination of caribou and moose is allowed. The hunter must have in his/her possession the permit and a designated hunter permit during all periods that are being hunted.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear. Bears taken within Denali National Park must be sealed within 5 days of harvest. That portion within Denali National Park will be closed by announcement of the Superintendent after 4 bears have been harvested.	Aug. 10–May 31.
Caribou:	
Unit 13(A) and (B)—2 caribou by Federal registration permit only. Only bulls may be taken during the Aug. 10 B Sept. 30 season. During the winter season (Oct. 21-Mar. 31), the sex of animals that may be taken will be announced by the Glennallen Field Office Manager of the Bureau of Land Management in consultation with the Alaska Department of Fish and Game area biologist and Chairs of the Eastern Interior Regional Advisory Council and the Southcentral Regional Advisory Council.	Aug. 10–Sept. 30. Oct. 21–Mar. 31
Unit 13—remainder—2 bulls by Federal registration permit only	Aug. 10–Sept. 30. Oct. 21–Mar. 31.
Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	
Sheep: Unit 13—excluding Unit 13(D) and the Tok Management Area and Delta Controlled Use Area—1 ram with 7/8 curl or larger horn.	Aug. 10–Sept. 20.
Moose:	
Unit 13(E)—1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household	Aug. 1–Sept. 20.
Unit 13—remainder—1 antlered bull moose by Federal registration permit only	Aug. 1–Sept. 20.
Beaver: 1 beaver per day, 1 in possession	June 15–Sept. 10.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Jan. 31.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: No limit	Sept. 25–May 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Jan. 15.
Marten: Unit 13—No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Sept.25–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Oct. 15–Apr. 30.

Harvest limits	Open season
Wolverine: No limit	Nov. 10–Jan. 31.

(14) *Unit 14.* (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south and west bank of the Talkeetna River to its confluence with Clear Creek, the west side drainages of a line going up the south bank of Clear Creek to the first unnamed creek on the south, then up that creek to lake 4408, along the northeast shore of lake 4408, then southeast in a straight line to the northernmost fork of the Chickaloon River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the east bank of the Susitna River, on the north by the north bank of Willow Creek and Peters Creek to its headwaters, then east along the hydrologic divide separating the Susitna River and Knik Arm drainages to the outlet creek at lake 4408, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A).

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservation;

(B) You may not take wildlife for subsistence uses in the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek.

(iii) Unit-specific regulations:

Harvest limits	Open season
Hunting	
Black Bear: Unit 14(C)—1 bear	July 1–June 30.
Beaver: Unit 14(C)—1 beaver per day, 1 in possession	May 15–Oct. 31.
Coyote: Unit 14(C)—2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): Unit 14(C)—5 hares per day	Sept. 8–Apr. 30.
Lynx: Unit 14(C)—2 lynx	Dec. 15–Jan. 15.
Wolf: Unit 14(C)—5 wolves	Aug. 10–Apr. 30.
Wolverine: Unit 14(C)—1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed): Unit 14(C)—5 per day, 10 in possession	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): Unit 14(C)—10 per day, 20 in possession	Sept. 8–Mar. 31.
Trapping	
Beaver: Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—1 fox	Nov. 10–Feb. 28.
Marten: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Mink and Weasel: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Muskrat: Unit 14(C)—No limit	Nov. 10–May 15.
Otter: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolf: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolverine: Unit 14(C)—No limit	Nov. 10–Feb. 28.

(15) *Unit 15.* (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet, and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the north bank of the Kenai River and the north shore of Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the north bank of the Kenai River and the north shore of Skilak Lake, and north of the north bank of the Kasilof River, the north shore of Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15.

(ii) You may not take wildlife, except for grouse, ptarmigan, and hares that may be taken only from October 1—March 1 by bow and arrow only, in the Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not trap furbearers for subsistence in the Skilak Loop Wildlife Management Area;

(C) You may not trap marten in that portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier;

(D) You may not take red fox in Unit 15 by any means other than a steel trap or snare.

Harvest limits	Open season
Hunting	
Black Bear:	
Unit 15(C)—3 bears	July 1–June 30.
Unit 15—remainder	No open season.
Moose:	
Unit 15(A)—Skilak Loop Wildlife Management Area	No open season.
Unit 15(A)—remainder, Unit 15(B), and (C)—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 10–Sept. 20.
Coyote: No limit	Sept. 1–Apr. 30
Hare (Snowshoe): No limit	July 1–June 30.
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 15—remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 Wolverine	Sept. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Grouse (Ruffed)	No open season.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15(A) and (B)—20 per day, 40 in possession	Aug. 10–Mar. 31
Unit 15(C)—20 per day, 40 in possession	Aug. 10–Dec. 31
Unit 15(C)—5 per day, 10 in possession	Jan. 1–Mar. 31.
Trapping	
Beaver: 20 Beaver per season	Nov. 10–Mar. 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): 1 Fox	Nov. 10–Feb. 28.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier	No open season.
Remainder of Unit 15—No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: Unit 15—No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: Unit 15(B) and (C)—No limit	Nov. 10–Feb. 28.

(16) *Unit 16.* (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16.

(ii) You may not take wildlife for subsistence uses in the Mount McKinley National Park, as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (m)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Caribou: 1 caribou	Aug. 10–Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 bull	Sept. 1–Sept. 15.
Unit 16(B)—remainder—1 bull	Sept. 1–Sept. 30.
	Dec. 1–Feb. 28.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.

Harvest limits	Open season
Trapping	
Beaver: No limit	Oct. 10–May 15.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(17) *Unit 17.* (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legal hunting camps, you may not use any motorized vehicle for hunting ungulates, bears, wolves, and wolverine, including transportation of hunters and parts of ungulates, bear, wolves, or wolverine in the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), from Aug. 1–Nov. 1.

(B) [Reserved]

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting;

(C) For Federal registration permit caribou hunts for Unit 17 (A) and (C), that portion consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay, a Federally-qualified subsistence user may designate another Federally-qualified subsistence user to harvest caribou on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(D) If you have a trapping license, you may use a firearm to take beaver in Unit 17 from April 15–May 31. You may not take beaver with a firearm under a trapping license on National Park Service lands.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears	Aug. 1–May 31.
Brown Bear: Unit 17—1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 17(A)—all drainages west of Right Hand Point—5 caribou; however, no more than 1 bull may be taken from Aug. 1 through Nov. 30. The season may be closed and harvest limit reduced for the drainages between the Togiak River and Right Hand Point by announcement of the Togiak National Wildlife Refuge Manager.	Aug. 1–Mar. 31.
Unit 17(A) and (C)—that portion of 17 (A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—up to 2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above. The harvest objective, harvest limit, and the number of permits available will be announced by the Togiak National Wildlife Refuge Manager after consultation with the Alaska Department of Fish and Game and the Nushagak Peninsula Caribou Planning Committee. Successful hunters must report their harvest to the Togiak National Wildlife Refuge within 24 hours after returning from the field. The season may be closed by announcement of the Togiak National Wildlife Refuge Manager.	Aug. 1–Sept. 30. Dec. 1–Mar. 31.
Unit 17(B) and (C)—that portion of 17(C) east of the Wood River and Wood River Lakes—5 caribou; however, no more than 1 bull may be taken from Aug. 1 through Nov. 30.	Aug.1–Apr. 15.
Unit 17(A)—remainder and 17(C)—remainder—selected drainages; a harvest limit of up to 5 caribou will be determined at the time the season is announced.	Season to occur between Aug. 1 through Mar. 31, harvest limit, and hunt area to be announced by the Togiak National Wildlife Refuge Manager.
Sheep: 1 ram with full curl or larger horn	Aug. 10–Sept. 20.
Moose:	
Unit 17(A)—1 bull by State registration permit	Aug. 25–Sept. 20.
Unit 17(A)—that portion that includes the area east of the west shore of Nenevok Lake, east of the west shore of Nenevok Lake, east of the west bank of the Kemuk River, and east of the west bank of the Togiak River south from the confluence Togiak and Kemuk Rivers—1 antlered bull by State registration permit. Up to a 14-day season during the period Dec.1—Jan. 31 may be opened or closed by the Togiak National Wildlife Refuge Manager after consultation with ADF&G and local users.	Winter season to be announced.

Harvest limits	Open season
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull by State registration permit. During the period Sept. 1—Sept. 15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit. During the period Sept. 1—Sept. 15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket..	Aug. 20–Sept. 15.
Unit 17(B)—remainder and 17(C)—remainder—1 bull by State registration permit. During the period Sept. 1—Sept. 15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 17—No limit	Oct. 10–Mar. 31.
—2 beaver per day. Only firearms may be used	Apr. 15–May 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: 2 muskrats	Nov. 10–Feb. 28.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(18) *Unit 18.* (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(ii) In the Kalskag Controlled Use Area, which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag, you are not allowed to use aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 18 from Apr. 1 through Jun. 10;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting;

(C) You may take caribou from a boat moving under power in Unit 18.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear by State registration permit only	Sept. 1–May 31.
Caribou: 5 caribou	Aug. 1–Apr. 15.
Moose:	
Unit 18—that portion east of a line running from the mouth of the Ishkowik River to the closest point of Dall Lake, then to the easternmost point of Takslesluk Lake, then along the Kuskokwim River drainage boundary to the Unit 18 border, and then north of and including the Eek River drainage.	No open season.
Unit 18—south of and including the Kanektok River drainages	No open season.
Unit 18—remainder—1 antlered bull. A 10-day hunt to occur between Dec. 1 and Feb. 28 (1 bull, evidence of sex required) will be opened by announcement.	Sept. 1–Sept. 30. Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by Federally-qualified rural Alaska residents during seasons identified above.	
Beaver: No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.

Harvest limits	Open season
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Mar. 31
Wolf: 5 wolves	Aug. 10–Apr. 30
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession	Aug. 10–May 30.
Trapping	
Beaver: No limit	July 1–June 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Mar. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf:-No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Mar. 31.

(19) *Unit 19.* (i) Unit 19 consists of the Kuskokwim River drainage upstream from a straight line drawn between Lower Kalskag and Piamiut:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (m)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) In the Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152°50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf benchmark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, you may not use aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in those portions of 19(A) and (B) downstream of and including the Aniak River drainage if you have obtained a State registration permit prior to hunting.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 19(A) and (B)—those portions which are downstream of and including the Aniak River drainage—1 bear by State registration permit.	Aug. 10–June 30.
Unit 19(A)—remainder, 19(B)—remainder, and Unit 19(D)—1 bear	Aug. 10–June 30.
Caribou:	
Unit 19(A)—north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19(A)—south of the Kuskokwim River and Unit 19(B) (excluding rural Alaska residents of Lime Village)—5 caribou.	Aug. 1–Apr. 15.
Unit 19(C)—1 caribou	Aug. 10–Oct. 10.

Harvest limits	Open season
Unit 19(D)—south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Unit 19(D)—remainder—1 caribou	Aug. 10–Sept. 30.
Unit 19—rural Alaska residents domiciled in Lime Village only—no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
Sheep: 1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—no individual harvest limit, but a village harvest quota of 28 bulls (including those taken under the State Tier II system). Reporting will be by a community reporting system.	July 1–June 30.
Unit 19(A)—1 antlered bull by State registration permit	Sept. 1–Sept. 20.
Unit 19(B)—1 bull with spike-fork or 50-inch antlers or antlers with 4 or more brow tines on one side by harvest ticket; or 1 antlered bull by State registration permit.	Sept. 1–Sept. 20.
Unit 19(C)—1 antlered bull	Sept. 1–Sept. 20.
Unit 19(C)—1 bull by State registration permit	Jan. 15–Feb. 15.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Unit 19(D)—remainder—1 antlered bull	Sept. 1–Sept. 30. Dec. 1–Dec. 15.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf:	
Unit 19(D)—10 wolves per day	Aug. 10–Apr. 30.
Unit 19—remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No limit	Nov. 1–Jun. 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Mar. 31.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(20) *Unit 20.* (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages, and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980: Subsistence uses as authorized by this paragraph (m)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5 through Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages

of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except aircraft and boats in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife;

(D) You may not use any motorized vehicle for hunting from August 5—September 20 in the Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) You may by permit only hunt moose on the Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning;

(F) You may hunt moose by bow and arrow only in the Fairbanks Management Area, which consists of that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to Isberg Road, then northeasterly on Isberg Road to Cripple Creek Road, then northeasterly on Cripple Creek Road to the Parks Highway, then north on the Parks Highway to Alder Creek, then westerly to the middle fork of Rosie Creek through section 26 to the Parks Highway, then east along the Parks Highway to Alder Creek, then upstream along Alder Creek to its confluence with Emma Creek, then upstream along Emma Creek to its headwaters, then northerly along the hydrographic divide between Goldstream Creek drainages and Cripple Creek drainages to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to Sheep Creek Road, then north on Sheep Creek Road to Murphy Dome Road, then west on Murphy Dome Road to Old Murphy Dome Road, then east on Old Murphy Dome Road to the Elliot Highway, then south on the Elliot Highway to Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, Davidson Ditch, then southeasterly along the Davidson Ditch to its confluence with the tributary to Goldstream Creek in Section 29, then downstream along the tributary to its confluence with Goldstream Creek, then in a straight line to First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its confluence with Ruby Creek, then upstream along Ruby Creek to Esro Road, then south on Esro Road to Chena Hot Springs Road, then east on Chena Hot Springs Road to Nordale Road, then south on Nordale Road to the Chena River, to its intersection with the Trans_Alaska Pipeline right of way, then southeasterly along the easterly edge of the Trans_Alaska Pipeline right of way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along the Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap coyotes or wolves in Unit 20(E) during April and October;

(C) Residents of Unit 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three-moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 20(A)—1 bear	Sept. 1–May 31.
Unit 20(E)—1 bear	Aug. 10–June 30.
Unit 20—remainder—1 bear	Sept. 1–May 31.
Caribou:	
Unit 20(E)—1 caribou by joint State/Federal registration permit only	Aug. 10–Sept. 30.

Harvest limits	Open season
Up to 900 caribou may be taken under a State/Federal harvest quota. During the winter season, area closures or hunt restrictions may be announced when Nelchina caribou are present in a mix of more than 1 Nelchina caribou to 15 Fortymile caribou, except when the number of caribou present is low enough that less than 50 Nelchina caribou will be harvested regardless of the mixing ratio for the two herds. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management, after consultation with the National Park Service and Alaska Department of Fish and Game.	Nov. 1–Feb. 28.
Unit 20(F)—north of the Yukon River—1 caribou	Aug. 10–Sept. 20.
Unit 20(F)—east of the Dalton Highway and south of the Yukon River—1 caribou; however, cow caribou may be taken only from Nov. 1–March 31. During the November 1–March 31 season a State registration permit is required.	Nov. 1–Mar. 31.
Moose:	
Unit 20(A)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Unit 20(B)—remainder—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(C)—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30. Nov. 15–Dec. 15.
Unit 20(C)—remainder—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30.
Unit 20(E)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 20(E)—that portion drained by the Forty-mile River (all forks) from Mile 92 to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 bull.	Aug. 24–Aug. 28. Sept. 1–Sept. 15.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–Sept. 25.
Unit 20(F)—remainder—1 antlered bull	Sept. 1–Sept. 25. Dec. 1–Dec. 10.
Beaver:	
Unit 20(E) B Yukon—Charley Rivers National Preserve—6 beaver per season. Meat from harvested beaver must be salvaged for human consumption.	Sept. 20–May 15.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31.
Unit 20—remainder—2 lynx	Dec. 1–Jan. 31.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25–Mar. 31.
Unit 20—remainder—15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock and Willow):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Units 20(A), 20(B), Unit 20(C), and 20(F)—No limit	Nov. 1–Apr. 15.
Unit 20(D)—25 beaver per season	Nov. 1–Apr. 15.
Unit 20(E)—25 beaver per season. Only firearms may be used during Sept. 20–Oct. 31 and Apr. 16–May 15, to take up to 6 beaver. Only traps or snares may be used Nov. 1–Apr. 15. The total annual harvest limit for beaver is 25, of which no more than 6 may be taken by firearm under trapping or hunting regulations. Meat from beaver harvested by firearm must be salvaged for human consumption.	Sept. 20–May 15.
Coyote:	
Unit 20(E)—No limit	Oct. 15–Apr. 30.
Remainder Unit 20—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit.	Nov. 1– Feb. 28.
Lynx:	
Unit 20 (A), (B), (D), and (C) east of the Teklanika River—No limit	Dec. 1–Dec. 31.
Unit 20(E)—No limit; however, no more than 5 lynx may be taken between Nov. 1 and Nov. 30	Nov. 1–Dec. 31.
Unit 20(F) and the remainder of 20(C)—No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20–June 10.
Unit 20—remainder—No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf:	
Unit 20(A, B, C, & F)—No limit	Nov. 1–Apr. 30.
Unit 20(D)—No limit	Oct. 15–Apr. 30.

Harvest limits	Open season
Unit 20(E)—No limit	Oct. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Feb. 28.

(21) *Unit 21.* (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River drainage upstream from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Unit 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk at 64° 52.58′ N. lat., 157° 43.10′ W. long., then northerly to the confluences of the Honhosa and Kateel Rivers at 65° 28.42′ N. lat., 157° 44.89′ W. long., then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57 N. lat., 156° 41 W. long.) at 65° 56.66′ N. lat., 156° 40.81′ W. long., then easterly to the confluence of the forks of the Dakli River at 66° 02.56′ N. lat., 156° 12.71′ W. long., then easterly to the confluence of McLanes Creek and the Hogatza River at 66° 00.31′ N. lat., 155° 18.57′ W. long., then southwesterly to the crest of Hochandochtla Mountain at 65° 31.87′ N. lat., 154° 52.18′ W. long., then southwest to the mouth of Cottonwood Creek at 65° 13.00′ N. lat., 156° 06.43′ W. long., then southwest to Bishop Rock (Yistletaw) at 64° 49.35′ N. lat., 157° 21.73′ W. long., then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G—operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. Aircraft may not be used in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30; and in the Koyukuk Controlled Use Area, you may also use bait to hunt black bear between September 1 and September 25;

(B) If you have a trapping license, you may use a firearm to take beaver in Unit 21(E) from Nov. 1–June 10;

(C) The residents of Units 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State;

(D) The residents of Unit 21 may take up to three moose per regulatory year for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 21(D)—1 bear by State registration permit only	Aug. 10–June 30.

Harvest limits	Open season
Unit 21—remainder—1 bear	Aug. 10–June 30.
Caribou:	
Unit 21(A)—1 caribou	Aug. 10–Sept. 30.
	Dec. 10–Dec. 20.
Unit 21(B), (C), and (E)—1 caribou	Aug. 10–Sept. 30.
Unit 21(D)—north of the Yukon River and east of the Koyukuk River—1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30. Winter season to be announced.
Unit 21(D)—remainder—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Moose:	
Unit 21(A)—1 bull	Aug. 20–Sept. 25.
	Nov. 1–Nov. 30.
Unit 21(B)—1 bull by State registration permit	Sept. 5–Sept. 25.
Unit 21(C)—1 antlered bull	Sept. 5–Sept. 25.
Unit 21(D)—Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only during Aug. 27–31 and the Mar. 1–5 season if authorized by announcement by the Koyukuk/Nowitna National Wildlife Refuge Manager. Harvest of cow moose accompanied by calves is prohibited. During the Aug. 27–Sept. 20 season a State registration permit is required. During the Mar. 1–5 season a Federal registration permit is required. Announcement for the antlerless moose seasons and cow quotas will be made after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and Middle Yukon Fish and Game Advisory Committee.	Aug. 27–Sept. 20. Dec. 1–Dec. 10. Mar. 1–5 season to be announced.
Unit 21(D)—that portion within the Koyukuk River Drainage west of the Koyukuk Controlled Use Area and that portion north of the Yukon River and east of the Koyukuk Controlled Use Area–1 moose; however, antlerless moose may be taken only during Sept. 21–25 and the March 1–5 season if authorized jointly by the Koyukuk/Nowitna National Wildlife Refuge Manager and the Northern Field Office Manager, Bureau of Land Management. Harvest of cow moose accompanied by calves is prohibited. During the Sept. 5–Sept. 25 season a State registration permit is required. During the March 1–5 season a Federal registration permit is required. Announcement for the antlerless moose seasons and cow quotas will be made after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and the Middle Yukon Fish and Game Advisory Committee.	Sept. 5–Sept. 25. Dec. 1–Dec. 10. Mar. 1–5 season to be announced.
Unit 21(D)—remainder—1 moose; however, antlerless moose may be taken only during Sept. 21–25 and the March 1–5 season if authorized jointly by the Koyukuk/Nowitna National Wildlife Refuge Manager and the Northern Field Office Manager, Bureau of Land Management. Harvest of cow moose accompanied by calves is prohibited. During the Mar. 1–5 season a Federal registration permit is required. Announcement for the antlerless moose seasons and cow quotas will be made after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and Middle Yukon Fish and Game Advisory Committee.	Sept. 5–Sept. 25. Dec. 1–Dec. 10. Mar. 1–5 season to be announced.
Unit 21(E)—1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season.	Aug. 20–Sept. 25. Feb. 1–Feb. 10.
Beaver:	
Unit 21(E)—No Limit	Nov. 1–June 10.
Unit 21—remainder	No open season.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No Limit	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(22) *Unit 22.* (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. Aircraft may not be used in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 22 during the established seasons;

(B) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes;

(C) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine;

(D) The taking of one bull moose and one muskox by the community of Wales is allowed for the celebration of the Kingikmiut Dance Festival under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Wales. The harvest may only occur between January 1 and March 15 in Unit 22(E) for a bull moose and in Unit 22(E) for a muskox. The harvest will count against any established quota for the area.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 22(A), (B), (D), and (E)—1 bear by State registration permit only	Aug. 1–May 31.
Unit 22(C)—1 bear by State registration permit only	Aug. 1–Oct. 31. May 10–May 25.
Caribou:	
Unit 22(A), (B), (D) that portion in the Kougaruk, Kuzitrin, Pilgrim, American, and Agiapuk River Drainages, and (E) east of and including the Sanaguich River drainage—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Moose:	
Unit 22(A)—that portion north of and including the Tagoomenik and Shaktoolik River drainages—1 bull Federal public lands are closed to hunting except by residents of Unit 22(A) only.	Aug. 1–Sept. 30.
Unit 22(A)—that portion in the Unalakleet drainage and all drainages flowing into Norton Sound north of the Golsovia drainage and south of the Tagoomenik and Shaktoolik River drainages—1 bull. Federal public lands are closed to the taking of moose except by residents of Unit 22(A) only.	Aug. 15–Sept. 25.
Unit 22(A)—remainder—1 bull. However during the period Dec. 1–Dec. 31 only an antlered bull may be taken. Federal public lands are closed to the taking of moose except by residents of Unit 22(A) only.	Aug. 1–Sept. 30. Dec. 1–Dec. 31.
Unit 22(B)—West of the Darby Mountains—bull by State registration permit. The combined State/Federal harvest may not exceed 42 moose. Federal public lands are closed to the taking of moose except by Federally-qualified subsistence users.	Aug. 10–Sept. 23.
Unit 22(B)—West of the Darby Mountains—1 bull by either Federal or State registration permit. The total combined State/Federal harvest for both the Aug/Sept and January seasons may not exceed 48 moose. Federal public lands are closed to the taking of moose except by residents of White Mountain and Golovin.	Jan. 1–Jan. 31.
Unit 22(B)—Remainder—1 bull	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull	Sept. 1–Sept. 14.
Unit 22(D)—That portion within the Kougarok, Kuzitrin, and Pilgrim River drainages—1 bull by Federal registration permit. The combined State/Federal harvest may not exceed 33 moose. Federal public lands are closed to the taking of moose except by residents of Units 22(D) and 22(C).	Aug. 20–Sept. 30.
Unit 22(D)—That portion west of the Tisuk River drainage and Canyon Creek—1 bull by Federal registration permit. The combined State/Federal harvest may not exceed 8 moose.	Aug. 20–Sept. 30.
Unit 22(D)—That portion west of the Tisuk River drainage and Canyon Creek—1 bull by Federal registration permit. The combined State/Federal harvest in Aug./Sept. and Dec. may not exceed 8 moose. Federal public lands are closed to the taking of moose except by residents of Units 22(D) and 22(C).	Dec. 1–Dec. 31.
Unit 22(D)—remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf. Federal public lands are closed to the taking of moose except by Federally-qualified subsistence users.	Aug. 1–Jan. 31.
Unit 22(E)—1 bull. Federal public lands are closed to the taking of moose except by Federally-qualified subsistence users.	Aug. 1–Dec. 31.
Muskox:	
Unit 22(B)—1 bull by Federal permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Aug. 1–Mar. 15.
Unit 22(D)—That portion west of the Tisuk River drainage and Canyon Creek—1 muskox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Sept. 1–Mar. 15.

Harvest limits	Open season
Remainder of Unit 22(D)—1 muskox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Aug. 1–Mar. 15.
Unit 22(E)—1 muskox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Aug. 1–Mar. 15.
Unit 22—remainder	No open season.
Beaver:	
Unit 22(A), (B), (D), and (E)—50 beaver	Nov. 1–June 10.
Unit 22—remainder	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	Sept. 1–Apr. 15.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Marten:	
Unit 22(A) and (B)—No limit	Nov. 1–Apr. 15.
Unit 22—remainder	No open season.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 15.
Wolverine: 3 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow):	
Unit 22(A) and 22(B) east of and including the Niukluk River drainage—40 per day, 80 in possession	Aug. 10–Apr. 30.
Unit 22(E)—20 per day, 40 in possession	July 15–May 15.
Unit 22 Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 22(A), (B), (D), and (E)—50 beaver	Nov. 1–June 10.
Unit 22(C)	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

(23) *Unit 23.* (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species in the Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek, is closed for the period August 25–September 15. This does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service.

(B) [Reserved]

(iii) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. Aircraft may not be used in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 23;

(B) In addition to other restrictions on method of take found in this § __.26, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) If you have a trapping license, you may take beaver with a firearm in all of Unit 23 from Nov. 1–Jun. 10;

(D) For the Baird and DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for only one recipient in the course of a season and may have both his and the recipients' harvest limits in his/her possession at the same time;

(E) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the

animals are not shot from a moving snowmachine.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear by State registration permit	Sept. 1–May 31.
Unit 23—remainder—1 bear every four regulatory years	Sept. 1–Oct. 10. Apr. 15–May 25.
Caribou: 15 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 23—south of Rabbit Creek, Kyak Creek, and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 sheep by Federal registration permit. The total allowable harvest of sheep is 21, of which 15 may be rams and 6 may be ewes. Federal public lands are closed to the taking of sheep except by Federally-qualified subsistence users.	Aug. 10–April 30. If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.
Unit 23—north of Rabbit Creek, Kyak Creek, and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 sheep by Federal registration permit. The total allowable harvest of sheep for the DeLong Mountains is 8, of which 5 may be rams and 3 may be ewes.	Aug. 10–April 30. If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.
Unit 23, remainder (Schwatka Mountains)—1 ram with 7/8 curl or larger horn	Aug. 10–Sept. 20.
Unit 23, remainder (Schwatka Mountains)—1 sheep	Oct. 1–Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Singogalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers —1 moose; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Sept. 15. Oct. 1–Mar. 31.
Unit 23—remainder—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 23—south of Kotzebue Sound and west of and including the Buckland River drainage—1 muskox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Aug. 1–Mar. 15.
Unit 23—remainder	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare: (Snowshoe and Tundra) No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Wolf: 5 wolves	Nov. 10–Mar. 31.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver	July 1–June 30.
Unit 23—remainder—30 beaver	July 1–June 30.
Coyote: No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

(24) *Unit 24.* (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms, snowmobiles, licensed highway vehicles, or motorized vehicles, except aircraft and boats in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, and Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife;

(B) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Koyukuk Controlled Use Area, which consists of those portions of Unit 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk at 64° 52.58′ N. lat., 157° 43.10′ W. long., then northerly to the confluences of the Honhosa and Kateel Rivers at 65° 28.42′ N. lat., 157° 44.89′ W. long., then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57 N. lat., 156° 41 W. long.) at 65° 56.66′ N. lat., 156° 40.81′ W. long., then easterly to the confluence of the forks of the Dakli River at 66° 02.56′ N. lat., 156° 12.71′ W. long., then easterly to the confluence of McLanes Creek and the Hogatza River at 66° 00.31′ N. lat., 155° 18.57′ W. long., then southwesterly to the crest of Hochandochtla Mountain at 65° 31.87′ N. lat., 154° 52.18′ W. long., then southwest to the mouth of Cottonwood Creek at 65° 13.00′ N. lat., 156° 06.43′ W. long., then southwest to Bishop Rock (Yistletaw) at 64° 49.35′ N. lat., 157° 21.73′ W. long., then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station.

(iii) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. You may not use aircraft in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears. However, this prohibition does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30; and in the Koyukuk Controlled Use Area, you may also use bait to hunt black bear between September 1 and September 25;

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 24–1 bear by State registration permit	Aug. 10–June 30.
Caribou:	
Unit 24—that portion south of the south bank of the Kanuti River, upstream from and including that portion of the Kanuti-Kilolitna River drainage, bounded by the southeast bank of the Kodosin-Nolitna Creek, then downstream along the east bank of the Kanuti-Kilolitna River to its confluence with the Kanuti River—1 caribou.	Aug. 10–Mar. 31.
Remainder of Unit 24–5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 24—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person, no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 24—(excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park —3 sheep.	Aug. 1–Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl or larger horn by Federal registration permit only.	Aug. 20–Sept. 30.
Unit 24—remainder—1 ram with 7/8 curl or larger horn	Aug. 10–Sept. 20.
Moose:	
Unit 24—Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only during Aug. 27–31 and the Mar. 1–5 season if authorized by announcement by the Koyukuk/Nowitna National Wildlife Refuge Manager. Harvest of cow moose accompanied by calves is prohibited. During the Aug. 27–Sept. 20 season a State registration permit is required. During the Mar. 1–5 season a Federal registration permit is required. Announcement for the antlerless moose seasons and cow quotas will be made after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and Middle Yukon Fish and Game Advisory Committee.	Aug. 27–Sept. 20. Dec. 1–Dec. 10. Mar. 1–Mar. 5 season to announced.

Harvest limits	Open season
Unit 24—that portion west of the Hogatza River Drainage and the Koyukuk Controlled Use Area and that portion east of the Dakli River Drainage and the Koyukuk Controlled Use Area and west of the Kanuti Controlled Use Area, the Tanana-Allakaket Winter Trail and the Alatna River Drainage; 1 moose; however, antlerless moose may be taken only during the March 1–5 season only on Koyukuk National Wildlife Refuge lands if authorized by the Koyukuk/Nowitna National Wildlife Refuge Manager. Harvest of cow moose accompanied by calves is prohibited. During Sept. 5–Sept. 25 a State registration permit is required. During the March 1–5 season a Federal registration permit is required. Announcement for the antlerless moose season and cow quotas will be made after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and the Middle Yukon Fish and Game Advisory Committee.	Aug. 25–Sept. 25. Mar. 1–Mar. 5 season to be announced.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose	Aug. 1—Dec. 31.
Unit 24—the Alatna River drainage within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Dec. 31. Mar. 1–Mar. 10.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except those portions of the John River and the Alatna River drainages within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24–that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Unit 24—remainder—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents.	Aug. 25–Sept. 25.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 15 wolves; however, no more than 5 wolves may be taken prior to Nov. 1	Aug. 10–Apr. 30.
Wolverine: 5 wolverine; however, no more than 1 wolverine may be taken prior to Nov. 1	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession	Aug.–Apr. 30.
Trapping	
Beaver: No limit	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(25) *Unit 25.* (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except aircraft and boats in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife;

(B) The Arctic Village Sheep Management Area consists of that portion of Unit 25(A) north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake

and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into 2 roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30 and between August 1 and September 25;

(B) You may take caribou and moose from a boat moving under power in Unit 25;

(C) The taking of bull moose outside the seasons provided in this part for food in memorial potlatches and traditional cultural events is authorized in Unit 25(D) west provided that:

(*1*) The person organizing the religious ceremony or cultural event contact the Refuge Manager, Yukon Flats National Wildlife Refuge prior to taking or attempting to take bull moose and provide to the Refuge Manager the name of the decedent, the nature of the ceremony or cultural event, number to be taken, the general area in which the taking will occur;

(*2*) Each person who takes a bull moose under this section must submit a written report to the Refuge Manager, Yukon Flats National Wildlife Refuge not more than 15 days after the harvest specifying the harvester=s name and address, and the date(s) and location(s) of the taking(s);

(*3*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in Unit 25(D) west;

(*4*) Any moose taken under this provision counts against the annual quota of 60 bulls.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears, or 3 bears by State community harvest permit	July 1–June 30.
Brown Bear:	
Unit 25(A) and (B)—1 bear	Aug. 10–June 30.
Unit 25(C)—1 bear	Sept. 1–May 31.
Unit 25(D)—1 bear	July 1–June 30.
Caribou:	
Unit 25(C)—that portion west of the east bank of the mainstem of Preacher Creek to its confluence with American Creek, then west of the east bank of American Creek—1 caribou; however cow caribou may be taken only from Nov. 1–Mar. 31. However, during the November 1–March 31 season, a State registration permit is required.	Aug. 10–Sept. 20. Nov. 1–Mar. 31.
Unit 25(C)—remainder—1 caribou by joint State/Federal registration permit only. Up to 600 caribou may be taken under a State/Federal harvest quota. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management, after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 25 (D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long. 1 bull	Aug. 10–Sept. 30. Dec. 1–Dec. 31.
Unit 25(A), (B), and the remainder of Unit 25(D)–10 caribou	July 1–Apr. 30.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area	No open season.
Units 25(A)—Arctic Village Sheep Management Area— 2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkyitsik during seasons identified above.	Aug. 10–Apr. 30.
Unit 25(A)—remainder—3 sheep by Federal registration permit only	Aug. 10–Apr. 30.
Moose:	
Unit 25(A)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 10.
Unit 25(B)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–Dec. 10.
Unit 25(B)—that portion, other than Yukon Charley National Preserve, draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull.	Sept. 5–Sept. 30. Dec. 1–Dec. 15.
Unit 25(B)—remainder—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 15.
Unit 25(C)—1 antlered bull	Sept. 1–Sept. 15.
Unit 25(D)(West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzic River, then upstream along the west bank of the Hadweenzic River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Permits will be available in the following villages: Beaver (25 permits), Birch Creek (10 permits), and Stevens Village (25 permits). Permits for residents of 25(D)West who do not live in one of the three villages will be available by contacting the Yukon Flats National Wildlife Refuge Office in Fairbanks or a local Refuge Information Technician. Moose hunting on public land in Unit 25(D)(West) is closed at all times except for residents of Unit 25(D) West during seasons identified above. The moose season will be closed when 60 moose have been harvested in the entirety (from Federal and non-Federal lands) of Unit 25(D)(West).	Aug. 25–Feb. 28.
Unit 25(D)—remainder—1 antlered moose	Aug. 25–Sept. 25. Dec. 1–Dec. 20.
Beaver:	

Harvest limits	Open season
Unit 25, excluding Unit 25(C)—1 beaver per day; 1 in possession	Apr. 16–Oct. 31.
Unit 25(C)	No Federal open season.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx:	
Unit 25(C)–2 lynx	Dec. 1–Jan. 31.
Unit 25—remainder—2 lynx	Nov. 1–Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25–10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed):	
Unit 25(C)–15 per day, 30 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 25(C)—No limit	Nov. 1–Apr. 15.
Unit 25—remainder—50 beaver	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit.	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine:	
Unit 25(C)—No limit	Nov. 1–Feb. 28.
Unit 25—remainder—No limit	Nov. 1–Mar. 31.

(26) *Unit 26.* (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border, including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from July. 1–Sept. 14 and from Jan. 1–Mar. 31 in Unit 26(A); however, this does not apply to transportation of moose hunters, their gear, or moose parts by aircraft between publicly owned airports;

(B) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except aircraft and boats in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife.

(iii) You may hunt brown bear in Unit 26(A) by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. You may not use aircraft in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 26;

(B) In addition to other restrictions on method of take found in this § —.26, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) In Kaktovik, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep or muskox on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(D) For the DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a

member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for only one recipient in the course of a season and may have both his and the recipients' harvest limits in his/her possession at the same time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 26(A)—1 bear by State registration permit	Sept. 1–May 31.
Unit 26(B)—1 bear	Sept. 1–May 31.
Unit 26(C)—1 bear	Aug. 10–June 30.
Caribou:	
Unit 26(A)—10 caribou per day; however, cow caribou may not be taken May 16–June 30. Federal lands south of the Colville River and east of the Killik River are closed to the taking of caribou by non-Federally qualified subsistence users from Aug. 1–Sept. 30.	July 1–June 30.
Unit 26(B)—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30	July 1–June 30.
Unit 26(C)—10 caribou per day	July 1–Apr. 30.
(You may not transport more than 5 caribou per regulatory year from Unit 26 except to the community of Anaktuvuk Pass.).	
Sheep:	
Unit 26(A) and (B)—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person, no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 26(A)—(excluding Anaktuvuk Pass residents)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 sheep by Federal registration permit. The total allowable harvest of sheep for the DeLong Mountains is 8, of which 5 may be rams and 3 may be ewes.	Aug. 10–April 30. If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl or larger horn by Federal registration permit only.	Aug. 10–Sept. 20.
Unit 26(A)—remainder and 26(B)—remainder—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl or larger horn.	Aug. 10–Sept. 20.
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl or larger horn. A Federal registration permit is required for the Oct. 1–Apr. 30 season.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
Moose:	
Unit 26(A)—that portion of the Colville River drainage downstream from and including the Chandler River—1 bull. Federal public lands are closed to the taking of moose except by Federally qualified users.	Aug. 1–Sept. 14.
Unit 26(A)—portion of Unit 26 (A) west of 156° 00′W. longitude and north of 69° 20′N latitude. 1 moose; however, antlerless moose may only be taken July 1–August 31. You may not at any time take a calf or a cow accompanied by a calf.	July 1–Sept. 14.
Unit 26(A)—remainder—1 bull	Sept. 1–Sept. 14.
Unit 26(B) and (C)—1 moose by Federal registration permit by residents of Kaktovik only. The harvest quota is 3 moose (2 bulls and 1 of either sex), provided that no more than 2 bulls may be harvested from Unit 26(C) and cows may not be harvested from Unit 26(C). You may not take a cow accompanied by a calf. Only 3 Federal registration permits will be issued. Federal public lands are closed to the taking of moose except by a Kaktovik resident holding a Federal registration permit.	July 1—Mar. 31.
Muskox: Unit 26(C)—1 bull by Federal registration permit only. The number of permits that may be issued only to the residents of the village of Kaktovik will not exceed three percent (3%) of the number of muskoxen counted in Unit 26(C) during a pre-calving census. Public lands are closed to the taking of muskox, except by rural Alaska residents of the village of Kaktovik during open seasons.	July 15–Mar. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Wolf: 15 wolves	Aug. 10–Apr. 30.
Wolverine: 5 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote: No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.

Harvest limits	Open season
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

Dated: June 9, 2004.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board,

Dated: June 9, 2004.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 04–14548 Filed 6–30–04; 8:45 am]

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Federal Register

Thursday,
July 1, 2004

Part V

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds as Acceptable Reinsuring Companies; Notice

04 14818

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
HYATTSVILLE, MD 20782

4810-35

DEPARTMENT OF THE TREASURY

FISCAL SERVICE
(Dept. Circular 570; 2004 Revision)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective July 1, 2004

This Circular is published annually, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular and interim changes may be obtained directly from the internet or from the Government Printing Office (202) 512-1800. (Interim changes are published in the FEDERAL REGISTER and on the internet as they occur.) Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F07, Hyattsville, MD 20782, Telephone (202) 874-6850 or Fax (202) 874-9978.

The most current list of Treasury authorized companies is always available through the Internet at http://www.fms.treas.gov/c570. In addition, applicable laws, regulations, and application information are also available at the same site.

Please note that the underwriting limitation published herein is on a per bond basis but this does not limit the amount of a bond that a company can write. Companies are allowed to write bonds with a penal sum over their underwriting limitation as long as they protect the excess amount with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11. Please refer to footnote (b) at the end of this publication.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury. Those listed in the front of this Circular are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)]. Those listed in the back are acceptable only as reinsurers on Federal bonds under 31 CFR 223.3(b) [See Note (e)].

If we can be of any assistance, please feel free to contact the Surety Bond Branch at (202) 874-6850.

Wanda J. Rogers
Assistant Commissioner
Financial Operations
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

Acadia Insurance Company (NAIC #31325)
BUSINESS ADDRESS: P.O. Box 9010, Westbrook, ME 04098-5010. PHONE: (207) 772-4300. UNDERWRITING LIMITATION b/: $3,649,000. SURETY LICENSES c,f/: AZ, CO, CT, DE, DC, KY, ME, MD, MA, MS, MO, NH, NM, NY, OK, PA, RI, SC, TX, UT, VT, VA. INCORPORATED IN: Maine.

ACCREDITED SURETY AND CASUALTY COMPANY, INC. (NAIC #26379)
BUSINESS ADDRESS: 400 S. Park Avenue, Suite 320, Winter Park, FL 32789. PHONE: (407) 629-2131. UNDERWRITING LIMITATION b/: $1,230,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY (NAIC #22950)
BUSINESS ADDRESS: P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 224-2000. UNDERWRITING LIMITATION b/: $1,914,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aegis Security Insurance Company (NAIC #33898)
BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657-9671 x-3051. UNDERWRITING LIMITATION b/: $3,119,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Affiliated FM Insurance Company (NAIC #10014)
BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION b/: $20,042,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

ALL AMERICA INSURANCE COMPANY (NAIC #20222)
BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. PHONE: (419) 238-5551 x-2350. UNDERWRITING LIMITATION b/: $5,914,000. SURETY LICENSES c,f/: AZ, CA, CT, GA, IL, IN, IA, KY, MA, MI, NV, NJ, NY, NC, OH, OK, TN, TX, VA. INCORPORATED IN: Ohio.

See Footnotes and Notes at the end of this Circular.

Allegheny Casualty Company (NAIC #13285)
BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION b/: $1,226,000. SURETY LICENSES c,f/: AL, AK, AR, CA, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MS, MO, NV, NJ, NM, NY, NC, OH, OK, PA, SC, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

AMCO Insurance Company (NAIC #19100)
BUSINESS ADDRESS: 1100 Locust Street, Des Moines, IA 50391-1100. PHONE: (800) 532-1436. UNDERWRITING LIMITATION b/: $38,428,000. SURETY LICENSES c,f/: AZ, CA, CO, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, ND, OH, OR, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

AMERICAN ALTERNATIVE INSURANCE CORPORATION (NAIC #19720)
BUSINESS ADDRESS: 555 College Road East - P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION b/: $14,548,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American Automobile Insurance Company (NAIC #21849)
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (800) 243-9622. UNDERWRITING LIMITATION b/: $9,889,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA (NAIC #10111)
BUSINESS ADDRESS: 11222 Quail Roost Drive, Miami, FL 33157. PHONE: (305) 253-2244 x-35611. UNDERWRITING LIMITATION b/: $26,712,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Casualty Company of Reading, Pennsylvania (NAIC #20427)
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (800) 262-2255. UNDERWRITING LIMITATION b/: $9,926,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

See Footnotes and Notes at the end of this Circular.

AMERICAN CONTRACTORS INDEMNITY COMPANY (NAIC #10216)[1]
BUSINESS ADDRESS: 9841 Airport Boulevard, 9th Floor, Los Angeles, CA 90045. PHONE: (310) 649-0990. UNDERWRITING LIMITATION b/: $3,077,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MN, MS, MO, MT, NE, NV, NJ, NM, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

American Economy Insurance Company (NAIC #19690)
BUSINESS ADDRESS: Safeco Plaza, Seattle, WA 98185. PHONE: (800) 332-3226. UNDERWRITING LIMITATION b/: $39,274,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Fire and Casualty Company (NAIC #24066)
BUSINESS ADDRESS: 9450 Seward Road, Fairfield, OH 45014. PHONE: (513) 603-2400. UNDERWRITING LIMITATION b/: $10,760,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

American Guarantee and Liability Insurance Company (NAIC #26247)
BUSINESS ADDRESS: 1400 American Lane, Tower I, 19th Floor, Schaumburg, IL 60196-1056. PHONE: (800) 382-2150. UNDERWRITING LIMITATION b/: $9,373,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA,WA, WV, WI, WY. INCORPORATED IN: New York.

American Hardware Mutual Insurance Company (NAIC #13331)
BUSINESS ADDRESS: 471 East Broad Street, Columbus, OH 43215. PHONE: (800) 922-6757. UNDERWRITING LIMITATION b/: $9,207,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

American Home Assurance Company (NAIC #19380)
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 458-7018. UNDERWRITING LIMITATION b/: $362,190,000. SURETY LICENSES c,f/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes and Notes at the end of this Circular.

American Insurance Company (The) (NAIC #21857)
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (800) 243-9622. UNDERWRITING LIMITATION b/: $34,801,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

AMERICAN INTERNATIONAL INSURANCE COMPANY OF PUERTO RICO (NAIC #31674)
BUSINESS ADDRESS: P. O. Box 10181, San Juan, PR 00908. PHONE: (787) 767-6400. UNDERWRITING LIMITATION b/: $9,482,000. SURETY LICENSES c,f/: PR, VI. INCORPORATED IN: Puerto Rico.

American International Pacific Insurance Company (NAIC #23795)
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 458-7018. UNDERWRITING LIMITATION b/: $2,868,000. SURETY LICENSES c,f/: AK, CO, CT, DC, IA, ME, MD, MA, MS, MT, NE, NH, ND, RI, SD, UT, VT, WV, WY. INCORPORATED IN: Colorado.

American Re-Insurance Company (NAIC #10227)
BUSINESS ADDRESS: 555 College Road East - P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION b/: $327,146,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

AMERICAN RELIABLE INSURANCE COMPANY (NAIC #19615)
BUSINESS ADDRESS: 8655 East Via De Ventura, Scottsdale, AZ 85258. PHONE: (480) 483-8666. UNDERWRITING LIMITATION b/: $7,117,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

AMERICAN ROAD INSURANCE COMPANY (THE) (NAIC #19631)
BUSINESS ADDRESS: The American Road, Dearborn, MI 48121-6027. PHONE: (313) 594-1914. UNDERWRITING LIMITATION b/: $32,017,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

See Footnotes and Notes at the end of this Circular.

American Safety Casualty Insurance Company (NAIC #39969)
BUSINESS ADDRESS: 1845 The Exchange, Atlanta, GA 30339. PHONE: (770) 916-1908. UNDERWRITING LIMITATION b/: $3,977,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American Southern Insurance Company (NAIC #10235)
BUSINESS ADDRESS: P. O. Box 723030, Atlanta, GA 31139-0030. PHONE: (404) 266-9599. UNDERWRITING LIMITATION b/: $3,448,000. SURETY LICENSES c,f/: AL, AR, FL, GA, IL, KS, KY, MD, MS, NE, NC, OH, PA, SC, TN, UT, WA, WV, WY. INCORPORATED IN: Kansas.

American States Insurance Company (NAIC #19704)
BUSINESS ADDRESS: Safeco Plaza, Seattle, WA 98185. PHONE: (800) 332-3226. UNDERWRITING LIMITATION b/: $63,000,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety Company (NAIC #31380)
BUSINESS ADDRESS: 3905 Vincennes Road, Suite 200, Indianapolis, IN 46268. PHONE: (317) 875-8700. UNDERWRITING LIMITATION b/: $734,000. SURETY LICENSES c,f/: AL, AK, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, LA, ME, MD, MN, MS, MO, MT, NE, NV, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA, WV, WY. INCORPORATED IN: Indiana.

Amerisure Mutual Insurance Company (NAIC #23396)
BUSINESS ADDRESS: P. O. Box 2060, Farmington Hills, MI 48333-2060. PHONE: (248) 615-9000 x-67968. UNDERWRITING LIMITATION b/: $35,663,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Michigan.

Antilles Insurance Company (NAIC #10308)
BUSINESS ADDRESS: P. O. Box 9023507, San Juan, PR 00902-3507. PHONE: (787) 474-4900. UNDERWRITING LIMITATION b/: $4,251,000. SURETY LICENSES c,f/: PR. INCORPORATED IN: Puerto Rico.

See Footnotes and Notes at the end of this Circular.

Arch Insurance Company (NAIC #11150)

BUSINESS ADDRESS: One Liberty Plaza, 53rd Floor, New York, NY 10006. PHONE: (203) 388-3300. UNDERWRITING LIMITATION b/: $24,943,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Arch Reinsurance Company (NAIC #10348)

BUSINESS ADDRESS: 55 Madison Avenue, P.O. Box 1988, Morristown, NJ 07962-1988. PHONE: (973) 889-6467. UNDERWRITING LIMITATION b/: $15,636,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV. INCORPORATED IN: Nebraska.

Associated Indemnity Corporation (NAIC #21865)

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (800) 243-9622. UNDERWRITING LIMITATION b/: $4,705,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Atlantic Bonding Company, Inc. (NAIC #41114)

BUSINESS ADDRESS: Suite 212, Hilton Plaza, Pikesville, MD 21208. PHONE: (410) 484-3100. UNDERWRITING LIMITATION b/: $874,000. SURETY LICENSES c,f/: MD. INCORPORATED IN: Maryland.

Atlantic Mutual Insurance Company (NAIC #19895)

BUSINESS ADDRESS: 140 Broadway, New York, NY 10005-1101. PHONE: (800) 999-4762. UNDERWRITING LIMITATION b/: $32,127,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Auto-Owners Insurance Company (NAIC #18988)

BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909-8160. PHONE: (517) 323-1200. UNDERWRITING LIMITATION b/: $324,261,000. SURETY LICENSES c,f/: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NV, NM, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Michigan.

See Footnotes and Notes at the end of this Circular.

Berkley Insurance Company (NAIC #32603)
BUSINESS ADDRESS: 475 Steamboat Road, Greenwich, CT 06830. PHONE: (203) 542-3800. UNDERWRITING LIMITATION b/: $63,682,000. SURETY LICENSES c,f/: AL, AK, AR, CA, CO, DE, DC, FL, ID, IL, IN, IA, KY, LA, MD, MI, MN, MS, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, WA, WV, WI. INCORPORATED IN: Delaware.

Berkley Regional Insurance Company (NAIC #29580)
BUSINESS ADDRESS: 11201 Douglas, Urbandale, IA 50322. PHONE: (203) 629-2880. UNDERWRITING LIMITATION b/: $45,730,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

BITUMINOUS CASUALTY CORPORATION (NAIC #20095)
BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201-8744. PHONE: (309) 732-0300. UNDERWRITING LIMITATION b/: $20,041,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY (NAIC #27081)
BUSINESS ADDRESS: 1919 S. Highland Ave, Bldg. A, Suite 300, Lombard, IL 60148. PHONE: (630) 495-9380. UNDERWRITING LIMITATION b/: $603,000. SURETY LICENSES c,f/: CO, DC, FL, IL, IN, KS, KY, MO, MT, NV, NJ, NC, OH, OK, TN, TX, UT, WV, WY. INCORPORATED IN: Illinois.

BRITISH AMERICAN INSURANCE COMPANY (NAIC #32875)
BUSINESS ADDRESS: P.O. Box 1590, Dallas, TX 75221-1590. PHONE: (214) 443-5500. UNDERWRITING LIMITATION b/: $3,225,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

Buckeye Union Insurance Company (The) (NAIC #20788)
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (800) 262-2255. UNDERWRITING LIMITATION b/: $18,910,000. SURETY LICENSES c,f/: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

Capital City Insurance Company, Inc. (NAIC #30589)
BUSINESS ADDRESS: P. O. Box 212157, Columbia, SC 29221-2157. PHONE: (803) 731-7728. UNDERWRITING LIMITATION b/: $3,252,000. SURETY LICENSES c,f/: AL, AR, GA, IL, LA, MS, MO, NC, OK, PA, SC, TN, TX, VA, WV. INCORPORATED IN: South Carolina.

See Footnotes and Notes at the end of this Circular.

Capitol Indemnity Corporation (NAIC #10472)
BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. PHONE: (608) 231-4450 x-642. UNDERWRITING LIMITATION b/: $14,032,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

Carolina Casualty Insurance Company (NAIC #10510)
BUSINESS ADDRESS: P. O. Box 2575, Jacksonville, FL 32203. PHONE: (904) 363-0900. UNDERWRITING LIMITATION b/: $18,537,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

Centennial Insurance Company (NAIC #19909)
BUSINESS ADDRESS: 140 Broadway, New York, NY 10005-1101. PHONE: (800) 999-4762. UNDERWRITING LIMITATION b/: $13,514,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

CENTRAL MUTUAL INSURANCE COMPANY (NAIC #20230)
BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. PHONE: (419) 238-5551 x-2350. UNDERWRITING LIMITATION b/: $23,251,000. SURETY LICENSES c,f/: AZ, CA, CT, DE, GA, IL, IN, IA, KY, MA, MI, NV, NH, NJ, NM, NY, NC, OH, OK, PA, TN, TX, VA, WV. INCORPORATED IN: Ohio.

CENTURY SURETY COMPANY (NAIC #36951)
BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION b/: $4,651,000. SURETY LICENSES c,f/: AZ, IN, ME, OH, WV, WI. INCORPORATED IN: Ohio.

Cherokee Insurance Company (NAIC #10642)
BUSINESS ADDRESS: 34200 Mound Road, Sterling Heights, MI 48310. PHONE: (800) 201-0450 x-3474. UNDERWRITING LIMITATION b/: $3,316,000. SURETY LICENSES c,f/: AZ, AR, CA, CO, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, MT, ND, OH, OK, PA, SC, TN, TX, VI, WV, WI. INCORPORATED IN: Michigan.

CHUBB INDEMNITY INSURANCE COMPANY (NAIC #12777)
BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-5150. UNDERWRITING LIMITATION b/: $3,187,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. . INCORPORATED IN: New York.

See Footnotes and Notes at the end of this Circular.

Cincinnati Casualty Company (The) (NAIC #28665)
BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $25,252,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Cincinnati Insurance Company (The) (NAIC #10677)
BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $252,730,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

CITIZENS INSURANCE COMPANY OF AMERICA (NAIC #31534)
BUSINESS ADDRESS: 645 W. Grand River Avenue, Howell, MI 48843. PHONE: (508) 853-7200 x-2075. UNDERWRITING LIMITATION b/: $52,653,000. SURETY LICENSES c,f/: AL, GA, IL, IN, KS, MA, MI, MO, NH, NJ, NY, NC, OH, PA, RI, SC, VT, VA. INCORPORATED IN: Michigan.

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY (NAIC #34347)
BUSINESS ADDRESS: 1400 American Lane, Tower I, 19th Floor, Schaumburg, IL 60196-1056. PHONE: (800) 382-2150. UNDERWRITING LIMITATION b/: $2,010,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY (NAIC #10758)
BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION b/: $444,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, ID, IL, IN, KS, KY, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OK, OR, PA, RI, SD, TN, TX, UT, WV, WY. INCORPORATED IN: Pennsylvania.

Consolidated Insurance Company (NAIC #22640)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (603) 353-3221. UNDERWRITING LIMITATION b/: $5,091,000. SURETY LICENSES c,f/: IL, IN, IA, KY, MI, MN, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company (NAIC #20443)
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (800) 262-2255. UNDERWRITING LIMITATION b/: $413,817,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes and Notes at the end of this Circular.

CONTINENTAL HERITAGE INSURANCE COMPANY (NAIC #39551)
BUSINESS ADDRESS: P. O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION b/: $558,000. SURETY LICENSES c,f/: CA, FL, ID, IL, MD, MN, NV, ND, OH, TN, TX, UT. INCORPORATED IN: Ohio.

Continental Insurance Company (The) (NAIC #35289)[2]
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (800) 262-2255. UNDERWRITING LIMITATION b/: $73,108,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: South Carolina.

CONTRACTORS BONDING AND INSURANCE COMPANY (NAIC #37206)
BUSINESS ADDRESS: P. O. Box 9271, Seattle, WA 98109-0271. PHONE: (206) 628-7200. UNDERWRITING LIMITATION b/: $3,229,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico (NAIC #18163)
BUSINESS ADDRESS: P. O. Box 363846, San Juan, PR 00936-3846. PHONE: (787) 622-8585. UNDERWRITING LIMITATION b/: $20,301,000. SURETY LICENSES c,f/: PR. INCORPORATED IN: Puerto Rico.

CUMIS INSURANCE SOCIETY, INC. (NAIC #10847)
BUSINESS ADDRESS: P. O. Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION b/: $35,306,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DaimlerChrysler Insurance Company (NAIC #10499)
BUSINESS ADDRESS: CIMS: 405-26-10, P. O. Box 9217, Farmington Hills, MI 48333-9217. PHONE: (800) 782-9164. UNDERWRITING LIMITATION b/: $20,696,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Michigan.

Developers Surety and Indemnity Company (NAIC #12718)
BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92623. PHONE: (800) 782-1546. UNDERWRITING LIMITATION b/: $2,629,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

See Footnotes and Notes at the end of this Circular.

Employers Insurance Company of Wausau (NAIC #21458)
BUSINESS ADDRESS: P. O. Box 8017, Wausau, WI 54402-8017. PHONE: (715) 845-5211 x-6570. UNDERWRITING LIMITATION b/: $75,082,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Employers Mutual Casualty Company (NAIC #21415)
BUSINESS ADDRESS: P. O. Box 712, Des Moines, IA 50303-0712. PHONE: (515) 362-7589. UNDERWRITING LIMITATION b/: $55,153,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation (NAIC #39845)
BUSINESS ADDRESS: P.O. Box 2991, Overland Park, KS 66201-1391. PHONE: (913) 676-5147. UNDERWRITING LIMITATION b/: $481,532,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Erie Insurance Company (NAIC #26263)
BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. PHONE: (814) 870-2000. UNDERWRITING LIMITATION b/: $12,620,000. SURETY LICENSES c,f/: DC, IL, IN, KY, MD, NY, NC, OH, PA, TN, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Everest Reinsurance Company (NAIC #26921)
BUSINESS ADDRESS: P.O. Box 830, Liberty Corner, NJ 07938-0830. PHONE: (800) 438-4375. UNDERWRITING LIMITATION b/: $171,552,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

Evergreen National Indemnity Company (NAIC #12750)
BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION b/: $3,000,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Ohio.

See Footnotes and Notes at the end of this Circular.

Excelsior Insurance Company (NAIC #11045)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $5,596,000. SURETY LICENSES c,f/: CT, DE, DC, FL, GA, IN, KY, MD, MA, NH, NJ, NY, NC, PA, VA. INCORPORATED IN: New Hampshire.

Executive Risk Indemnity Inc. (NAIC #35181)
BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-5150. UNDERWRITING LIMITATION b/: $51,010,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

EXPLORER INSURANCE COMPANY (THE) (NAIC #40029)
BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400. UNDERWRITING LIMITATION b/: $2,275,000. SURETY LICENSES c,f/: AZ, CA, CO, FL, HI, ID, IL, IN, IA, MT, NV, NM, OR, PA, TX, UT, WA. INCORPORATED IN: Arizona.

Factory Mutual Insurance Company (NAIC #21482)
BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION b/: $263,287,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Farmers Alliance Mutual Insurance Company (NAIC #19194)
BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. PHONE: (620) 241-2200. UNDERWRITING LIMITATION b/: $7,350,000. SURETY LICENSES c,f/: AZ, CO, ID, IN, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, SD, TX. INCORPORATED IN: Kansas.

Farmington Casualty Company (NAIC #41483)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-1561. UNDERWRITING LIMITATION b/: $20,394,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

See Footnotes and Notes at the end of this Circular.

Farmland Mutual Insurance Company (NAIC #13838)
BUSINESS ADDRESS: 1100 Locust St., Dept 2007, Des Moines, IA 50391-2007. PHONE: (800) 228-6700. UNDERWRITING LIMITATION b/: $9,797,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Federal Insurance Company (NAIC #20281)
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-5150. UNDERWRITING LIMITATION b/: $575,194,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY (NAIC #13935)
BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. PHONE: (888) 333-4949. UNDERWRITING LIMITATION b/: $117,473,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The) (NAIC #35270)[3]
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (800) 262-2255. UNDERWRITING LIMITATION b/: $13,576,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Carolina.

Fidelity and Deposit Company of Maryland (NAIC #39306)
BUSINESS ADDRESS: 1400 American Lane, Tower I, 19th Floor, Schaumburg, IL 60196-1056. PHONE: (800) 382-2150. UNDERWRITING LIMITATION b/: $14,584,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

FIDELITY AND GUARANTY INSURANCE COMPANY (NAIC #35386)
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (800) 356-4098. UNDERWRITING LIMITATION b/: $1,388,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

See Footnotes and Notes at the end of this Circular.

Fidelity and Guaranty Insurance Underwriters, Inc. (NAIC #25879)
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (800) 356-4098. UNDERWRITING LIMITATION b/: $3,083,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Fidelity National Property and Casualty Insurance Company (NAIC #16578)[4]
BUSINESS ADDRESS: 10301 Deerwood Park Blvd, Suite 100, Jacksonville, FL 32256. PHONE: (904) 854-8100. UNDERWRITING LIMITATION b/: $1,343,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Financial Pacific Insurance Company (NAIC #31453)
BUSINESS ADDRESS: P. O. Box 292220, Sacramento, CA 95829-2220. PHONE: (916) 630-5000. UNDERWRITING LIMITATION b/: $4,058,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, ID, KS, MO, MT, NE, NV, NM, ND, OK, OR, SD, UT, WA, WI. INCORPORATED IN: California.

Fireman's Fund Insurance Company (NAIC #21873)
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (800) 243-9622. UNDERWRITING LIMITATION b/: $285,887,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey (NAIC #20850)
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (800) 262-2255. UNDERWRITING LIMITATION b/: $46,402,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

First Insurance Company of Hawaii, Ltd. (NAIC #41742)
BUSINESS ADDRESS: P.O. Box 2866, Honolulu, HI 96803. PHONE: (808) 527-7777. UNDERWRITING LIMITATION b/: $14,406,000. SURETY LICENSES c,f/: GU, HI. INCORPORATED IN: Hawaii.

See Footnotes and Notes at the end of this Circular.

First Liberty Insurance Corporation (The) (NAIC #33588)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500 x-43660. UNDERWRITING LIMITATION b/: $1,898,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

First National Insurance Company of America (NAIC #24724)
BUSINESS ADDRESS: Safeco Plaza, Seattle, WA 98185. PHONE: (800) 332-3226. UNDERWRITING LIMITATION b/: $6,143,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

First Sealord Surety, Inc. (NAIC #28519)
BUSINESS ADDRESS: 33 Rock Hill Road, Bala Cynwyd, PA 19004. PHONE: (610) 664-2324. UNDERWRITING LIMITATION b/: $814,000. SURETY LICENSES c,f/: AL, AK, AR, CT, DE, DC, FL, GA, IL, IN, IA, KY, MD, MI, MS, MO, NJ, NY, NC, OH, OR, PA, SC, TN, TX, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

FOLKSAMERICA REINSURANCE COMPANY (NAIC #38776)
BUSINESS ADDRESS: One Liberty Plaza - 19th Floor, New York, NY 10006-1404. PHONE: (212) 312-2500. UNDERWRITING LIMITATION b/: $91,279,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DC, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MS, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, TX, UT, VA, WA, WI. INCORPORATED IN: New York.

General Insurance Company of America (NAIC #24732)
BUSINESS ADDRESS: Safeco Plaza, Seattle, WA 98185. PHONE: (800) 332-3226. UNDERWRITING LIMITATION b/: $62,332,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

General Reinsurance Corporation (NAIC #22039)
BUSINESS ADDRESS: Financial Centre, P. O. Box 10350, Stamford, CT 06904-2350. PHONE: (203) 328-5604. UNDERWRITING LIMITATION b/: $473,174,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

See Footnotes and Notes at the end of this Circular.

Global Surety & Insurance Co. (NAIC #11304)
BUSINESS ADDRESS: 3555 Farnam Street, Omaha, NE 68131. PHONE: (402) 271-2840. UNDERWRITING LIMITATION b/: $4,124,000. SURETY LICENSES c,f/: AZ, CA, CO, NE, WY. INCORPORATED IN: Nebraska.

GRANITE RE, INC. (NAIC #26310)
BUSINESS ADDRESS: 14001 Quailbrook Drive, Oklahoma City, OK 73134. PHONE: (800) 440-5953. UNDERWRITING LIMITATION b/: $468,000. SURETY LICENSES c,f/: AZ, AR, CO, KS, MN, MT, NM, ND, OK, SD, WI. INCORPORATED IN: Oklahoma.

Granite State Insurance Company (NAIC #23809)
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 458-7018. UNDERWRITING LIMITATION b/: $2,863,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

GRAY INSURANCE COMPANY (THE) (NAIC #36307)
BUSINESS ADDRESS: P. O. Box 6202, Metairie, LA 70009-6202. PHONE: (504) 888-7790. UNDERWRITING LIMITATION b/: $5,863,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MS, MO, MT, NE, NV, NM, NC, ND, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Louisiana.

Great American Alliance Insurance Company (NAIC #26832)
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (800) 972-3008. UNDERWRITING LIMITATION b/: $2,241,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Great American Insurance Company (NAIC #16691)
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (800) 972-3008. UNDERWRITING LIMITATION b/: $156,253,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

GREAT AMERICAN INSURANCE COMPANY OF NEW YORK (NAIC #22136)
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (800) 972-3008. UNDERWRITING LIMITATION b/: $5,040,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes and Notes at the end of this Circular.

Great Northern Insurance Company (NAIC #20303)
BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-5150. UNDERWRITING LIMITATION b/: $22,147,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT; NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

GREAT RIVER INSURANCE COMPANY (NAIC #18468)
BUSINESS ADDRESS: P. O. Box 152180, Irving, TX 75015-2180. PHONE: (972) 719-2400 x-2416. UNDERWRITING LIMITATION b/: $1,220,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, GA, KY, LA, MS, NV, NM, OK, SC, TN, TX, UT. INCORPORATED IN: Mississippi.

Greenwich Insurance Company (NAIC #22322)
BUSINESS ADDRESS: Seaview House, 70 Seaview Avenue, Stamford, CT 06902-6040. PHONE: (203) 964-3466. UNDERWRITING LIMITATION b/: $27,308,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Guarantee Company of North America USA (The) (NAIC #36650)
BUSINESS ADDRESS: 102 Kercheval Avenue, Grosse Pointe Farms, MI 48236. PHONE: (313) 886-2200. UNDERWRITING LIMITATION b/: $5,573,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NE, NV, NH, NJ, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Michigan.

Gulf Insurance Company (NAIC #22217)
BUSINESS ADDRESS: P.O. Box 131771, Dallas, TX 75313-1771. PHONE: (917) 320-4989. UNDERWRITING LIMITATION b/: $57,956,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hanover Insurance Company (The) (NAIC #22292)
BUSINESS ADDRESS: 440 Lincoln Street, Worcester, MA 01653. PHONE: (508) 853-7200 x-2075. UNDERWRITING LIMITATION b/: $47,506,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

See Footnotes and Notes at the end of this Circular.

HARCO NATIONAL INSURANCE COMPANY (NAIC #26433)
BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. PHONE: (847) 321-4800. UNDERWRITING LIMITATION b/: $13,343,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Harleysville Mutual Insurance Company (NAIC #14168)
BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2297. PHONE: (215) 256-5470. UNDERWRITING LIMITATION b/: $42,552,000. SURETY LICENSES c,f/: AL, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Harleysville Worcester Insurance Company (NAIC #26182)
BUSINESS ADDRESS: 120 Front Street, Suite 400, Worcester, MA 01608-1408. PHONE: (215) 256-5470. UNDERWRITING LIMITATION b/: $9,040,000. SURETY LICENSES c,f/: CT, ME, MA, MI, NH, NY, RI, VT. INCORPORATED IN: Massachusetts.

Hartford Accident and Indemnity Company (NAIC #22357)
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-4707. UNDERWRITING LIMITATION b/: $164,078,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company (NAIC #29424)
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-4707. UNDERWRITING LIMITATION b/: $69,313,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company (NAIC #19682)
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-4707. UNDERWRITING LIMITATION b/: $789,555,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois (NAIC #38288)
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-4707. UNDERWRITING LIMITATION b/: $116,480,000. SURETY LICENSES c,f/: IL, NY, PA. INCORPORATED IN: Illinois.

See Footnotes and Notes at the end of this Circular.

Hartford Insurance Company of the Midwest (NAIC #37478)
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-4707. UNDERWRITING LIMITATION b/: $12,617,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast (NAIC #38261)
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-4707. UNDERWRITING LIMITATION b/: $5,492,000. SURETY LICENSES c,f/: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

Indemnity Company of California (NAIC #25550)
BUSINESS ADDRESS: P. O. Box 19725, Irvine, CA 92623. PHONE: (800) 782-1546. UNDERWRITING LIMITATION b/: $627,000. SURETY LICENSES c,f/: AK, AZ, CA, HI, ID, IN, NV, OR, SC, UT, VA, WA. INCORPORATED IN: California.

Independence Casualty and Surety Company (NAIC #10024)
BUSINESS ADDRESS: P. O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400. UNDERWRITING LIMITATION b/: $1,925,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

Indiana Insurance Company (NAIC #22659)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $21,892,000. SURETY LICENSES c,f/: FL, IL, IN, IA, KS, KY, MI, MN, NJ, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Indiana Lumbermens Mutual Insurance Company (NAIC #14265)
BUSINESS ADDRESS: 3600 Woodview Trace, Indianapolis, IN 46268-0600. PHONE: (317) 875-3710. UNDERWRITING LIMITATION b/: $2,971,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company (NAIC #23264)
BUSINESS ADDRESS: P. O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: $8,710,000. SURETY LICENSES c,f/: AZ, CO, IA, KS, MN, MO, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of the State of Pennsylvania (The) (NAIC #19429)
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 458-7018. UNDERWRITING LIMITATION b/: $40,094,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

See Footnotes and Notes at the end of this Circular.

Insurance Company of the West (NAIC #27847)
BUSINESS ADDRESS: P. O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400. UNDERWRITING LIMITATION b/: $23,094,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Insurors Indemnity Company (NAIC #43273)
BUSINESS ADDRESS: P. O. Box 2683, Waco, TX 76702-2683. PHONE: (254) 759-3703 x-3727. UNDERWRITING LIMITATION b/: $296,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

INTEGRAND ASSURANCE COMPANY (NAIC #26778)
BUSINESS ADDRESS: P. O. Box 70128, San Juan, PR 00936-8128. PHONE: (787) 781-0707. UNDERWRITING LIMITATION b/: $5,675,000. SURETY LICENSES c,f/: PR, VI. INCORPORATED IN: Puerto Rico.

International Business & Mercantile REassurance Company (NAIC #24139)
BUSINESS ADDRESS: 307 North Michigan Avenue, Chicago, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION b/: $12,380,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

International Fidelity Insurance Company (NAIC #11592)[5]
BUSINESS ADDRESS: One Newark Center, Newark, NJ 07102-5207. PHONE: (973) 624-7200. UNDERWRITING LIMITATION b/: $4,360,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

ISLAND INSURANCE COMPANY, LIMITED (NAIC #22845)
BUSINESS ADDRESS: P. O. Box 1520, Honolulu, HI 96806-1520. PHONE: (808) 564-8200. UNDERWRITING LIMITATION b/: $8,963,000. SURETY LICENSES c,f/: HI. INCORPORATED IN: Hawaii.

Kansas Bankers Surety Company (The) (NAIC #15962)
BUSINESS ADDRESS: P. O. Box 1654, Topeka, KS 66601-1654. PHONE: (785) 228-0000. UNDERWRITING LIMITATION b/: $10,488,000. SURETY LICENSES c,f/: AZ, AR, CO, DE, ID, IL, IN, IA, KS, KY, LA, ME, MI, MN, MS, MO, MT, NE, NM, ND, OH, OK, SD, TN, TX, VA, WI, WY. INCORPORATED IN: Kansas.

See Footnotes and Notes at the end of this Circular.

Lexington Insurance Company (NAIC #19437)
BUSINESS ADDRESS: 100 Summer Street, Boston, MA 02110. PHONE: (212) 458-7018. UNDERWRITING LIMITATION b/: $211,641,000. SURETY LICENSES c,f/: DE. INCORPORATED IN: Delaware.

LEXINGTON NATIONAL INSURANCE CORPORATION (NAIC #37940)
BUSINESS ADDRESS: 214 East Lexington Street, Baltimore, MD 21202. PHONE: (410) 625-0800. UNDERWRITING LIMITATION b/: $625,000. SURETY LICENSES c,f/: AK, AZ, CA, CO, DE, FL, HI, ID, IN, LA, ME, MD, MN, MS, MO, MT, NJ, NY, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WY. INCORPORATED IN: Maryland.

Lexon Insurance Company (NAIC #13307)
BUSINESS ADDRESS: 10002 Shelbyville Road, Suite 100, Louisville, KY 40223. PHONE: (502) 253-6568. UNDERWRITING LIMITATION b/: $2,005,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Liberty Insurance Corporation (NAIC #42404)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500 x-42067. UNDERWRITING LIMITATION b/: $25,779,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

LIBERTY MUTUAL FIRE INSURANCE COMPANY (NAIC #23035)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500 x-42067. UNDERWRITING LIMITATION b/: $55,123,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Liberty Mutual Insurance Company (NAIC #23043)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500 x-42067. UNDERWRITING LIMITATION b/: $466,304,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

See Footnotes and Notes at the end of this Circular.

Lincoln General Insurance Company (NAIC #33855)
BUSINESS ADDRESS: 3350 Whiteford Rd., P.O. Box 3709, York, PA 17402-0136. PHONE: (847) 700-8603. UNDERWRITING LIMITATION b/: $15,259,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

LM Insurance Corporation (NAIC #33600)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500 x-42067. UNDERWRITING LIMITATION b/: $1,685,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Lyndon Property Insurance Company (NAIC #35769)
BUSINESS ADDRESS: 14755 North Outer Forty Rd., Suite 400, St. Louis, MO 63017. PHONE: (800) 950-6060. UNDERWRITING LIMITATION b/: $15,368,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Madison Insurance Company (NAIC #10702)
BUSINESS ADDRESS: 303 Peachtree Street NE, Suite 700, Atlanta, GA 30308. PHONE: (404) 588-8344. UNDERWRITING LIMITATION b/: $6,734,000. SURETY LICENSES c,f/: DC, FL, GA, MD, TN, VA. INCORPORATED IN: Georgia.

Massachusetts Bay Insurance Company (NAIC #22306)
BUSINESS ADDRESS: 440 Lincoln Street, Worcester, MA 01653. PHONE: (508) 853-7200 x-2075. UNDERWRITING LIMITATION b/: $2,191,000. SURETY LICENSES c,f/: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

Merchants Bonding Company (Mutual) (NAIC #14494)
BUSINESS ADDRESS: 2100 Fleur Drive, Des Moines, IA 50321-1158. PHONE: (515) 243-8171. UNDERWRITING LIMITATION b/: $3,438,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

See Footnotes and Notes at the end of this Circular.

Michigan Millers Mutual Insurance Company (NAIC #14508)
BUSINESS ADDRESS: P. O. Box 30060, Lansing, MI 48909-7560. PHONE: (517) 482-6211 x-252. UNDERWRITING LIMITATION b/: $9,499,000. SURETY LICENSES c,f/: AZ, AR, CA, ID, IL, IN, IA, KS, KY, MI, MN, MO, NE, NY, NC, ND, OH, OK, PA, SD, VA, WI. INCORPORATED IN: Michigan.

Mid-Century Insurance Company (NAIC #21687)
BUSINESS ADDRESS: P. O. Box 2478 Terminal Annex, Los Angeles, CA 90051. PHONE: (805) 583-7000. UNDERWRITING LIMITATION b/: $60,585,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY (NAIC #23418)
BUSINESS ADDRESS: P. O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION b/: $13,282,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, IL, IN, IA, KS, LA, MN, MS, MO, MT, NE, NM, NC, ND, OH, OK, SC, TN, TX, UT, VA, WA, WY. INCORPORATED IN: Oklahoma.

MIDWESTERN INDEMNITY COMPANY (THE) (NAIC #23515)[6]
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $2,635,000. SURETY LICENSES c,f/: AL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NJ, NY, NC, OH, PA, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Minnesota Surety and Trust Company (NAIC #30996)
BUSINESS ADDRESS: P. O. Box 463, Austin, MN 55912-0463. PHONE: (507) 437-3231. UNDERWRITING LIMITATION b/: $134,000. SURETY LICENSES c,f/: CO, MN, MT, ND, SD, UT. INCORPORATED IN: Minnesota.

Motorists Mutual Insurance Company (NAIC #14621)
BUSINESS ADDRESS: 471 East Broad Street, Columbus, OH 43215. PHONE: (800) 876-6642. UNDERWRITING LIMITATION b/: $37,100,000. SURETY LICENSES c,f/: IN, KY, MI, OH, PA, WV. INCORPORATED IN: Ohio.

Motors Insurance Corporation (NAIC #22012)
BUSINESS ADDRESS: 300 Galleria Officentre, Southfield, MI 48034. PHONE: (248) 263-6900. UNDERWRITING LIMITATION b/: $175,812,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

See Footnotes and Notes at the end of this Circular.

National American Insurance Company (NAIC #23663)
BUSINESS ADDRESS: 1010 Manvel Avenue, Chandler, OK 74834. PHONE: (405) 258-0804. UNDERWRITING LIMITATION b/: $5,015,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Oklahoma.

National Fire Insurance Company of Hartford (NAIC #20478)
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (800) 262-2255. UNDERWRITING LIMITATION b/: $15,368,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company (NAIC #14788)
BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (603) 358-1785. UNDERWRITING LIMITATION b/: $30,826,000. SURETY LICENSES c,f/: AZ, CT, DE, DC, GA, ID, IL, IN, IA, KY, ME, MD, MA, MI, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company (NAIC #20087)
BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131-3580. PHONE: (402) 536-3000. UNDERWRITING LIMITATION b/: $2,309,632,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

National Surety Corporation (NAIC #21881)
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (800) 243-9622. UNDERWRITING LIMITATION b/: $11,993,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA (NAIC #19445)
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 458-7018. UNDERWRITING LIMITATION b/: $541,777,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

See Footnotes and Notes at the end of this Circular.

Nationwide Mutual Insurance Company (NAIC #23787)
BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43215-2220. PHONE: (614) 249-6408. UNDERWRITING LIMITATION b/: $677,318,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

NAVIGATORS INSURANCE COMPANY (NAIC #42307)
BUSINESS ADDRESS: 6 International Drive, Rye Brook, NY 10573. PHONE: (914) 934-8999. UNDERWRITING LIMITATION b/: $21,032,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Netherlands Insurance Company (The) (NAIC #24171)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $4,095,000. SURETY LICENSES c,f/: AZ, AR, CA, CT, DC, GA, ID, IL, IN, IA, KY, ME, MD, MA, MI, MN, NV, NH, NJ, NY, NC, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI. INCORPORATED IN: New Hampshire.

New Hampshire Insurance Company (NAIC #23841)
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 458-7018. UNDERWRITING LIMITATION b/: $69,675,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY (NAIC #29874)
BUSINESS ADDRESS: 650 Elm Street, Manchester, NH 03101. PHONE: (603) 644-6600. UNDERWRITING LIMITATION b/: $12,394,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

NORTHWESTERN PACIFIC INDEMNITY COMPANY (NAIC #20338)
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-5150. UNDERWRITING LIMITATION b/: $3,654,000. SURETY LICENSES c,f/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon.

See Footnotes and Notes at the end of this Circular.

NOVA Casualty Company (NAIC #42552)
BUSINESS ADDRESS: 180 Oak Street, Buffalo, NY 14203. PHONE: (716) 856-3722 x-315. UNDERWRITING LIMITATION b/: $1,501,000. SURETY LICENSES c,f/: AL, AZ, FL, GA, IL, IN, IA, MS, NV, NY, ND, OH, PA, SC, TN, VA. INCORPORATED IN: New York.

Ohio Casualty Insurance Company (The) (NAIC #24074)
BUSINESS ADDRESS: 9450 Seward Road, Fairfield, OH 45014. PHONE: (513) 603-2400. UNDERWRITING LIMITATION b/: $31,532,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company (NAIC #24104)
BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0980. UNDERWRITING LIMITATION b/: $76,529,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, DC, FL, GA, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Ohio Indemnity Company (NAIC #26565)
BUSINESS ADDRESS: 250 East Broad Street, 10th Floor, Columbus, OH 43215. PHONE: (614) 228-2800 x-5230. UNDERWRITING LIMITATION b/: $3,629,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Oklahoma Surety Company (NAIC #23426)
BUSINESS ADDRESS: P. O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION b/: $687,000. SURETY LICENSES c,f/: AR, KS, LA, OK, TX, VA. INCORPORATED IN: Oklahoma.

OLD DOMINION INSURANCE COMPANY (NAIC #40231)
BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (603) 358-1785. UNDERWRITING LIMITATION b/: $1,719,000. SURETY LICENSES c,f/: DE, FL, GA, MD, SC, VA. INCORPORATED IN: Florida.

Old Republic Insurance Company (NAIC #24147)
BUSINESS ADDRESS: P. O. Box 789, Greensburg, PA 15601-0789. PHONE: (724) 834-5000. UNDERWRITING LIMITATION b/: $60,999,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

See Footnotes and Notes at the end of this Circular.

Old Republic Surety Company (NAIC #40444)
BUSINESS ADDRESS: P. O. Box 1635, Milwaukee, WI 53201. PHONE: (262) 797-2640 x-654. UNDERWRITING LIMITATION b/: $3,608,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

OneBeacon America Insurance Company (NAIC #20621)
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (508) 549-9797. UNDERWRITING LIMITATION b/: $50,876,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

OneBeacon Insurance Company (NAIC #21970)
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (508) 549-9797. UNDERWRITING LIMITATION b/: $85,134,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Pacific Indemnity Company (NAIC #20346)
BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-5150. UNDERWRITING LIMITATION b/: $97,918,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

PACIFIC INDEMNITY INSURANCE COMPANY (NAIC #18380)
BUSINESS ADDRESS: 348 West O'Brien Drive, Hagatna, GU 96932. PHONE: (671) 472-8834. UNDERWRITING LIMITATION b/: $317,000. SURETY LICENSES c,f/: GU. INCORPORATED IN: Guam.

PARTNER REINSURANCE COMPANY OF THE U.S. (NAIC #38636)
BUSINESS ADDRESS: One Greenwich Plaza, Greenwich, CT 06830-6352. PHONE: (203) 485-4287. UNDERWRITING LIMITATION b/: $45,298,000. SURETY LICENSES c,f/: AL, AK, AZ, CA, CO, DC, IL, KS, MI, MS, NE, NY, TX, UT, WA. INCORPORATED IN: New York.

See Footnotes and Notes at the end of this Circular.

PARTNERRE INSURANCE COMPANY OF NEW YORK (NAIC #10006)
BUSINESS ADDRESS: One Greenwich Plaza, Greenwich, CT 06830-6352. PHONE: (203) 485-4287. UNDERWRITING LIMITATION b/: $9,269,000. SURETY LICENSES c,f/: AL, AZ, CA, CO, DE, DC, IL, IN, IA, KS, KY, MD, MI, MN, MS, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: New York.

Peerless Indemnity Insurance Company (NAIC #18333)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (630) 505-1442. UNDERWRITING LIMITATION b/: $47,851,000. SURETY LICENSES c,f/: AK, AZ, AR, CO, IL, KS, MD, MT, NJ, NY, PA, UT, VT, WA, WI. INCORPORATED IN: Illinois.

Peerless Insurance Company (NAIC #24198)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $29,483,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company (NAIC #24228)
BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. PHONE: (309) 346-1161 x-2499. UNDERWRITING LIMITATION b/: $5,667,000. SURETY LICENSES c,f/: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Penn Millers Insurance Company (NAIC #14982)
BUSINESS ADDRESS: P. O. Box P, Wilkes-Barre, PA 18773-0016. PHONE: (570) 822-8111. UNDERWRITING LIMITATION b/: $4,433,000. SURETY LICENSES c,f/: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WI. INCORPORATED IN: Pennsylvania.

Pennsylvania General Insurance Company (NAIC #21962)
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (508) 549-9797. UNDERWRITING LIMITATION b/: $20,243,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, DC, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company (NAIC #14990)
BUSINESS ADDRESS: P. O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941 x-6867. UNDERWRITING LIMITATION b/: $25,413,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

See Footnotes and Notes at the end of this Circular.

Pioneer General Insurance Company (NAIC #12670)
BUSINESS ADDRESS: 6780 East Hampden Avenue, Denver, CO 80224. PHONE: (303) 758-8122. UNDERWRITING LIMITATION b/: $436,000. SURETY LICENSES c,f/: CO, KS, MT, NM, UT, WY. INCORPORATED IN: Colorado.

PLATTE RIVER INSURANCE COMPANY (NAIC #18619)
BUSINESS ADDRESS: P. O. Box 5900, Madison, WI 53705-0900. PHONE: (860) 494-4928. UNDERWRITING LIMITATION b/: $2,868,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

Progressive Casualty Insurance Company (NAIC #24260)
BUSINESS ADDRESS: 6300 Wilson Mills Road, W33, Mayfield Village, OH 44143-2182. PHONE: (800) 776-4737. UNDERWRITING LIMITATION b/: $221,811,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Protective Insurance Company (NAIC #12416)
BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636-9800 x-288. UNDERWRITING LIMITATION b/: $30,338,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Ranger Insurance Company (NAIC #24384)
BUSINESS ADDRESS: P.O. Box 2807, Houston, TX 77042. PHONE: (713) 954-8100. UNDERWRITING LIMITATION b/: $8,404,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Republic - Franklin Insurance Company (NAIC #12475)
BUSINESS ADDRESS: P. O. 530, Utica, NY 13503-0530. PHONE: (315) 734-2413. UNDERWRITING LIMITATION b/: $2,555,000. SURETY LICENSES c,f/: CT, DE, DC, GA, IL, IN, KS, MD, MA, MI, NJ, NY, NC, OH, PA, RI, TN, TX, VA, WI. INCORPORATED IN: Ohio.

See Footnotes and Notes at the end of this Circular.

RLI Indemnity Company (NAIC #28860)

BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615. PHONE: (309) 692-1000 x-5466. UNDERWRITING LIMITATION b/: $3,184,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

RLI Insurance Company (NAIC #13056)

BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615. PHONE: (309) 692-1000 x-5466. UNDERWRITING LIMITATION b/: $51,475,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

SAFECO Insurance Company of America (NAIC #24740)

BUSINESS ADDRESS: Safeco Plaza, Seattle, WA 98185. PHONE: (800) 332-3226. UNDERWRITING LIMITATION b/: $81,848,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Safety National Casualty Corporation (NAIC #15105)

BUSINESS ADDRESS: 2043 Woodland Parkway, Suite 200, St. Louis, MO 63146. PHONE: (314) 995-5300 x-200. UNDERWRITING LIMITATION b/: $25,217,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Seaboard Surety Company (NAIC #22535)

BUSINESS ADDRESS: 5801 Smith Avenue, Baltimore, MD 21209-3653. PHONE: (800) 356-4098. UNDERWRITING LIMITATION b/: $11,898,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

SECURA INSURANCE, A Mutual Company (NAIC #22543)

BUSINESS ADDRESS: P. O. Box 819, Appleton, WI 54912-0819. PHONE: (920) 739-3161. UNDERWRITING LIMITATION b/: $12,802,000. SURETY LICENSES c,f/: IL, IN, IA, KS, MI, MN, MO, ND, WI. INCORPORATED IN: Wisconsin.

See Footnotes and Notes at the end of this Circular.

Select Insurance Company (NAIC #22233)
BUSINESS ADDRESS: P. O. Box 131771, Dallas, TX 75313-1771. PHONE: (917) 320-4989. UNDERWRITING LIMITATION b/: $5,245,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Selective Insurance Company of America (NAIC #12572)
BUSINESS ADDRESS: 40 Wantage Avenue, Branchville, NJ 07890. PHONE: (973) 948-3000. UNDERWRITING LIMITATION b/: $37,700,000. SURETY LICENSES c,f/: AL, CT, DE, DC, GA, IL, IN, IA, KY, MD, MA, MI, MN, MS, MO, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, TX, VA, WV, WI. INCORPORATED IN: New Jersey.

Seneca Insurance Company, Inc. (NAIC #10936)
BUSINESS ADDRESS: 160 Water Street, New York, NY 10038-4922. PHONE: (212) 344-3000. UNDERWRITING LIMITATION b/: $8,325,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Sentry Insurance A Mutual Company (NAIC #24988)
BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481-8020. PHONE: (715) 346-7527. UNDERWRITING LIMITATION b/: $202,951,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Sentry Select Insurance Company (NAIC #21180)
BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481-8020. PHONE: (715) 346-7527. UNDERWRITING LIMITATION b/: $14,756,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

SERVICE INSURANCE COMPANY (NAIC #36560)
BUSINESS ADDRESS: P. O. Box 9729, Bradenton, FL 34206-9729. PHONE: (800) 780-8423 x-1021. UNDERWRITING LIMITATION b/: $1,011,000. SURETY LICENSES c,f/: AL, AK, AR, CO, DE, DC, FL, GA, IN, IA, KS, ME, MI, MS, MO, MT, NE, NV, NM, NC, ND, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV. INCORPORATED IN: Florida.

See Footnotes and Notes at the end of this Circular.

SERVICE INSURANCE COMPANY INC. (THE) (NAIC #28240)
BUSINESS ADDRESS: 80 Main Street, West Orange, NJ 07052. PHONE: (973) 731-7650. UNDERWRITING LIMITATION b/: $228,000. SURETY LICENSES c,f/: CT, DE, NJ, NY, PA. INCORPORATED IN: New Jersey.

St. Paul Fire and Marine Insurance Company (NAIC #24767)
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (800) 356-4098. UNDERWRITING LIMITATION b/: $381,294,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY (NAIC #24775)
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (800) 356-4098. UNDERWRITING LIMITATION b/: $1,376,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company (NAIC #24791)
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (800) 356-4098. UNDERWRITING LIMITATION b/: $2,438,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Standard Fire Insurance Company (The) (NAIC #19070)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-1561. UNDERWRITING LIMITATION b/: $88,945,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Star Insurance Company (NAIC #18023)
BUSINESS ADDRESS: 26600 Telegraph Road, Southfield, MI 48034. PHONE: (800) 482-2726. UNDERWRITING LIMITATION b/: $9,992,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

See Footnotes and Notes at the end of this Circular.

State Auto Property and Casualty Insurance Company (NAIC #25127)
BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215. PHONE: (614) 464-5000 x-5017. UNDERWRITING LIMITATION b/: $35,054,000. SURETY LICENSES c,f/: AL, AZ, AR, FL, GA, IL, IN, KS, KY, MD, MI, MN, MS, MO, MT, NC, ND, OH, OK, PA, SC, SD, TN, UT, VA, WV, WI, WY. INCORPORATED IN: South Carolina.

State Automobile Mutual Insurance Company (NAIC #25135)
BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215-3976. PHONE: (614) 464-5000 x-5017. UNDERWRITING LIMITATION b/: $82,241,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, UT, VA, WV, WI, WY. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company (NAIC #25143)
BUSINESS ADDRESS: One State Farm Plaza, Bloomington, IL 61710. PHONE: (309) 766-6393. UNDERWRITING LIMITATION b/: $460,426,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Suretec Insurance Company (NAIC #10916)
BUSINESS ADDRESS: 10000 Memorial Dr. Suite 330, Houston, TX 77024. PHONE: (713) 812-0800. UNDERWRITING LIMITATION b/: $899,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

SURETY BONDING COMPANY OF AMERICA (NAIC #24047)
BUSINESS ADDRESS: P. O. Box 5111, Sioux Falls, SD 57117-5111. PHONE: (800) 331-6053. UNDERWRITING LIMITATION b/: $582,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DE, DC, GA, ID, IL, IN, KS, MN, MO, MT, NE, NV, NM, NY, ND, OK, OR, SC, SD, TN, TX, UT, WV, WY. INCORPORATED IN: South Dakota.

Surety Company of the Pacific (NAIC #12793)
BUSINESS ADDRESS: P. O. Box 10289, Van Nuys, CA 91410. PHONE: (818) 609-9232. UNDERWRITING LIMITATION b/: $508,000. SURETY LICENSES c,f/: CA. INCORPORATED IN: California.

Swiss Reinsurance America Corporation (NAIC #25364)
BUSINESS ADDRESS: 175 King Street, Armonk, NY 10504. PHONE: (914) 828-8000. UNDERWRITING LIMITATION b/: $233,002,000. SURETY LICENSES c,f/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

See Footnotes and Notes at the end of this Circular.

TEXAS PACIFIC INDEMNITY COMPANY (NAIC #20389)
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-5150. UNDERWRITING LIMITATION b/: $1,084;000. SURETY LICENSES c,f/: AR, TX. INCORPORATED IN: Texas.

TRANSATLANTIC REINSURANCE COMPANY (NAIC #19453)
BUSINESS ADDRESS: 80 Pine Street, New York, NY 10005. PHONE: (212) 770-2000. UNDERWRITING LIMITATION b/: $185,119,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, DE, DC, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, NY, OH, OK, PA, SD, UT, WA, WI. INCORPORATED IN: New York.

Travelers Casualty and Surety Company (NAIC #19038)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-1561. UNDERWRITING LIMITATION b/: $202,223,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of America (NAIC #31194)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-1561. UNDERWRITING LIMITATION b/: $81,966,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty Insurance Company of America (NAIC #19046)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-1561. UNDERWRITING LIMITATION b/: $41,866,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Indemnity Company (The) (NAIC #25658)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-1561. UNDERWRITING LIMITATION b/: $432,422,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

See Footnotes and Notes at the end of this Circular.

Trinity Universal Insurance Company (NAIC #19887)
BUSINESS ADDRESS: P. O. Box 655028, Dallas, TX 75265-5028. PHONE: (800) 926-1887. UNDERWRITING LIMITATION b/: $92,209,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, MT, NE, NM, OH, OK, OR, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Texas.

U.S. Specialty Insurance Company (NAIC #29599)
BUSINESS ADDRESS: 13403 Northwest Freeway, Houston, TX 77040-6094. PHONE: (713) 462-1000. UNDERWRITING LIMITATION b/: $11,507,000. SURETY LICENSES c,f/: AL, AK, AR, CO, DC, HI, ID, IL, KS, KY, LA, MI, MS, MO, MT, NE, NV, NM, NY, ND, OK, SD, TN, TX, UT, VT, WA, WV, WY. INCORPORATED IN: Texas.

Union Insurance Company (NAIC #25844)
BUSINESS ADDRESS: P. O. Box 1594, Des Moines, IA 50306. PHONE: (515) 278-3000. UNDERWRITING LIMITATION b/: $1,875,000. SURETY LICENSES c,f/: AL, AK, AZ, CO, DE, DC, GA, ID, IL, IA, KS, KY, LA, MD, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

UNITED CASUALTY AND SURETY INSURANCE COMPANY (NAIC #36226)
BUSINESS ADDRESS: 170 Milk Street, Boston, MA 02109. PHONE: (617) 542-3232 x-109. UNDERWRITING LIMITATION b/: $293,000. SURETY LICENSES c,f/: DC, MA, NY, ND, PA. INCORPORATED IN: Massachusetts.

United Coastal Insurance Company (NAIC #28053)[7]
BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 223-5000. UNDERWRITING LIMITATION b/: $2,144,000. SURETY LICENSES c,f/: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company (NAIC #13021)
BUSINESS ADDRESS: P. O. Box 73909, Cedar Rapids, IA 52407-3909. PHONE: (319) 399-5700. UNDERWRITING LIMITATION b/: $30,311,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

UNITED FIRE & INDEMNITY COMPANY (NAIC #19496)
BUSINESS ADDRESS: P. O. Box 73909, Cedar Rapids, IA 52407-3909. PHONE: (409) 766-4600. UNDERWRITING LIMITATION b/: $806,000. SURETY LICENSES c,f/: AL, CO, IN, KY, LA, MS, MO, NM, TX. INCORPORATED IN: Texas.

See Footnotes and Notes at the end of this Circular.

United States Fidelity and Guaranty Company (NAIC #25887)
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (800) 356-4098. UNDERWRITING LIMITATION b/: $86,106,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

United States Fire Insurance Company (NAIC #21113)
BUSINESS ADDRESS: 305 Madison Avenue, Morristown, NJ 07962. PHONE: (973) 490-6473. UNDERWRITING LIMITATION b/: $71,864,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Delaware.

United States Surety Company (NAIC #10656)
BUSINESS ADDRESS: P. O. Box 5605, Timonium, MD 21094-5605. PHONE: (410) 453-9522. UNDERWRITING LIMITATION b/: $468,000. SURETY LICENSES c,f/: DE, DC, MD, NJ, NC, PA, SC, WV. INCORPORATED IN: Maryland.

UNITED SURETY AND INDEMNITY COMPANY (NAIC #44423)
BUSINESS ADDRESS: P. O. Box 2111, San Juan, PR 00922-2111. PHONE: (787) 273-1818. UNDERWRITING LIMITATION b/: $4,543,000. SURETY LICENSES c,f/: PR. INCORPORATED IN: Puerto Rico.

UNIVERSAL INSURANCE COMPANY (NAIC #31704)
BUSINESS ADDRESS: GPO Box 71338, San Juan, PR 00936. PHONE: (787) 706-7150. UNDERWRITING LIMITATION b/: $12,507,000. SURETY LICENSES c,f/: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company (NAIC #25933)
BUSINESS ADDRESS: P. O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: $7,027,000. SURETY LICENSES c,f/: AZ, AR, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY (NAIC #41181)
BUSINESS ADDRESS: 7045 College Boulevard, Overland Park, KS 66211. PHONE: (913) 339-1000. UNDERWRITING LIMITATION b/: $45,984,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Kansas.

See Footnotes and Notes at the end of this Circular.

Utica Mutual Insurance Company (NAIC #25976)
BUSINESS ADDRESS: P. O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2413. UNDERWRITING LIMITATION b/: $39,201,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

VAN TOL SURETY COMPANY, INCORPORATED (NAIC #30279)
BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692-6294. UNDERWRITING LIMITATION b/: $327,000. SURETY LICENSES c,f/: SD. INCORPORATED IN: South Dakota.

Vigilant Insurance Company (NAIC #20397)
BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-5150. UNDERWRITING LIMITATION b/: $9,722,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company (NAIC #32778)
BUSINESS ADDRESS: 1200 Arlington Heights Road, Suite 400, Itasca, IL 60143. PHONE: (630) 227-4700. UNDERWRITING LIMITATION b/: $3,562,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

West American Insurance Company (NAIC #44393)
BUSINESS ADDRESS: 9450 Seward Road, Fairfield, OH 45014. PHONE: (513) 603-2400. UNDERWRITING LIMITATION b/: $44,471,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

WEST BEND MUTUAL INSURANCE COMPANY (NAIC #15350)
BUSINESS ADDRESS: 1900 South 18th Avenue, West Bend, WI 53095. PHONE: (262) 334-5571 x-6523. UNDERWRITING LIMITATION b/: $29,461,000. SURETY LICENSES c,f/: IL, IN, IA, MI, MN, OH, WI. INCORPORATED IN: Wisconsin.

See Footnotes and Notes at the end of this Circular.

Westchester Fire Insurance Company (NAIC #21121)
BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 41484, Philadelphia, PA 19101-1484. PHONE: (215) 640-4551. UNDERWRITING LIMITATION b/: $47,617,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Western Insurance Company (NAIC #10008)
BUSINESS ADDRESS: P. O. Box 21030, Reno, NV 89515. PHONE: (775) 829-6650. UNDERWRITING LIMITATION b/: $881,000. SURETY LICENSES c,f/: CA, NV, NM, UT. INCORPORATED IN: Nevada.

Western Surety Company (NAIC #13188)
BUSINESS ADDRESS: P. O. Box 5077, Sioux Falls, SD 57117-5077. PHONE: (800) 331-6053. UNDERWRITING LIMITATION b/: $18,460,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

Westfield Insurance Company (NAIC #24112)
BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0980. UNDERWRITING LIMITATION b/: $42,745,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company (NAIC #24120)
BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0980. UNDERWRITING LIMITATION b/: $10,989,000. SURETY LICENSES c,f/: AZ, CA, FL, GA, IL, IN, IA, KY, MI, MN, NM, ND, OH, PA, SD, TN, TX, WV, WI. INCORPORATED IN: Ohio.

Westport Insurance Corporation (NAIC #34207)
BUSINESS ADDRESS: P. O. Box 2991, Overland Park, KS 66202-1391. PHONE: (913) 676-5200. UNDERWRITING LIMITATION b/: $30,403,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

See Footnotes and Notes at the end of this Circular.

XL Reinsurance America Inc. (NAIC #20583)

BUSINESS ADDRESS: Seaview House, 70 Seaview Avenue, Stamford, CT 06902-6040. PHONE: (203) 964-3466. UNDERWRITING LIMITATION b/: $125,437,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

XL Specialty Insurance Company (NAIC #37885)

BUSINESS ADDRESS: Seaview House, 70 Seaview Avenue, Stamford, CT 06902-6040. PHONE: (203) 964-3466. UNDERWRITING LIMITATION b/: $10,947,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Zurich American Insurance Company (NAIC #16535)

BUSINESS ADDRESS: 1400 American Lane, Tower I, 19th Floor, Schaumburg, IL 60196-1056. PHONE: (800) 382-2150. UNDERWRITING LIMITATION b/: $310,649,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes and Notes at the end of this Circular.

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]

Clearwater Insurance Company (NAIC #25070)
BUSINESS ADDRESS: 300 First Stamford Place, Stamford, CT 06902. PHONE: (203) 977-8024. UNDERWRITING LIMITATION b/: $55,704,000.

GE Reinsurance Corporation (NAIC #22969)
BUSINESS ADDRESS: 540 W. Northwest Highway, Barrington, IL 60010. PHONE: (847) 277-5437. UNDERWRITING LIMITATION b/: $66,720,000.

NATIONAL REINSURANCE CORPORATION (NAIC #34835)
BUSINESS ADDRESS: 695 East Main Street, Stamford, CT 06901-2141. PHONE: (203) 328-5604. UNDERWRITING LIMITATION b/: $69,436,000.

Odyssey America Reinsurance Corporation (NAIC #23680)
BUSINESS ADDRESS: 300 First Stamford Place, Stamford, CT 06902. PHONE: (203) 977-8019. UNDERWRITING LIMITATION b/: $99,602,000.

Phoenix Insurance Company (The) (NAIC #25623)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-1561. UNDERWRITING LIMITATION b/: $96,570,000.

SAFECO Insurance Company of Illinois (NAIC #39012)
BUSINESS ADDRESS: Safeco Plaza, Seattle, WA 98185. PHONE: (800) 332-3226. UNDERWRITING LIMITATION b/: $15,418,000.

SAFECO National Insurance Company (NAIC #24759)
BUSINESS ADDRESS: Safeco Plaza, Seattle, WA 98185. PHONE: (800) 332-3226. UNDERWRITING LIMITATION b/: $6,040,000.

ST. PAUL PROTECTIVE INSURANCE COMPANY (NAIC #19224)
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (800) 356-4098. UNDERWRITING LIMITATION b/: $21,956,000.

ZENITH INSURANCE COMPANY (NAIC #13269)[8]
BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. PHONE: (800) 440-5020. UNDERWRITING LIMITATION b/: $45,980,000.

See Footnotes and Notes at the end of this Circular.

FOOTNOTES

1 AMERICAN CONTRACTORS INDEMNITY COMPANY is required by state law to conduct business in the state of Texas as TEXAS BONDING COMPANY, assumed name of AMERICAN CONTRACTORS INDEMNITY COMPANY.

2 The Continental Insurance Company changed its state of incorporation from New Hampshire to South Carolina effective January 1, 2004.

3 The Fidelity and Casualty Company of New York changed its state of incorporation from New Hampshire to South Carolina effective January 1, 2004.

4 First Community Insurance Company changed its name effective January 23, 2004 to Fidelity National Property and Casualty Insurance Company.

5 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular. Do not hesitate to contact the Company to verify the authenticity of a bond.

6 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

7 United Coastal Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

8 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular. Do not hesitate to contact the Company to verify the authenticity of a bond.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a *per bond basis*. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, *when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected* by

See Footnotes and Notes at the end of this Circular.

co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a *bond of this type as an Excess Risk.* When Excess Risks on *bonds in favor of the United States are protected by reinsurance*, such reinsurance is to be effected by use of a *Federal reinsurance form* to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(c) A surety company *must be licensed in the State or other area in which it provides a bond*, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec.24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. *For updated license information, you may contact the company directly or the applicable State Insurance Department.* Refer to the list of state insurance departments at the end of this publication. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(d) FEDERAL PROCESS AGENTS: Treasury Approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the *principal resides*; where the *obligation is to be performed;* and in the *District of Columbia* where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.)
(NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be Approved *surplus lines carriers* in various states. Such approval may indicate that the company is *authorized to write surety in a particular state, even though the company is not licensed in the state.* Questions related to this may be directed to the appropriate State Insurance Department. Refer to the list of state insurance departments at the end of this publication.

See Footnotes and Notes at the end of this Circular.

STATE INSURANCE DEPARTMENTS	TELEPHONE NO.
Alabama, Montgomery 36104	(334) 269-3550
Alaska, Anchorage 99501-3567	(907) 269-7900
Arizona, Phoenix 85018-7256	(602) 912-8400
Arkansas, Little Rock 72201-1904	(501) 371-2600
California, Sacramento 95814	(916) 492-3500
Colorado, Denver 80202	(303) 894-7499
Connecticut, Hartford 06142-0816	(860) 297-3800
D. C., Washington 20002	(202) 727-8000
Delaware, Dover 19904	(302) 739-4251
Florida, Tallahassee 32399-0300	(850) 413-2806
Georgia, Atlanta 30334	(404) 656-2056
Hawaii, Honolulu 96813	(808) 586-2790
Idaho, Boise 83720-0043	(208) 334-4250
Illinois, Springfield 62767-0001	(217) 782-4515
Indiana, Indianapolis 46204-2787	(317) 232-2385
Iowa, Des Moines 50319	(515) 281-5705
Kansas, Topeka 66612-1678	(785) 296-3071
Kentucky, Frankfort 40602-0517	(502) 564-6027
Louisiana, Baton Rouge 70802	(225) 342-5423
Maine, Augusta 04333-0034	(207) 624-8475
Maryland, Baltimore 21202-2272	(410) 468-2090
Massachusetts, Boston 02110	(617) 521-7301
Michigan, Lansing 48933-1020	(517) 373-0220
Minnesota, St. Paul 55101-2198	(651) 296-5769
Mississippi, Jackson 39201	(601) 359-3569
Missouri, Jefferson City 65102	(573) 751-4126
Montana, Helena 59601	(406) 444-2040
Nebraska, Lincoln 68508	(402) 471-2201
Nevada, Carson City 89701-5753	(775) 687-4270
New Hampshire, Concord 03301	(603) 271-2261
New Jersey, Trenton 08625	(609) 292-5360
New Mexico, Sante Fe 87504-1269	(505) 827-4601
New York, New York 10004-2319	(212) 480-2289
North Carolina, Raleigh 27611	(919) 733-3058
North Dakota, Bismarck 58505-0320	(701) 328-2440
Ohio, Columbus 43215-1067	(614) 644-2658
Oklahoma, Oklahoma City 73107	(405) 522-4969
Oregon, Salem 97301-3883	(503) 947-7980
Pennsylvania, Harrisburg 17120	(717) 783-0442
Puerto Rico, Santurce 00909	(787) 722-8686
Rhode Island, Providence 02903-4233	(401) 222-5466
South Carolina, Columbia 29202-3105	(803) 737-6212
South Dakota, Pierre 57501-3185	(605) 773-4104
Tennessee, Nashville 37243-0565	(615) 741-6007

See Footnotes and Notes at the end of this Circular.

Texas, Austin 78701	(512) 463-6464
Utah, Salt Lake City 84114-1201	(801) 538-3800
Vermont, Montpelier 05620-3101	(802) 828-3301
Virgin Islands, St. Thomas 00802	(340) 774-7166
Virginia, Richmond 23218	(804) 371-9694
Washington, Olympia 98504-0255	(360) 725-7100
West Virginia, Charleston 25305-0540	(304) 558-3354
Wisconsin, Madison 53707-7873	(608) 267-1233
Wyoming, Cheyenne 82002-0440	(307) 777-7401

See Footnotes and Notes at the end of this Circular.

[FR Doc. 04–14818 Filed 6–30–04; 8:45 am]
BILLING CODE 4810–35–M

Federal Register

Thursday,
July 1, 2004

Part VI

Department of Education

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Education Research for Fiscal Year (FY) 2005; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.305A, 84.305B, 84.305E, 84.305F, 84.305G, 84.305H, 84.305K, 84.305M, and 84.902B]

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Education Research for Fiscal Year (FY) 2005

SUMMARY: The Director of the Institute of Education Sciences (Institute) announces ten FY 2005 competitions for grants to support education research. The Director takes this action under the Education Sciences Reform Act of 2002 (Act), Title I of Public Law 107–279. The intent of these grants is to provide national leadership in expanding fundamental knowledge and understanding of education from early childhood education through postsecondary study.

SUPPLEMENTARY INFORMATION:

Mission of Institute: A central purpose of the Institute is to provide parents, educators, students, researchers, policymakers, and the general public with reliable information about education practices that support learning and improve academic achievement and access to education opportunities for all students. In carrying out its mission, the Institute provides support for programs of research in areas of demonstrated national need.

Competitions in This Notice: The Institute currently plans to support the following competitions in FY 2005:

- National Research and Development Centers. These centers will focus on Assessment, Education Policy, Early Childhood Education, and English Language Learners;
- Post-doctoral Research Fellowships;
- Reading Comprehension and Reading Scale-up Research;
- Cognition and Student Learning Research;
- Mathematics and Science Education Research;
- Teacher Quality Research with a Focus on Reading;
- Teacher Quality Research with a Focus on Mathematics and Science;
- Research on Education Finance, Leadership, and Management;
- Secondary Analysis of Data from the National Assessment of Educational Progress; and
- Field-Initiated Evaluations of Education Innovations.

Eligible Applicants: Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, non-profit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

Request for Applications and Other Information: Information regarding program and application requirements for each of the Institute's competitions is contained in the applicable Request for Applications package (RFA), which will be available at the following Web site: *http://www.ed.gov/programs/edresearch/applicant.html* on the dates indicated in the chart printed elsewhere in this notice. Interested potential applicants should periodically check the Institute's Web site.

Information regarding selection criteria and review procedures will also be posted at this Web site.

Fiscal Information: Although Congress has not enacted a final appropriation for FY 2005, the Institute is inviting applications for these competitions now so that it may be prepared to make awards following final action on the Department's appropriations bill. The President's FY 2005 Budget for the Institute includes sufficient funding for all of the competitions included in this notice. The actual award of grants is pending the availability of funds. The number of awards made under each competition will depend upon the quality of the applications received for that competition. The size of the awards will depend upon the scope of the projects proposed.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 80, 81, 82, 84, 85, 86 (part 86 applies only to institutions of higher education), 97, 98, and 99. In addition 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217, 75.219, 75.220, 75.221, 75.222, and 75.230.

Performance Measures

To evaluate the overall success of its education research program, the Institute annually assesses the quality and relevance of newly funded research projects, as well as the quality of research publications that result from its funded research projects. Two indicators address the quality of new projects. First, an external panel of eminent senior scientists reviews the quality of a randomly selected sample of newly funded research applications, and the percentage of new projects that are deemed to be of high quality is determined. Second, because much of the Institute's work focuses on questions of effectiveness, newly funded applications are evaluated to identify those that address causal questions and then to determine what percentage of those projects use randomized field trials to answer the causal questions. To evaluate the relevance of newly funded research projects, a panel of experienced education practitioners and administrators reviews descriptions of a randomly selected sample of newly funded projects and rates the degree to which the projects are relevant to educational practice.

Two indicators address the quality of new research publications, both print and web-based, which are the products of funded research projects. First, an external panel of eminent scientists reviews the quality of a randomly selected sample of new publications, and the percentage of new publications that are deemed to be of high quality is determined. Second, publications that address causal questions are identified, and are then reviewed to determine the percentage that employ randomized experimental designs. As funded research projects are completed, the Institute will subject the final reports to similar reviews.

To evaluate impact, the Institute surveys a random sample of K–16 policymakers and administrators once every 3 years to determine the percentage who report routinely considering evidence of effectiveness before adopting educational products and approaches.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications for the FY 2005 competitions be submitted electronically to the following Web site: *http://ies.constellagroup.com.* Information on the software to be used in submitting applications will be available at the same Web site.

FOR FURTHER INFORMATION CONTACT: The contact person associated with a particular program of research is listed in the following chart and in the particular RFA. The date on which applications will be available, the deadline for transmittal of applications,

the estimated range of awards, and the project period are also listed in the chart and in the particular RFA that will be posted at: *http://www.ed.gov/programs/edresearch/applicant.html.*

CFDA number and name	Applications available	Deadline for transmittal of applications	Estimated range of awards*	Project period	For further information contact
84.305G Reading Comprehension and Reading Scale-up Research.	July 9, 2004	October 28, 2004.	$150,000 to $1,200,000.	Up to 5 years ...	Elizabeth Albro; *Elizabeth.Albro@ed.gov.*
84.305K Mathematics and Science Education Research.	July 9, 2004	October 28, 2004.	$150,000 to $1,200,00.	Up to 5 years ...	Diana Cordova; *Diana.Cordova@ed.gov.*
84.902B Secondary Analysis of National Assessment of Educational Progress Data.	July 9, 2004	October 28, 2004.	$65,000 to $100,000.	Up to 18 months.	Alexandra Sedlacek; *Alexandra.Sedlacek@ed.gov.*
84.305A National Research and Development Centers.	July 9, 2004	Novemberr 18, 2004.	$1,000,000 to $2,000,000.	Up to 5 years ...	Michael Wiatrowski; *Michael.Wiatrowski@ed.gov.*
84.305B Post-doctoral Research Fellowships.	July 9, 2004	Novemberr 18, 2004.	Up to $200,000	Up to 5 years ...	James Griffin; *James.Griffin@ed.gov.*
84.305M Teacher Quality Research—Reading.	August 6, 2004	December 2, 2004.	$150,000 to $1,200,000.	Up to 5 years ...	Harold Himmelfarb; *Harold.Himmelfarb@ed.gov.*
84.305M Teacher Quality Research—Mathematics and Science.	August 6, 2004	December 2, 2004.	$150,000 to $1,200,000.	Up to 5 years ...	Harold Himmelfarb; *Harold.Himmelfarb@ed.gov.*
84.305E Research on Education, Finance, Leadership, and Management.	August 6, 2004	December 16, 2004.	$100,000 to $750,000.	Up to 4 years ...	Jon Oberg; *Jon.Oberg@ed.gov.*
84.305H Cognition and Student Learning Research.	August 6, 2004	December 16, 2004.	$150,000 to $350,000.	Up to 3 years ...	Elizabeth Albro; *Elizabeth.Albro@ed.gov.*
84.305F Field-Initiated Evaluations of Education Innovations.	August 6, 2004	December 16, 2004.	$150,000 to $1,200,000.	Up to 5 years ...	Stefanie Schmidt; *Stefanie.Schmidt@ed.gov.*

*These estimates are annual amounts.

Note: The Department is not bound by any estimates in this notice.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.** Individuals with disabilities may obtain a copy of the RFA in an alternative format by contacting that person.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 9501 *et seq.* (the "Education Sciences Reform Act of 2002", Title I of Public Law 107–279, November 5, 2002).

Dated: June 25, 2004.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 04–14988 Filed 6–30–04; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Thursday,
July 1, 2004

Part VII

Environmental Protection Agency

40 CFR Parts 51 and 52

Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion; Stay; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD–FRL–7780–1; E–Docket ID No. OAR–2002–0068; Legacy Docket No. A–2002–04]

RIN 2060–AM28

Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion; Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: A December 24, 2003 order of the U.S. Court of Appeals for the District of Columbia Circuit stayed the effectiveness of the Equipment Replacement Provision (ERP) of the Clean Air Act (CAA) New Source Review (NSR) Routine Maintenance, Repair, and Replacement (RMRR) exclusion. Today's action reflects this stay in the Code of Federal Regulations. This document also sets out EPA's interpretation of the effect of the stay on the Prevention of Significant Deterioration (PSD) federal implementation plans in various state implementation plans. EPA is issuing this final rule without notice and opportunity for public comment because there is good cause to do so within the meaning of the Administrative Procedure Act.

DATES: Effective July 1, 2004.

ADDRESSES: EPA has established a docket for this action under E-Docket ID No. OAR–2002–0068 (legacy docket number no. A–2002–04). This number will also appear at the top of your FR document along with the FRL assigned to your particular FR document]. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. David Svendsgaard, Information Transfer and Program Integration Division (C339–03), U.S. EPA Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2380, facsimile number (919) 541–5509, electronic mail address: *svendsgaard.dave@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Today's Final Rule

A. What RMRR Exclusion Is in Effect After the Court's Order?

On October 27, 2003, EPA published amendments to the regulations governing the PSD and NSR programs mandated under parts C and D of title I of the Clean Air Act (CAA). These amendments added an "Equipment Replacement Provision" (ERP) to the Routine Maintenance, Repair, and Replacement (RMRR) exclusion from these programs.[1] This provision was scheduled to take effect on December 26, 2003.

Shortly after publication of the ERP amendments, various parties filed petitions for review of EPA's action in the U.S. Court of Appeals for the District of Columbia Circuit (*State of New York* v. *EPA*, No. 03–1380 and consolidated cases). Upon the motions of various petitioners, the Court ordered the new provisions stayed pending the completion of its review. The Court issued its order on December 24, 2003. Therefore, the new provisions never became effective.

Today's final rule adds a note to the RMRR provisions due to the fact that the new provisions have been stayed. The effect of the Court's stay order keeps the RMRR provisions in-effect as they existed prior to the ERP amendments. We have inserted a note into each affected paragraph of the CFR explaining which portions of the rules are affected by the Court's order. Upon the Court completing its review or otherwise terminating the stay order, EPA will publish an additional notice in the **Federal Register** reflecting the termination of the stay and the status of the ERP.

[1] For an explanation of the development of the new provisions and the reasons for them, see 68 FR 61248 (October 27, 2003), and the docket referenced above.

B. What Amendments Are Necessary for the PSD FIPs Due to the Stay?

On December 24, 2003, EPA promulgated a FIP correction rule, which amended the way in which EPA incorporates § 52.21 into each FIP. The new format incorporates revisions to § 52.21 without further revision to each FIP in each subpart (*see* 68 FR 74483). EPA's new format for incorporating § 52.21 into each FIP states that all of § 52.21 is incorporated except paragraph (a)(1).

Parties to the litigation on the ERP, as well as states not involved in the litigation, asked whether the FIP correction rule would make the ERP effective in states with PSD FIPs, notwithstanding the stay. As previously communicated to all parties on January 8, 2004, it is EPA's opinion that, because the FIPs incorporate sections of 52.21 that have been stayed by the court, these "ERP" sections are not effective in the areas covered by the FIPs (*e.g.*, it does not matter that the FIPs now incorporate § 52.21(cc) because that section is stayed). This result occurs automatically due to the Court's staying of the underlying rule changes at 40 CFR 52.21, and that further action by the Court or EPA is not necessary.

C. What Is the Basis for Finding Good Cause To Make These Amendments Immediately Effective?

The EPA has determined that notice and comment on this amendment to the NSR regulations is not required. Under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)), a rule is exempt from notice and public comments requirements "when the agency for a good cause finds (and incorporates the finding and a brief statements of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

The terms of the court order prevented the ERP from coming into effect. In the absence of the ERP, the prior regulatory text remains in effect. Accordingly, this rule is merely a housekeeping measure that reflects the court order. The action does not have any substantive effect.

Public comment could not change the result dictated by the court order, and is therefore unnecessary and impracticable. In addition, delay in issuing this rule amending the existing regulations could result in confusion on the part of state and local air pollution control agencies as well as the public regarding which text is in effect. Notice and comment would therefore be

contrary to the public interest. Accordingly, EPA has concluded that notice and comment on this rule would be impracticable, unnecessary, and contrary to the public interest, within the meaning of 5 U.S.C. 553(b)(3)(B).

The EPA also believes that there is good cause to make today's rule effective immediately, rather than effective within 30 days, within the meaning of 5 U.S.C. 553(d)(3). For the reasons stated above, EPA has determined that it is unnecessary, impracticable and contrary to the public interest to delay this rule. In addition, EPA has balanced the necessity for immediate implementation against principles of fundamental fairness, which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of this rule. In so doing, EPA has concluded that, because the court order came into effect upon issuance, the benefit to the public of adding to the CFR text a note clarifying the effect of the Court's action immediately outweighs the need, if any, to give affected parties time to adjust their behavior accordingly. Indeed, EPA has determined that, on balance, making this rule effective immediately is in the public interest and affected parties will better be served by the avoidance of confusion.

II. Statutory and Executive Order Reviews

This final rule merely conforms the CFR to the terms of the *State of New York* v. *EPA* Court's order of December 24, 2003. In so doing, this rule has no substantive effect. Therefore, under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This rule does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The Office of Management and Budget (OMB) approved the information collection requirements contained for the NSR regulations that are in effect as a result of the court order under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003, EPA ICR number 1230.10.

III. Congressional Review Act

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 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).

List of Subjects in 40 CFR Parts 51 and 52

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 23, 2004.

Michael O. Leavitt,

Administrator.

■ 40 CFR parts 51 and 52 are amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 51.165 is amended by adding notes to paragraphs (a)(1)(v)(C)(*1*), (a)(1)(xliii), (a)(1)(xliv), (a)(1)(xlv), (a)(1)(xlvi), and (h) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(v) * * *

(C) * * *

(*1*) * * *

Note to paragraph (a)(1)(v)(C)(*1*): On December 24, 2003, the second sentence of this paragraph (a)(1)(v)(C)(*1*) is stayed indefinitely by court order. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

* * * * *

(xliii) * * *

Note to paragraph (a)(1)(xliii): By a court order on December 24, 2003, this paragraph (a)(1)(xliii) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

* * * * *

(xliv) * * *

Note to paragraph (a)(1)(xliv): By a court order on December 24, 2003, this paragraph (a)(1)(xliv) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

(xlv) * * *

Note to paragraph (a)(1)(xlv): By a court order on December 24, 2003, this paragraph (a)(1)(xlv) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

(xlvi) * * *

Note to paragraph (a)(1)(xlvi): By a court order on December 24, 2003, this paragraph (a)(1)(xlvi) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

* * * * *

(h) * * *

Note to paragraph (h): By a court order on December 24, 2003, this paragraph (h) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

* * * * *

■ 3. Section 51.166 is amended by adding notes to paragraphs (b)(2)(iii)(*a*), (b)(53), (b)(54), (b)(55), (b)(56) and (y) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(a) * * *

Note to paragraph (b)(2)(iii)(*a*): On December 24, 2003, the second sentence of this paragraph (b)(2)(iii)(*a*) is stayed indefinitely by court order. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

* * * * *

(53) * * *

Note to paragraph (b)(53): By a court order on December 24, 2003, this paragraph (b)(53) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

(54) * * *

Note to paragraph (b)(54): By a court order on December 24, 2003, this paragraph (b)(54) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

(55) * * *

Note to paragraph (b)(55): By a court order on December 24, 2003, this paragraph (b)(55) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

(56) * * *

Note to paragraph (b)(56): By a court order on December 24, 2003, this paragraph (b)(56) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

* * * * *

(y) * * *

Note to paragraph (y): By a court order on December 24, 2003, this paragraph (y) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

PART 52—[AMENDED]

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

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

■ 2. Section 52.21 is amended by adding notes to paragraphs (b)(2)(iii)(a), (b)(55), (b)(56), (b)(57), (b)(58) and (cc) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(a) * * *

Note to paragraph (b)(2)(iii)(a): By court order on December 24, 2003, the second sentence of this paragraph (b)(2)(iii)(a) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

* * * * *

(55) * * *

Note to paragraph (b)(55): By a court order on December 24, 2003, this paragraph (b)(55) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

(56) * * *

Note to paragraph (b)(56): By a court order on December 24, 2003, this paragraph (b)(56) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

(57) * * *

Note to paragraph (b)(57): By a court order on December 24, 2003, this paragraph (b)(57) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

(58) * * *

Note to paragraph (b)(58): By a court order on December 24, 2003, this paragraph (b)(58) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

* * * * *

(cc) * * *

Note to paragraph (cc): By a court order on December 24, 2003, this paragraph (cc) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the **Federal Register** advising the public of the termination of the stay.

* * * * *

[FR Doc. 04–14989 Filed 6–30–04; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
July 1, 2004

Part VIII

Environmental Protection Agency

40 CFR Parts 51 and 52

Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion; Reconsideration; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD–FRL–7781–4; E–Docket ID No. OAR–2002–0068; Legacy Docket No. A–2002–04]

RIN–2060–AK28

Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion; Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule; request for public comment; notice of public hearing.

SUMMARY: On October 27, 2003 and December 24, 2003, the EPA revised regulations governing the major New Source Review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA or Act). Following these two actions, the Administrator received petitions for reconsideration from a collection of environmental and public interest groups and a group of states. Today, we, the EPA, are announcing our reconsideration of certain issues arising from the final rules of October 27, 2003 and December 24, 2003. We are requesting public comment on three issues as to which we are granting reconsideration. The issues are described in section II of this notice. We plan to issue a final decision on these issues and other issues raised in the various petitions by December 28, 2004.

We are only seeking comment on provisions of the major NSR rules as specifically identified in this notice. We will not respond to any comments addressing any other provisions of the NSR rules or program.

DATES: *Comments.* Comments must be received on or before August 30, 2004. Because of the need to resolve the issues raised in this notice in a timely manner, we will not grant requests for extension beyond this date.

Public Hearing. The public hearing will convene at 9 a.m. e.d.t. and will end after all registered speakers have had an opportunity to speak but no later than 10 p.m. e.d.t. on approximately August 2, 2004. We will publish a notice to announce the specific date for this hearing. For additional information on the public hearing and requesting to speak, see the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: *Comments.* Comments may be submitted by mail to U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Rooms: B108, Mail Code: 6102T, Washington, DC 20460, Attention E–Docket ID No. OAR–2002–0068 (Legacy Docket ID No. A–2002–04). Comments may also be submitted electronically, by facsimile, through hand delivery/courier, or by phone.

Public Hearing. A public hearing will be held at a hotel near Research Triangle Park, North Carolina. We will publish a notice to announce the specific location of the hearing.

FOR FURTHER INFORMATION CONTACT: Mr. David Svendsgaard, Information Transfer and Program Integration Division (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–2380, or electronic mail at *svendsgaard.dave@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Are the Regulated Entities?

Entities potentially affected by the subject rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC[a]	NAICS[b]
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum Refining	291	324110.
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial Organic Chemicals	286	3251.10, 325132, 325192, 325188, 325193, 325120, 325199.
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510.
Natural Gas Liquids	132	211112.
Natural Gas Transport	492	486210, 221210.
Pulp and Paper Mills	261	322110, 322121, 322122, 322130
Paper Mills	262	322121, 322122.
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213.
Pharmaceuticals	283	325411, 325412, 325413, 325414.

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

Entities potentially affected by the subject rule also include State, local, and tribal governments that are delegated authority to implement these regulations.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under E–Docket ID No. OAR–2002–0068 (Legacy Docket ID No. A–2002–04). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742. A reasonable fee may be charged for copying.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of a portion of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. Interested persons may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access

the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, through hand delivery/courier, or by phone. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in either Docket ID No. A–2002–04 or E-Docket ID No. OAR–2002–0068 (for which A–2002–04 is now a legacy number). The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. E-mail. Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epamail.epa.gov,* Attention E-Docket ID No. OAR–2002–0068 (Legacy Docket ID No. A–2002–04). In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. Disk or CD–ROM. You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send two copies of your comments to: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC 20460, Attention E-Docket ID No. OAR–2002–0068 (Legacy Docket ID No. A–2002–04).

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC 20460, Attention Docket ID No. A–2002–04. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

4. By Facsimile. Fax your comments to the EPA Docket Center at (202) 566–1741, Attention Docket ID No. A–2002–0068 (Legacy Docket ID No. A–2002–04).

5. By Phone. You may call and leave oral comments on a public comment phone line. The number is (919) 541–0211. EPA will log and place in E-Docket ID No. OAR–2002–0068 (Legacy Docket ID No. A–2002–04) any comments received through this phone number.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket

or by e-mail. Send or deliver information identified as CBI only to the following address: Mr. David Svendsgaard, c/o OAQPS Document Control Officer (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Attention E-Docket ID No. OAR–2002–0068 (Legacy Docket ID No. A–2002–04). You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. (If you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI.) Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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

You may find the following suggestions helpful for preparing your comments.

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at your estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternatives.
- Make sure to submit your comments by the comment period deadline identified.
- To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

F. What Information Should I Know About the Public Hearing?

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the issues raised in this notice. Persons interested in attending or presenting oral testimony are encouraged to register in advance by contacting Ms. Chandra Kennedy, OAQPS, Integrated Implementation Group, Information Transfer and Program Integration Division (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541–5319 or e-mail kennedy.chandra@epa.gov no later than July 19, 2004. Presentations will be limited to 5 minutes each. We will assign speaking times to speakers who make a timely request to speak at the hearing. We will notify speakers of their assigned times by July 26, 2004. We will attempt to accommodate all other persons who wish to speak, as time allows.

The EPA's planned seating arrangement for the hearing is theater style, with seating available on a first come first served basis for about 250 people. Attendees should note that the use of pickets or other signs will not be allowed on hotel property.

As of the date of this announcement, the Agency intends to proceed with the hearing as announced; however, unforeseen circumstances may result in a postponement. Therefore, members of the public who plan to attend the hearing are advised to contact Ms. Chandra Kennedy at the above referenced address to confirm the location and date of the hearing. You may also check our New Source Review Web site at *http://www.epa.gov/nsr* for any changes in the date or location.

The record for this action will remain open until 30 days after the public hearing date, or the deadline for public comments, whichever is later to accommodate submittal of information related to the public hearing.

G. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of today's notice is also available on the World Wide Web through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of today's notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

H. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

II. Background

A. ERP and PSD FIP Rulemakings

On October 27, 2003, EPA published the Equipment Replacement Provision ("ERP") amendments to its regulations implementing the major NSR requirements of the CAA. The ERP amended the exclusion from major NSR for "routine maintenance, repair, and

replacement" ("RMRR") activities at existing major sources. For background on NSR, RMRR, and the ERP, please see the notice promulgating the ERP, especially sections II, "Background," and III.A, "Equipment Replacement Provision—Overview and Justification for Today's Final Action." 68 FR 61248, 61249—52 (Oct. 27, 2003). Several parties sought judicial review of the ERP in the U.S. Court of Appeals for the District of Columbia Circuit. See *State of New York* v. *EPA*, No. 03–1380 and consolidated cases (DC Cir.). As a result of a court order, the ERP is "stayed" (*i.e.*, not in effect) until the court decides this case.

On December 24, 2003, EPA published a rule amending the PSD provisions of state programs that did not have approved state rules for PSD. 68 FR 74483. In each of these states, EPA previously had made the area subject to the PSD rules in 40 CFR 52.21, the Federal Implementation Plan ("FIP") for PSD. Please see 68 FR 74483 (December 24, 2003), for additional background on this rule. Parties have also sought judicial review of this rule, and their petitions for review have been consolidated with the challenges to ERP.

B. Reconsideration Petitions

On December 24, 2003, petitioners [1] asked EPA to reconsider three aspects of the Equipment Replacement Provision that we published on October 27, 2003. Specifically, the petitioners assert that our legal basis for the ERP is flawed, the basis for the 20 percent ERP cost threshold is arbitrary and capricious, and EPA has retroactively applied the ERP. On January 16, 2004, a subset of the petitioners on the ERP rule filed a petition for reconsideration of the December 24, 2003 rule that incorporated the ERP into the FIP portion of a State plan where the State does not have an approved PSD State Implementation Plan (SIP). This petition reiterated the issues raised in the December 24, 2003 petition concerning the ERP. On February 23, 2004, a group of states and the District of Columbia filed a petition for reconsideration of the December 24, 2003 rule. This petition raised two issues. First, it asked for reconsideration on whether EPA needed to make a finding of deficiency for the PSD portions of each SIP before it amended the incorporation of the PSD FIP into the state plans. Second, it challenged whether EPA needed to provide an opportunity for comment on the revised format for incorporating the PSD FIP into state plans, which would automatically update the state plans whenever EPA amended the PSD FIP.

We have decided to grant reconsideration and request comment on three issues raised by petitioners—specifically, the contentions that our legal basis is flawed, that our selection of 20 percent for the cost limit is arbitrary and capricious and lacks sufficient record, and that we should provide an opportunity for comment on the revised format for incorporating the PSD FIP into state plans. Without prejudging the information that will be provided in response to this notice, we note that, to date, petitioners have not provided information which persuades us that our final decisions are erroneous or inappropriate. While we do not agree with Petitioners' claims, we have decided to grant reconsideration on these issues because of the importance EPA attaches to ensuring that all have ample opportunity to comment. Each of these issues is described in detail below.

C. Schedule for Reconsideration

Our final decision on reconsideration for all the issues in the petitions for reconsideration will be issued no later than the date by which we take final action on the issues with respect to which we have decided to grant reconsideration. We plan to take final action on all issues approximately 180 days after publication of today's notice.

III. Discussion of Issues

A. Legal Basis

As set forth in the preamble to the final rule, we have ample legal authority for our final ERP rule. See 68 FR 61268–73. It is a basic tenet of administrative law that expert agencies have discretion to interpret ambiguous statutory terms. *Chevron, U.S.A. Inc.* v. *NRDC*, 467 U.S. 837 (1984). That is exactly what we did in the ERP. NSR applies to new and "modified" sources. The CAA defines "modification" as "any physical *change* in, or *change* in the method of operation of, a stationary source which increases the amount any air pollutant emitted from such source of which results in the emission of any air pollutant not previously emitted." CAA sec. 111(a)(4) (emphasis added); CAA sec. 169(2)(C); CAA sec. 171(4). The CAA does not, however, define "change." We historically have understood "change" as not including, among other things, "routine maintenance, repair, and replacement" of existing sources. See 40 CFR 51.165(a)(1)(v)(C)(1); 40 CFR 51.166(b)(2)(iii)(a); 40 CFR 52.21(b)(2)(iii)(a). But prior to our ERP rule, our regulations did not provide any further definition of RMRR. Our ERP rule was an exercise of our Chevron authority to do so and create a bright line to assist in determining whether certain activities qualify as RMRR.

Petitioners allege that we did not afford an adequate opportunity to comment on the legal basis for our ERP rule. To support their claim, petitioners point to the difference in the length of the legal analysis discussion in the final rule as compared to the proposed rule. We disagree with petitioners' assertion, and believe that commenters had sufficient notice and opportunity to comment on the legal basis for the rule, as indicated by the many comments we actually received on the issue. Nevertheless, we have decided to solicit additional comments on this question, and refer interested persons to the preamble to the proposed rule and section III. N of the final rule. 68 FR 61268–73.

We have received numerous comments regarding our legal authority to promulgate the ERP rule. Some commenters suggested that an ERP rule was justified under a "Chevron I" analysis, since the statute, in their estimation, is clear on its face that replacement of equipment with its functional equivalent is not a "change." Others cited our *de minimis* authority, as articulated in *Alabama Power Co.* v. *Costle*, 606 F.2d 323, 360–61 (D.C. Cir. 1979). Commenters argued that the ERP rule was within our recognized authority to establish "bright lines" to reduce regulatory cost or establish certainty. See *Time Warner Entertainment Co. LP* v. *F.C.C.*, 240 F.3d 1126, 1141 (D.C. Cir. 2001). Several commenters questioned whether we have any authority to conclude that any equipment replacements are outside the scope of NSR, and indeed whether the RMRR exclusion itself is permissible, since in their view all such activities constitute "changes" as the term is used in the statutory definition of "modification." We invite comment on all of these as well as other possible legal arguments. With respect to the issue of whether the modifier "any" in

[1] In this notice, the term "petitioner" refers only to those entities that filed petitions for reconsideration. The following parties filed petition for reconsideration of the October 27, 2003 rule: Natural Resources Defense Council, Environmental Defense, Sierra Club, American Lung Association, Communities for a Better Environment, United States Public Interest Research Group, Alabama Environmental Council, Clean Air Council, Group Against Smog and Pollution, Michigan Environmental Council, The Ohio Environmental Council, Scenic Hudson, and Southern Alliance for Clean Energy. A subset of these parties filed a petition to reconsider the December 24, 2003 rule. Several states also filed a petition for reconsideration of the December 24, 2003 rule. They include California, Illinois, Massachusetts, New Jersey, and New York, along with the District of Columbia.

the definition of modification compels the agency to adopt the broadest possible construction of "physical change," we solicit comments on the recent Supreme Court case, *Nixon* v. *Missouri Municipal League*, ____ U.S. ____, 124 S.Ct. 1555, 1561 (2004). That case noted that Congress's understanding of "any" can differ depending upon the statutory setting. *Id.*

B. The 20 Percent Replacement Cost Threshold

In the December 31, 2002, proposed rule, EPA solicited comments on the ERP approach. At that time, we solicited comments on a range of possible percentages of cost that could serve as one of the criteria that must be met to qualify for the RMRR–ERP exclusion from NSR. We solicited comment on percentages ranging up to 50 percent, the threshold for reconstruction under the NSPS program. 67 FR at 80301.

In the final rule promulgating the ERP, we presented policy arguments and data analyses supporting 20 percent of replacement costs of a process unit as the threshold cost that would entitle an equipment replacement to qualify automatically as RMRR. 68 FR at 61255–58. In our summary of the basis of the rule, we discussed an analysis of the cost of replacements in six industries outside the electric generating sector. This analysis, which appears in Appendix C to the Regulatory Impact Analysis, was finalized in August of 2003 and is in the docket for this rule. See docket entries OAR–2002–0068–2207 to 2213. Additionally, we examined the cost of the activities at issue in *Wisconsin Electric Power Company* v. *Reilly*, 893 F.2d 901 (7th Cir. 1990) ("*WEPCO*"), and found that they would have exceeded the threshold established by the ERP. We also considered the costs of installing state-of-the-art controls on existing units and the point at which these would likely prevent facilities from replacing equipment necessary to ensure the safe, reliable and efficient operation. Furthermore, we discussed analyses of comments provided by the Utility Air Regulatory Group ("UARG") and the American Lung Association. See docket entries OAR–2002–0068–1150 and –1213 through –1221.

Petitioners ask that EPA reconsider the 20 percent threshold, and claim that none of EPA's arguments supporting the threshold had appeared in the proposed rule. While the petitioners' claim is overly broad, we nevertheless are soliciting additional comment on the data, our analyses, and the policy considerations supporting the 20 percent threshold. Commenters should refer to section III.C, "What Cost Limit Has Been Placed on the Equipment Replacement Approach?" in our final rule for our discussion of the data and our analyses. We invite comment on the matters discussed therein, as well as on the docket entries cited above.

In the course of considering how to proceed with respect to the reconsideration petition on this point, we also thought it might be of some interest to examine whether jurisdictions administering construction building codes use a percentage cost threshold for determining applicability of different requirements and if so, what that threshold might be. Our cursory review indicates that at least some jurisdictions specify a percentage cost threshold for determining what constitutes a building "improvement," and require such improvements to comply with the current code. A common threshold is 50 percent, based on cost of the improvement as compared to the market value of the pre-existing structure. We have placed further information on what we learned from our review on this topic in our docket. See Docket OAR–2002–0068; Document No. 2337. We solicit comment on the accuracy and representativeness of this information and whether it is appropriate to consider approaches used in building code applicability when establishing criteria for RMRR determinations. We also request any new data or approach that supports or rejects a 20 percent cost threshold for the ERP.

C. Revisions to the Format for Incorporating the PSD FIP Into State Plans

The December 24, 2003, final rule revised the PSD provision in each state plan that lacked an approved state regulation concerning PSD. In lieu of an approved PSD SIP, each of these state plans contained a reference incorporating the relevant provisions of 40 CFR 52.21, the PSD FIP, that applied within the state. Prior to the December 24th rule, we incorporated the relevant paragraphs of 40 CFR 52.21 by referring to the range of paragraphs from the first paragraph incorporated to the last paragraph. For example, the March 10, 2003 referred to the incorporated paragraphs of section 52.21 as "(a)(2) and (b) to (bb)." This format required updates every time we added paragraphs to section 52.21. These periodic updates introduced the possibility of typographical errors in the CFR and confusion during the period between updates. The December 24th rule adopted a different cross-referencing format—"40 CFR 52.21 except paragraph (a)(1)." Under the new format, the cross-references would automatically update whenever new sections were added to the PSD FIP.

A group of petitioners seek reconsideration of the new format. We seek comment on the new format for referencing the PSD FIP. We seek comment only on the issue of the new format and its ability to automatically update whenever EPA modifies the PSD FIP. At this time, we do not seek comment on a second issue raised in the petition for reconsideration, which is whether EPA must make a new finding of deficiency regarding the SIP before updating the state plans to reflect the ERP.

IV. Statutory and Executive Order Reviews

On October 27, 2003, we finalized rule changes to the regulations governing the NSR programs mandated by parts C and D of title I of the Act. With today's action we are proposing no changes to the final rules, and are seeking additional comments on some of the provisions finalized in the October 2003 **Federal Register** notice (68 FR 61248). Accordingly, we believe that the rationale provided with the final rules is still applicable and sufficient.

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, 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 entitlements, 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, OMB has notified us that

it considers this a "significant regulatory action" within the meaning of the Executive Order. We have submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. All written comments from OMB to EPA and any written EPA response to any of those comments are included in the docket listed at the beginning of this notice under **ADDRESSES.**

B. Executive Order 13132—Federalism

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

Today's action does not have federalism implications. Nevertheless, as described in section II.C of the October 27, 2003 notice, in developing the ERP, we consulted with affected parties and interested stakeholders, including State and local authorities, to enable them to provide timely input in the development of this rule. Today's action will not have substantial direct effects on the States, on the relationship between the national government and the State and local programs, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. We expect the ERP will result in some expenditures by the States, we expect those expenditures to be limited to $580,000 for the estimated 112 affected reviewing authorities. This estimate reflects the small increase in burden imposed upon reviewing authorities in order for them to revise their State Implementation Plans (SIP). However, this revision provides sources permitted by the States greater certainty in application of the program, which should in turn reduce the overall burden of the program on State and local authorities. Thus, the requirements of Executive Order 13132 do not apply to this rule.

C. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." We believe that this rule does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply.

The purpose of the ERP is to add greater flexibility to the existing major NSR regulations. These changes will benefit reviewing authorities and the regulated community, including any major source owned by a tribal government or located in or near tribal land, by providing increased certainty as to when the requirements of the major NSR program apply. Taken as a whole, the ERP should result in no added burden or compliance costs and should not substantially change the level of environmental performance achieved under the previous rules and guidance.

We anticipate that initially these changes will result in a small increase in the burden imposed upon reviewing authorities in order for them to be included in the State's SIP. Nevertheless, these options and revisions will ultimately provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden on the program on State and local authorities by reducing the number of required permit modifications. In comparison, no tribal government currently has an approved Tribal Implementation Plan (TIP) under the CAA to implement the NSR program. The Federal government is currently the NSR reviewing authority in Indian country. Thus, tribal governments should not experience added burden, nor should their laws be affected with respect to implementation of this rule. Additionally, although major stationary sources affected by the ERP could be located in or near Indian country and/or be owned or operated by tribal governments, such affected sources would not incur additional costs or compliance burdens as a result of this rule. Instead, the only effect on such sources should be the benefit of the added certainty and flexibility provided by the rule.

We recognize the importance of including tribal outreach as part of the rulemaking process. In addition to affording tribes an opportunity to comment on the ERP, on which two tribes did submit comments, we have also alerted tribes of this action through our Web site and quarterly newsletter. EPA specifically solicits additional comments on today's notice from tribal officials.

D. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 *FR* 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 reasonable alternatives that we considered.

This notice is not subject to Executive Order 13045, because it is not economically significant as defined under Executive Order 12866 and because we do not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

E. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not proposing any new paperwork (*e.g.*, monitoring, reporting, recordkeeping) as part of today's notice. With this action we are seeking additional comments on some of the provisions finalized in two **Federal Register** notices, the ERP (68 FR 61248 (Oct. 27, 2003)), and the related FIP update (68 FR 74483 (Dec. 24, 2003)). However, the information collection requirements in the ERP have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 1230.14), and a copy may be obtained from Susan Auby, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements included in ICR No. 1230.14 are not enforceable until OMB approves them.

The information that ICR No. 1230.14 covers is required for the submittal of a complete permit application for the construction or modification of all major new stationary sources of pollutants in

attainment and nonattainment areas, as well as for applicable minor stationary sources of pollutants. This information collection is necessary for the proper performance of EPA's functions, has practical utility, and is not unnecessarily duplicative of information we otherwise can reasonably access. We have reduced, to the extent practicable and appropriate, the burden on persons providing the information to or for EPA. In fact, we feel that this rule will result in less burden on industry and reviewing authorities since it streamlines the process of determining whether a replacement activity is RMRR.

However, according to ICR No. 1230.14, we do anticipate an initial increase in burden for reviewing authorities as a result of the rule changes, to account for revising state implementation plans to incorporate these rule changes. As discussed above, we expect those one-time expenditures to be limited to $580,000 for the estimated 112 affected reviewing authorities. For the number of respondent reviewing authorities, the analysis uses the 112 reviewing authorities count used by other permitting ICR's for the one-time tasks (for example, SIP revisions).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of responding to the information collection; adjust existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. We will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the ERP on small entities, small entity is defined as: (1) Any small business employing fewer than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of this rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The ERP will not have a significant economic impact on a substantial number of small entities because it will decrease the regulatory burden of the existing regulations and have a positive effect on all small entities subject to the rule. The ERP improves operational flexibility for owners or operators of major stationary sources and clarifies applicable requirements for determining if a change qualifies as a major modification. We have therefore concluded that the ERP will relieve regulatory burden for all small entities. We do not expect that today's action will change our overall assessment of regulatory burden so substantially as to result in a significant adverse impact on any source. As a result, we do not expect that today's action will result in a significant adverse impact on any entity.

We continue to be interested in the potential impacts of today's action on small entities and welcome comments on issues related to such impacts.

G. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We believe the ERP will actually reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners or operators and clarifying the

requirements. Because we are proposing no changes to the final rule, we believe that the same is true for today's notice. Because the program changes provided in the rule are not expected to result in a significant increase in the expenditure by State, local, and tribal governments, or the private sector, we have not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, we are not required to develop a plan with regard to small governments. Therefore, this rule is not subject to the requirements of section 203 of the UMRA.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards (VCS) in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

Although the ERP does involve the use of technical standards, it does not preclude the State, local, and tribal reviewing agencies from using VCS. The ERP is an improvement of the existing NSR permitting program. As such, it only ensures that promulgated technical standards are considered and appropriate controls are installed, prior to the construction of major sources of air emissions. Therefore, we are not considering the use of any VCS in the ERP.

I. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This notice is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

The ERP improves the ability of sources to maintain the reliability of production facilities, and effectively utilize and improve existing capacity.

J. Executive Order 12988—Civil Justice Reform

Neither the ERP nor today's action has any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

V. Statutory Authority

The statutory authority for this action is provided by sections 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601). This rulemaking is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Parts 51 and 52

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 28, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–14992 Filed 6–30–04; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
July 1, 2004

Part IX

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 414

Medicare Program; Medicare Ambulance MMA Temporary Rate Increases Beginning July 1, 2004; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1492–IFC]

RIN 0938–AN24

Medicare Program; Medicare Ambulance MMA Temporary Rate Increases Beginning July 1, 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule codifies the four payment provisions for Medicare covered ambulance services contained in section 414 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA).

DATES: *Effective date:* These provisions are effective on July 1, 2004.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 30, 2004.

ADDRESSES: In commenting, please refer to file code CMS–1492–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments* or to *www.regulations.gov* (attachments must be in Microsoft Word, WordPerfect, or Excel; we prefer Microsoft Word).

2. *By mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1492–IFC, P.O. Box 8011, Baltimore, MD 21244–8011.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Anne E. Tayloe, (410) 786–4546.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1492–IFC and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call telephone number: (410) 786–7197.

I. Background

[If you choose to comment on issues in this section, please include the caption "Background" at the beginning of your comments.]

A. Legislative and Regulatory History

Under section 1861(s)(7) of the Social Security Act (the Act), Medicare Part B (Supplementary Medical Insurance) covers and pays for ambulance services, to the extent prescribed in regulations, when the use of other methods of transportation would be contraindicated for the beneficiary. The House Ways and Means Committee and Senate Finance Committee Reports that accompanied the 1965 legislation creating the Act suggest that the Congress intended that: (1) The ambulance benefit cover transportation services only if other means of transportation are contraindicated by the beneficiary's medical condition; and (2) only ambulance service to local facilities be covered unless necessary services are not available locally, in which case, transportation to the nearest facility furnishing those services is covered (H.R. Rep. No. 213, 89th Cong., 1st Sess. 37 and S. Rep. No. 404, 89th Cong., 1st Sess., Pt. I, 43 (1965)). The reports indicate that transportation may also be provided from one hospital to another, to the beneficiary's home, or to an extended care facility.

Our regulations relating to ambulance services are located at 42 CFR Part 410, subpart B and 42 CFR Part 414, subpart H. Section 410.10(i) lists ambulance services as one of the covered medical and other health services under Medicare Part B. Ambulance services are subject to basic conditions and limitations set forth at § 410.12 and to specific conditions and limitations included at § 410.40. Part 414, subpart H describes how payment is made for ambulance services covered by Medicare.

The Medicare program pays for ambulance services for Medicare beneficiaries when other means of transportation are contraindicated. Ambulance services (air and ground) are divided into different levels of service based on the medically necessary treatment provided during transport. These services include the levels of service listed below.

For Ground:

- Basic Life Support (BLS)
- Advanced Life Support, Level 1 (ALS1)
- Advanced Life Support, Level 2 (ALS2)
- Specialty Care Transport (SCT)
- Paramedic ALS Intercept (PI)

For Air:

- Fixed Wing Air Ambulance (FW)
- Rotary Wing Air Ambulance (RW)

Historically, payment levels for ambulance services depended, in part, upon the entity that furnished the services. Before the implementation of the ambulance fee schedule on April 1, 2002, providers (hospitals, including critical access hospitals, skilled nursing facilities, and home health agencies) were paid on a retrospective reasonable cost basis. Suppliers, which are entities that are independent of any provider, were paid on a reasonable charge basis.

The Balanced Budget Act of 1997 (BBA) (establishing section 1834(l) of the Act) mandated the development of an ambulance fee schedule through negotiated rulemaking. On February 27, 2002, we published a final rule in the **Federal Register** (67 FR 9100) that established a fee schedule for the

payment of ambulance services under the Medicare program, effective for services furnished on or after April 1, 2002. The fee schedule replaced the retrospective reasonable cost payment system for providers and the reasonable charge system for suppliers of ambulance services. Additionally, the final rule—implemented a statutory requirement that ambulance suppliers accept Medicare assignment; codified the establishment of new Health Care Common Procedure Coding System (HCPCS) codes to be reported on claims for ambulance services; established increased mileage payment under the fee schedule for ambulance services furnished in rural areas based on the location of the beneficiary at the time the beneficiary is placed on board the ambulance; revised the certification requirements for coverage of nonemergency ambulance services; and provided for a 5-year transition period during which program payment for Medicare covered ambulance services would be based upon a blended rate comprised of a fee schedule portion and a reasonable cost (providers) or reasonable charge (suppliers) portion. We are now in the third year of that transition to full payment based solely on the fee schedule amount.

B. Transitional Assistance for Rural Mileage 18 Through 50—Section 221 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

Section 221 of the Benefits Improvement and Protection Act of 2000 (BIPA) provided a temporary bonus mileage payment through December 31, 2003 for miles 18 through 50 for ambulance transports originating in a rural area. This bonus amount could not be less than one-half of the rural bonus paid under the ambulance fee schedule for miles 1 through 17. This provision was implemented by § 414.610(c) of the ambulance fee schedule final rule.

C. Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA)

Section 414 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) contains four provisions affecting payment for Medicare-covered ambulance services. All four affect only the fee schedule (FS) portion of the program's payment, and they affect only ground ambulance services. They are all cumulative; that is, they are percentage increases applied in concert with one another. They are all effective July 1, 2004, but with different sunset dates. The four provisions are as follows:

1. A percentage increase in the FS payment rates for ambulance services—1 percent for urban and 2 percent for rural ambulance services. This increase sunsets on December 31, 2006.

2. A 25 percent increase for the mileage rate for miles 51 and greater (both urban and rural). This increase sunsets on December 31, 2008.

3. A Regional FS that provides a floor amount for the ground ambulance base rate. The floor amount is determined by establishing nine FSs based on each of the nine census divisions using the same methodology as was used to establish the national FS. This increase sunsets on December 31, 2009.

4. An increase in the payment for the base rate where the ambulance transport originates in a rural area determined by the Secretary to be in the lowest 25th percentile of all rural populations arrayed by population density. Rural areas include Goldsmith areas (a type of rural census tract). To determine these rural areas, first, all areas (rural counties plus Goldsmith areas) are arrayed in ascending order by population density. Then, all of these rural areas are divided into quartiles by population. The rural areas that comprise the lowest quartile of population (that is, the lowest 25 percent of rural population) comprise the areas eligible for this bonus payment. Approximately half of all rural areas (rural counties plus Goldsmith areas) are required to include 25 percent of the rural population when rural areas are arrayed by population density. The bonus amount is based on the Secretary's estimate of the ratio of the average cost per trip for the rural areas in the lowest quartile compared to the average cost per trip for the rural areas in the highest quartile. In making this estimate, the Secretary may use data provided by the General Accounting Office (GAO). This provision sunsets on December 31, 2009.

II. Provisions of the Interim Final Rule

[If you choose to comment on issues in this section, please include the caption "Provisions of the Interim Final Rule" at the beginning of your comments.]

A. Percentage Increase in the Payments for Rural and Urban Ambulance Services

Section 414.610 is amended by revising paragraph (c)(1) to specify that, for services furnished during the period July 1, 2004 through December 31, 2006, ambulance services originating in urban areas are paid based on a rate that is one percent higher than otherwise would be applicable under the ambulance FS, and ambulance services originating in rural areas are paid based on a rate that is two percent higher than otherwise would be applicable under the ambulance FS.

B. Payment Rate for Mileage Greater Than 50 Miles

Section 414.610 is amended by adding a new paragraph (c)(7) to specify that, for services furnished during the period July 1, 2004 through December 31, 2008, each loaded ambulance mile greater than 50 (that is, miles 51 and greater) for ambulance transports originating in either urban areas or in rural areas are paid based on a rate that is 25 percent higher than otherwise would be applicable under the ambulance FS.

C. Regional Ambulance Fee Schedule

A new section 414.617 is added to specify that for services furnished during the period July 1, 2004 through December 31, 2009, the ground ambulance base rate is subject to a floor amount, which is determined by establishing nine fee schedules based on each of the nine census divisions, and using the same methodology as was used to establish the national FS. If the regional FS methodology for a given census division results in an amount that is lower than the national ground base rate, then it is not used, and the national FS amount applies for all providers and suppliers in the census division. If the regional fee schedule methodology for a given census division results in an amount that is greater than the national ground base rate, then the FS portion of the base rate for that census division is equal to a blend of the national rate and the regional rate in accordance with the following schedule:

Time period	Regional percent	National percent
7/1/04–12/31/04	80	20
CY 2005	60	40
CY 2006	40	60
CY 2007–CY 2009	20	80
CY 2010 and thereafter	0	100

D. Super-Rural Bonus

Section 414.610(c)(5) is amended to specify that, for services furnished during the period July 1, 2004 through December 31, 2009, the payment amount for the ground ambulance base rate is increased where the ambulance transport originates in a rural area included in those areas comprising the lowest 25th percentile of all rural populations arrayed by population density. Rural areas include Goldsmith

areas (a type of rural census tract). Approximately half of all rural areas (rural counties plus Goldsmith areas) are required to include 25 percent of the rural population arrayed in order of population density. The amount of this increase is based on the Secretary's estimate of the ratio of the average cost per trip for the rural areas comprised of the lowest quartile of population arrayed by density compared to the average cost per trip for the rural areas comprised of the highest quartile arrayed by density. In making this estimate, the Secretary may use data provided by the GAO. We have determined that the amount of this increase is equal to 22.6 percent.

III. Methodology

[If you choose to comment on issues in this section, please include the caption "Methodology" at the beginning of your comments.]

A. Percentage Increase in the Payments for Rural and Urban Ambulance Services

This provision is self-implementing. A plain reading of the statute requires a merely ministerial application of the mandated increase in rates, and there is no authority for any discretionary action by the Secretary.

B. Payment Rate for Mileage Greater Than 50 Miles

This provision is self-implementing. A plain reading of the statute requires a merely ministerial application of the mandated increase in rates, and there is no authority for any discretionary action by the Secretary.

C. Regional Fee Schedule

The statute requires that the same methodology be used to determine each of the regional fee schedules as was used to determine the national FS. We applied this methodology to Medicare claims data from calendar year 2001. We used 2001 data because they were the most recent complete data for a year in which Medicare payments were based solely on the reasonable charge/reasonable cost payment methodologies and not blended with portions of the national ambulance fee schedule implemented on April 1, 2002. We needed to use these former payment amounts (that is, payments exclusive of the national FS amounts) to apply the methodology used for determining the national FS, which had originally used claims data from 1998. For a full description of this methodology, see the **Federal Register** ("Medicare Program; Fee Schedule for Payment of Ambulance Services and Revisions to the Physician Certification Requirements for Coverage of Nonemergency Ambulance Services")—Final Rule with Comment Period, published February 27, 2002 (67 FR 9100). We then determined a regional conversion factor (CF) by using the 2001 claims data from the states in each Census Division. Then we divided the regional CF by the national CF for 2001 claims data. Where this result was less than 1.0, the value of 1.0 was used. Then we multiplied this number by 80 percent, which is the statutory phase-in percentage of the regional FS for 2004, and added 0.2 (20 percent of 1.0) to that amount. In this way we created an index that reflects a blended FS amount of 80 percent regional FS and 20 percent national FS. This index was then applied to the FS portion of the blended payment rate for the period July 1, 2004 through December 31, 2004. In subsequent years, the blending percentage between the national FS amount and the regional FS amount will change as described in the chart, shown in section II.C., above.

D. Super-Rural Bonus

The statute states that in establishing the super-rural bonus, CMS will estimate the average cost per trip in the lowest quartile (25 percentile) of rural population arrayed by population density as compared to the estimate of the average cost per trip in the highest quartile of rural population arrayed by population density. In order to implement this provision promptly, data may be used from the Comptroller General (GAO) of the U.S. We obtained the same data as the data that were used in the GAO's September 2003 Report titled "Ambulance Services: Medicare Payments Can Be Better Targeted to Trips in Less Densely Populated Rural Areas" (GAO report number GAO–03–986) and used the same general methodology in a regression analysis as that used in that report. We considered only the full cost providers that were included in the data set, just as the GAO had done. The regression analysis correlated the providers' ambulance costs to the number of trips, the square of the number of trips, and the percentage of trips that were advanced life support (ALS) as opposed to those that were at the basic life support (BLS) level of care. The result of this regression was a formula that predicted the average cost per trip based on the variables just described. We then used the Medicare claims data from calendar year 2002 from every ambulance supplier and provider that furnished ambulance services in any rural area. These claims data showed the number of each level of ground ambulance services needed to satisfy the regression formula. The proxy that the GAO used for the total number of ambulance trips was the number of Medicare ambulance trips doubled. We then took the predicted average cost per trip in those rural areas in the lowest quartile of rural population arrayed by population density and compared that cost to the predicted average cost per trip in the rural areas in the highest quartile of rural population arrayed by population density. The result was that the average cost per trip in the lowest quartile was 22.6 percent higher than the average cost per trip in the highest quartile.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a proposed rule in the **Federal Register** and provide a period for public comment before we publish a final rule. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and we incorporate a statement of this finding and its reasons in the rule issued. We find it unnecessary to undertake notice and comment rulemaking in this instance because the statute specifies that these provisions may be implemented on the basis of an interim final rule or program instruction, in recognition of the fact that the statutorily required implementation date could not be met otherwise. Pursuant to this authority, we have issued program instructions to our contractors implementing these provisions with an effective date of July 1, 2004, as specified by the statute. The purpose of this IFC is to provide a vehicle for public comment and to conform the Code of Federal Regulations (CFR) to the statutory language. Chapter 8 of the Contract with America Advancement Act of 1996 (CWAAA) generally requires an agency to submit a rule to Congress 60 days before it is to be effective. The CWAAA, however, contains an exception where the rule includes a waiver based on good cause, as here. For this reason, and because we have already implemented these provisions of the MMA under the authority cited, we have concluded that the requirement for a 60-day delay in effective date for congressional review of major rules does not apply in this case.

V. Collection of Information Requirements

This document does not impose information collection and record keeping requirements. Consequently, it need not be reviewed by the Office of

Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption "Regulatory Impact Analysis" at the beginning of your comments.]

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this is a major rule.

The following impacts reflect the fact that the effective date of the MMA provisions is July 1, 2004 for all provisions. The figures are Medicare's expenditures (that is, exclusive of the Part B coinsurance and deductible requirements). These impacts also reflect the fact that the MMA provisions affect only the FS portion of the blended payment during the transition period, and, in 2004, the FS portion is only 60 percent of the total blended payment (40 percent of the payment is from the former reasonable charge/reasonable cost methodology).

Program Impact:

Fiscal year	Cost ($millions)
2004	20
2005	200
2006	220
2007	160
2008	120
2009	120

BREAKOUT OF 2004 REGIONAL FS IMPACT ON GROUND BASE RATES BY CENSUS DIVISION

Census division	Regional factor percentage increases
1. New England (CT, ME, MA, NH, RI, VT)	23.3
2. Middle Atlantic (NJ, NY, PA)	4.7
3. East North Central (IN, IL, MI, OH, WI)	0
4. West North Central (IA, KS, MN, MO, NE, ND, SD)	0
5. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	0
6. East South Central (AL, KY, MS, TN)	0
7. West South Central (AR, LA, OK, TX)	10.2
8. Mountain (AZ, CO, ID, NM, MT, UT, NV, WY)	9.9
9. Pacific (AK, CA, HI, OR, WA)	38.6

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million or less in any 1 year. For purposes of the RFA, most ambulance providers and most ambulance suppliers are considered small businesses. Individuals and States are not included in the definition of a small entity. This rule will have a significant impact on all ambulance providers and suppliers to the extent that this rule authorizes higher payments to anyone furnishing Medicare-covered ambulance services to Medicare beneficiaries. There is a one percent increase in payments for all urban transports and a two percent increase in payments for all rural transports, as well as a 22.6 percent increase in payments for the base rate in the least populated rural areas in the country. Also, there is a 25 percent increase in the payments for mileage in excess of 50 miles, which we anticipate will occur primarily in rural areas. Finally, the ambulance entities furnishing services in 26 States will receive increased payments to their base rate because of the FS rate floor established by census division.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule will impact small rural hospitals to the extent that they furnish Medicare covered ambulance services. As noted above, ambulance FS payments are increased by 2 percent for all rural trips, and there is a 22.6 percent increase in the base rate payments for ambulance transports in the least populated rural areas in the country.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule does not have any unfunded mandates.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule does not impose any compliance costs on the governments mentioned.

B. Anticipated Effects

This rule results in increased spending for all Medicare-covered ambulance services furnished to Medicare beneficiaries. Therefore, all entities that furnish these services will benefit from increased program revenues. Entities that furnish these services in rural areas will particularly benefit from increased revenue and especially those rural entities that furnish these services in the least populated areas in the country. Entities that furnish these services in 26 States will benefit from increased revenue resulting from the payment floor established based on the regional FS. There will be a commensurate cost to the Medicare program of approximately $840 million over the total 5-year period during which these provisions will be in effect.

C. Alternatives Considered

This rule conforms the Medicare program regulations to the statutory provisions contained in section 414 of the MMA. These provisions are essentially prescriptive in the statute and do not allow for discretionary alternatives on the part of the Secretary. In determining the super-rural bonus amount, we followed the statutory guidance of using the data from the

GAO report cited above and followed the same regression analysis that was used in that report.

D. Conclusion

Because this rule results in higher payments to all entities that furnish Medicare-covered ambulance services to Medicare beneficiaries, we anticipate that the primary effect of this rule will be to increase revenues for these entities. This rule will not adversely affect any of these entities. Those entities that furnish ambulance services in rural areas will particularly benefit, especially for those services furnished in the least populated rural areas.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and record keeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

Subpart H—Fee Schedule for Ambulance Services

■ 1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

■ 2. Section § 414.610 is amended by—
■ A. Revising paragraph (c)(1).
■ B. Revising paragraph (c)(5).
■ C. Adding paragraph (c)(7).

The revisions and addition read as follows:

§ 414.610 Basis of payment.

* * * * *

(c) * * *

* * * * *

(1) *Ground ambulance service levels.* The CF is multiplied by the applicable RVUs for each level of service to produce a service-level base rate. For services furnished during the period July 1, 2004 through December 31, 2006, ambulance services originating in urban areas (both base rate and mileage) are paid based on a rate that is one percent higher than otherwise is applicable under this section, and ambulance services originating in rural areas (both base rate and mileage) are paid based on a rate that is two percent higher than otherwise is applicable under this section. The service-level base rate is then adjusted by the GAF. Compare this amount to the actual charge. The lesser of the actual charge or the GAF adjusted base rate amount is added to the lesser of the actual mileage charges or the payment rate per mile, multiplied by the number of miles that the beneficiary was transported. When applicable, the appropriate RAF is applied to the ground mileage rate to determine the appropriate payment rates. The RVU scale for the ambulance fee schedule is as follows:

* * * * *

(5) *Rural adjustment factor (RAF).* (i) For ground ambulance services where the point of pickup is in a rural area, the mileage rate is increased by 50 percent for each of the first 17 miles and by 25 percent for miles 18 through 50. The standard mileage rate applies to every mile over 50 miles. For air ambulance services where the point of pickup is in a rural area, the total payment is increased by 50 percent; that is, the rural adjustment factor applies to the sum of the base rate and the mileage rate.

(ii) For services furnished during the period July 1, 2004 through December 31, 2009, the payment amount for the ground ambulance base rate is increased by 22.6 percent where the point of pickup is in a rural area determined to be in the lowest 25 percent of rural population arrayed by population density. The amount of this increase is based on CMS's estimate of the ratio of the average cost per trip for the rural areas in the lowest quartile of population compared to the average cost per trip for the rural areas in the highest quartile of population. In making this estimate, CMS may use data provided by the GAO.

* * * * *

(7) *Payment rate for mileage greater than 50 miles.* For services furnished during the period July 1, 2004 through December 31, 2008, each loaded ambulance mile greater than 50 (that is, miles 51 and greater) for ambulance transports originating in either urban areas or in rural areas are paid based on a rate that is 25 percent higher than otherwise is applicable under this section.

■ (3) A new § 414.617 is added to read as follows:

§ 414.617 Transition from regional to national ambulance fee schedule.

For services furnished during the period July 1, 2004 through December 31, 2009, the amount for the ground ambulance base rate is subject to a floor amount determined by establishing nine fee schedules based on each of the nine census divisions using the same methodology as used to establish the national fee schedule. If the regional fee schedule methodology for a given census division results in an amount that is less than or equal to the national ground base rate, then it is not used, and the national FS amount applies. If the regional fee schedule methodology for a given census division results in an amount that is greater than the national ground base rate, then the FS portion of the base rate for that census division is equal to a blend of the national rate and the regional rate in accordance with the following schedule:

Time period	Regional percent	National percent
7/1/04–12/31/04	80	20
CY 2005	60	40
CY 2006	40	60
CY 2007–CY 2009	20	80
CY 2010 and thereafter	0	100

(Catalog of Federal Domestic assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 27, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 17, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–15090 Filed 6–30–04; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Thursday,
July 1, 2004

Part X

Department of the Interior

Bureau of Land Management

43 CFR Parts 3830 and 3834
Location, Recording, and Maintenance of Mining Claims or Sites; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3830 and 3834

[WO–320–1430–00–24 1A]

RIN 1004–AD62

Location, Recording, and Maintenance of Mining Claims or Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM or "we") is issuing this final rule to amend regulations on locating, recording, and maintaining mining claims or sites. In this rule, we are amending our regulations to respond to the law requiring that: BLM adjust the location and maintenance fees on unpatented mining claims or sites; adjust these fees every five years or sooner if conditions warrant; base the adjustment upon the change in the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics; and give notice of any fee adjustment in the **Federal Register** by July 1st of any given assessment year in order for such adjustment to be effective by the beginning of the following assessment year (*i.e.*, the September 1st immediately following the 1st of July in which the notice is given).

DATES: *Effective Date:* This rule is effective June 30, 2004.

ADDRESSES: You may mail suggestions or inquiries to Bureau of Land Management, Solid Minerals Group, Room 501 LS, 1849 C Street, NW., Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Roger Haskins in the Solid Minerals Group at (202) 452–0355. For assistance in reaching Mr. Haskins, persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–(800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

On August 10, 1993, Congress enacted Public Law 103–66, 107 Stat. 405, 30 U.S.C. 28f–28k, which requires claimants to pay a $25 one-time location fee and a $100 annual maintenance fee per claim or site, and adds qualifiers for small miner waivers. The Act (30 U.S.C. 28j) also requires the periodic adjustment of the location and annual maintenance fees on a 5-year basis and the use of the CPI to form the basis of the fee adjustments. The BLM has not adjusted the fees since the Act was originally passed in 1993. The adjustment made in this rule is based upon the change in the CPI from September 1, 1993 through December 31, 2003. The calculated change is 125.6 percent from September 1, 1993 through December 31, 2003, reflecting a 25.6 percent increase in the CPI. We have rounded the resulting adjusted fees down to the nearest $5.00, so that the fees are slightly lower than the percentage increase would indicate.

II. Discussion of the Final Rule

Why We Are Publishing This as a Final Rule

BLM is adopting this final rule to amend our regulations to make adjustments in the mining law fees as required by 30 U.S.C. 28j(c).

The Department of the Interior for good cause finds under 5 U.S.C. 553(b)(3)(B) that notice and public procedure for this rule are unnecessary. The reason is that this rule implements a statutory requirement to adjust the location and annual maintenance fees. The statute specifies the method of calculation of the fee adjustments and prescribes the form and manner of notice of the fee adjustment.

We also determine under 5 U.S.C. 553(d) that there is good cause to place the rule into effect on the date of publication, because the fee adjustment is explicitly required by statute.

Organization of the Final Rule

This final rule amends the existing regulation. It contains amendments necessary to conform to the requirements of the statute. One of the amendments appears as a modification of the fee transaction table at 43 CFR 3830.21. We have amended the fee transaction table by changing the amounts of the location fee and the initial and annual maintenance fees required to be paid for each mining claim, mill, or tunnel site. In addition, we have amended § 3834.23 by adding a new paragraph (c) that states that in any year in which the fee is adjusted, BLM will give claimants an opportunity to cure a failure to pay the increased fee amounts if the claimant paid the pre-adjusted fee amount by the deadline.

The rule also adds a new paragraph (c) to § 3834.23 to allow a mining claimant who has paid the old $100 maintenance fee before June 30, 2004, to pay the additional amount without penalty upon notice from BLM. The current regulations make the failure to pay the maintenance fee by September 1st, or the location fee at the time of recording a fatal defect, and the claim or site becomes forfeit. This addition to § 3834.23 provides that whenever the BLM raises the maintenance or location fees as required by 30 U.S.C. 28(j), in the year of the fee adjustment BLM will allow the failure to pay the difference between the old fee and the amount required under the fee adjustment to be a curable defect.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, BLM has determined that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

- The rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The fee adjustment does not change the substance of current mining claim administration within BLM.
- This rule will not create inconsistencies with other agencies' actions. It does not change the relationships of BLM to other agencies and their actions.
- This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule does not address any of these programs.
- This rule will not raise novel legal or policy issues because it makes no major substantive changes in the regulations. The constitutionality of the location and maintenance fees has been challenged in the Federal courts. The courts have consistently upheld the 1993 and subsequent Acts and their implementing regulations.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The rule will have a minor impact because the fees paid by small entities will be adjusted. However, the fee adjustment is directed by statute and the BLM has no discretion in the timing, form, or manner of making the adjustments. A

final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

For the purposes of this section a "small entity" is an individual, limited partnership, or small company, at "arm's length" from the control of any parent companies, with fewer than 500 employees or less than $5 million in revenue. This definition conforms with Small Business Administration regulations at 13 CFR 121.201.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- Does not have an annual effect on the economy of $100 million or more. As explained in section 1 above, the revised regulations will not materially alter current BLM policy. The fee adjustments are directed by statute. The total amount of fees collected, including the effects of the adjustment, is estimated to be $38 million annually.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does affect the cost to locate, record, or maintain a mining claim or site.
- Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

- This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is unnecessary.
- This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The changes implemented in this rule do not require anything of any non-Federal governmental entity.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have takings implications.

A takings implication assessment is not required. This rule does not substantially change BLM policy. Nothing in this rule constitutes a taking. The Federal courts have heard a number of suits challenging the imposition of the rental and maintenance fees as a taking of a right, or, alternatively, as an unconstitutional tax. The courts have upheld the 1993 and subsequent Acts and the BLM rules as a proper exercise of congressional and executive authorities.

Executive Order 12612, Federalism

In accordance with Executive Order 12612, BLM finds that the rule does not have significant federalism effects. A Federalism Assessment is not required. This rule does not change the role or responsibilities between Federal, state, and local governmental entities, nor does it relate to the structure and role of states or have direct, substantive, or significant effects on states.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, BLM finds that the rule does not unduly burden the judicial system and therefore meets the requirements of sections 3(a) and 3(b)(2) of the Order. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the drafting process.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the regulations that this administrative final rule is amending, under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004–0114.

National Environmental Policy Act

BLM has determined that this administrative final rule, which is required by an Act of Congress, and merely adjusts certain mining claim location and annual maintenance fees, is a regulation of an administrative, financial, legal, technical or procedural nature. Therefore, it is categorically excluded from environmental review under Section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required. Further, the fee adjustment is directed by an Act of Congress and BLM has no discretion in this matter.

Because this rule does not substantially change BLM's overall management objectives or our environmental compliance requirements, it would have no impact on, or only marginally affect, the following critical elements of the human environment as defined in Appendix 5 of the BLM National Environmental Policy Act Handbook (H–1790–1): air quality, areas of critical environmental concern, cultural resources, Native American religious concerns, threatened or endangered species, hazardous or solid waste, water quality, prime and unique farmlands, wetlands, riparian zones, wild and scenic rivers, environmental justice, and wilderness.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.

In accordance with Executive Order 13175, we have considered the impact of this rule on the interests of Tribal governments. Because this rule does not specifically involve Indian reservation lands, government-to-government relationships are not affected and consultation is unnecessary.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. To the extent that the rule affects the mining of energy minerals (*i.e.*, uranium and other fissionable metals), the rule applies only a statutory adjustment of the mining claim location and maintenance fees that BLM has been collecting for many years. It will not change any other financial or other obligations of the mining industry.

Authors

The principal author of this administrative final rule is Roger Haskins in the Solid Minerals Group, assisted by Ted Hudson in the Regulatory Affairs Group, Washington Office, BLM.

List of Subjects in 43 CFR Part 3830

Maintenance fees, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: June 24, 2004.

Chad Calvert,

Acting Assistant Secretary of the Interior.

■ For the reasons stated in the preamble, and under the authority of the Act of August 10, 1993, as amended (Pub. L. 103–66, 107 Stat. 405); sections 441 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1201 and 1457); and sections 2319 and 2324 of the Revised Statutes, as amended (30 U.S.C. 22 and 28); part 3830, group 3800, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as follows:

PART 3830—LOCATION OF MINING CLAIMS

Subpart D—BLM Service Charge and Fee Requirements

■ 1. The authority citation for part 3830 continues to read as follows:

Authority: 30 U.S.C. 22, 28, and 28f–28k; 43 U.S.C. 299 and 1201; 31 U.S.C. 9701; 16 U.S.C. 1901, 1907; 43 U.S.C. 1740 and 1744; 30 U.S.C. 242; 50 U.S.C. appendix 565; 112 Stat. 2861–235; 115 Stat 414.

■ 2. Revise § 3830.21 to read as follows:

3830.21 What are the different types of service charges and fees?

The following table lists service charges, maintenance fees, location fees, and oil shale fees (all cross-references refer to this chapter):

Transaction	Amount due per mining claim or site	Waiver available
(a) Recording a mining claim or site location (part 3833)	(1) A total of $165, which includes:	
	(i) A $10 service charge	No.
	(ii) A one-time $30 location fee	No.
	(iii) An initial $125 maintenance fee	No.
(b) Amending a mining claim or site location (§ 3833.20)	A $5 service charge	No.
(c) Transferring a mining claim or site (§ 3833.30)	A $5 service charge	No.
(d) Maintaining a mining claim or site for one assessment year (part 3834).	A $125 annual maintenance fee	Yes, see part 3835.
(e) Recording an annual FLPMA filing (§ 3835.30)	A $5 service charge	No.
(f) Submitting a petition for deferment of assessment work (§ 3836.30).	A $25 service charge	No.
(g) Maintaining an oil shale placer mining claim (§ 3834.11(b)).	An annual $550 fee	No.
(h) Recording a notice of intent to locate mining claims on Stockraising Homestead Act Lands (part 3838).	A $25 service charge	No.

PART 3834—REQUIRED FEES FOR MINING CLAIMS OR SITES

Subpart B—Fee Adjustment

■ 3. Amend section 3834.23 by adding paragraph (c) to read as follows:

§ 3834.23 When do I start paying the adjusted fees?

* * * * *

(c) Notwithstanding §§ 3830.91(a)(3) and 3830.96, in any year in which BLM adjusts the maintenance and location fees, if you pay the fees on or before September 1 of that year, but pay an amount based on the fee in effect immediately before the adjustment was made, BLM will send you a notice, as provided in § 3830.94, giving you 30 days in which to pay the additional amount required to meet the adjusted fees. If you do not pay the additional amount due within 30 days after the date you receive the notice, you will forfeit the affected mining claims or sites.

[FR Doc. 04–15158 Filed 6–30–04; 12:15 pm]

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Federal Register

Thursday,
July 1, 2004

Part XI

The President

Proclamation 7800—To Modify Duty-Free Treatment Under the Generalized System of Preferences

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Presidential Documents

Title 3—

The President

Proclamation 7800 of June 30, 2004

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to section 503(c)(1) of title V of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2463(c)(1)), the President may withdraw, suspend, or limit designation of specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries or beneficiary sub-Saharan African countries pursuant to section 503(c)(2)(D) of the 1974 Act (19 U.S.C. 2463(c)(2)(D)), are subject to competitive need limitations on the preferential treatment afforded under the GSP to eligible articles.

3. Section 503(c)(2)(C) of the 1974 Act (19 U.S.C. 2463(c)(2)(C)) provides that a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the competitive need limitations in section 503(c)(2)(A) during the preceding calendar year.

4. Section 503(c)(2)(F) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)) provides that the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed an amount set forth in section 503(c)(2)(F)(ii) (19 U.S.C. 2463(c)(2)(F)(ii)).

5. Pursuant to section 503(d) of the 1974 Act (19 U.S.C. 2463(d)), the President may waive the application of the competitive need limitations in section 503(c)(2)(A) with respect to any eligible article from any beneficiary developing country if certain conditions are met.

6. Pursuant to section 503(c)(1) of the 1974 Act, and having considered the factors set forth in sections 501 and 502(c) (19 U.S.C. 2461 and 2462(c)), I have determined that it is appropriate to withdraw the designation of certain articles as eligible articles under the GSP when imported from any beneficiary developing country. In order to do so for two of the articles, it is necessary to subdivide and amend the nomenclature of existing subheadings of the HTS.

7. Pursuant to section 503(c)(1) of the 1974 Act, and having considered the factors set forth in sections 501 and 502(c), I have determined to limit the application of duty-free treatment accorded to a certain article from a certain beneficiary developing country.

8. Pursuant to section 503(c)(1) and 503(c)(2)(A) of the 1974 Act, I have determined that certain beneficiary countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles

that were imported in quantities exceeding the applicable competitive need limitation in 2003.

9. Pursuant to section 503(c)(2)(C) of the 1974 Act, I have determined that certain countries should be redesignated as beneficiary developing countries with respect to certain eligible articles that previously had been imported in quantities exceeding the competitive need limitations of section 503(c)(2)(A).

10. Pursuant to section 503(c)(2)(F) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) should be waived with respect to certain eligible articles from certain beneficiary developing countries.

11. Pursuant to section 503(d) of the 1974 Act, I have determined that the competitive need limitations of section 503(c)(2)(A) should be waived with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waiver, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c), that such waivers are in the national economic interest of the United States.

12. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act (19 U.S.C. 2461–7, 2483), do proclaim that:

(1) In order to provide that one or more countries that have not been treated as beneficiary developing countries with respect to one or more eligible articles be redesignated as beneficiary developing countries with respect to such article or articles for purposes of the GSP, and, in order to provide that one or more countries no longer be treated as a beneficiary developing country with respect to one or more eligible articles for purposes of the GSP, general note 4(d) to the HTS is modified as provided in section A of Annex I to this proclamation.

(2) In order to withdraw the designation of certain articles as eligible articles for purposes of the GSP, the HTS is modified by amending and subdividing the nomenclature of certain existing HTS subheadings as provided in section B of Annex I to this proclamation.

(3) (a) In order to provide preferential tariff treatment under the GSP to a beneficiary developing country that has been excluded from the benefits of the GSP for certain eligible articles, the Rates of Duty 1-Special subcolumn for such HTS subheadings is modified as provided for in section C(1) of Annex I to this proclamation.

(b) In order to provide that one or more countries not be treated as a beneficiary developing country with respect to certain eligible articles for purposes of the GSP, the Rates of Duty 1-Special subcolumn for such HTS subheadings is modified as provided for in section C(2) of Annex I to this proclamation.

(c) In order to withdraw preferential tariff treatment under the GSP for a certain article imported from any beneficiary developing country, the Rates of Duty 1-Special subcolumn for such HTS subheading is modified as provided for in section C(3) of Annex I to this proclamation.

(4) A waiver of the application of section 503(c)(2)(A) (i)(II) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and to the beneficiary developing countries listed in Annex II to this proclamation.

(5) A waiver of the application of section 503(c)(2)(A) of the 1974 Act shall apply to the eligible article in the HTS subheading and to the beneficiary developing country listed in Annex III to this proclamation.

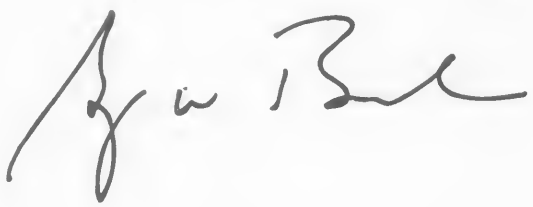
(6) Any provisions of previous proclamations or Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(7) (a) The modifications made by Annex I to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2004.

(b) The actions taken in Annex II to this proclamation shall be effective on July 1, 2004.

(c) The action taken in Annex III to this proclamation shall be effective on the date of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of June, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



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Annex I

Modifications to the Harmonized Tariff Schedule of the United States (HTS)

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2004.

Section A. General note 4(d) to the HTS is modified by:

(1). deleting the following provisions and the country set out opposite such subheading:

0410.00.00 Indonesia	
0711.40.00 India	4012.11.80 India
2917.12.10 India	8525.40.80 Indonesia

(2). adding, in numerical sequence, the following subheadings and countries set out opposite them:

0202.30.02 Costa Rica	
0302.69.10 Ecuador	4107.12.70 Dominican Republic
0811.90.55 Guatemala	5308.90.10 Dominican Republic
1703.90.50 Dominican Republic	6802.91.25 Turkey
	8402.11.00 Peru

(3). adding, in alphabetical order, the country set out opposite the following subheading:

1701.91.42 Colombia
1702.90.35 Guatemala
3920.62.00 Thailand

Section B. The HTS is modified as provided in this section, with bracketed matter included to assist in the understanding of proclaimed modifications. The following provisions supersede matter now in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

(a) Subheadings 3901.10.00 and 3901.20.00 are superseded and the following provisions inserted in numerical sequence:

	[Polymers of ethylene, in primary forms:]			
"3901.10	Polyethylene having a specific gravity of less than 0.94:			
3901.10.10	Having a relative viscosity of 1.44 or more	6.5%	Free (CA,CL,E,IL, J,JO,MX) 5.7% (SG)	43%
3901.10.50	Other	6.5%	Free (A,CA,CL,E, IL,J,JO,MX) 5.7% (SG)	43%
3901.20	Polyethylene having a specific gravity of 0.94 or more:			
3901.20.10	Having a relative viscosity of 1.44 or more	6.5%	Free (CA,CL,E,IL, J,JO,MX,SG)	43%
3901.20.50	Other	6.5%	Free (A,CA,CL,E, IL,J,JO,MX,SG)	43%"

(b). Conforming change: For subheadings 3901.10.10 and 3901.10.50 on January 1 for each of the dated columns listed below, the rate of duty in the Rates of Duty 1-Special subcolumn followed by the symbol "SG" is deleted and rate of duty for such dated column is inserted in lieu thereof:

2005	2006	2007
3.8%	1.9%	Free

Section C. Each enumerated article's preferential tariff treatment under the Generalized System of Preferences (GSP) in the HTS is modified as provided in this section.

(1). For the following provisions, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof:

0410.00.00
0711.40.00
4012.11.80
8525.40.80

(2). For the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting an "A*" in lieu thereof:

0202.30.02
0302.69.10
0811.90.55
1703.90.50
4107.12.70
5308.90.10
6802.91.25
8402.11.00

(3). For subheading 2917.12.10, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A*,".

Annex II

HTS subheading and countries for which the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the Trade Act of 1974 is waived

0302.70.20 Russia	2008.19.30 Turkey	4104.11.50 Brazil
0305.10.40 Thailand	2008.99.35 Thailand	4106.22.00 Pakistan
0305.69.60 Philippines	2008.99.50 Thailand	4107.11.40 India
0410.00.00 Indonesia	2305.00.00 Argentina	4107.11.60 Brazil
0710.29.15 India	2306.30.00 Argentina	4107.92.40 India
0711.40.00 India	2515.12.20 Turkey	4202.22.35 Philippines
0712.90.70 Egypt	2804.29.00 Russia	4202.92.04 Philippines
0802.50.20 Turkey	2840.11.00 Turkey	4602.10.23 Philippines
0804.50.80 Philippines	2840.19.00 Turkey	5007.10.30 India
0810.60.00 Thailand	2850.00.20 Russia	5208.31.20 India
0813.40.10 Thailand	2903.51.00 Romania	5208.32.10 India
1102.30.00 Thailand	2903.69.08 Brazil	5208.41.20 India
1202.10.40 Egypt	2909.50.40 Indonesia	5208.42.10 India
1515.90.60 Argentina	2910.20.00 Brazil	5209.31.30 India
1604.14.50 Fiji	2915.12.00 Turkey	5209.41.30 India
1806.10.43 Brazil	2915.35.00 Brazil	5607.90.35 Philippines
1806.20.22 Brazil	2931.00.25 Brazil	6406.10.72 Brazil
1806.90.15 Russia	2934.99.18 Brazil	8112.19.00 Kazakhstan
1901.20.02 Argentina	2938.10.00 Brazil	8528.12.44 Thailand
1901.20.30 Argentina	3603.00.30 Brazil	8606.10.00 India
1901.20.45 Argentina	4012.11.80 India	9507.20.40 Philippines
2001.90.45 India	4101.90.40 Argentina	9614.20.60 Turkey

Annex III

HTS Subheading and Country Granted A Waiver of the Application of Section 503(c)(2)(A) of the 1974 Act

HTS Subheading	Country
8525.40.80	Indonesia

[FR Doc. 04–15262

Filed 6–30–04; 3:07 pm]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 1, 2004

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:
- Classification services to growers; 2004 user fees; published 5-28-04

Milk marketing orders:
- Mideast; published 6-22-04
- Pacific Northwest; published 6-23-04

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Plum pox compensation; published 6-1-04

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Fish and shellfish; subsistence taking
  - Seasonal adjustment; published 5-19-04
- Wildlife; 2004-2005 subsistence taking; published 7-1-04

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic highly migratory species—
  - Shark fishing season; published 6-1-04
- Northeastern United States fisheries—
  - Mackerel, squid and butterfish; published 6-1-04

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans:
- Preparation, adoption, and submittal—
  - Prevention of significant deterioration and nonattainment new source review; equipment replacement provision; stay of effective date; published 7-1-04

Organization, functions, and authority delegations:
- Office of Pesticide Programs; address changes; published 7-1-04

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Thrift Savings Plan:
- Funds withdrawal; court orders and legal processes, and loan program; published 5-26-04

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare and medicaid:
- Ambulance services fee schedule; temporary rate increases; published 7-1-04

Medicare:
- Inpatient rehabilitation facility; classification criteria changes; published 5-7-04
- Long-term care hospitals; prospective payment system; annual payment rate updates and policy changes; published 5-7-04

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Massachusetts; published 6-24-04

Ports and waterways safety:
- Saginaw River, Bay City, MI; safety zones; published 6-21-04

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Fish and shellfish; subsistence taking
  - Seasonal adjustment; published 5-19-04
- Wildlife; 2004-2005 subsistence taking; published 7-1-04

LIBRARY OF CONGRESS

American Television and Radio Archives Act:
- News transmissions; reproduction, compilation, and distribution; miscellaneous amendments; published 7-1-04

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:
- Allocation of assets—
  - Interest assumptions for valuing and paying benefits; published 6-15-04

POSTAL SERVICE

Freedom of Information Act; implementation:
- Information; release and privacy
  - Correction; published 7-1-04

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
- Incident reporting requirements and incident report form; revisions; published 12-3-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:
- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Livestock and poultry disease control:
- Highly pathogenic avian influenza; additional restrictions; comments due by 7-9-04; published 5-10-04 [FR 04-10524]

Plant-related quarantine, domestic:
- Karnal bunt; comments due by 7-6-04; published 5-5-04 [FR 04-10195]

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:
- Guaranteed farm ownership and operating loan requirements; comments due by 7-6-04; published 5-4-04 [FR 04-10068]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Food labeling—
  - Uniform compliance dates; comments due by 7-6-04; published 5-4-04 [FR 04-09931]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Rural Business Investment Program; administrative provisions; comments due by 7-8-04; published 6-8-04 [FR 04-12731]

AGRICULTURE DEPARTMENT

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Rural Business Investment Program; administrative provisions; comments due by 7-8-04; published 6-8-04 [FR 04-12731]

RUS Telecommunications Borrowers; accounting requirements; comments due by 7-9-04; published 5-10-04 [FR 04-10512]

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National Oceanic and Atmospheric Administration

Fishery conservation and management:
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  - Multispecies fishery; comments due by 7-6-04; published 6-21-04 [FR 04-13941]
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 7-7-04; published 6-7-04 [FR 04-12707]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Service-Disabled Veteran-Owned Small Business Concerns Procurement Program; comments due by 7-6-04; published 5-5-04 [FR 04-09752]

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Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Appliance standards program; possible expansion to include

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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H.R. 1822/P.L. 108–239
To designate the facility of the United States Postal Service located at 3751 West 6th Street in Los Angeles, California, as the "Dosan Ahn Chang Ho Post Office". (June 25, 2004; 118 Stat. 673)

H.R. 2130/P.L. 108–240
To redesignate the facility of the United States Postal Service located at 121 Kinderkamack Road in River Edge, New Jersey, as the "New Bridge Landing Post Office". (June 25, 2004; 118 Stat. 674)

H.R. 2438/P.L. 108–241
To designate the facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, as the "Major Henry A. Commiskey, Sr. Post Office Building". (June 25, 2004; 118 Stat. 675)

H.R. 3029/P.L. 108–242
To designate the facility of the United States Postal Service located at 255 North Main Street in Jonesboro, Georgia, as the "S. Truett Cathy Post Office Building". (June 25, 2004; 118 Stat. 676)

H.R. 3059/P.L. 108–243
To designate the facility of the United States Postal Service located at 304 West Michigan Street in Stuttgart, Arkansas, as the "Lloyd L. Burke Post Office". (June 25, 2004; 118 Stat. 677)

H.R. 3068/P.L. 108–244
To designate the facility of the United States Postal Service located at 2055 Siesta Drive in Sarasota, Florida, as the "Brigadier General (AUS-Ret.) John H. McLain Post Office". (June 25, 2004; 118 Stat. 678)

H.R. 3234/P.L. 108–245
To designate the facility of the United States Postal Service located at 14 Chestnut Street in Liberty, New York, as the "Ben R. Gerow Post Office Building". (June 25, 2004; 118 Stat. 679)

H.R. 3300/P.L. 108–246
To designate the facility of the United States Postal Service located at 15500 Pearl Road in Strongsville, Ohio, as the "Walter F. Ehrnfelt, Jr. Post Office Building". (June 25, 2004; 118 Stat. 680)

H.R. 3353/P.L. 108–247
To designate the facility of the United States Postal Service located at 525 Main Street in Tarboro, North Carolina, as the "George Henry White Post Office Building". (June 25, 2004; 118 Stat. 681)

H.R. 3536/P.L. 108–248
To designate the facility of the United States Postal Service located at 210 Main Street in Malden, Illinois, as the "Army Staff Sgt. Lincoln Hollinsaid Malden Post Office". (June 25, 2004; 118 Stat. 682)

H.R. 3537/P.L. 108–249
To designate the facility of the United States Postal Service located at 185 State Street in Manhattan, Illinois, as the "Army Pvt. Shawn Pahnke Manhattan Post Office". (June 25, 2004; 118 Stat. 683)

H.R. 3538/P.L. 108–250
To designate the facility of the United States Postal Service located at 201 South Chicago Avenue in Saint Anne, Illinois, as the "Marine Capt. Ryan Beaupre Saint Anne Post Office". (June 25, 2004; 118 Stat. 684)

H.R. 3690/P.L. 108–251
To designate the facility of the United States Postal Service located at 2 West Main Street in Batavia, New York, as the "Barber Conable Post Office Building". (June 25, 2004; 118 Stat. 685)

H.R. 3733/P.L. 108–252
To designate the facility of the United States Postal Service located at 410 Huston Street in Altamont, Kansas, as the "Myron V. George Post Office". (June 25, 2004; 118 Stat. 686)

H.R. 3740/P.L. 108–253
To designate the facility of the United States Postal Service located at 223 South Main Street in Roxboro, North Carolina, as the "Oscar Scott Woody Post Office Building". (June 25, 2004; 118 Stat. 687)

H.R. 3769/P.L. 108–254
To designate the facility of the United States Postal Service located at 137 East Young High Pike in Knoxville, Tennessee, as the "Ben Atchley Post Office Building". (June 25, 2004; 118 Stat. 688)

H.R. 3855/P.L. 108–255
To designate the facility of the United States Postal Service located at 607 Pershing Drive in Laclede, Missouri, as the "General John J. Pershing Post Office". (June 25, 2004; 118 Stat. 689)

H.R. 3917/P.L. 108–256
To designate the facility of the United States Postal Service located at 695 Marconi Boulevard in Copiague, New York, as the "Maxine S. Postal United States Post Office". (June 25, 2004; 118 Stat. 690)

H.R. 3939/P.L. 108–257
To redesignate the facility of the United States Postal Service located at 14-24 Abbott Road in Fair Lawn, New Jersey, as the "Mary Ann Collura Post Office Building". (June 25, 2004; 118 Stat. 691)

H.R. 3942/P.L. 108–258
To redesignate the facility of the United States Postal Service located at 7 Commercial Boulevard in Middletown, Rhode Island, as the "Rhode Island Veterans Post Office Building". (June 25, 2004; 118 Stat. 692)

H.R. 4037/P.L. 108–259
To designate the facility of the United States Postal Service located at 475 Kell Farm Drive in Cape Girardeau, Missouri, as the "Richard G. Wilson Processing and Distribution Facility". (June 25, 2004; 118 Stat. 693)

H.R. 4176/P.L. 108–260
To designate the facility of the United States Postal Service located at 122 West Elwood Avenue in Raeford, North Carolina, as the "Bobby Marshall Gentry Post Office Building". (June 25, 2004; 118 Stat. 694)

H.R. 4299/P.L. 108–261
To designate the facility of the United States Postal Service located at 410 South Jackson Road in Edinburg, Texas, as the "Dr. Miguel A. Nevarez Post Office Building". (June 25, 2004; 118 Stat. 695)

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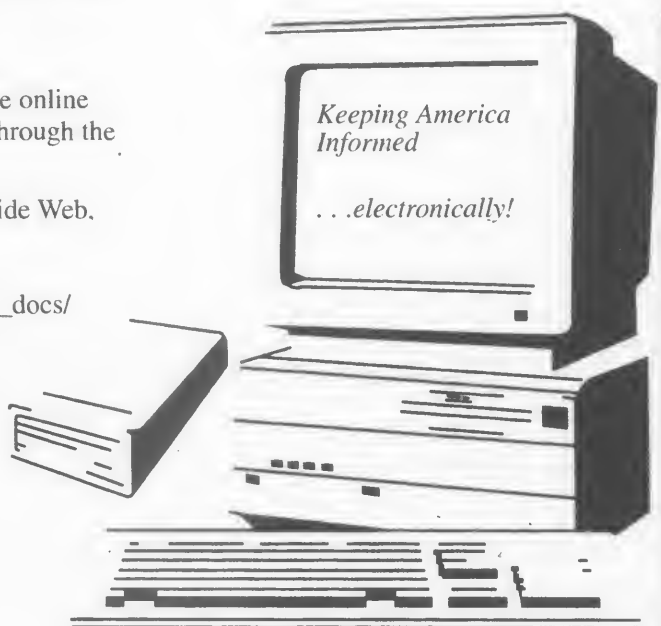

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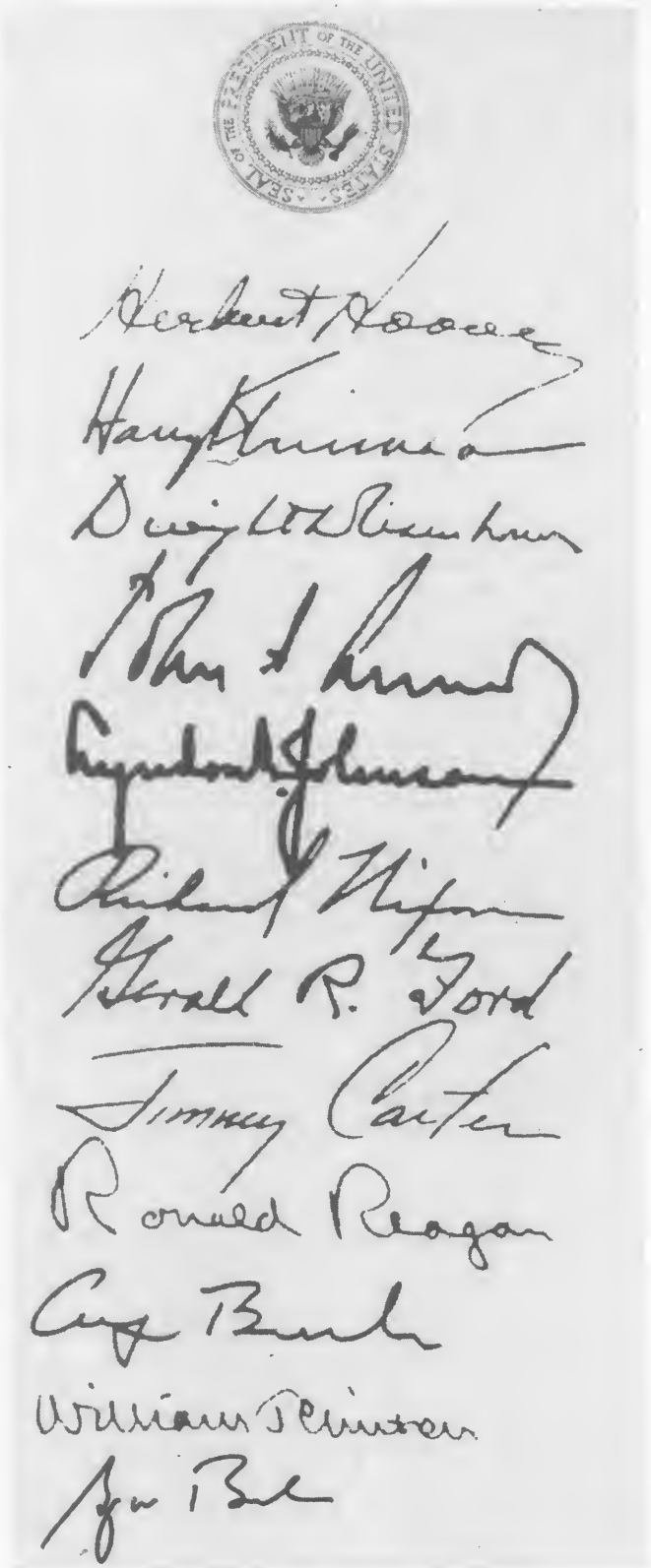

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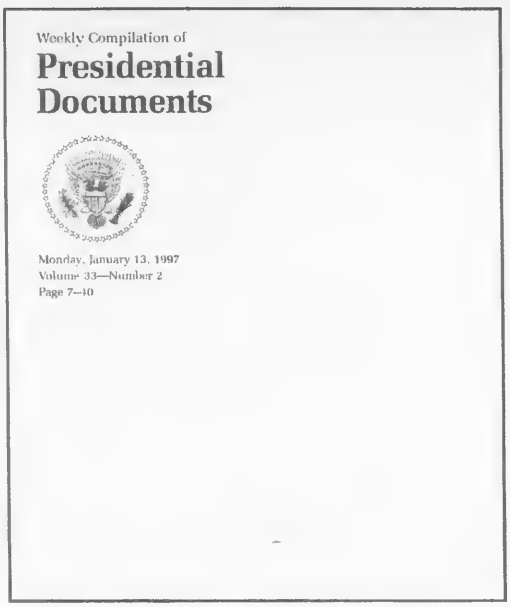

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